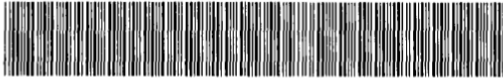




MISC 2015009317

F 5 misc 34.00 OC-42382 LC



FEB 09 2015 12:00 P 5

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
2/9/2015 12:00:07.72



2015009317

Drafted by/Return to: Randy Allen (402) 398-7927
Northern Natural Gas Company, 1111 South 103rd Street, Omaha, NE 68124-1000

NEB49301-83
356-14

ENCROACHMENT AGREEMENT

This instrument made and entered into this 10th day of November, 2014, by and between NORTHERN NATURAL GAS COMPANY, a Delaware corporation, (hereinafter referred to as "Northern"), with principal offices at 1111 South 103rd Street, Omaha, Nebraska 68124-1000, and Qwest Corporation, d/b/a Centurylink QC with principal offices at 1801 California Street, Suite 900, Denver, Colorado 80202 (hereinafter referred to as "CenturyLink").

WITNESSETH THAT:

WHEREAS, Northern is the holder of an easement granted by John R. Atkins and Mary A. Atkins, husband and wife, on January 16, 1962, covering the following described premises in Douglas County, Nebraska:

Southeast Quarter (SE $\frac{1}{4}$) of Section 16, Township 15 North, Range 11 East of the 6th P.M., except four (4) additional acres of right of way occupied by the UPRR Company and except state and county roads; and

which easement was recorded March 21, 1962, at Book 378 of Miscellaneous, Page 47, and was defined to a 132-foot wide strip by a Modification and Amendment of Easement Grant recorded November 21, 1969, in Book 483 of Miscellaneous, Page 579; all in the Office of the Register of Deeds for Douglas County, Nebraska (hereinafter collectively referred to as "Easement"); and

WHEREAS, pursuant to the authority contained in said Easement, Northern has constructed and currently operates and maintains a 16-inch pipeline (NEB49301) along with the right to install additional facilities from time to time (hereinafter referred to as "Pipeline Facilities") across and through the above described premises; and

WHEREAS, CenturyLink is the holder of an easement for utilities on the premises subject to said Easement (hereinafter referred to as the "Premises").

WHEREAS, CenturyLink plans to construct one new telecommunication switch with the two existing switches no closer than 45 feet to Northern's pipeline facilities and two existing, one and one quarter inch (1 $\frac{1}{4}$ " plastic inner ducts to contain a new 48 fiber optic cable, both of which cross Northern's Pipeline Facilities at a 90 degree angle, and a new THHN 3 OD single phase 240V power line sleeved through a 2-inch HDPE UL conduit which will undercross Northern's Pipeline Facilities by a minimum of 12 inches at a near 90 degree angle (hereinafter referred to as "Encroachment") upon and within a portion of the confines of Northern's 132-foot wide Easement as depicted on Exhibit "A", with this written consent; and

WHEREAS, CenturyLink has been advised by Northern that Northern is a natural gas transmission company and that Northern operates a high pressure underground natural gas pipeline through the Premises; and

WHEREAS, CenturyLink has requested permission from Northern to maintain, use, and enjoy the Encroachment upon a portion of Northern's Easement and in close proximity to Northern's Pipeline Facilities; and

RETURN: Right of way department
Northern Natural Gas
P.O. Box 3330
Omaha, NE 68103

✓ 02 8783
✓ 028694

WHEREAS, Northern is willing to grant such permission upon the terms and conditions set forth as follows.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. Northern hereby grants permission to CenturyLink to maintain, operate and use upon the Premises and in close proximity to Northern's Pipeline Facilities, the said Encroachment, subject to the following conditions:

A. That CenturyLink assumes all risks for damages, injuries, or loss to either property or persons, which may be incurred by CenturyLink or its respective agents, invitees, or licensees present on or in the vicinity of the Easement and in any way associated with said Encroachment.

B. That the permission granted herein is limited exclusively to the proposed Encroachment within Northern's Easement. CenturyLink shall not alter the grade or permit such alteration anywhere on the land upon which Northern has reserved its easement rights, without the prior express written consent of Northern.

C. That CenturyLink shall at all times conduct all its activities on said Easement in such a manner as not to interfere with or impede the operation of Northern's Pipeline Facilities and activities in any manner whatsoever.

D. That CenturyLink shall not plant any trees or shrubs within the confines of Northern's Easement without the prior express written consent of Northern.

2. CenturyLink agrees to indemnify, protect, and hold Northern, its parent, affiliates, subsidiaries, and their directors, officers, employees, representatives, and agents harmless from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage, injury, suit, proceeding, judgment, cost, or expense of whatever kind or nature, including but not limited to reasonable attorneys' fees, arising from or as a result of any incident, act, action, cause of action, negligence, transaction or omission of CenturyLink in connection with, or incidental to the construction, operation, maintenance, or use of the said Encroachment within, upon or in the vicinity of the Easement Area, or from the operation, maintenance, use or presence of Northern's Pipeline Facilities upon or in the vicinity of the Encroachment except where such loss, cost, liability, or expense was proximately caused by the negligence of Northern or its employees. It is understood and agreed by the parties that under this Agreement, CenturyLink shall be jointly and severally liable.

3. CenturyLink agrees that protection of Northern's Pipeline Facilities will be maintained at all times.

4. Should Northern need to remove any of CenturyLink's said Encroachment within its Easement in order to construct, maintain, operate, repair, remove, or resize Northern's existing or additional Pipeline Facilities, CenturyLink or its respective heirs, successors, and assigns shall pay the cost of removing and replacing or reinstalling said Encroachment. In addition, all repair and maintenance work performed by Northern on its existing or additional Pipeline Facilities located on the Premises shall be performed in a reasonable workmanlike manner and Northern shall restore the surface and grade of the Premises where the work is performed, but shall not be liable for loss, damage, or replacement to CenturyLink's said Encroachment or any associated equipment and facilities that exist within the Easement, and in this regard, CenturyLink hereby releases Northern, its employees, agents, officers, and directors from any and all liability for any such loss or damage.

5. The Parties hereto understand that this Agreement in no way constitutes a waiver by Northern of its rights to enjoy its Easement unencumbered by the construction of said Encroachment within Northern's Easement.

6. It is expressly agreed to by and between the parties hereto that if CenturyLink is in violation of any terms or conditions set forth in this Agreement, Northern, at its option, may terminate this Agreement upon ten (10) days' notice to CenturyLink. In the event of such termination, CenturyLink shall immediately remove any and all of said Encroachment which

may be situated on the Easement, or if CenturyLink fails to remove any and all of said Encroachment, Northern may, at its option, remove said Encroachment at the expense of CenturyLink and without any liability whatsoever. It is further agreed that the failure by Northern to exercise such option as to any such violation shall not constitute a waiver of Northern's future right to exercise such option as to the same or any future violation.

7. The provisions of the Easement, and all rights, powers, privileges, and duties, obligations, and liabilities created thereby, remain in full force and effect and are not affected hereby except to the extent and in the manner set forth above.

8. CenturyLink agrees to indemnify, defend and hold Northern, its parent and affiliated companies, and the directors, officers and employees of any such corporate entities harmless from and against any liability, damage, claims, loss, cause of action, suit, proceeding, judgment, cost (including the cost or expense of environmental response, removal or remediation activities), fees or expense, including reasonable attorney's fees arising from: (1) non-compliance with any laws, regulations and orders applicable to the ownership or the operation and maintenance of the said Encroachment on the Premises described herein, and (2) any incidents, acts, releases, negligence, transactions or omissions, or conditions on or affecting the Easement that would (i) contribute to or constitute a violation of any local, state or federal environmental rule, regulation, law or judicial order, (ii) result, in whole or in part, in any requirement to clean up or otherwise remedy or remediate a condition, (iii) give rise to any lien, liability, injunction, order, restriction, claim, expense, damage, fine or penalty, or (iv) adversely affect human health or the environment at or near the Easement.

9. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED, AND AGREES ANY SUCH ACTIONS MAY NOT IN ANY EVENT BE CONSOLIDATED TOGETHER.

This instrument and the covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties and the benefits of this Agreement shall run with the land.

IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

"NORTHERN"
NORTHERN NATURAL GAS COMPANY

"CENTURYLINK"
CENTURYLINK QC

By: Joseph A. Jessen

By: Kimberly R Jirovsky

Name: Joseph A. Jessen

Name: Kimberly R Jirovsky

Title: Agent and Attorney-in-Fact

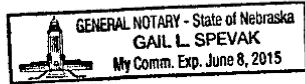
Title: Row Manager NE

ACKNOWLEDGEMENTS

STATE OF NEBRASKA)
)SS
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, this 20th day of November, 2014, by Joseph A. Jessen as Agent and Attorney-in-Fact for Northern Natural Gas Company, a Delaware corporation, on behalf of the corporation.

(SEAL)

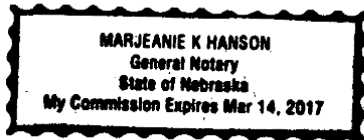


Gail L. Spevak
Notary Public
My Commission Expires 6/8/15

STATE OF NE)
)SS.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me, a Notary Public, this 10th day of November, 2014, by Kimberly R Jirovsky, the Row Manager for CenturyLink, a Colorado corporation, on behalf of the corporation.

(SEAL)



Marjeanie K Hanson
Notary Public
My Commission Expires March 14, 2017

Southeast (SE¼) of Section 16, Township 15N, Range 11E
Douglas County, Nebraska
Exhibit "A"

Parcel # 2502390436 Lot 8 West Dodge Pointe
Parcel # 2502390420 LOT 1 West Dodge Pointe

