

**Amendment for Pole Attachment, Right Of Way, & Innerduct Occupancy to the
Interconnection Agreement
Between
Qwest Wireless
and
Qwest Corporation
f.k.a U S WEST Communications, Inc.
For the State of Washington**

This Amendment ("Amendment") is made and entered into by and between Qwest Wireless ("WSP") and Qwest Corporation f.k.a. U S WEST Communications, Inc. ("Qwest").

RECITALS

WHEREAS, WSP and Qwest entered into an Interconnection Agreement for service in the state of Washington that was effective April 8, 1998 ("Agreement"); and

WHEREAS, WSP and Qwest desire to amend the Agreement by adding the terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Amendment Terms.

This Amendment is made in order to add terms and conditions for Pole Attachment, Right Of Way, and Innerduct Occupancy, as set forth in Attachment 1 and Exhibit A attached hereto and incorporated herein.

Neither Party shall lose any of its rights from the original contract by entering into this Amendment.

2. Effective Date.

This Amendment shall be deemed effective upon the approval of the State Commission; however, the Parties may agree to implement the provisions of this Amendment upon execution.

3. Amendments; Waivers.

The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default,

misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

4. Entire Agreement

This Amendment (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Amendment and supersedes any prior understandings, agreements, amendments, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of this Amendment.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Qwest Wireless

Qwest Corporation

Authorized Signature

Authorized Signature

Name Printed/Typed

L.T. Christensen

Name Printed/Typed

Title

Director - Business Policy

Title

Date

Date

Attachment 1

1. **PURPOSE.** The purpose of this General Information document is to share information and provide or deny permission to attach and maintain WSP's facilities ("Facilities") to Qwest Corporation's ("Qwest") Poles, to place Facilities on or within Qwest's Innerduct (collectively "Poles/Innerduct") and to obtain access to Qwest's private right of way ("ROW"), to the extent Qwest has the right to grant such access. This General Information is necessary to determine if Qwest can meet the needs of the WSP's request but does not guarantee that physical space or access is currently available. Permission will be granted on a first-come, first-serve basis on the terms and conditions set forth in the appropriate agreement pertaining to "Poles/Innerduct".

2. **PROCESS.** The Qwest process is designed to provide the WSP the information so as to assist WSP and Qwest to make Poles, Innerduct and ROW decisions in a cost-efficient manner. The Process has these distinct steps:

2.1 Inquiry Review - Attachment 1.A (Database Search). The WSP is requested to review this document and return Attachment 1.A along with two copies of a map and the nonrefundable Inquiry Fee, calculated in accordance with Attachment 1.A hereto. These fees are intended to cover Qwest's expenses associated with performing an internal record (database) review, preparing a cost estimate for the required field survey, setting up an account, and determining time frames for completion of each task to meet the WSP's Request. Be sure a BAN number is assigned by the Qwest Service Support Representative for each request before sending an Attachment 1.A. To request a BAN number send an email requesting one to: wssst@qwest.com. Include your name, company, phone number, email address, city and state of our inquiry. A BAN number will be assigned to your inquiry and will be emailed to you along with other materials.

As indicated on Attachment 1.A, a copy of the signed Attachment and maps of the desired route must be emailed to wssst@qwest.com while the fee must be sent to the Qwest WSP Joint Use Manager with the original signed Attachment 1.A. The map should clearly show street names and highways along the entire route, and specific locations of entry and exit of the ROW/duct/pole system. Area Maps should be legible and identify all significant geographic characteristics including, but not limited to, the following: Qwest central offices, streets, cities, states, lakes, rivers, mountains, etc. Qwest reserves the right to reject illegible or incomplete maps. If WSP wishes to terminate at a particular manhole (such as a POI) it must be indicated on the maps. For ROW: Section, Range and Township, to the ¼section must also be provided.

Qwest will complete the Inquiry review and prepare and return a Poles/Innerduct Verification/ROW Access Agreement Preparation Costs Quotation (Attachment 1.B) to the WSP generally within ten (10) days or the applicable federal or state law, rule or regulation that governs this Agreement in the state in which Innerduct attachment is requested. In the case of poles, Qwest will assign a Field Engineer and provide his/her name and phone number to the WSP. The Field Engineer will check the local database and be available for a joint verification with the WSP. The Poles/Innerduct Verification/ROW Access Agreement Preparation Costs Quotation will be valid for thirty (30) calendar days from the date of quotation. The Inquiry step results only in the location and mapping of Qwest facilities and does not indicate whether space is available. This information is provided with Attachment 1.B.

In the case of ROW, Qwest will prepare and return a ROW information matrix and a copy of agreements listed in the ROW Matrix, within ten (10) days. The ROW Matrix will identify (a) the owner of the ROW as reflected in Qwest's records, and (b) the nature of each ROW (i.e., publicly recorded and non-recorded). The ROW information matrix will also indicate whether or not Qwest has a copy of the ROW agreement in its possession. Qwest makes no representations or warranties regarding the accuracy of its records, and WSP acknowledges that, to the extent that real property rights run with the land, the original granting party may not be the current owner of the property.

In the case of MDUs, Qwest will prepare and return an MDU information matrix, within ten (10) days, which will identify (a) the owner of the MDU as reflected in Qwest's records, and (b) whether or not Qwest has a copy of the agreement between Qwest and the owner of a specific multi-dwelling unit that grants Qwest access to the multi-dwelling unit in its possession. Qwest makes no representations or warranties regarding the accuracy of its records, and WSP acknowledges that the original landowner may not be the current owner of the property.

Qwest will provide to WSP a copy of agreements listed in the Matrices that have not been publicly recorded if WSP obtains authorization for such disclosure from the third party owner(s) of the real property at issue by an executed version of the Consent to Disclosure form, which is included in Attachment 4. Qwest will redact all dollar figures from copies of agreements listed in the Matrices that have not been publicly recorded that Qwest provides to WSP. Alternatively, in order to secure any agreement that has not been publicly recorded, a WSP may provide a legally binding and satisfactory agreement to indemnify Qwest in the event of any legal action arising out of Qwest's provision of such agreement to WSP. In that event, the WSP shall not be required to execute the Consent to Disclosure form.

If there is no other effective agreement (i.e., an Interconnection Agreement) between WSP and Qwest concerning access to Poles, Ducts and ROW, then Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for WSP to obtain access to Poles, Ducts and/or ROW.

2.2 Attachment 1.B (Verification) & Attachment 4 (Access Agreement Preparation). With respect to Poles and Innerduct, upon review and acceptance of signed Attachment 1.B and payment of the estimated verification costs by the WSP, Qwest will conduct facilities verification and provide the requested information which may or may not include the following: a review of public and/or internal Qwest right-of-ways records for restrictions, identification of additional rights-of-way required; a field survey and site investigation of the Innerduct, including the preparation of distances and drawings, to determine availability on existing Innerduct; identification of any make-ready costs required to be paid by the WSP, if applicable, prior to installing its facilities. In the case of Poles, Attachment 1.B orders the field verification which may be done jointly. A copy of the signed Attachment 1.B should be emailed to wsst@qwest.com while the appropriate fees should be sent to the Qwest-WSP Joint Use Manager with the original signed Attachment 1.B. Upon completion of the verification, Attachment 2 will be sent to the WSP by Qwest.

With respect to ROW, upon review and acceptance of signed Attachment 1.B and payment of the ROW conveyance consideration, Qwest will deliver to the WSP an

executed and acknowledged Access Agreement to the WSP in the form attached hereto as Attachment 4 (the "Access Agreement"). In the event that the ROW in question was created by a publicly recorded document and Qwest has a copy of such document in its files, a copy of the Right-of-Way Agreement, as defined in the Access Agreement, will be attached to the Access Agreement and provided to the WSP at the time of delivery of the Access Agreement. If the ROW was created by a document that is not publicly recorded, or if Qwest does not have a copy of the Right-of-Way Agreement in its possession, the Access Agreement will not have a copy of the Right-of-Way Agreement attached. If the ROW was created by a non-publicly recorded document, but Qwest does not have a copy of the Right-of-Way Agreement in its possession, the WSP must obtain a copy of the Right-of-Way Agreement or other suitable documentation reasonably satisfactory to Qwest to describe the real property involved and the underlying rights giving rise to the Access Agreement.

Although Qwest will provide the identity of the original grantor of the ROW, as reflected in Qwest's records, the WSP is responsible for determining the current owner of the property and obtaining the proper signature and acknowledgement to the Access Agreement. If Qwest does not have a copy of the Right-of-Way Agreement in its records, it is the responsibility of the WSP to obtain a copy of the Right-of-Way Agreement. If the ROW was created by a publicly recorded document, the WSP must record the Access Agreement (with the Right-of-Way Agreement attached) in the real property records of the county in which the property is located. If the ROW was created by a grant or agreement that is not publicly recorded, WSP must provide Qwest with a copy of the properly executed and acknowledged Access Agreement and, if applicable, properly executed Consent Regarding Disclosure form or letter of indemnification.

Qwest is required to respond to each Attachment 1.B. submitted by WSP within 35 days of receiving the Attachment 1.B. In the event that Qwest believes that circumstances require a longer duration to undertake the activities reasonably required to deny or approve a request, it may petition for relief before the Commission or under the escalation and dispute resolution procedures generally applicable under the interconnection agreement, if any, between Qwest and WSP.

2.3 Poles/Duct Order Attachment 2 (Access). In the case of Poles and Innerduct, upon completion of the inquiry and verification work described in Section 2.2 above, Qwest will provide the WSP a Poles/Innerduct Order (Attachment 2) containing annual recurring charges, estimated Make-ready costs. Upon receipt of the executed Attachment 2 Order form from the WSP and applicable payment for the Make-Ready Fees identified, Qwest will assign the WSP's requested space; Qwest will also commence the Make-ready work within 30 days following payment of the Make-Ready Fees. Qwest will notify WSP when Poles/Innerduct are ready for attachment or placement of Facilities. A copy of the signed Attachment 2 form should be emailed to wsst@qwest.com while the payment should go to the Joint Use Manager along with the original signed Attachment 2.

NOTE: Make-ready work performed by Qwest concerns labor only. For Poles it involves rearrangement to accommodate the new attachment. For Innerduct, it involves placing the standard three innerducts in the conduit to accommodate fiber cable where spare conduit exists. Segments without conduit space are considered "blocked". Qwest will consider repair or clearing damaged facilities, but may not construct new facilities as part of Make-ready work.

Construction work to place conduit or replace poles may be required where facilities are blocked. The WSP may contract separately with a Qwest-approved contractor to complete the construction provided a Qwest inspector inspects the work during and after construction. If other parties benefit from construction, the costs may be divided among the beneficiaries. Construction costs are not included in Attachment 2. The WSP is not encouraged to sign the Poles/Innerduct Order (Attachment 2) until provisions have been made for construction.

2.4 Provision of ROW/Poles/Innerduct. Qwest agrees to issue to WSP for any lawful telecommunications purpose, a nonexclusive, revocable Order authorizing WSP to install, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct to the extent owned or controlled by Qwest. Qwest provides access to Poles/Innerduct/ROW in accordance with the applicable federal, state, or local law, rule, or regulation, incorporated herein by this reference, and said body of law, which governs this Agreement in the state in which Poles/Innerduct is provided. Any and all rights granted to WSP shall be subject to and subordinate to any future federal, state, and/or local requirements. Nothing in this General Information shall be construed to require or compel Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by the WSP.

The costs included in the Poles/Innerduct Verification Fee are used to cover the costs incurred by Qwest in determining if Poles/Innerduct space is available to meet the WSP's request; however, the WSP must agree and will be responsible for payment of the actual costs incurred if such costs exceed the estimate. If the actual costs are less than the estimate, an appropriate credit can be provided upon request. If Qwest denies access, Qwest shall do so in writing, specifying the reasons for denial within 45 days of the initial inquiry.

Likewise, the fees included in the ROW processing costs quotation are used to cover the costs incurred by Qwest in searching its databases and preparing the Access Agreement. In the event that complications arise with respect to preparing the Access Agreement or any other aspect of conveying access to Qwest's ROW, the WSP agrees to be responsible for payment of the actual costs incurred if such costs exceed the standard fees; actual costs shall include, without limitation, personnel time, including attorney time.

3. **DISPUTE RESOLUTION**

31. Other than those claims over which a federal or state regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

3.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

3.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

3.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

ATTACHMENT 1. A
Poles/Innerduct/ or ROW Inquiry Preparation Fee

General Agreement _____

BAN Number (one for each route must be assigned before processing): _____

Date Submitted: _____ Date Replied to WSP: _____

WSP Name _____ Contact name: _____

Billing Address: _____

Phone Number: _____ e-mail

address: _____

State and city of inquiry: _____

Poles/Innerduct Permit Database Search Costs Quotation
 (One Mile Minimum)

	<u>Costs</u>	<u>Est. Miles</u>	<u>Total</u>
1. Pole Inquiry Fee (see attached pricing chart) X	_____	=	\$ _____
2. Innerduct Inquiry Fee (see attached pricing chart) X	_____	=	\$ _____
3. ROW Records Inquiry (see attached pricing chart) X	_____	=	\$ _____
4. Estimated Interval for Completion of Items 1, 2 or 3:	10	Days	
5. Additional requirements of WSP: _			

This Inquiry will result in (a) for Poles and Innerduct: a drawing of the duct or innerduct structure fitting the requested route, if available, and a quote of the charges for field verification, and/or (b) in the case of ROW, a ROW identification matrix, a quote of the charges for preparation of and consideration for, the necessary Access Agreements, and copies of ROW documents in Qwest's Possession. (c) For Poles, the name and telephone number of the Field Engineer are provided so that the WSP may contact the Qwest Field engineer and discuss attachment plans. If a field verification of poles is required, Attachment 1.B must be completed and the appropriate charges paid. Innerduct verification is always needed.

By signing below and providing payment of the Estimated Costs identified above, the WSP desires Qwest to proceed with the processing of its database/records search and acknowledges receipt of this General Information, including the General Terms and Conditions under which Qwest offers such Poles/Innerduct. Quotes expire in 30 days.

		Qwest Corporation
Signature		Signature
Name Typed or Printed		Name Typed or Printed
Title		Title
Date		Date

This signed form (original) must be sent with a check for the Inquiry amount (to "Qwest") to:

**Debra Marshall, Qwest Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112
303-784-0387**

A copy of this form must be sent with two acceptably-detailed maps showing the requested route to:

Qwest Service Representative at: wsst@qwest.com. Put "Agree" on signature line.

ATTACHMENT 1.B

General Agreement _____
 BAN Number: _____

Poles/Innerduct Verification/ROW Access Agreement Preparation Costs Quotation

Date Nonrefundable Received: _____ Date Replied to WSP: _____

****NOTE: THIS ATTACHMENT WILL BE COMPLETED BY QWEST AND SENT TO THE WSP FOR SIGNATURE AFTER THE DATABASE INQUIRY IS COMPLETE.****

Charge	Estimated Costs	Number	Total
1. Pole Field Verification Fee (10 pole minimum) \$_____	_____	_____	
2. Innerduct Field Verification Fee \$_____	_____	_____	
3. Preparation of private ROW documents \$_____	_____		_____
4. Access Agreement Prep. and Consideration \$10/ Access Agreement \$_____	_____		_____
5. Estimated Interval to Complete Items 1 or 2 or 3 and/or 4: Days		_____	Working

Comments: _____

By signing below and providing payment of the Total Estimated Costs identified above, the WSP desires Qwest to proceed with the processing of its field survey/preparation of Access Agreements, and acknowledges receipt of this General Information, including the General Terms and Conditions under which Qwest offers such ROW/Poles/Innerduct. The WSP acknowledges the above costs are estimates only and WSP may be financially responsible for final actual costs which exceed this estimate, or receive credit if requested. Quotes expire in 30 days.

		Qwest Corporation
Signature		Signature

Name Typed or Printed		Name Typed or Printed
Title		Title
Date		Date

The original signed form must be sent with a check for the verification amount to:
Debra Marshall, Qwest WSP Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112

An email copy of this form must be sent to: wsst@qwest.com, with "Agree" on the signature line.

Signature		Signature
Name Typed or Printed		Name Typed or Printed
Title		Title
Date		Date

ATTACHMENT 3

General Agreement: _____

QWEST RIGHT OF WAY ACCESS, POLE ATTACHMENT AND/OR INNERDUCT OCCUPANCY GENERAL TERMS AND CONDITIONS

This is an Agreement between _____ (“WSP”) and Qwest Corporation (“Qwest”), for one or more Orders for the WSP to obtain access to Qwest’s Right-of-Way (“ROW”) and/or to install/attach and maintain their communications facilities (“Facilities”) to Qwest’s Poles and/or placement of Facilities on or within Qwest’s Innerduct (collectively “Poles/Innerduct”) described in the General Information and WSP Map, which are incorporated herein by this reference (singularly “Order” or collectively, “Orders”). If there is no other effective agreement (*i.e.*, an Interconnection Agreement) between WSP and Qwest concerning access to Poles, Ducts and ROW, then this Agreement/Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for WSP to obtain access to Poles, Ducts and/or ROW.

1. SCOPE.

- 1.1 Subject to the provisions of this Agreement, Qwest agrees to issue to WSP for any lawful telecommunications purpose, (a) one or more nonexclusive, revocable Orders authorizing WSP to attach, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct owned or controlled by Qwest, and/or (b) access to Qwest’s ROW to the extent that (i) such ROW exists, and (ii) Qwest has the right to grant access to the WSP. Any and all rights granted to WSP shall be subject to and subordinate to any future local, state and/or federal requirements, and in the case of ROW, to the original document granting the ROW to Qwest or its predecessors.
- 1.2 Except as expressly provided herein, nothing in this Agreement shall be construed to require or compel Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by WSP or to obtain any ROW for WSP’s use.
- 1.3 Qwest agrees to provide access to ROW/Poles/Innerduct in accordance with the applicable local, state or federal law, rule, or regulation, incorporated herein by this reference, which governs this Agreement in the state in which Poles/Innerduct is provided.

2. **TERM.** Any Order issued under this Agreement for Pole attachments or Innerduct occupancy shall continue in effect for the term specified in the Order. Any access to ROW shall be non-exclusive and perpetual, subject to the terms and conditions of the Access Agreement (as hereinafter defined) and the original instrument granting the ROW to Qwest. This Agreement shall continue during such time WSP is providing Poles/Innerduct attachments under any Order to this Agreement.

3. TERMINATION WITHOUT CAUSE.

- 3.1 To the extent permitted by law, either party may terminate this Agreement (which will have the effect of terminating all Orders hereunder), or any individual Order(s) hereunder, without cause, by providing notice of such termination in writing and by certified Mail to the other party. The written notice for termination without cause shall be dated as of the day it is mailed and shall be effective no sooner than one hundred twenty (120) calendar days from the date of such notice.
- 3.2 Termination of this Agreement or any Order hereunder does not release either party from any liability under this Agreement that may have accrued or that arises out of any claim that may have been accruing at the time of termination, including indemnity, warranties, and confidential information.
- 3.3 If Qwest terminates this Agreement for Cause, or if WSP terminates this Agreement without Cause, WSP shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its Facilities from the Poles/Innerduct within sixty (60) days, or cause Qwest to remove its Facilities from the Poles/Innerduct at WSP's expense; provided, however, that WSP shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until WSP's Facilities are physically removed. Notwithstanding anything herein to the contrary, upon the termination of this Agreement for any reason whatsoever, all Orders hereunder shall simultaneously terminate.
- 3.4 If this Agreement or any Order is terminated for reasons other than Cause, then WSP shall remove its Facilities from Poles/Innerduct within one hundred and eighty (180) days from the date of termination; provided, however, that WSP shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until WSP's Facilities are physically removed.
- 3.5 Qwest may abandon or sell any Poles/Innerduct at any time by giving written notice to the WSP. Upon abandonment of Poles/Innerduct, and with the concurrence of the other WSP(s), if necessary, WSP shall, within sixty (60) days of such notice, either apply for usage with the new owner or purchase the Poles/Innerduct from Qwest, or remove its Facilities therefrom. Failure to remove its Facilities within sixty (60) days shall be deemed an election to purchase the Poles/Innerduct at the current market value.

4. CHARGES AND BILLING.

- 4.1. WSP agrees to pay Qwest Poles/Innerduct usage fees ("Fees") as specified in the Order. Fees will be computed in compliance with applicable local, state and Federal law, regulations and guidelines. Such Fees will be assessed, in advance on an annual basis. Annual Fees will be assessed as of January 1st of each year. Fees are not refundable except as expressly provided herein. WSP shall pay all applicable Fees and charges specified herein within thirty (30) days from receipt of invoice. Any outstanding invoice will be subject to applicable finance charges.
- 4.2. Qwest has the right to revise Fees, at its sole discretion, upon written notice to WSP within at least sixty (60) days prior to the end of any annual billing period.

5. **INSURANCE.** The WSP shall obtain and maintain at its own cost and expense the following insurance during the life of the Contract:
- 5.1. Workers' Compensation and/or Longshoremen's and Harbor Workers Compensation insurance with (1) statutory limits of coverage for all employees as required by statute; and (2) although not required by statute, coverage for any employee on the job site; and (3) Stop Gap liability or employer's liability insurance with a limit of One Hundred Thousand Dollars (\$100,000.00) for each accident.
 - 5.2. General liability insurance providing coverage for underground hazard coverage (commonly referred to as "U" coverage), products/completed operations, premises operations, independent contractor's protection (required if contractor subcontracts the work), broad form property damage and contractual liability with respect to liability assumed by the WSP hereunder. This insurance shall also include: (1) explosion hazard coverage (commonly referred to as "X" coverage) if the work involves blasting and (2) collapse hazard coverage (commonly referred to as "C" coverage) if the work may cause structural damage due to excavation, burrowing, tunneling, caisson work, or underpinning. The limits of liability for this coverage shall be not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.
 - 5.3. Comprehensive automobile liability insurance covering the use and maintenance of owned, non-owned and hired vehicles. The limits of liability for this coverage shall be not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.
 - 5.4. Qwest may require the WSP from time-to-time during the life of the Contract to obtain additional insurance with coverage or limits in addition to those described above. However, the additional premium costs of any such additional insurance required by Qwest shall be borne by Qwest, and the WSP shall arrange to have such costs billed separately and directly to Qwest by the insuring carrier(s). Qwest shall be authorized by the WSP to confer directly with the agent(s) of the insuring carrier(s) concerning the extent and limits of the WSP's insurance coverage in order to assure the sufficiency thereof for purposes of the work performable under the Contract and to assure that such coverage as a whole with respect to the work performable are coordinated from the standpoint of adequate coverage at the least total premium costs.
 - 5.5. The insuring carrier(s) and the form of the insurance policies shall be subject to approval by Qwest. The WSP shall forward to Qwest, certificates of such insurance issued by the insuring carrier(s). The insuring carrier(s) may use the ACORD form, which is the Insurance Industries certificate of insurance form. The insurance certificates shall provide that: (1) Qwest is named as an additional insured; (2) thirty (30) calendar days prior written notice of cancellation of, or material change or exclusions in, the policy to which the

certificates relate shall be given to Qwest; (3) certification that underground hazard overage (commonly referred to as “U” coverage) is part of the coverage; and (4) the words “pertains to all operations and projects performed on behalf of the certificate holder” are included in the description portion of the certificate. The WSP shall not commence work hereunder until the obligations of the WSP with respect to insurance have been fulfilled. The fulfillment of such obligations shall not relieve the WSP of any liability hereunder or in any way modify the WSP’s obligations to indemnify Qwest.

- 5.6 Whenever any work is performed requiring the excavation of soil or use of heavy machinery within fifty (50) feet of railroad tracks or upon railroad right-of-way, a Railroad Protective Liability Insurance policy will be required. Such policy shall be issued in the name of the Railroad with standard limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit for bodily injury, property damage or physical damage to property with an aggregate limit of Six Million Dollars (\$6,000,000.00). In addition, said policy shall name Qwest and the WSP/SubWSP on the declarations page with respect to its interest in these specific job. Said insurance policy shall be in form and substance satisfactory both to the Qwest and the Railroad and shall be delivered to and approved by both parties prior to the entry upon or use of the Railroad Property.
- 5.7 Whenever any work must be performed in the Colorado State Highway right-of-way, policies and certificates of insurance shall also name the State of Colorado as an additional insured. Like coverage shall be furnished by or on behalf of any subcontractor. Copies of said certificates must be available on site during the performance of the work.

6. CONSTRUCTION AND MAINTENANCE OF FACILITIES.

- 6.1 Qwest retains the right, in its sole judgment, to determine the availability of space on Poles/Innerduct. When modifications to a Qwest spare conduit include the placement of innerduct, Qwest retains the right to install the number of innerducts required to occupy the conduit structure to its full capacity. In the event Qwest determines that rearrangement of the existing facilities on Poles/Innerduct is required before WSP’s Facilities can be accommodated, the cost of such modification will be included in the WSP’s nonrecurring charges for the associated Poles/Innerduct Order.
- 6.2 WSP shall be solely responsible for obtaining the necessary underlying legal authority to occupy Poles/Innerduct on governmental, federal, Native American, and private rights of way, as applicable, and Qwest does not warrant or represent that providing WSP with access to the Poles/Innerduct in any way constitutes such legal right. The WSP shall obtain any necessary permits, licenses, bonds, or other legal authority and permission, at the WSP’s sole expense, in order to perform its obligations under this Agreement. The WSP shall contact all owners of public and private rights-of-way, as necessary, to obtain written permission required to perform the work prior to entering the property or starting any work thereon and shall provide Qwest with written documentation of such legal authority prior to placement of its facilities on or in the Poles/Innerduct. The WSP shall comply with all conditions of rights-of-way and Orders.

- 6.3 WSP's Facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated herein by reference, and any governing authority having jurisdiction of the subject matter of this Agreement. Where a difference in specifications exists, the more stringent shall apply. Failure to maintain Facilities in accordance with the above requirements shall be Cause as referenced in Section 3 to this Agreement for termination of the Order in question. Termination of more than two (2) Orders in any twelve-month period pursuant to the foregoing sentence shall be Cause as referenced in Section 3 for termination of this Agreement. Qwest's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate Qwest premises. WSP's procedures governing its standards maintenance practices for Facilities shall be made available to Qwest upon written request. WSP shall within thirty (30) days comply and provide the requested information to Qwest to bring their facilities into compliance with these terms and conditions.
- 6.4. In the event of any service outage affecting both Qwest and WSP, repairs shall be effectuated on a priority basis as established by local, state or federal requirements, or where such requirement do not exists, repairs shall be made in the following order: electrical, telephone (local), telephone (long distance), and cable television, or as mutually agreed to by the users of the effected Poles/Innerduct.
- 6.5 In the event of an infrastructure outage, the WSP should contact their Network Maintenance Center at 1-800-223-7881 or the WSP may contact their Account Manager at the Interconnect Service Center.

7. MODIFICATION TO EXISTING POLES/INNERDUCT.

- 7.1. If WSP requests Qwest to replace or modify existing Poles/Innerduct to increase its strength or capacity for the benefit of the WSP and Qwest determines in its sole discretion to provide the requested capacity, the WSP shall pay Qwest the total replacement cost, Qwest's cost to transfer its attachments, as necessary, and the cost for removal (including destruction fees) of any replaced Poles/Innerduct, if such is necessary. Ownership of new Poles/Innerduct shall vest in Qwest. To the extent that a modification is incurred for the benefit of multiple parties, WSP shall pay a proportionate share of the total cost as outlined above, based on the ratio of the amount of new space occupied by the Facilities to the total amount of space occupied by all parties joining the modification. Modifications that occur in order to bring Poles/Innerduct into compliance with applicable safety or other requirements shall be deemed to be for the benefit of the multiple parties and WSP shall be responsible for its pro rata share of the modification cost. Except as set forth herein, WSP shall have no obligation to pay any of the cost of replacement or modification of Poles/Innerduct requested solely by third parties.

7.2 Written notification of modification initiated by or on behalf of Qwest shall be provided to WSP at least sixty (60) days prior to beginning modifications if such modifications are not the result of an emergency situation. Such notification shall include a brief description of the nature and scope of the modification. If WSP does not rearrange its facilities within sixty (60) days after receipt of written notice from Qwest requesting such rearrangement, Qwest may perform or cause to have performed such rearrangement and WSP shall pay for cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct.

8. INSPECTION OF FACILITIES. Qwest reserves the right to make final construction, subsequent and periodic inspections of WSP's facilities occupying the Poles/Innerduct system. WSP shall reimburse Qwest for the cost of such inspections except as specified in Section 8 hereof.

8.1. WSP shall provide written notice to Qwest, at least fifteen (15) days in advance, of the locations where WSP's plant is to be constructed.

8.2. The WSP shall forward Exhibit A, entitled "Pulling In Report" attached hereto and incorporated herein by this reference, to Qwest within five (5) business days of the date(s) of the occupancy.

8.3. Qwest shall provide written notification to WSP within seven (7) days of the date of completion of a final construction inspection.

8.4. Where final construction inspection by Qwest has been completed, WSP shall be obligated to correct non-complying conditions within thirty (30) days of receiving written notice from Qwest. In the event the corrections are not completed within the thirty (30)-day period, occupancy authorization for the Poles/Innerduct system where non-complying conditions remain uncorrected shall terminate immediately, regardless of whether WSP has energized the facilities occupying said Poles/Innerduct system, unless Qwest has provided WSP a written extension to comply. WSP shall remove its facilities from said Poles/Innerduct in accordance with the provisions set forth in Section 10 of this Agreement. No further occupancy authorization shall be issued to WSP until such non-complying conditions are corrected or until WSP's facilities are removed from the Pole/Conduit system where such non-complying conditions exist. If agreed to in writing, by both parties, Qwest shall perform such corrections and WSP shall pay Qwest the cost of performing such work. Subsequent inspections to determine if appropriate corrective action has been taken may be made by Qwest.

8.5. Once the WSP's facilities occupy Qwest Poles/Innerduct system and Exhibit A has been received by Qwest, Qwest may perform periodic inspections. The cost of such inspections shall be borne by Qwest, unless the inspection reveals any violations, hazards, or conditions indicating that WSP has failed to comply with the provisions set forth in this Agreement, in which case the WSP shall reimburse Qwest for full costs of inspection, and re-inspection to determine compliance as required. A WSP representative may accompany Qwest on field inspections scheduled specifically for the purpose of inspecting WSP's Facilities; however, WSP's costs associated with its participation in such

inspections shall be borne by WSP. Qwest shall have no obligation to notify WSP, and WSP shall have no right to attend, any routine field inspections.

- 8.6. The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to the WSP within thirty (30) days upon completion of the inspection.
- 8.7. Final construction, subsequent and periodic inspections or the failure to make such inspections, shall not impose any liability of any kind upon Qwest, and shall not relieve WSP of any responsibilities, obligations, or liability arising under this Agreement.

9. UNAUTHORIZED FACILITIES

- 9.1 If any facilities are found attached to Poles/Innerduct for which no Order is in effect, Qwest, without prejudice to any other rights or remedies under this Agreement, shall assess an unauthorized attachment administrative fee of Two Hundred Dollars (\$200.00) per attachment per Pole or innerduct run between manholes, and require the WSP to submit in writing, within ten (10) day after receipt of written notification from Qwest of the unauthorized occupancy, a Poles/Innerduct application. Qwest shall waive the unauthorized attachment fee if the following conditions are both met: (1) WSP cures such unauthorized attachment (by removing it or submitting a valid Order for attachment in the form of Attachment 2 of Exhibit D, within thirty (30) days of written notification from Qwest of the unauthorized attachment; and (2) the unauthorized attachment did not require Qwest to take curative measures itself (e.g., pulling additional innerduct) prior to the cure by WSP. Qwest shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by Qwest rather than by WSP. If such application is not received by Qwest within the specified time period, the WSP will be required to remove its unauthorized facility within ten (10) days of the final date for submitting the required application, Qwest may remove the WSP's facilities without liability, and the cost of such removal shall be borne by the WSP.
- 9.2 For the purpose of determining the applicable charge, the unauthorized Poles/Innerduct occupancy shall be treated as having existed for a period of five (5) years prior to its discovery, and the charges, as specified in Section 4, shall be due and payable forthwith whether or not WSP is ordered to continue the occupancy of the Poles/Innerduct system.
- 9.3. No act or failure to act by Qwest with regard to an unauthorized occupancy shall be deemed to constitute the authorization of the occupancy; any authorization that may be granted subsequently shall not operate retroactively or constitute a waiver by Qwest of any of its rights of privileges under this Agreement or otherwise.

- 10. **REMOVAL OF FACILITIES.** Should Qwest, under the provisions of this Agreement, remove WSP's Facilities from the Poles/Innerduct covered by any Order (or otherwise), Qwest will deliver the Facilities removed upon payment by WSP of the cost of removal, storage and delivery, and all other amounts due Qwest. If payment is not received by Qwest within thirty (30) days, WSP will be deemed to have abandoned such facilities,

and Qwest may dispose of said facilities as it determines to be appropriate. If Qwest must dispose of said facilities, such action will not relieve WSP of any other financial responsibility associated with such removal as provided herein. If WSP removes its Facilities from Poles/Innerduct for reasons other than repair or maintenance purposes, the WSP shall have no right to replace such facilities on the Poles/Innerduct until such time as all outstanding charges due to Qwest for previous occupancy have been paid in full. WSP shall submit Exhibit B, entitled "Notification of Surrender of Modification of Conduit Occupancy License by WSP," or Exhibit C, entitled "Notification of Surrender of Modification of Pole Attachment by WSP," each as attached hereto, advising Qwest as to the date on which the removal of Facilities from each Poles/Innerduct has been completed.

- 11. INDEMNIFICATION AND LIMITATION OF LIABILITIES.** WSP shall indemnify and hold harmless Qwest, its owners, parents, subsidiaries, affiliates, agents, directors, and employees against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, costs of defense, and attorneys' fees ("Liabilities") to the extent they arise from or in connection with: (1) infringement, or alleged infringement, of any patent rights or claims caused, or alleged to have been caused, by the use of any apparatus, appliances, equipment, or parts thereof, furnished, installed or utilized by the WSP; (2) actual or alleged fault or negligence of the WSP, its officers, employees, agents, subcontractors and/or representatives; (3) furnishing, performance, or use of any material supplied by WSP under this Contract or any product liability claims relating to any material supplied by WSP under this Contract; (4) failure of WSP, its officers, employees, agents, subcontractors and/or representatives to comply with any term of this Contract or any applicable local, state, or federal law or regulation, including but not limited to the OSH Act and environmental protection laws; (5) assertions under workers' compensation or similar employee benefit acts by WSP or its employees, agents, subcontractors, or subcontractors' employees or agents; (6) the acts or omissions (other than the gross negligence or willful misconduct) of Qwest, its officers, employees, agents, and representatives, except as otherwise provided in paragraphs 11.3 and 11.4 below; and/or, (7) any economic damages that may rise, including damages for delay or other related economic damages that the Qwest or third parties may suffer or allegedly suffer as a result of the performance or failure to perform work by the WSP. If both Qwest and the WSP are sued as a result of or in connection with the performance of work arising out of this Contract, the parties hereby agree that the defense of the case (including the costs of the defense and attorneys' fees) shall be the responsibility of the WSP, if Qwest desires. Qwest shall give the WSP reasonable written notice of all such claims and any suits alleging such claims and shall furnish upon the WSP's request and at the WSP's expense all information and assistance available to the Qwest for such defense. The parties shall employ Article 13, Dispute Resolution, to resolve any dispute concerning the proportional fault and liability after the underlying case is terminated.

11.1 IF WORK IS PERFORMED IN THE STATE OF WASHINGTON UNDER THIS GENERAL CONTRACT, THE WSP ACKNOWLEDGES AND AGREES THAT THIS INDEMNIFICATION OBLIGATION SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL CLAIMS AGAINST QWEST BY AN EMPLOYEE OR FORMER EMPLOYEE OF THE WSP, AND THE WSP EXPRESSLY WAIVES ALL IMMUNITY AND LIMITATION ON LIABILITY UNDER ANY INDUSTRIAL INSURANCE ACT, OTHER WORKERS' COMPENSATION ACT, DISABILITY BENEFIT ACT, OR OTHER

EMPLOYEE BENEFIT ACT OF ANY JURISDICTION WHICH WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH A CLAIM.

- 11.2 Except as expressly provided herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this Contract or any valid and applicable law, rule or regulation.
- 11.3 FOR ANY WORK PERFORMED IN ARIZONA, IDAHO, SOUTH DAKOTA, UTAH OR WASHINGTON, SECTION 11(6) SHALL NOT EXTEND TO THE SOLE NEGLIGENCE OF QWEST BUT SHALL EXTEND TO THE NEGLIGENCE OF QWEST WHEN CONCURRENT WITH THAT OF THE WSP.
- 11.4 FOR ANY WORK PERFORMED IN THE STATES OF MINNESOTA, NEBRASKA, NEW MEXICO, OR OREGON, ARTICLE 11 SHALL NOT APPLY, EXCEPT THAT SECTION 11 SHALL APPLY FOR WORK PERFORMED IN MINNESOTA FOR MAINTENANCE OR REPAIR OF MACHINERY, EQUIPMENT, OR OTHER SUCH DEVICES, USED AS PART OF A MANUFACTURING, COVERING, OR OTHER PRODUCTION PROCESS INDULGING ELECTRIC, GAS, STEAM, AND TELEPHONE UTILITY EQUIPMENT USED FOR PRODUCTION, TRANSMISSION, OR DISTRIBUTION PURPOSES.

12. **FORCE MAJEURE**

12.1 The WSP shall be excused from its performance as to any Order if prevented by acts or events beyond the WSP's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

12.2 If such contingency occurs, Qwest may elect:

12.2.1 To terminate this Agreement as to the Order in question; or

12.2.2 To terminate already-assigned specific work assignment(s) the WSP is unable to perform, or any part thereof, and to assign new specific work assignments to other parties for the duration of the cause of the delay; or

12.2.3 To suspend already-assigned specific work assignment(s) the WSP is unable to perform, or any part thereof, for the duration of the cause of the delay; and to assign new specific work assignments to other parties for the duration of the cause of the delay.

- 12.3 Qwest shall be deemed to have elected Section 12.2.3 above unless written notice of termination is given by Qwest after the contingency occurs. With respect to Qwest's election of Section 12.2.3 above:
- 12.3.1 Qwest shall give the WSP written notice of the work to be performed by such other party prior to its performance and shall deduct from the WSP's price the cost of the work or services actually performed by such other parties.
 - 12.3.2 The WSP shall resume performance, and complete any work not performed or to be performed by another party, once the delaying cause ceases.
 - 12.3.3 If appropriate, at the Qwest's discretion, the time for completion of specific work assignment(s) shall be extended up to the length of time the contingency endured.
- 12.4 Qwest shall be excused from its performance if prevented by acts or events beyond the Qwest's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

13. **DISPUTE RESOLUTION.**

- 13.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.
- 13.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.
- 13.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.
- 13.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's

costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

14. **LAWFULNESS.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where Poles/Innerduct is provided. Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the Communications Act of 1934, as amended (47 U.S.C. 224). The WSP represents that it is a certified Competitive Local Exchange Carrier or otherwise has the legal right, pursuant to 47 U.S.C. 224 to attach to Qwest's pole pursuant to the terms thereof. The WSP acknowledges that Qwest will rely on the foregoing representation, and that if such representation is not accurate, this Agreement shall be deemed void *ab initio*, except for Article 9 hereof, for which WSP shall remain fully liable.
15. **SEVERABILITY.** In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.
16. **GENERAL PROVISIONS.**
 - 16.1 Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.
 - 16.2 This Agreement shall not be assignable by WSP without the express written consent of Qwest, which shall not be unreasonably withheld. Assignment of this Agreement by WSP to WSP's subsidiary or affiliate shall be presumed to be reasonable; provided, however, that WSP must obtain Qwest's consent in any event.
 - 16.3 This Agreement benefits WSP and Qwest. There are no third party beneficiaries.
 - 16.4 This Agreement constitutes the entire understanding between WSP and Qwest with respect to Service provided herein and supersedes any prior agreements or understandings.

PULLING IN REPORT

This report is to be completed by the WSP when fiber cable is placed into innerduct.

_____ 20__

Send to:

Brooke Bale, Qwest Corp
700 W Mineral, Rm IAF12
Littleton, CO 80120 (303-707-7598)

This is to advise you that pursuant to General Agreement No. _____ granted to us under the terms of the Innerduct Agreement dated _____, 20__ we have completed installation of the following cable into the following ducts.

Municipality _____

<u>Location</u>		<u>Cable and Equipment Installed</u>
<u>From Manhole at</u>	<u>To Manhole at</u>	

Name of WSP
By: _____
Title: _____

Receipt of the above report is hereby acknowledged _____, 20__.

Qwest Corporation
By: _____
Title: _____

1. Reports shall be submitted in duplicate.
2. A complete description of all facilities shall be given, including a print showing the locations, quantities, sizes and types of all cables and equipment.

3. Sketch to be furnished showing duct used. Must be same duct assigned to Licensee by Licensor as shown on Exhibit ____, unless a change has been previously authorized in writing by Licensor.

EXHIBIT C

NOTIFICATION OF SURRENDER OR MODIFICATION
OF POLE ATTACHMENT ORDER BY WSP

WSP: _____

Return to:
Brooke Bale, Qwest Corp
700 W Mineral, Rm IAF12
Littleton, CO 80120

In accordance with the terms and conditions of the Agreement between Qwest and WSP, dated __, 20__, notice is hereby given that the licenses covering attachments to the following poles and/or anchors, and/or utilization of anchor/guy strand is surrendered (or modified as indicated in WSP's prior notification to Qwest, dated _____, 20__) effective _____.

	POLE NO.	ASSOC. POLE NO.	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC. RMVD OR MODIFIED
1.		A A/GS -			
2.		A A/GS -			
3.		A A/GS -			
4.		A A/GS -			
5.		A A/GS -			
6.		A A/GS -			
7.		A A/GS -			
8.		A A/GS -			
9.		A A/GS -			

Date Notification Received _____

Date Modification Received _____

By: _____

Name of WSP

Discontinued:
Poles _____
Anchors _____

By: _____
Anchor/Guy Strands _____ Its: _____

subordinate to, and limited by the Right of Way Agreement, and (b) subject to the terms and conditions hereof. As used in this Agreement, “Authorized Users” of Owner, Grantor and Grantee shall mean Owner, Grantor or Grantee, as applicable, their respective Affiliates and agents, licensees, employees, and invitees, including, without limitation, contractors, subcontractors, consultants, suppliers, public emergency vehicles, shipping or delivery vehicles, or construction vehicles. “Affiliates” means, with respect to any Person, any Person that controls, is controlled by or is under common control with such Person, together with its and their respective members, partners, venturers, directors, officers, stockholders, agents, employees and spouses. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise. “Person” means an individual, partnership, limited liability company, association, corporation or other entity.

2. Grantor’s Reserved Rights. Grantor reserves to itself and its Authorized Users the right to use the Easement Rights for any purpose not incompatible with the rights conveyed to Grantee by this Agreement.

3. Conditions Precedent to Effectiveness of Agreement. This Agreement is expressly conditioned on the following:

a. Recordation of Agreement. If the Right-of-Way Agreement has been publicly recorded, Grantee shall be responsible for assuring that the Agreement is in appropriate form for recording in the real property records of the County, shall pay for the recording thereof, and shall provide a copy of the recorded Agreement to Grantor at the address set forth above. A legible copy of the Right of Way Agreement must be attached to the Agreement when recorded or the Agreement shall not be effective.

b. Payment of Costs and Expenses. Grantee shall pay to or reimburse Grantor for all costs and expenses, including reasonable attorneys’ fees, relating to Grantor’s execution and delivery of this Agreement.

4. Grantee’s Representations and Warranties. Grantee represents and warrants to Grantor that:

a. Authority. Grantee is a _____, duly formed and validly existing under the laws of the State of _____. All necessary action has been taken by Grantee to execute and deliver this Agreement and to perform the obligations set forth hereunder. Grantee is a “telecommunications carrier” as that term is defined in 42 U.S.C. § 224.

b. Due Diligence. Grantee acknowledges and agrees that neither Grantor nor any agent, employee, attorney, or representative of Grantor has

made any statements, agreements, promises, assurances, representations, or warranties, whether in this Agreement or otherwise and whether express or implied, regarding the Right of Way Agreement or the Easement Rights or the assignability or further granting thereof, or title to or the environmental or other condition of the Property. Grantee further acknowledges and agrees that Grantee has examined and investigated to its full satisfaction the physical nature and condition of the Property and the Easement Rights and that it is acquiring the Easement Rights in an "AS IS, WHERE IS" condition. Grantee expressly waives all claims for damages by reason of any statement, representation, warranty, assurance, promise or agreement made, if any.

5. Grantee's Covenants.

a. Compliance with Right of Way Agreement. Grantee agrees that the rights granted by Grantor hereunder are expressly subject to, subordinate to, and limited by the Right of Way Agreement, and Grantee further agrees to comply in all respects with the terms and conditions of the Right of Way Agreement as they apply to the holder or user of the Easement Rights. In the event Grantee fails to observe or perform any of its obligations under the Right of Way Agreement, Grantor shall have the right, but not the obligation, to perform or observe such obligation to the extent that such obligation can be observed or performed by Grantor.

b. Compliance with Laws. Grantee agrees to use the Property and the Easement Rights in compliance with all applicable laws.

c. No Further Grant. Grantee shall not grant to any Person other than Grantee's Authorized Users the right to use the Easement Rights without the prior written consent of Grantor, which consent may be granted or withheld in Grantor's sole discretion.

d. Non-Interference. Grantee agrees that it will not interfere with Grantor's or Grantor's Authorized Users' use of the Easement Rights and will not take any action or fail to take any action that would negatively affect the Easement Rights or cause or contribute to the termination of the Right of Way Agreement.

6. Indemnification. Grantee hereby agrees to indemnify, defend and hold Owner, Grantor and their respective Affiliates harmless from and against any and all claims, judgments, damages, liabilities, penalties, fines, suits, causes of action, costs of settlement, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon or incurred by Grantor or its Authorized Users, or any of them, arising from, relating to or caused by Grantee's breach of this Agreement or the use, or the use by any of Grantee's Authorized Users, of the Easement Rights. In addition to the indemnity obligations described above, in the event that any act or omission of Grantee or Grantee's Authorized Users causes, directly or indirectly, and without reference

to any act or omission of Owner, Grantor or their respective Authorized users, the termination or revocation of the Easement Rights, Grantee shall be liable to Grantor for all costs incurred in connection with (a) acquiring replacement Easement Rights over the Property or over other suitable Property, as determined in Grantor's sole judgment (the "Replacement Easement"), (b) the fully-loaded cost of constructing replacement facilities over the Replacement Easement, (c) the cost of removing its facilities and personal property from the Property, if required by the Right of Way Agreement, and (d) any other costs of complying with the Right of Way Agreement, including, without limitation, reasonable attorneys' fees. Grantee shall pay all such amounts within ten (10) days of receipt of any invoice for such costs delivered to Grantee by Owner, Grantor or their respective Authorized Users.

7. Condemnation. If any action is taken whereby the Right of Way Agreement or any part of the Easement Rights are terminated, relocated or otherwise affected, by any taking or partial taking by a governmental authority or otherwise, then such any compensation due or to be paid to the holder of the Easement Rights due to such occurrence shall belong solely to Grantor.

8. Severable Provisions. If any term of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. Default; Remedies. (a) If Grantee files a petition in bankruptcy, or a petition is bankruptcy is filed against Grantee, which is not dismissed on or before fifteen (15) days after such filing, or (b) in the event of Grantee's breach or threatened breach of any term, covenant or condition of this Agreement, then Grantor shall have, in addition to all other legal and equitable remedies, the right to (x) terminate this Agreement, (y) enforce the provisions hereof by the equitable remedy of specific performance, or (z) enjoin such breach or threatened breach by injunctive action, all without the necessity of proof of actual damages or inadequacy of any legal remedy. Grantee agrees to pay all costs of enforcement of the obligations of Grantee hereunder, including reasonable attorneys' fees and all costs of suit, in case it becomes necessary for Grantor to enforce the obligations of Grantee hereunder, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings.

10. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be assigned at any time in whole or in part by Grantor.

11. No Dedication. Nothing contained in this Agreement shall constitute a gift or dedication of any portion of the Easement Rights to the general public or for any public purpose whatsoever. There are no intended third-party

beneficiaries to this Agreement.

12. Grantor's Waiver of Confidentiality. If the Right of Way Agreement is not publicly recorded, Grantor hereby grants a limited waiver of any right to keep the terms and conditions of the Right of Way Agreement confidential, except for any dollar amounts in the Right of Way Agreement, which rights Grantor expressly reserves, and subject to Grantee's and Owner's compliance with the terms and conditions in this paragraph. In all instances, Grantee will use the Right of Way Agreement only for the following purposes: (a) to determine whether Grantor has ownership or control over duct, conduits, or rights-of-way within the property described in the Right of Way Agreement; (b) to determine the ownership of wire within the property described in the Right of Way agreement; or (c) to determine the demarcation point between Grantor facilities and the Owner's facilities in the property described in the agreement. Grantee further agrees that Grantee shall not disclose the contents, terms, or conditions of any agreement provided pursuant to Section 10.8 to any Grantee agents or employees engaged in sales, marketing, or product management efforts on behalf of Grantee. Grantor's waiver of rights, subject to the limitations set forth above, is intended to be effective whether or not such right to confidentiality is expressly set forth in the Right of Way Agreement or elsewhere or may have been agreed to orally, and so long as Grantee and Owner comply with the conditions set forth above, Grantor further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Owner or Grantee, based upon or arising out of Grantor's alleged right to confidentiality relating to the Right of Way Agreement, except in the event of disclosure of dollar amounts in the Right of Way Agreement. Grantor's waiver is expressly conditioned on Owner's waiver of Owner's confidentiality rights, as set forth in the Consent to Disclosure form, which is a part hereof, or Grantee's provision to Grantor of a legally binding and satisfactory agreement to indemnify Grantee in the event of any legal action arising out of Owner's provision of a non-recorded agreement to Grantee . In the event that , the person executing the Consent to Disclosure form does not have the legal right to bind the Owner, Grantor reserves the right to maintain an action for damages, including, without limitation, consequential damages, arising from such improper execution against any Person improperly executing the Consent to Disclosure form. In any event, Grantor reserves its right to (a) to enforce the confidentiality provisions of the Right of Way Agreement as to any dollar amounts set forth in such Right of Way Agreements, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the disclosure of the dollar amounts in any Right of Way Agreement, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent to Disclosure form.

13. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight

express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

14. Modification; Counterparts. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of any amendment, modification, change or waiver is sought. This Agreement may be executed in any number of counterparts, all of which shall constitute but one and the same document.

15. Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

16. Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT OF APPLICABLE LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

[Signature pages follow]

EXECUTED as of the date first written above.

GRANTOR:

Witnessed by: _____

QWEST CORPORATION, a Colorado corporation, successor in interest to U S WEST COMMUNICATIONS, INC., a Colorado corporation

By: _____

Name: _____

Title: _____

STATE OF _____)

) ss:

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__, by _____ as _____ of QWEST CORPORATION, a Colorado corporation.

Witness my hand and official seal.

(SEAL)

Notary Public
My Commission Expires: _____

EXECUTED as of the date first written above.

GRANTEE:

Witnessed by: _____, a

By: _____

Name:

Title:

STATE OF _____)

)

) ss:

COUNTY OF _____)

)

The foregoing instrument was acknowledged before me this ___ day of
_____, 20__, by _____ as
_____ of
_____, a _____.

Witness my hand and official seal.

(SEAL)

Notary Public

My Commission Expires:

CONSENT TO DISCLOSURE

THE UNDERSIGNED, _____, a _____
("Owner"), whose address is _____,
_____, hereby consents to
the terms of the following paragraphs regarding the agreement described or entitled as
_____ between Qwest Corporation, formerly U S
WEST Communications, Inc. ("Qwest") and Owner for the property located at
_____ ("Property") that provides Qwest with access to Owner's
Property (the "Agreement").

FOR TEN DOLLARS (\$10) and other good and valuable consideration, the receipt and
sufficiency of which are hereby acknowledged, Owner agrees as follows:

1. Title to Property. Owner represents and warrants either (a) that Owner is the owner of fee
title to the Property described in the Agreement or, if no description of the Property is given in
the Agreement, then (b) that Owner is the grantor, or the successor to or assignee of the
grantor, of the easement rights, if any, under the Agreement. Owner further represents and
warrants that Owner has the legal right to execute this Consent to Disclosure, including,
without limitation, the right to waive the confidentiality of the Agreement as set forth in
paragraph 3 of this Consent to Disclosure.

2. Owner's Acknowledgments. Owner expressly acknowledges that (a) this is a legal
document that may affect Owner's rights and Owner was given the opportunity to have the
Agreement and this Consent to Disclosure reviewed by Owner's attorney; and (b) Owner, by
signing this Consent to Disclosure, waives any rights it may have to keep the terms and
provisions of the Agreement confidential.

3. Owner's Waiver of Confidentiality. Owner hereby waives any right it may have to keep the
terms and conditions of the Agreement confidential, whether or not such right to confidentiality
is expressly set forth in the Agreement or elsewhere or may have been agreed to orally,
subject to the compliance of the competitive local exchange carrier ("WSP") with the
requirements of paragraph 5. Owner further covenants not to assert any claim or commence
any action, lawsuit, or other legal proceeding against Qwest or WSP presenting this Consent
to Disclosure, based upon or arising out of Owner's alleged right to confidentiality relating to
the Agreement. Owner's consent to disclosure applies only to the Agreement that is described
in this Consent to Disclosure form and only to the undersigned WSP.

4. Qwest's Waiver of Confidentiality. Qwest represents and warrants that it is granting a
limited waiver of its confidentiality rights that permits WSP to review the Agreement subject to
WSP's compliance with the requirements of paragraph 5 and Qwest's right to redact all dollar
amounts set forth in the Agreement. Qwest's consent to disclosure applies only to the
Agreement that is described in this Consent to Disclosure form and only to the undersigned
WSP.

5. WSP's Obligations. WSP shall use the Agreement exclusively for the following purposes
and for no other purpose whatsoever:

- (a) to determine whether Qwest has ownership or control over duct, conduits, or rights-of-way within the Property described in the Agreement; or
- (b) to determine the ownership of wire within the Property described in the Agreement; or
- (c) to determine the demarcation point between Qwest facilities and the Owner's facilities in the Property described in the Agreement.

WSP further agrees that WSP shall not disclose the contents, terms, or conditions of the Agreement to any WSP agents or employees engaged in sales, marketing, or product management efforts on behalf of WSP.

6. Acknowledgement of Limitation on Waivers. **Owner understands that Qwest does not agree to waive the confidentiality of the dollar amounts set forth in any Agreement, and acknowledges that Owner has no right to provide copies of such Agreements to any party unless Owner has completely deleted the dollar amounts. Owner shall not provide a copy of the Agreement unless Owner has completely deleted all dollar amounts. Whether provided by Owner or Qwest, WSP shall comply with the conditions set forth in paragraph 5.**

7. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

EXECUTED as of the date first written above.

OWNER:

WSP:

EXHIBIT 1

Right of Way Agreement

(This represents the ROW agreement between the parties)

EXHIBIT A

Access to Poles, Ducts, Conduits and Rights of Way					
	Pole Inquiry Fee, per Mile			\$435.81	1
	Innerduct Inquiry Fee, per Mile			\$303.80	1
	ROW Inquiry Fee			\$483.35	1
	ROW Doc Prep Fee			\$143.99	1
	Field Verification Fee, per Pole			\$23.89	1
	Field Verification Fee, per Manhole			\$201.89	1
	Planner Verification, Per Manhole			\$15.99	1
	Manhole Verification Inspector Per Manhole			\$107.50	1
	Manhole Make-Ready Inspector, per Manhole			\$286.67	1
	Pole Attachment Fee, per Foot, per Year				
	Urban				
	2002		\$1.96		5
	2003		\$2.13		5
	2004		\$2.29		5
	2005		\$2.46		5
	Non-Urban				
	2002		\$2.46		5
	2003		\$2.88		5
	2004		\$3.29		5
	2005		\$3.71		5
	Innerduct Occupancy Fee, per Foot, per Year		\$0.38		5
	Access Agreement Consideration			\$10.00	2
	Make Ready			ICB	3

NOTES:					
[1]	Rates proposed in Cost Docket UT-003013 on 11/7/01 and/or 3/7/02. TELRIC based where required.				
[5]	Per FCC Guidelines				