

## **UNDERGROUND RIGHT-OF-WAY LICENSE**

Permission is hereby granted by the **CITY OF CHARLOTTESVILLE** and the **COUNTY OF ALBEMARLE**, political subdivisions of the Commonwealth of Virginia and the joint owners of the property that is subject to this License (hereinafter referred to as “Licensors”) to **CENTURYLINK COMMUNICATIONS, LLC**, a limited liability company authorized to transact business in Virginia (hereinafter referred to as “Licensee”) to make excavation into the real property owned by Licensors and as described herein, under the terms and conditions set forth in this License.

### **1. Term:**

This License shall be valid for a period of five (5) years beginning January 1, 2021 and ending December 31, 2025, unless this License is terminated as provided herein.

### **2. Rights Not Exclusive:**

Nothing contained in this License shall ever be held or construed to confer upon Licensee, its successors and / or assigns, exclusive rights or privileges of any nature whatsoever.

### **3. Conditions of Use:**

a. Prior to beginning any work on the property subject to this License, Licensee shall submit detailed engineering drawings to the County of Albemarle for approval, and obtain from the County any permits or approvals that may be required by the County or any other governing authority for the installation of a total of 4,500 linear feet of fiber optic cable at the location more specifically described in section 4 herein. Licensee is further required, before beginning any excavation on the property described herein, to contact all applicable utility companies for location of buried cable, water or sewer services or mains, electric lines, gas lines, and the like. All construction allowed under this License shall be accomplished under the supervision and direction of the County Engineer, or such other person as the County of Albemarle may designate. Licensee shall not unnecessarily obstruct or impair traffic upon any street, road or other public way within Albemarle County and shall comply with all of the County’s rules and regulations designed to prevent damage to trees and shrubbery that may be caused by its installation hereunder.

b. Upon making an opening in any portion of the property subject to this License for the purpose of laying, constructing, repairing and/or maintaining Licensee’s System, Licensee shall, without unnecessary delay, replace and restore the same to its former condition as nearly as possible, and in full compliance with the provisions of the County of Albemarle’s policies, rules, regulations and / or ordinances. Licensee shall re-sod disturbed grassed areas and replace all excavated areas to their original or better condition in order to minimize the disruption of public property. Licensee shall, at its sole cost, repair paving cuts in a good workmanlike manner to specifications outlined by the County.

c. Licensee shall provide safe passageway for pedestrians and vehicles through, in and around the work site areas. Work shall be performed at night, if requested by the County, so as not to impede the regular use of Darden Towe Park. Licensee shall use directional boring in all areas where possible unless otherwise required or approved by the County of Albemarle. Licensee shall meet all local and State requirements for traffic control and notify the County at least 24 hours prior to the commencement of work or the accessing of conduit installed pursuant to this License, except in cases of emergency.

d. Licensee shall not cut or install any ditches or trenches within the root zone of any tree but rather shall bore under the same unless written permission to do otherwise is provided in advance by the County Engineer or his designee.

e. The work authorized by this License shall be the installation, repair, replacement and maintenance of two (2) two-inch (2") conduits containing fiber optic cable, as well as related other facilities and equipment (collectively, the "Facilities"). All such Facilities within Darden Towe Park shall be placed underground.

f. Licensee shall file with the County Engineer true and correct maps or plats of all existing and proposed installations and the types of equipment and facilities installed or constructed, properly identified and described as to the type of equipment and facility by appropriate symbols and marks and which shall include annotations of all public property, public ways, street, road and conduits where the work is to be undertaken. Maps shall be drawn in a scale and in such detail so as to allow proper review and interpretation by the County Engineer, and the same will be filed with the County not less than ten (10) working days before any excavation or installation of said cable or equipment or facilities commences.

g. If, at any time during the term of this Permit, Licensors shall determine, in their sole discretion, that the Facilities of Licensee installed pursuant to this License are in conflict with an intended use of Darden Towe Park by the City or County (and not, for example, to accommodate another private party or utility) and must be relocated, Licensee, upon reasonable notice from Licensors, shall remove, relay and relocate its Facilities at its own expense and within reasonable time schedules established by Licensors, to another location mutually agreeable to Licensors and Licensee. Should Licensee refuse or fail to remove its equipment or plant as provided for herein within 45 days after written notification, Licensors shall have the right to do such work or cause it to be done and the full cost thereof shall be chargeable to the Licensee, or in the alternative, to consider such failure by the Licensee to remove its equipment or plant as abandonment of all ownership rights in said property. Upon relocation, Licensee shall prepare at its own expense and provide to Licensors a revised survey plat that shows the new location of Licensee's wires, cables and equipment.

h. Licensee shall keep Licensors fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Licensee's System installed hereunder. Licensee shall report to Licensors such other

information relating to the Licensee as Licensors may reasonably request in writing. Licensee shall respond to such inquiries on a timely basis.

i. Licensee shall install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of all applicable County codes, ordinances and regulations, and in such a manner that they will not interfere with any existing installations of the County or of a public utility serving the residents of the County of Albemarle or the City of Charlottesville.

#### **4. Permit Specifications; Payment:**

a. The right-of-way occupancy permitted under this License shall be approximately 4,500 linear feet of Licensee's System, to be installed in Darden Towe Park in the location shown on the attached survey plat prepared by Thomas B. Lincoln Land Surveyor, Inc., and dated January 6, 2006, revised February 10, 2006, a copy of which is attached to this License as Exhibit A.

b. The granting of this License is conditioned upon the payment by Licensee to Licensors of the annual sum of One Thousand, Six Hundred Eighty and 00/100 Dollars (\$1,680.00), which represents the fee for the placement and occupation of the facilities for approximately 4,500 linear feet of property in Albemarle County that is subject to this License. Annual payments shall be due and payable on or before January 10th of each year commencing for the year 2021 and shall be due and payable at a like date each year during the term of the Permit. In the event that Licensee's payments are not timely made, a ten percent (10%) surcharge shall be due and payable to Licensors. All payments by Licensee pursuant to this License shall be made to the County of Albemarle, as agent of the Licensors.

#### **5. Safety Requirements:**

a. Licensee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injury to the public or to constitute a nuisance. Licensee shall install such equipment and employ such personnel to maintain its facilities so as to assure efficient service, and shall have the equipment and personnel necessary to make repairs promptly.

b. Licensee shall install and maintain its System in accordance with the requirements of applicable building codes and regulations of the County of Albemarle and the statutes and regulations of appropriate Federal and State agencies, including but not limited to the Federal Communications Commission and the U.S. Army Corps of Engineers, which may now be in effect or enacted, and in such a manner that will not interfere with any installations of the County of Albemarle or the City of Charlottesville or of any public utility serving residents of the County of Albemarle or the City of Charlottesville.

c. Licensee's System, wherever situated, or located, shall at all times be kept and maintained in a safe operating condition and in good order and repair.

**6. Liability and Indemnification:**

a. By acceptance of this License, Licensee agrees that it shall indemnify, protect, defend and hold forever harmless the Licensors, their elected officials, officers, agents, representatives and employees, and their successors, legal representatives and assigns, from any and all claims of every kind and nature whatsoever, and from liabilities, losses, costs, judgments, penalties, damages, and expenses, including reasonable attorney's fees and expenses of litigation incurred in the defense of any such claim arising out of or relating to the installation, operation or maintenance by the Licensee of the Licensee's System or the Licensee's failure to perform any of the obligations of this License, including but not limited to claims for injury or death to any person or persons, or damages to any property, as may be incurred by or asserted against Licensors, or either of them, their elected officials, officers, agents, representatives and/or employees, directly or indirectly, by reason of the installation, operation or maintenance by the Licensee of the Licensee's System within the area subject to this License. Licensee shall pay, and by acceptance of this Permit, the Licensee specifically agrees that it will pay all damages and penalties which Licensors, or either of them, may legally be required to pay as a result of installation, operation or maintenance by the Licensee of the Licensee's System or the Licensee's failure to perform any of the obligations of this Permit. These damages or penalties shall include all damages arising from the installation, operation or maintenance of the System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Permit, and Licensors shall not be responsible in any manner for any damage to the System and which may be caused by Licensee or other persons regardless of the cause of damage. Notwithstanding the foregoing, Licensee shall not be required to indemnify, protect, defend or hold harmless Licensor(s) for claims arising out of or relating, in whole or in part, to the negligence or willful conduct of either or both Licensor(s).

b. Licensee shall maintain, and by its acceptance of this License, specifically agrees that it will provide throughout the term of the Permit, workers compensation insurance in such amounts of coverage as required by the Commonwealth of Virginia and liability insurance coverage with regard to all damages mentioned in subsection (a) above in the following minimum amounts, whichever is greater:

1. General Liability Insurance- \$1,000,000 per occurrence, \$2,000,000 aggregate limits. Commercial General Liability is to include bodily injury and property damage, personal injury, advertising injury, contractual liability, and products and completed operations coverage. The County of Albemarle and City of Charlottesville are to be included as additional insureds with respect to General Liability coverage.

2. Comprehensive Automobile Liability Insurance including owned, non-owned and hired vehicles. Minimum coverage of \$1,000,000 combined single limit for

each accident. The County of Albemarle and City of Charlottesville are to be included as additional insureds with respect to Auto Liability coverage.

c. Licensee agrees that all insurance contracts providing any of the above-required coverage will be issued by one or more insurance carriers duly authorized to do business in the Commonwealth of Virginia and will contain the following required provisions:

1. Both of the Licensors, their elected officials, officers, agents, employees and representatives shall be included as additional insureds (as the interests of each may appear) as to all applicable coverage:

2. The amount and conditions of said liability and comprehensive insurance may be increased upon sixty (60) days written notice by Licensors should the protection afforded by this insurance be deemed by Licensors to be insufficient for the risk created by this License. At no time, however, will any such increase in the amount of required liability and comprehensive insurance exceed that which is customarily required of other franchises or contractors of services for similar situations of risk.

3. Prior to the commencement of any work pursuant to this License and at least annually thereafter Licensee shall make available to Licensor evidence of such insurance coverage certifying that such coverage is in full force and effect. Evidence of Licensee's insurance is available at [www.centurylink.com/moi](http://www.centurylink.com/moi).

## **7. Licensors' Rights in License:**

a. Licensee shall construct, maintain and operate said System in the locations described in Exhibit A and will at all times comply with all reasonable requirements, regulations, laws and ordinances now in force, and which may hereafter be adopted by the County of Albemarle and be applicable to the construction, repair or maintenance of said system or use of the property subject to this License. Failure of the Licensee to comply with any of the terms of this License or failure to pay the License fees prescribed by this Agreement shall be cause for Licensors to revoke this License. Without limiting the generality of the foregoing, Licensors also reserve the right to terminate and cancel this License and all rights and privileges of the Licensee hereunder in the event that the Licensee: (1) violates any rule, order or determination of Albemarle County made pursuant to this License, except where such violation is without fault or through excusable neglect; (2) becomes insolvent, unable or unwilling to pay its legal debts, or is adjudged a bankrupt; (3) attempts to evade any of the provisions of this License; (4) practices any fraud or deceit upon the Licensors, or either of them or; (5) fails to begin construction of its System within one hundred eighty (180) days from the date this License is granted and to continue such construction without unreasonable delay or interruption until completed.

b. Licensors' right to revoke this License pursuant to section 7.a. may be exercised only after written notice of default and a thirty (30) day period for Licensee to cure such default except for any act of default involving the payment of money or failing to provide any insurance coverage required hereunder in which event said thirty (30) day period shall

be reduced to three (3) business days. The right is hereby reserved to the County of Albemarle to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations of general applications to all similarly situated Licensees as it shall find necessary in the exercise of its police power provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

**8. Assignment:**

The License granted pursuant to this Agreement shall not be assigned by the Licensee without the prior written consent of the Licensors, which consent may be granted or withheld in Licensors' sole discretion; provided, however, that Licensee may assign this License to a governmental entity without consent of the Licensors, and provided further that the sale or transfer of a controlling interest in Licensee shall not be considered an assignment within the meaning of this paragraph.

**9. Notice:**

For the purpose of giving notice as provided for in this Permit, the following addresses are provided:

For the Licensee:

CenturyLink Communications, LLC  
1025 Eldorado Blvd  
Broomfield, CO 80021  
Attention: NIS ROW

For the Licensors:

Chip Boyles  
City Manager  
P. O. Box 911  
Charlottesville, VA 22902

*With a copy to:*

Lisa A. Robertson  
Acting City Attorney  
P. O. Box 911  
Charlottesville, VA 22902

And

Jeffrey B. Richardson  
County Executive

401 McIntire Road  
Charlottesville, VA 22902

*With a copy to:*  
Greg Kamptner  
County Attorney  
401 McIntire Road  
Charlottesville, VA 22902

Unless and until a different address is provided in writing by Licensee to Licensors, the placing of notices in the United States Mail addressed to the Licensee as set forth above by registered or certified mail, return receipt requested, shall constitute compliance with the provisions of this Section.

**10. Miscellaneous:**

If any section, subsection, sentence, clause, phrase or portion of this Permit is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent, and severable provision and such holding shall not affect the validity of the remaining portions hereof. This Permit shall be interpreted and construed in accordance with the laws of the Commonwealth of Virginia. All claims, disputes and other matters in question between the Licensee and Licensors, or either of them, arising out of or relating to this Permit, or the breach thereof, shall be decided in a state or federal court in the Commonwealth of Virginia that has subject matter jurisdiction over the claim or dispute. The Licensee, by accepting this Permit, specifically consents to venue in either state or federal court in Virginia and waives any right to contest venue in Virginia.

**WHEREFORE**, this Permit has been authorized by the City Council of the City of Charlottesville, Virginia in an open meeting on \_\_\_\_\_, 2021 and by the Board of Supervisors of Albemarle County, Virginia in an open meeting on \_\_\_\_\_, 2021, and each governing body has authorized the execution of this License by the City Manager and County Executive, respectively, as attested by the Clerk of each governing body, and the Licensee has accepted the terms and conditions of this License as evidenced by its corporate presents which have been executed by and through its authorized officers and the seal of the corporation affixed.

This \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Licensee:**

**CenturyLink Communications, LLC**

  
Danett Kennedy (Apr 25, 2021 17:33 MDT)

By: Danett Kennedy  
Title: Senior Manager

**Licensors:**

**City of Charlottesville**

\_\_\_\_\_  
By: Chip Boyles  
Title: City Manager

Attest: \_\_\_\_\_  
By: Kyna Thomas  
Title: Clerk of Council

Approved as to form:

\_\_\_\_\_  
By: Lisa A. Robertson  
Title: Acting City Attorney

**County of Albemarle**

\_\_\_\_\_  
By: Jeffrey B. Richardson  
Title: County Executive

Attest: \_\_\_\_\_  
By: Claudette Borgersen  
Title: Clerk to the Board of Supervisors

Approved as to form:

\_\_\_\_\_  
By: Greg Kamptner  
Title: County Attorney