

**AGENDA ITEM NO. 7d**  
**MEETING DATE: March 15, 2011**

TO: John Doan, City Administrator [jdoan@ci.tumwater.wa.us](mailto:jdoan@ci.tumwater.wa.us)

FOR: City Council  
[council@ci.tumwater.wa.us](mailto:council@ci.tumwater.wa.us)

FROM: Administrative Services Department / Eric Trimble, Director  
[etrimble@ci.tumwater.wa.us](mailto:etrimble@ci.tumwater.wa.us)  
Brian Scharber, IT Manager  
[bscharber@ci.tumwater.wa.us](mailto:bscharber@ci.tumwater.wa.us)

RE: **Conduit Lease Agreement Amendment #6 & Easement**

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1) References: (List only those attached)

- A. Lease Agreement #6
- B. Easement
- C. CenturyTel Leased City Conduit/Fiber Spreadsheet

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2) Action Requested / Staff Recommendation:

Staff requests that the City Council approve and authorize the Mayor to sign the attached Conduit Lease Agreement and Easement with CenturyTel of Washington, dba CenturyLink.

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3) History & Facts Brief:

The City had telecommunication vaults, conduit and innerduct installed on Tumwater Boulevard as part of that road improvement project. CenturyLink is proposing to lease a portion of that facility from the City as outlined in the attached Lease Agreement #6. In addition to the lease agreement, the City needs to provide CenturyTel with an easement allowing them to operate in City right-of-way.

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4) Discussion & Alternatives:

The City Council has entered into previous agreements with CenturyTel for Lease of City facilities. This proposed Lease #6 is another in the series of those agreements.

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5) Fiscal Notes:

The City will receive approximately \$44,100 from CenturyTel over the 5+ year term of proposed Lease #6 (from the date of lease approval to January 1, 2017).

# A

## AGREEMENT

### 2011 Leasing of City-Owned Conduit By CenturyTel/CenturyLink Lease #6

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Tumwater, herein referred to as the "City," and CenturyTel of Washington, Inc., dba "CenturyLink", herein referred to as "CenturyLink."

WHEREAS, the City owns underground conduit within the right-of-way of its urban core; and

WHEREAS, the conduit contains capacity for use by CenturyLink to run fiber optic cable through said conduit; and

WHEREAS, the City has granted CenturyLink access to City's right-of-way pursuant to Master Use Permit Agreement, Ordinance No. 02011-003; and

WHEREAS, by execution of this Lease #6, the City and CenturyLink also seek to add an additional path of right-of-way; and

WHEREAS, it is in the best interest of the City and CenturyLink that CenturyLink be authorized to install and maintain fiber optic cable through the City conduit under the terms and conditions set forth below.

#### THE PARTIES AGREE AS FOLLOWS:

##### 1. Authorization.

A. This Agreement authorizes CenturyLink to install a 4" conduit located on the Capitol Deschutes River Bridge, install and maintain one (1) 48-strand line of fiber optic cable in conduit as described herein in Attachment A.

B. City authorizes installation of two 1.25 inch inner ducts for City use at Capitol Deschutes River Bridge and New Market Street.

C. The Lease Area shall include Tumwater Blvd. inner-duct underground conduit from Center Street to Capitol Blvd. with overall length of 3,758 lineal feet as depicted in Attachment A attached hereto and incorporated herein by reference.

D. This Agreement does not authorize any further use of said conduit by CenturyLink. CenturyLink may perform any necessary maintenance or repair of its fiber optic cable, but must do so in accord with all rules and regulations of the City, including obtaining the necessary permits. This Lease does not and shall not convey any right to install facilities on, under, over, across, or to otherwise use City-owned or leased properties of any kind outside the Lease Area, or to install facilities on, under, over, across or otherwise use any City-owned or leased property within the Lease Area other than as described in Attachment A herein.

E. CenturyLink shall procure all necessary construction permits from the City prior to commencing use of the conduit as herein authorized and shall install the fiber optic cable in accordance with all applicable federal, state, and local regulations. CenturyLink shall also comply with all City ordinances as well as regulations as set forth in the City of Tumwater Development Guide, and the current version of the Standard Specifications for Road, Bridge and Municipal construction as promulgated by the Washington State Department of Transportation, for construction.

F. Before commencing any work under this Agreement, CenturyLink shall first submit a construction schedule to the Public Works Department for approval.

G. No act, occurrence or thing shall give CenturyLink any rights to occupy or use the City's right-of-way permanently nor shall any act, event, or occurrence operate as an estoppel against the City. No rights or permission granted under this Agreement shall convey any right, title, or interest to CenturyLink in the public right-of-way. Upon expiration of this Agreement, or revocation by the City Council, CenturyLink shall remove its infrastructure or other facilities from the City right-of-way, at its own expense.

H. This Agreement is not exclusive. The City expressly reserves the right to grant such rights, permits, licenses, leases, or franchises to other persons or entities to use the City rights-of-way for similar or different purposes.

## 2. Consideration.

A. In consideration of the City to provide the lease of conduit in the amount of 3,758 linear feet as shown on Attachment A to CenturyLink during the term of this Agreement, CenturyLink shall compensate the City annually, commencing on the effective date of this Agreement.

1. For the year 2011, CenturyLink will pay to the City of Tumwater, in an amount of \$2.05 per linear foot of conduit (3,758 linear feet x \$2.05). A prorated amount for year 2011 shall be due within 30 days of the effective date of this agreement. Payments for subsequent years during the term of this agreement shall

be for the full year and shall be due and payable no later than January 31 of each year.

2. For the year 2012 (billed January 1, 2012), CenturyLink will pay to the City of Tumwater, in an amount of \$2.09 per linear foot of conduit or \$7,854.22 (3,758 linear feet x \$2.09 = \$7,854.22).

3. For the year 2013 (billed January 1, 2013), CenturyLink will pay to the City of Tumwater, in an amount of \$2.13 per linear foot of conduit or \$8,004.54 (3,758 linear feet x \$2.13 = \$8,004.54).

4. For the year 2014 (billed January 1, 2014), CenturyLink will pay to the City of Tumwater, in an amount of \$2.17 per linear foot of conduit or \$8,154.86 (3,758 linear feet x \$2.17 = \$8,154.86).

5. For the year 2015 (billed January 1, 2015), CenturyLink will pay to the City of Tumwater, in an amount of \$2.21 per linear foot of conduit or \$8,305.18 (3,758 linear feet x \$2.21 = \$8,305.18).

6. For the year 2016 (billed January 1, 2016), CenturyLink will pay to the City of Tumwater, in an amount of \$2.25 per linear foot of conduit or \$8,455.50 (3,758 linear feet x \$2.25 = \$8,455.50).

B. During the construction of CenturyLink's 4" duct installation on the Capitol Boulevard Deschutes River Bridge and on New Market Street, CenturyLink agrees to install two (2) additional 1.25 inch PVC inner ducts with pull strings, that shall become property of the City upon completion of the project.

1. Capitol Deschutes River Bridge: (2) 1.25 inch PVC inner duct from the vault located near the southeast intersection of Capitol Blvd. SW and Sunset Way SE to the vault located near the southeast intersection of Capitol Blvd. SW and "E" St. SW for a total of 7,488 linear feet or (3,744 linear feet x 2 = 7,488 total linear feet)

New Market Street: (2) 1.25 inch PVC inner duct from the vault located near New Market St. SW and the southeast corner of Parcel #82700300300 to vault located near the southwest corner of intersection Tumwater Blvd. SW and New Market St. SW for a total of 3,260 linear feet or (1,630 linear feet x 2 = 3,260 total linear feet).

2. In consideration of the two 1.25 inch PVC inner ducts located on Capitol Deschutes River Bridge the City shall grant to CenturyLink access to City right-of-way on Capitol Deschutes River Bridge for the term of this Agreement.

3. In consideration of the two 1.25 inch PVC inner ducts located on New Market Street the City agrees to grant a 50 square foot easement located on

Parcel No. 82700300300, that will be conveyed to CenturyLink by separate document.

C. Reimburse Cost of Negotiating and Administering Agreement. CenturyLink agrees to pay a fee or a charge to recover the actual reasonable administrative expenses incurred by the City that are directly related to preparing and approving this Agreement. Nothing herein shall preclude the City from charging administrative fees or recovering any administrative costs incurred by the City in the approval or permits or in the supervision, inspection or examination of all work by CenturyLink as prescribed in accordance with applicable state and local laws and regulations and the provisions of this Agreement

3. Term.

The term of this Agreement shall commence on the effective date of this Agreement and shall be in effect until January 1, 2017. At the end of this term, the parties may extend this Agreement under terms and conditions then agreed to by the parties, and pursuant to the procedures outlined in Tumwater Municipal Code, Chapter 11.08. If this Agreement is not extended, CenturyLink shall remove its facilities within thirty (30) days of expiration of this Agreement.

4. Indemnity.

CenturyLink hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person, including claims by CenturyLink's own employees to which CenturyLink might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the negligent acts or omissions of CenturyLink, its agents, servants, officers, or employees in performing under this authorization, master permit, or lease are the proximate cause. CenturyLink further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person including claims by CenturyLink's own employees, including those claims to which CenturyLink might otherwise have immunity under Title 51 RCW. CenturyLink will indemnify the City for liability to any person, arising against the City solely by virtue of the City's ownership or control of the rights-of-way or other public properties, of CenturyLink's exercise of the rights granted herein, of the City's permitting CenturyLink's use of the City's rights-of-way or other public property, or the City's inspection or lack of inspection of work performed by CenturyLink, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the

City has control, pursuant to this authorization, master permit, or lease, or pursuant to any other permit or approval issued in connection with this authorization, master permit, or lease. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the negligent acts or omissions of CenturyLink, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public right-of-way or other public place in performance of work or services permitted under this authorization, master permit, or lease.

5. Insurance.

CenturyLink shall maintain the following liability policies insuring both it and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to CenturyLink:

A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:

1. \$3,000,000.00 for bodily injury or death to each person;
2. \$3,000,000.00 for property damage resulting from any one accident; and
3. \$5,000,000.00 per occurrence.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$3,000,000.00 for each person and \$3,000,000.00 for each accident.

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00.

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.00.

E. The liability insurance policies required by this Section shall be maintained by CenturyLink throughout the term of the authorization, master permit, or lease, and such other period of time during which CenturyLink is operating without an authorization, master permit, or lease hereunder, or is engaged in the removal of its Facilities. CenturyLink shall provide an insurance

certificate, together with an endorsement naming the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any facilities pursuant to said authorization, master permit, or lease. Payment of deductibles and self-insured retentions shall be the sole responsibility of CenturyLink. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. CenturyLink's insurance shall be primary insurance as respects the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of CenturyLink's insurance and shall not contribute with it.

F. In addition to the coverage requirements set forth in this Section, each such insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until thirty (30) days after receipt by the City, by mail, of a written notice addressed to the City Administrator of such intent to cancel or not to renew."

G. Within thirty (30) days after receipt by the City of said notice, and in no event later than fifteen (15) days prior to said cancellation or intent not to renew, CenturyLink shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

H. If self-insured, documentation acceptable to the City demonstrating that the coverage provided meets or exceeds that described above must be provided.

I. CenturyLink shall provide all certificates evidencing the required insurance coverage by the effective date of this Agreement. CenturyLink shall provide to the City a certificate evidencing such insurance coverage upon each annual anniversary date of this Agreement.

## 6. Bond.

A. CenturyLink shall provide a performance and construction bond, irrevocable letter of credit or deposit monies in the amount of \$20,000, in order to ensure its performance under this Agreement. Said bond, or letter of credit must meet with the approval of the City Attorney. Said bond or letter of credit shall be required to remain in full force and effect until the expiration or termination of this agreement. CenturyLink shall request, by mail, a release of said funds.

B. In addition, CenturyLink shall provide a construction bond pursuant to the term of its right-of-way use permit for any active construction within the right-of-way requiring a right-of-way use permit.

7. Construction standards.

A. CenturyLink shall, before commencing any construction in the City's rights-of-way, comply with all regulations of RCW Chapter 19.122, the One Number Locator Service.

B. CenturyLink, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public and/or workers. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and rights-of-way or places of a permit, master permit, or lease area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair. The City reserves the general right to see that the system of CenturyLink is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, after discussions with CenturyLink, establish a reasonable time for CenturyLink to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from CenturyLink.

C. CenturyLink agrees to guarantee its work for a period of five (5) years against settlement or repair.

D. CenturyLink agrees to relocate its property within the City's right-of-way at its own expense in order to accommodate any changes in street grade, street standards, and improvements within the right-of-way, utility construction or maintenance procedures to be performed by the City.

E. CenturyLink may not locate or maintain its fiber optic cable so as to unreasonably interfere with the use of the City's rights-of-way, the general public, or by other persons authorized to use or be present in or upon the City's rights-of-way. All such facilities or equipment shall be moved by CenturyLink at its expense, either temporarily or permanently, to a location approved by the City Engineer.

F. Before either party performs any work on or within the conduit, it will give notice to the other party per the requirements of Section 11 of this Agreement. Either party doing work on or within the conduit shall do so with due care, in accord with established practices and with trained personnel only, and only after issuance



of the applicable permit from the City. Hours of operation for said construction and/or maintenance, shall be according to applicable sections of the City of Tumwater Development Guide, or will be specified on the permit itself. The City may, at its option, have a representative at the site, observing the work being done.

G. CenturyLink is required to cooperate with the City and with other lessees, Master Permittees, grantees, or users of the rights-of-way, to coordinate construction in the City's rights-of-way. By February 1 of each year, CenturyLink shall provide the City with a schedule of its proposed construction activities in, around, or that may affect the right-of-way. CenturyLink agrees to meet with applicable City officials as requested, to coordinate construction in the City's rights-of-way with the goal of minimizing disruption to the public.

#### 8. Relocation and removal.

A. CenturyLink will relocate its fiber optic cable installed under this Agreement within the Conduit, at its own expense, in order to accommodate future changes in street grade, street standards, and improvements within the rights-of-way, utility construction or maintenance by the City.

B. The City shall be responsible for all relocation costs associated with the relocation of the City-owned conduit.

C. CenturyLink may not permanently occupy or use the City rights-of-way. This Agreement conveys to CenturyLink no title or interest in the City rights-of-way. Upon expiration or termination of this Agreement by the City Council, CenturyLink must, at the sole discretion of the City, either: (1) remove its fiber optic cable from the City rights-of-way at its own expense; or (2) disconnect (unlight) its fiber and deed the same to the City at no expense to the City. The City's exercise of discretion will be made in writing, by notice to CenturyLink, pursuant to Section 11, herein.

#### 9. Revocation.

A. An authorization, master permit, or lease granted by the City to use or occupy rights-of-way of the City or City property may be revoked for the following reasons:

1. Construction or operation in the City or in the right-of-way of the City or upon City property without a grant of authority from an authorization, master permit, or lease;

2. Construction or operation at an unauthorized location;

3. Misrepresentation by or on behalf of CenturyLink in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any authorization, master permit, or lease pursuant to Tumwater Municipal Code;

4. Abandonment of Facilities in the right-of-way or upon City property;

5. Failure to relocate or remove Facilities as required by this Agreement;

6. Failure to pay taxes, fees or costs when and as due the City;

7. Insolvency or bankruptcy of CenturyLink;

8. Violation of any material provision of these Chapters; and

9. Violation of the material terms of an authorization, master permit, or lease agreement.

B. In the event that the City believes that grounds exist for revocation of an authorization, master permit, or lease, CenturyLink shall be given written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing CenturyLink a reasonable period of time not exceeding thirty (30) days to furnish evidence:

1. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

2. That rebuts the alleged violation or noncompliance; and

3. That it would be in the public interest to impose some penalty or sanction less than revocation.

C. In the event that CenturyLink fails to provide evidence reasonably satisfactory to the City as noted above, the City shall refer the apparent violation or non-compliance to the City Council. The City Council shall provide CenturyLink with notice and a reasonable opportunity to be heard concerning the matter.

D. If the City Council determines that CenturyLink willfully violated or failed to comply with any of the provisions of this Agreement or an authorization, master permit, or lease granted, or through willful misconduct or gross negligence failed to heed or comply with any notice given CenturyLink by the City under the

provisions of these Chapter 11.10 of the Tumwater Municipal Code, then CenturyLink shall, at the election of the City Council, forfeit all rights conferred hereunder and the authorization, master permit, or lease may be revoked or annulled by the City Council. The City Council may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order from the Superior Court having jurisdiction compelling CenturyLink to comply with the said provisions and any authorization, master permit, or lease granted hereunder, and to recover damages and costs incurred by the City by reason of CenturyLink's failure to comply. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent, and gravity of the violation and in making its determination under this Section:

1. Whether the misconduct was egregious;
2. Whether substantial harm resulted;
3. Whether the violation was intentional;
4. Whether there is a history of prior violations of the same or other requirements;
5. Whether there is a history of overall compliance; and
6. Whether the violation was voluntarily disclosed, admitted or cured.

10. Vacation.

If at any time the City, by ordinance, vacates all or any portion of the Lease Area, the City will not be liable for any damages or loss to CenturyLink by reason of such vacation. The City shall notify CenturyLink in writing not less than thirty (30) days before vacating all or any portion of the Lease Area. The City may, after thirty (30) days written notice to CenturyLink, terminate this Agreement with respect to any such vacated area.

11. Notice.

Any notice required to be given under this Agreement shall be deemed effective three days after being placed in the U.S. Mail, via postage pre-paid, first class mail. Notice shall be addressed as follows:

City of Tumwater  
John Doan, City Administrator  
555 Israel Road SW  
Tumwater, WA 98501

Tim Grigar, General Manager  
CenturyTel of Washington, Inc.  
8102 Skansie Avenue  
Gig Harbor, WA 98332

12. General provisions.

A. Entire Agreement. This Lease Agreement contains all of the agreements of the parties with respect to any matter covered or mentioned in this Agreement and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose.

B. Modification. No provision of this Agreement may be amended or added to except by agreement in writing signed by both of the parties.

C. Assignment. CenturyLink shall not have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the City. Any assignee shall, within thirty (30) days of the date of any approved assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Agreement. Notwithstanding the foregoing, CenturyLink shall have the right, without such notice or such written contest, to mortgage its rights, benefits and privileges in and under this Agreement to the Trustee for its bondholders.

D. Attorney Fees. In the event the City or CenturyLink defaults on the performance of any terms in this Agreement, and CenturyLink or the City places the enforcement of the Agreement or any part thereof or for the collection of any monies due, or to become due hereunder, in the hands of an attorney, or files suit upon the same, the prevailing party shall be entitled to an award of all reasonable attorneys' fees, costs and expenses. The venue for any dispute related to this Agreement shall be Thurston County, Washington.

E. No Waiver. Failure to either party to declare any breach or default by the other party immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but such party shall have the right to declare any such breach or default at any time. Failure to either party to declare one breach or default does not act as a waiver of such party's right to declare another breach or default.

F. Governing Law. This Lease Agreement shall be made in and shall be governed by an interpreted in accordance with the laws of the State of Washington.

G. Authority. Each individual executing this Agreement represents and warrants that such individual is duly authorized to execute and deliver this Agreement on behalf of CenturyLink or the City.

H. Severability. If any provision of this Agreement or its application to any person or circumstances is held invalid, the remainder of this Agreement, or application of the provision to other persons or circumstances, shall be unaffected.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY OF TUMWATER

CENTURYTEL OF WASHINGTON,  
INC., dba CENTURYLINK

\_\_\_\_\_  
Pete Kmet, Mayor

\_\_\_\_\_  
Signature

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Jim Hendrickson, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Kirkpatrick, City Attorney

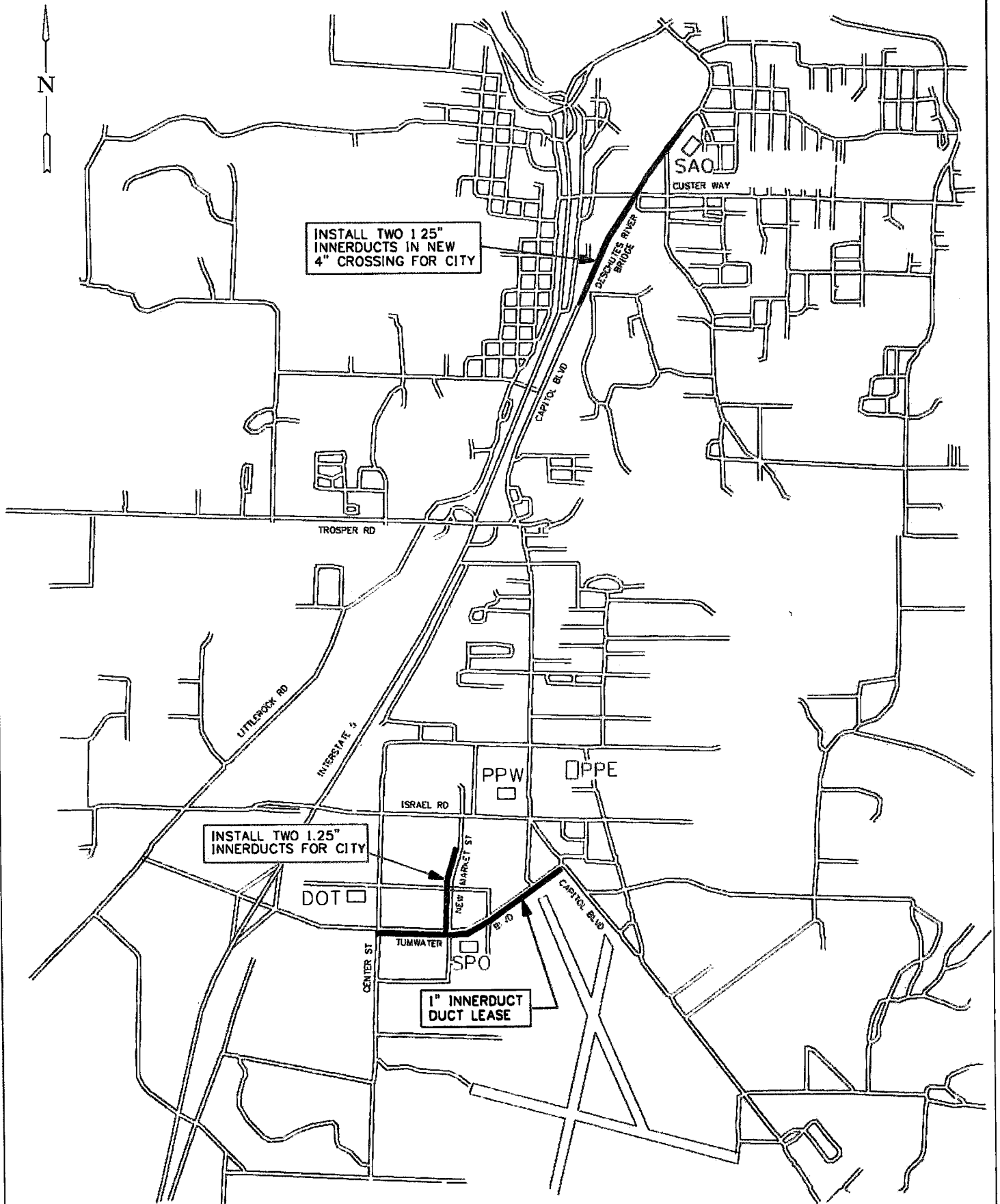
STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

On this day personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of \_\_\_\_\_ that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

GIVEN my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
(typed/printed name of notary)  
Notary Public in and for the State of Washington.  
My commission expires \_\_\_\_\_.

# ATTACHMENT A



Recording Requested By:

When Recorded Mail To:

CITY OF TUMWATER  
555 ISRAEL RD SW  
TUMWATER, WA 98501  
ATTN: Melody Valiant/ Deputy City Clerk

## Cable Easement

Grantor (s): CITY OF TUMWATER, a Washington Municipal Corporation  
Grantee (s): CenturyTel of Washington, Inc., d/b/a CenturyLink  
Easement Legal Description: Exhibit "A"  
Assessor's Tax Parcel ID#(s): 82700300300

For and in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, **CITY OF TUMWATER**, a Washington municipal corporation, ("Grantor") grants, conveys and warrants to ***CenturyTel of Washington, Inc., d/b/a CenturyLink***, ("Grantee") for the purposes hereinafter set forth a permanent easement that is legally described on Exhibit "A", attached hereto and incorporated by reference ("Easement").

**1. Purpose.** During initial construction Grantee shall have the right, without prior notice to Grantor, at such times as deemed necessary by Grantee, to enter upon the Easement to inspect, design, construct, reconstruct, operate, maintain, repair, replace, remove, grade, excavate, and enlarge all underground cables, wires, conduits, splicing boxes, surface location markers, and other facilities or structures, ("Facilities") as are reasonably necessary for Grantee to exercise the rights granted to it in herein for the purpose of providing telecommunication services. Telecommunication services does not include cable television service or television service over internet. Following the initial construction of the Facilities, Grantee may from time to time construct such additional facilities as it may require upon Grantors approval.

**2. Access.** Grantee shall have the right of access to the Easement over and across the public rights of way or by any other method mutually agreeable to Grantor and Grantee to enable Grantee to exercise its rights hereunder.

**3. Obstructions; Landscaping.** Grantee may from time to time remove vegetation, trees, or other obstructions within the Easement, and may level and grade the Easement to the extent reasonably necessary to carry out the purposes set forth in paragraph 1 hereof, provided, that following any such work, Grantee shall, to the extent reasonably practicable, restore the Easement to a condition similar to its condition prior to such work. Following the installation of the Facilities, Grantor may undertake any ordinary improvements to the landscaping of the Easement, provided that no trees or other plants shall be placed thereon, which would be unreasonably expensive or impractical for Grantee to remove and restore.

**4. Grantor's Use of Easement.** This Easement shall be non-exclusive to Grantee; Grantor reserves the right to use the Easement for any purpose not inconsistent with Grantee's rights provided: Grantor shall not construct or maintain any buildings or other structures on the Easement, that Grantor shall not perform grading or other form of construction activity on the Property, which would alter the functioning of the Facilities.

**5. Termination for Cessation of Use.** In the event the Grantee discontinues use of the easement area for a period of twenty-four months, or longer, this easement and all of Grantee's rights hereunder shall terminate. Upon termination all facilities shall be removed, unless abandonment in place is authorized by the City.

**6. Indemnification.** Grantee agrees to indemnify, defend, and hold Grantor, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Easement or Grantee's activities or facilities on the Property.

**7. Successors and Assigns.** The rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns.



**DATED THIS**                      day of \_\_\_\_\_, 2011.

**GRANTOR:**  
**CITY OF TUMWATER**

By: \_\_\_\_\_  
Pete Kmet, Mayor

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF )

On this day personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the \_\_\_\_\_ that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

GIVEN my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

(typed / printed name of notary)  
Notary Public in and for the State of  
Washington.

My commission expires \_\_\_\_\_

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**GRANTEE:**

**Century Tel of Washington, Inc., d/b/a CenturyLink**

By: \_\_\_\_\_

STATE OF WASHINGTON )

) ss.

COUNTY OF \_\_\_\_\_)

On this day personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the \_\_\_\_\_ that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

GIVEN my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
\_\_\_\_\_

(typed / printed name of notary)

Notary Public in and for the State of  
Washington.

My commission expires \_\_\_\_\_

# Exhibit A

## Page 1 of 2

### EASEMENT:

To benefit Century Tel of Washington, d/b/a CenturyLink for the purpose of an non-exclusive easement adjoining the 60 foot right-of-way of existing City of Tumwater Road way known as New Market Street to accommodate telephone wires, props, and underground facilities, and the right to place all or part of such line staked out by the Grantee over, across, and upon the following described real property in Thurston County, State of Washington, to wit:

That portion of the City of Tumwater Property, Parcel No. 82700300300, also known as Parcel B of Boundary Line Adjustment No. 977359, as recorded under Auditor's File No. 3092993, records of Thurston County, Washington, and being located in the Southwest Quarter of the Southeast Quarter of Section 3, Township 17 North, Range 2 West, W.M. Thurston County, Washington, described as follows:

Commencing at the southeast corner of Parcel B of Boundary Line Adjustment No. BLA 05-7493 TW as recorded under Auditor's File No. 3800264;

Thence North  $02^{\circ}06'25''$  East a distance of 632.87 feet to the True Point of Beginning of said easement;

Thence North  $02^{\circ}06'25''$  East 10.00 feet;

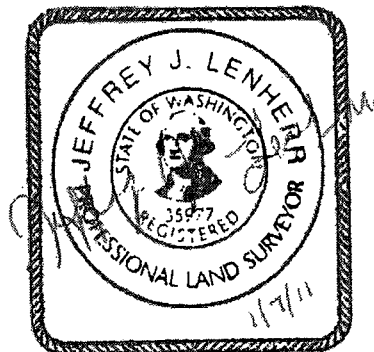
Thence North  $88^{\circ}14'41''$  West 5.00 feet;

Thence South  $02^{\circ}06'25''$  West 10.00 feet to a point on the north line of said Parcel B;

Thence South  $88^{\circ}14'41''$  East along said north line 5.00 feet to the True Point of Beginning.

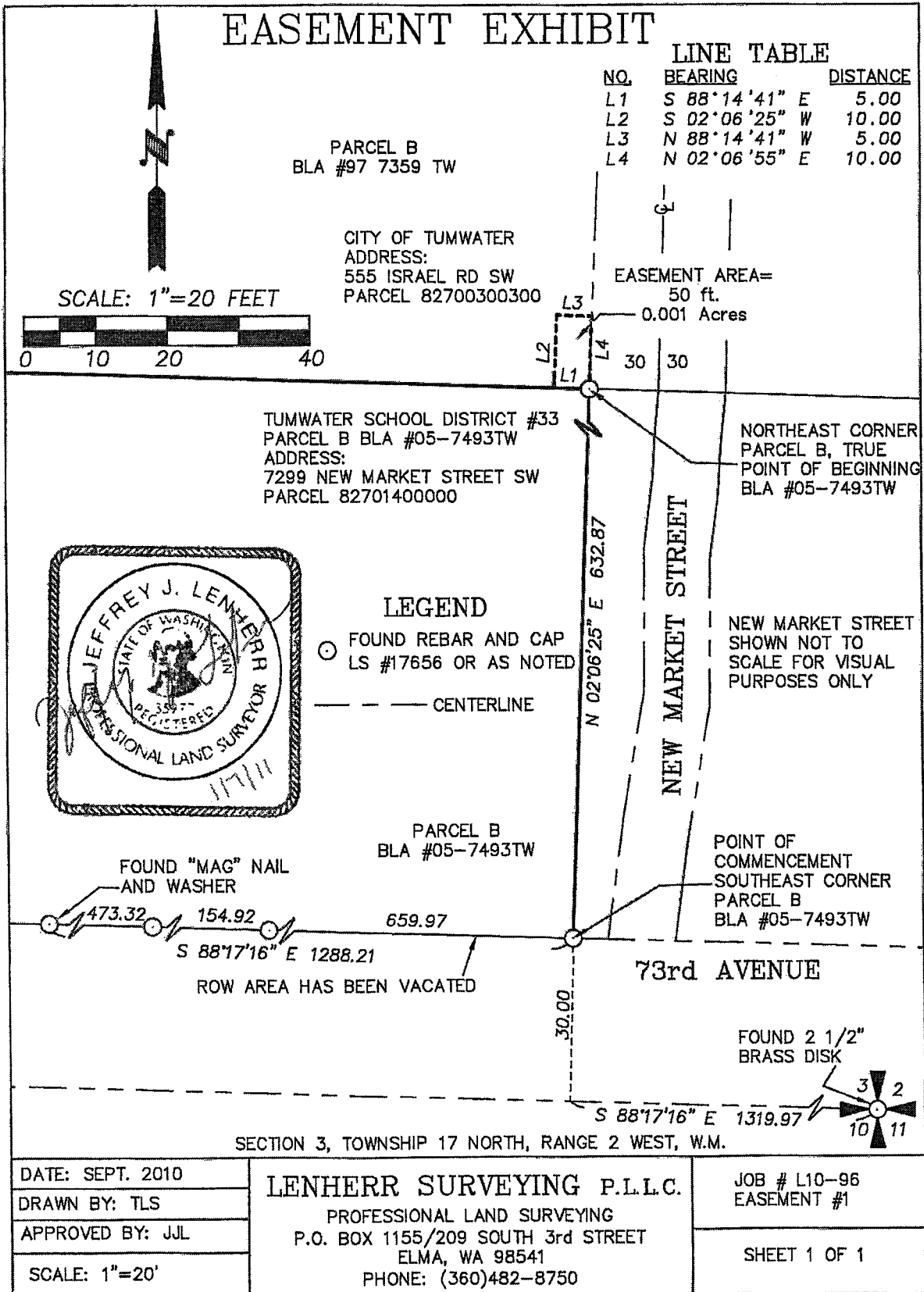
Easement containing 50 sq. ft.

Situate in the County of Thurston, State of Washington.



# Exhibit A

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## LEASED CITY CONDUIT/FIBER

[illegible]