

LAND LEASE

For

COUNTY-OWNED PROPERTY

BETWEEN

The COUNTY OF ALBEMARLE

AND

THE UNITED STATES OF AMERICA

AUTHORITY: This lease is being acquired under the authority of Title 10 United States Code Section 2661.

I. This **LEASE**, made and entered into this ____ day of _____ in the year of 2021.

by: County of Albemarle

Address: 401 McIntire Road, Charlottesville, Virginia 22902

and whose interest in the property is that of the owner, hereinafter called the **Lessor**, and the UNITED STATES OF AMERICA, hereinafter called the **Lessee**.

In consideration for **RENT** the parties promise and agree as follows:

2. **PROPERTY:** The Lessor leases to the Lessee a below-grade portion of the Boulders Road Right of Way, identified in the local land records as Parcel ID No. 03200-00-00-005C3, for the purpose of maintaining a system of fiber communication conduits and appurtenances, herein after referred to as "the system", as they are currently situated, further described in Schedule A. Lessee will maintain surface rights as necessary to maintain the system.

3. **LEASE TERM:** The Lessee shall have the right to have and to hold the said premises, or any portion thereof, for a period of one (1) year period beginning upon the date of executing of this lease. This lease may be renewed for one (1) additional one (1) year period, for a total of two (2) one (1) year periods, provided that the Lessee gives the Lessor a thirty (30) day written notice to renew, and provided further, that the renewal of this lease is subject to adequate appropriations being made available year to year for the payment of rentals.

4. **PROMPT PAYMENT:** The Lessee will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

a. When the date for commencement of rent falls on the 15th day of the month or earlier, the initial rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

b. When the date for commencement of rent falls after the 15th day of the month, the initial rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

5. **RENTAL:** The Lessee shall pay the Owner rent at the following rate: **Two Thousand Two Hundred Forty-Two Dollars** (\$2,242.00) per year in arrears on or about the first date of the first month after completion of the rental period. Rent for a lesser period shall be prorated. Rent payments shall be made by Check, payable to the Lessor, by USACE Baltimore District, RSFO, PO Box 548, Annapolis Junction, MD 20701-0548.

6. **OWNERSHIP:** The Lessor warrants that it is the rightful and legal owner of the property, subject to all easements and encumbrances of record, and has the legal right to enter into this lease. If the title of the Lessor shall fail, or it be discovered that the Lessor did not have authority to lease to the property, the lease shall terminate. To the extent permitted by law, the Lessor, the Lessor's heirs, executors, administrators, successors, or assigns agree to indemnify the Lessee by reason of such failure and to refund all rentals paid.

7. **TERMINATION:**

a. The Lessee may terminate this lease at any time in whole or in part, by giving thirty (30) days notice in writing to the Lessor and no rental shall be due for payment after the effective date of termination. Said notice shall be the day after the date of mailing, or hand delivery.

b. Termination in whole or in part shall be effective upon written notice, however, the parties may enter into a supplemental agreement to resolve certain issues arising from the tenancy and its termination, in whole or in part.

c. The Lessor has no termination rights.

8. **ALTERATIONS/RESTORATION/RELEASE OF LIABILITY:**

All installations placed in said right-of-way by the lessee shall remain the property of the lessee and may be removed therefrom by the lessee at any time. The construction, operation, and maintenance, renewal, and removal of the said installation shall be accomplished by the Lessee at its sole cost and expense and in such a manner as will at times enable the lessor to use the surface of the right-of-way. The Lessor may, upon not less than 30 days' written notice to the Lessee, and before termination of the lease, require restoration of the leased premises, subject to exceptions to restoration stated below of all alterations. In this event, prior to the expiration or termination of this lease, or prior to relinquishment of possession, whichever first occurs, the Lessee shall, at its sole election, either (1) restore the premises to the same condition as that existing at the time of entering into the lease or; (2) make appropriate settlement to the Lessor representing either the diminution in the fair market value of the property due to the failure to restore, or the actual cost of restoration, whichever is the lesser amount. The Lessee

shall not restore the premises, either physically or by payment in lieu thereof, for damages as a result of reasonable and ordinary wear and tear, the elements or circumstances over which the Lessee has no control, or for alterations, or damage thereto, which the Lessee installed at its expense or the Lessor installed and was reimbursed by the Lessee through payment thereof. Should a mutually acceptable settlement be made hereunder, the parties shall enter into a Supplemental Agreement at the termination of the lease hereto effectuating such settlement.

9. **PROPERTY INVENTORY:** As of the starting date of this lease, a joint inventory and condition report of all personal property of the Lessor included in this lease, and also a joint physical survey and inspection report of the real property shall be made, said reports to reflect the then present condition, and to be signed on behalf of the parties.

10. **TAXES:** The Lessor accepts full and sole responsibility for the payment of all taxes and other charges of a public nature which may arise in connection with this lease or which may be assessed against the property. This includes registration of the lease and payment of related charges.

11. **NOTICE:** Any notice under the terms of this lease shall be in writing signed by a duly authorized representative of the party giving such notice, and if given by the Lessee shall be addressed to the Lessor at:

County Executive
County of Albemarle
401 McIntire Road
Charlottesville, Virginia 22902

and if given by the Lessor shall be addressed to the Lessee at:

Commander, U.S. Army Engineer District, Baltimore
P.O. Box 548
Annapolis Junction, Maryland 20701-0548
ATTN: CENAB-RS-R

12. **LESSOR'S SUCCESSORS:** The terms and provisions of this lease and the conditions shall bind the Lessor, and the Lessor's heirs, executors, administrators, successors, and assigns.

13. **COVENANT AGAINST CONTINGENT FEES:** The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or a contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty the Lessee shall have the right to annul this lease without liability or in its discretion to deduct from the lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

14. **OFFICIALS NOT TO BENEFIT:** No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

15. **GRATUITIES:**

a. The Lessee may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer, or employee of the Lessee with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such lease; provided, that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

b. In the event this lease is terminated as provided in paragraph (a) hereof, the Lessee shall be entitled (i) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Lessor in providing any such gratuities to an such officer or employee.

c. The rights and remedies of the Lessee provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

16. **EXAMINATION OF RECORDS:** The Lessor agrees that any duly authorized representatives shall have the right until the expiration of three (3) years after final payment of the agreed rental, have access to and the right to examine any directly pertinent books, documents, papers and records of the Lessor involving transactions related to this lease.

17. **MODIFICATION:** No Change or modification of this lease shall be effective unless it is in writing and signed by both parties to this lease.

18. **DISPUTES:**

a. This lease is subject to the Contract Disputes Act of 1978 (41 USC 601-613).

b. Except as provided in the Contract Disputes Act ("Act"), all disputes arising under or relating to this lease shall be resolved under this clause.

c. "Claim" as used in this clause, means a written demand or written assertion by one of the leasing parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under a lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Lessor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d) (2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

- d. (1) A claim by the Lessor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Lessee against the Lessor shall be subject to a written decision by the Contracting Officer.
- (2) For Lessor claims exceeding \$100,000, the Lessor shall submit with the claim a certification that:
- (i) The claim is made in good faith;
 - (ii) Supporting data are accurate and complete to the best of the Lessor's knowledge and belief; and
 - (iii) The amount requested accurately reflects the contract adjustment for which the Lessor believes the Lessee is liable.
- (3) (i) If the Lessor is an individual, the certification shall be executed by that individual.
- (ii) If the Lessor is not an individual, the certification shall be executed by:
- (A) A senior company official in charge at the Lessor's plant or location involved; or
 - (B) An officer or general partner of the Lessor having overall responsibility for the conduct of the Lessor's affairs.

e. For Lessor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Lessor, render a decision within 60 days of the request. For Lessor certified claims over \$100,000, the Contractor Officer must, within 60 days, decide the claim or notify the Lessor of the date by which the decision will be made.

f. The Contracting Officer's decision shall be final unless the Lessor appeals or files a suit as provided in the Act.

g. At the time a claim by the Lessor is submitted to the Contracting Officer or a claim by the Lessee is presented to the Lessor, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternative dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph (d)(2) of this clause, and executed in accordance with paragraph (d)(3) of this clause.

h. The Lessee shall pay interest on the amount found due and unpaid from: (1) the date the Contracting Officer receives the claim (properly certified is required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6 month period as fixed by the Treasury Secretary during the pendency of the claim.

i. The Lessor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

19. **SEVERABILITY:** If any provision of this lease or the application thereof to any person, or if any circumstance is held invalid for any reason, such invalidity shall not affect the other provisions, or any other application of this lease which can be given effect without the invalid provision or application, and to this end, all the provisions of this lease are hereby declared to be severable.

20. **ANTI-DEFICIENCY ACT:** Any expenditure by the United States of federal funds under this Lease is subject to the lawful availability of such funds for the purposes described in this Lease. Nothing in this Lease will require a violation of the Anti-Deficiency Act (31 U.S.C. 1341(a)(1)(A)), or any other law or regulation relating to appropriated funds of the United States, nor shall this Lease require a violation of any law or regulation relating to the leasing of real property by the United States.

21. **COUNTERPARTS:** If this Lease shall be executed in two or more counterpart originals, each counterpart original shall be for all purposes considered an original of this Agreement.

22. **NO WAIVER:** No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

23. **INTEGRATED AGREEMENT:** This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

24. **ASSIGNMENT OF CLAIMS:** Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this lease provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Lessor from the Lessee under this contract may be assigned to a bank, trust company, or other financial institution, including any Federal lending agency, and may thereafter be further assigned or reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provisions of this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

IN WITNESS WHEREOF, the parties have subscribed their names as of the date first above written.

Witnesses:

COUNTY OF ALBEMARLE, LESSOR:

JEFFREY B. RICHARDSON
County Executive
Albemarle County

Witnesses:

THE UNITED STATES OF AMERICA, LESSEE:

STAN H. GRAHAM
Chief, IIES Branch
Real Estate Contracting Officer
Real Estate Division
Baltimore District
U.S. Army Corps of Engineers

CERTIFICATE

I, _____, certify that I am the _____ of the County of Albemarle; that Jeffrey B. Richardson, who signed the foregoing instrument on behalf of the County was then County Executive of the *County*. I further certify that the said officer was acting within the scope of the powers delegated to this officer by the governing body of the County in executing said instrument.

Date _____

Secretary or other appropriate officer
(Excluding the officer executing the instrument)

{Seal}

VIRGINIA STATE GRID NORTH '83



SCHEDULE A

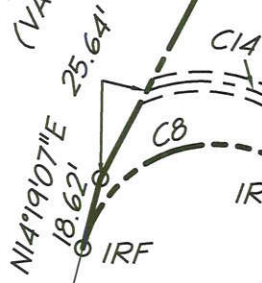
U.S. ROUTE 29 - SEMINOLE TRAIL
(VARIABLE WIDTH R/W)

QWEST NEXT GENERATION I.L.C.
QWEST UTILITIES HOLDING, L.L.C.
PARCEL ID: 03200-00-00-005C0
DEED BOOK 1534 PAGE 611

C/L 5' FIBER OPTIC
UTILITY EASEMENT
(HEREBY GRANTED)

COUNTY OF ALBEMARLE, VIRGINIA
(121.38' PRIVATE STREET)
PARCEL ID: 03200-00-00-005C3
DEED BOOK 3802 PAGE 50

BOULDERS ROAD



C/L 5' FIBER OPTIC
UTILITY EASEMENT
(HEREBY GRANTED)

N 3,945,328.65
E 11,506,763.38



UNITED STATES OF AMERICA
UNITED STATES OF AMERICA
PARCEL ID: 03200-00-00-005C1
DEED BOOK 1591 PAGE 1096



PLAT SHOWING
FIBER OPTIC UTILITY EASEMENT
FOR: QWEST GOVERNMENT SERVICES, INC; dba CENTURYLINK
ON THE PROPERTY OF

COUNTY OF ALBEMARLE, VIRGINIA
RIVANNA MAGISTERIAL DISTRICT ALBEMARLE COUNTY, VIRGINIA

MATCHLINE SEE SHEET 4 OF 5

SCALE: 1" = 50'
DATE: 03/21/13
REV: 04/22/13
SHEET 3 OF 5

DRAWN:
BWS
CHECKED:
KLS



christopher consultants
engineering · surveying · land planning
9417 innovation drive manassas, va 20110
703.393.9887 · fax 703.393.9076

EXHIBIT A CONTD.

NITE NEXT GENERATION, L.L.C.
NITE NEXT GENERATION, L.L.C.
PARCEL ID: 03200-00-00-005C0
DEED BOOK 1534 PAGE 611

C/L 5' FIBER OPTIC
UTILITY EASEMENT
(HEREBY GRANTED)

VIRGINIA STATE GRID NORTH '83



MATCHLINE SEE SHEET 3 OF 5

BOULDERS ROAD
(121.38' PRIVATE STREET)
COUNTY OF ALBEMARLE, VIRGINIA
PARCEL ID: 03200-00-00-005C3
DEED BOOK 3802 PAGE 50

MATCHLINE SEE SHEET 5 OF 5

NITE UNITED STATES OF AMERICA
NITE UNITED STATES OF AMERICA
PARCEL ID: 03200-00-00-005C1
DEED BOOK 1591 PAGE 1096



PLAT SHOWING
FIBER OPTIC UTILITY EASEMENT
FOR: QWEST GOVERNMENT SERVICES, INC; dba CENTURYLINK
ON THE PROPERTY OF

COUNTY OF ALBEMARLE, VIRGINIA
RIVANNA MAGISTERIAL DISTRICT ALBEMARLE COUNTY, VIRGINIA

SCALE: 1" = 50'
DATE: 03/21/13
REV: 04/22/13
SHEET 4 OF 5

DRAWN:
BWS
CHECKED:
KLS



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engineering · surveying · land planning
9417 innovation drive manassas, va 20110
703.393.9887 · fax 703.393.9076

