

RESOLUTION NO. 12924-16

A RESOLUTION GRANTING PERMISSION TO USE THE CITY'S RIGHTS-OF-WAY FOR TELECOMMUNICATIONS PURPOSES, AND AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN TEMPORARY, NONEXCLUSIVE, REVOCABLE LICENSE AGREEMENT BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND CENTURYLINK COMMUNICATIONS, LLC, DATED THE 1ST DAY OF JULY, 2016.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newport News:

1. That it hereby grants to CenturyLink Communications, LLC the right to use the City's rights-of-way, pursuant to the terms of that certain Temporary, Nonexclusive, Revocable License Agreement by and between the City of Newport News, Virginia, and CenturyLink Communications, LLC, dated the 1st day of July, 2016, hereinafter referred to as the Agreement, for the placement, use and maintenance of its facilities to be used for telecommunications purposes.
2. That satisfaction by CenturyLink Communications, LLC, of all federal, state and local laws, rules, and regulations affecting the use of the City's rights-of-way are conditions precedent to the use of such rights-of-way pursuant to the Agreement.
3. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest the Agreement on behalf of the City of Newport News.
4. That a copy of the said License Agreement is attached hereto and made a part hereof.
5. That this resolution shall be in effect on and after the date of its adoption, May 24, 2016.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON MAY 24, 2016

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

CITY OF NEWPORT NEWS, VIRGINIA

CENTURYLINK COMMUNICATIONS, LLC

TEMPORARY, NONEXCLUSIVE, REVOCABLE LICENSE AGREEMENT

This Temporary, Nonexclusive, Revocable License Agreement (hereinafter "Agreement") dated this 1st day of July, 2016, by and between **CITY OF NEWPORT NEWS, VIRGINIA**, a Virginia municipal corporation (hereinafter "City") and **CENTURYLINK COMMUNICATIONS, LLC**, hereinafter "CenturyLink", a Delaware limited liability company, having its principal office at 100 CenturyLink Drive, Monroe, Louisiana 71203.

WHEREAS, on July 1, 2006, Qwest Communications Company, LLC, was granted a temporary, nonexclusive, revocable license to install and maintain HDPE underground conduit containing fiber optic cable in the City's rights-of-way as part of its nationwide long distance telecommunications system, which said license expired on June 30, 2011; and

WHEREAS, the license was renewed by Council Resolution 12158-11 for a period beginning on July 1, 2011, which said license expired on June 30, 2016; and

WHEREAS, On April 1, 2014, Qwest Communications Company, LLC changed its name to CenturyLink Communications, LLC; and

WHEREAS, CenturyLink has requested the right to install and maintain HDPE underground conduit containing fiber optic cable in City's rights-of-way as part of its nationwide long distance telecommunications system; and

WHEREAS, the Commonwealth of Virginia has adopted legislation regarding public rights-of-way and telecommunication facilities; and

WHEREAS, CenturyLink desires to use City's rights-of-way at its own risk; and

WHEREAS, City is agreeable to allowing CenturyLink to use City's rights-of-way subject to certain terms and conditions hereinafter set out and subject to any regulatory ordinances affecting telecommunications facilities and this Agreement that may be adopted by City in the future.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, City and CenturyLink agree as follows:

Section 1: Grant of Authority. CenturyLink is hereby granted a temporary nonexclusive revocable License to construct and maintain telecommunications facilities in, over, under, and across the public ways, as indicated on the route diagram attached as Exhibit 1, within City for the sole purpose to provide conduit within which shall be located a fiber optic telecommunication system for providing long distance telecommunications services. CenturyLink will provide with its right-of-way permit application(s) pursuant to Section 17.4 of this Agreement a detailed route diagram and detailed description of all proposed facilities, appliances, their location, and construction

requirements. This License does not include any provisions for public cable television or public information services facilities, or any public wireless services facilities. City specifically reserves the right to grant other licenses, permits, and rights to others for the use of its rights-of-way as it, in its sole discretion, deems appropriate for any purpose.

Section 2: Definitions. For the purpose of this Agreement, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

"Affiliate" means a person that directly, or indirectly, through one or more intermediaries, owns, controls, is owned or controlled by, or is under common ownership or control with another person.

"Cable Act" shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. §521, *et seq.* as now and hereafter amended.

"CenturyLink" means CenturyLink Communications, LLC, or its employees, officers and agents.

"City" means the City of Newport News, Virginia, and where appropriate its officers, agents, employees and volunteers.

"City property" means and includes all real property owned by City, other than public streets and utility easements, as those terms are defined herein, and all property held in a proprietary capacity by City, which are not subject to right-of-way franchising as provided by law.

"Communications Act" means the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, and as it may be amended from time to time.

"Federal Communications Commission" means the Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

"HDPE" means High Density Polyethylene underground conduit to be utilized by CenturyLink pursuant to this Agreement.

"Maintenance" means any effort or expenditure taken or made by CenturyLink to preserve, repair, or improve existing telecommunications facilities or infrastructure in accordance with generally accepted industry standards.

"Other ways" means the highways, streets, alleys, utility easements or other rights-of-way within City, but under the jurisdiction and control of a governmental entity other than City.

"Person" means any natural person, corporation, company, association, joint stock company or association, firm, partnership, limited liability company, joint venture, trust, individual and any other legally recognized entity, private or public, whether for profit or not-for-profit, and includes the

officers, agents, employees, or representatives of such entity where appropriate.

"Public street" means the surface of and the space above and below any public street, road, highway, avenue, sidewalk, way, bridge, viaduct, alley or other public right-of-way, including non-paved surfaces, now or hereafter held by City for the purpose of public travel, communications, alarm, street lighting, power distribution, water or sewer easements or similar public use.

"Public Utility" or "Utility" shall be defined in accordance with applicable Virginia laws regarding public utilities.

"Public way" means and includes all public streets, as those terms are defined herein, now or hereafter held or controlled by City, but only to the extent of City's right, title, interest or authority to grant a License to occupy and use such streets and easements for telecommunications facilities.

"State" or "Commonwealth" means the Commonwealth of Virginia.

"State Corporation Commission" means the State administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers in the Commonwealth of Virginia.

"Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the State Corporation Commission or other regulatory entity, to allow its use by a telecommunications carrier for a pole attachment.

"Telecommunications facilities" means the plant, equipment and property, including but not limited to, fiber optic cables, cables, lines, wires, conduits, ducts, circuits, pedestals, antennae, electronics and other appurtenances or technology used or to be used to transmit, receive, distribute, provide or offer long distance telecommunications services.

"Telecommunications service" means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of signals, including but not limited to voice, data, image, graphic or video or other programming information between or among points by wire, lines cable, fiber optics, circuits, laser or infrared, microwave, radio, satellite or other telecommunications facilities.

"Telecommunications system," same as "Telecommunications facilities."

Section 3: Compliance with Applicable Law. City and CenturyLink shall at all times comply with all applicable federal, state, and local laws, ordinances, and regulations, including but not limited to the Communications Act.

Section 4: Permits. CenturyLink, including its contractors and consultants, prior to any construction or work will obtain all appropriate permits therefor, including any application and

permit for street opening if any streets will be disturbed.

Section 5: CenturyLink's Authority. CenturyLink warrants and represents that it has obtained all necessary and appropriate authority and approval from all applicable federal and state agencies or authorities to provide the fiber optic telecommunications system link it intends to provide within City, and upon request by City will provide evidence of such authority.

Section 6: License Only. CenturyLink acknowledges and agrees that all it is granted by this Agreement is a temporary nonexclusive revocable license and that no other rights of any kind are granted by this Agreement.

Section 7: Application of Telecommunications Regulatory Ordinance. CenturyLink acknowledges and agrees that City may develop a regulatory ordinance that will affect telecommunications facilities in City. CenturyLink acknowledges and agrees that it will be subject to any final regulatory ordinance affecting telecommunications facilities that City may adopt in accordance with state and federal law, and that CenturyLink will comply with the terms of such regulatory ordinance, specifically including compensation due to City in accordance with local, state and federal laws.

Section 8: Compensation. CenturyLink acknowledges and agrees that the compensation CenturyLink will owe City, if any, for the use of City's public ways or other areas has not yet been determined, but will be determined upon City's adoption of a regulatory ordinance affecting telecommunications facilities.

Section 9: Term.

9.1: The term of this Agreement shall commence on July 1, 2016, and terminate on June 30, 2017, or upon the adoption of a regulatory ordinance affecting telecommunications facilities by City, at which time all rights of the License under this Agreement shall terminate, except as provided herein. If such adoption does not occur by June 30, 2017, the term of this Agreement shall automatically extend for one (1) year, or until such ordinance and license takes effect, whichever occurs first, and from year to year thereafter; however, the terms of this Agreement shall not exceed five (5) years in the aggregate from the commencement date of the first term. If this Agreement is not otherwise terminated and automatically renews itself from year to year, on June 30, 2021, this Agreement shall expire by its own terms.

9.2: If prior to June 30, 2021, either party desires to enter into a new agreement, they may do so by providing written notice thereof to the other party at the address contained in the then current version of Section 53. Upon receipt of such a notice, the receiving party shall determine if it desires to renegotiate a new agreement. If so, the parties may begin negotiations toward a new agreement; if not, no new negotiations will commence and the termination of this Agreement on June 30, 2021, shall be final.

Section 10: Other Remedies. Nothing in this Agreement shall be construed as waiving or

limiting any rights or remedies that City or CenturyLink may have, at law or in equity, for enforcement of this Agreement.

Section 11: Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement, or its application to any person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

Section 12: Transfer of Ownership. CenturyLink shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, either voluntarily or by force or involuntary sale, or ordinary sale, consolidation, or otherwise any (except to a parent or affiliate, or in connection with financing by CenturyLink in the ordinary course of business) of the rights or privileges granted by this Agreement without the prior written consent of City Council, which consent shall not be unreasonably withheld. Notwithstanding any other provision of this Agreement, no consent from City shall be required for a transfer in trust, mortgage, collateral, assignment or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a *pro forma* transfer to a person controlling, controlled by or under common control with CenturyLink.

Section 13: Costs. CenturyLink will pay to City, upon submission of itemized invoices, the costs and expenses incurred by City related to the grant of this License Agreement.

Section 14: Location of Facilities. All telecommunications facilities shall be constructed, installed and located in accordance with City's Design Criteria Manual, 2nd Edition dated August 1997, as amended, and the following terms and conditions, unless otherwise specified by City:

14.1: CenturyLink shall install its telecommunications facilities underground in locations and in such a manner as first approved by City. CenturyLink may not install any above ground facilities within City's rights-of-way without the prior written consent of City's Department of Engineering.

14.2: In the event City determines, in its sole discretion, that it is necessary for CenturyLink to locate or relocate its telecommunications facilities, such location or relocation shall be at the sole expense of CenturyLink and shall be underground unless otherwise approved in writing by City's Department of Engineering.

Section 15: Permits. CenturyLink is required to obtain, at its sole cost and expense, all applicable permits for telecommunications facilities as required by law and this Agreement. However, nothing herein shall prohibit City and a CenturyLink from agreeing to an alternative plan to review permit and construction procedures provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

Section 16: Public Works. The rights and privileges granted by this Agreement shall not be in preference or hindrance to the rights of City and any other lawful governmental authorities having jurisdiction to perform or carry out any public works or public improvements. Should the

telecommunications system interfere with the construction, maintenance or repair of such public works or improvements, CenturyLink, at its expense, shall protect or relocate the telecommunications system, or any applicable part thereof, as directed by City or other governmental authorities having jurisdiction so long as such directions are in compliance with the §56-468.2 of the Code of Virginia, 1950, as amended.

Section 17: Use of Public Ways.

17.1: CenturyLink, in any opening it shall make in the public ways of City, shall be subject to the provisions of this Agreement and to all applicable ordinances, codes and regulations of City. CenturyLink shall locate its telecommunications system so as not to interfere with the public safety or with the convenience of persons using the public ways.

17.2: City reserves the right by resolution of City Council or otherwise through proper representatives of City to specifically designate the location of CenturyLink's telecommunications system with reference to municipal facilities, such sewer and water mains, drainage facilities, fiber optic cables, signal poles, lines, and other similar facilities; other facilities, such as public telephone utilities, public electric utilities, public cable television utilities; and railway communication and power lines, in such a manner as to protect the public safety and public and private property. Failure by City to so designate does not relieve CenturyLink of its responsibilities in matters of public safety as provided in this Agreement. CenturyLink shall construct, maintain and locate its telecommunications system so as not to interfere with the construction, location and maintenance of sewer, water, drainage, electrical, signal and fiber optic facilities of City.

17.3: Except in the cases of emergencies, CenturyLink shall not move, alter, change or extend any of its telecommunications system in any public way unless prior written notice of its intention to do so is given to the City Manager and permission in writing to do so is granted by the City Manager or such requirement is waived in writing by the City Manager. Such permission shall be conditioned upon compliance with the terms and conditions of this Agreement, with such other terms and conditions as will preserve, protect and promote the safety of the public using the public ways, and as will prevent undue interference with or obstruction of the use of the public ways by the public, City or by any other public utility or public service corporation for their respective purposes and functions. Such work by CenturyLink shall also be specifically coordinated with City's annual paving program through the Office of the City Engineer.

17.4: City may require that written permits, in any and all cases, be obtained by CenturyLink whenever it becomes necessary for CenturyLink to excavate in the public ways in order to install, construct, maintain or extend the telecommunications system. Such permits, if required, may be made applicable to any and all types of excavations in the public ways, as prescribed by City, and City may establish a fee for each excavation made in a public way by CenturyLink. Such permits may require the particular part or point of the public ways where construction or excavation is to be conducted, the length of time in which such permit shall authorize such work to be done and the hours of each day during which such work shall be undertaken. A single permit may be issued for multiple excavations to be made in public ways; provided, however, any public way opening fee

established by City shall apply to each excavation made in public ways of City. Exceptions to the requirement for a written permit may be allowed in cases of emergencies involving public safety or restoration of service. In the case of emergency excavations made in the public ways without permit, CenturyLink shall make a good faith attempt to immediately notify the Director of Engineering, or his designee, to obtain appropriate guidance and authority, however, in the event CenturyLink is unable to make such contact after making a good faith effort to do so, CenturyLink may make a report of each such excavation to City within two (2) working days and pay such fee as may be established by City for excavations in public ways by CenturyLink. Any permit applications and inspections related to repair of excavations shall be promptly acted upon by City so as not to unreasonably delay CenturyLink in efficiently discharging its public service obligation.

17.5: Immediately after installation, repair or extension of the telecommunications system or any portion thereof or any pavement cut by CenturyLink in any public way of the City, the incidental trenches or excavations shall be refilled by CenturyLink in a manner acceptable to City Manager and City's Design Criteria Manual. Pavement, sidewalks, curbs, gutters or any other portions of public ways damaged, disturbed or destroyed by such work shall be promptly restored and replaced with like materials to their former condition by CenturyLink at its own expense; however, where it is necessary, and if authorized by City, in order to achieve the former conditions, CenturyLink shall use materials whose type, specification and quantities exceed or are different from those used in the installation, then CenturyLink at its own expense shall provide such different materials. Where a cut or disturbance is made in a section of sidewalk or paving, rather than replacing only the area actually cut, CenturyLink shall replace the full width of the existing sidewalk or appropriate sections of paving as determined by the City Engineer and the full length of the section or sections cut, a section being defined as that area marked by expansion joints or scoring or as determined by the City Engineer. CenturyLink shall maintain, repair and keep in good condition for a period of one (1) year following such disturbance all portions of public ways disturbed by CenturyLink, provided such maintenance and repair shall be necessary because of defective workmanship or materials supplied by CenturyLink.

17.6: CenturyLink shall promptly remove or correct any obstruction, damage, or defect in any public way which may have been caused by CenturyLink in the installation, operation, maintenance or extension of CenturyLink's telecommunications system. Any such obstruction, damage, or defect which is not promptly removed, repaired or corrected by CenturyLink after proper notice so to do, given by City to CenturyLink, may be removed or corrected by City, and the cost thereof shall be charged against CenturyLink and may be enforced as a lien upon any of CenturyLink's properties or assets. Any expense, cost, or damages incurred for repair, relocation, or replacement to City water, sanitary sewer, storm sewer, storm drainage, communication facilities or other property resulting from construction or maintenance of telecommunications system shall be borne by and any and all expense and cost incurred in connection therewith by City shall be fully reimbursed by the CenturyLink to City.

(a) If weather or other conditions do not permit the complete restoration required by this Section, CenturyLink shall temporarily restore the affected public ways or property. Such temporary restoration shall be at the CenturyLink's sole expense and the CenturyLink shall promptly

undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(b) CenturyLink or any other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property and shall comply with all federal, state, and local laws and regulations, including the Virginia Department of Transportation flagging requirements.

17.7: CenturyLink shall not open, disturb or obstruct, at any one time, any more of the public ways than reasonably may be necessary to enable it to proceed in laying or repairing its telecommunications system. Neither shall CenturyLink permit any public ways so opened, disturbed or obstructed by it in the installation, construction, repair or extension of its telecommunications system to remain open or the public way disturbed or obstructed for a longer period of time than reasonably shall be necessary. In all cases where any public ways shall be excavated, disturbed or obstructed by CenturyLink, CenturyLink shall take all precautions necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals and other devices necessary or proper to adequately give notice, protection and warning to the public of the existence of all actual conditions present.

17.8: Whenever City shall widen, reconstruct, realign, pave or re-pave, or otherwise work on any public ways, or shall change the grade or line of any public ways, or shall construct or reconstruct any water, sanitary sewer, storm sewer, drainage or communications facility of City, it shall be the duty of CenturyLink to move, alter or relocate its telecommunications system or any part thereof as requested by City. Upon written notice by the City Manager of City's intention to perform work as specified above, CenturyLink shall within a reasonable period of time accomplish its obligation in accordance with and to conform to the plans of City for such construction, reconstruction or improvements. Should CenturyLink fail, refuse or neglect to comply with such notice, the telecommunications system or any part hereof may be removed, altered or relocated by City and City shall not be liable to CenturyLink for any damages resulting from such removal, alteration or relocation. All relocation costs shall be handled in accordance with the §56-468.2 of the Code of Virginia, 1950, as amended.

Section 18: Damage to Property. Neither CenturyLink nor any person acting on CenturyLink's behalf shall take any action or permit any action to be done which may impair or damage any City property or public ways of the City; or any other ways or property located in, on or adjacent thereto.

Section 19: Unexpected Repair and Emergency Work. In the event of an unexpected repair or emergency, CenturyLink may commence such repair and emergency response work as required under the circumstances, provided CenturyLink shall notify City as promptly as possible, before such repair or emergency work is started or as soon thereafter as possible if advance notice is not practicable.

Section 20: Maintenance of Facilities. CenturyLink shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements, laws, ordinances, and regulations.

Section 21: Safety Standards. CenturyLink shall at all times employ a high standard of care and shall install and maintain and use approved methods and devices for preventing failure or accidents which are likely to cause damages, injuries or nuisances to the public.

Section 22: Police Power. All rights and privileges granted hereby are subject to the lawful exercise of the police power of the City to adopt and enforce local laws, rules and regulations necessary to the health, safety and general welfare of the public. Expressly reserved to City is the right to adopt, in addition to the provisions of this Agreement and existing laws, such additional ordinances and regulations as are necessary for the lawful exercise of its police power for the benefit and safety of the public.

Section 23: Relocation or Removal of Facilities. Within one hundred and twenty (120) days following written notice from City, CenturyLink shall temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public ways whenever City shall have determined that such removal, relocation, change or alteration is reasonable necessary for:

23.1: The construction, repair, maintenance or installation of any City facilities or other public improvement in or upon the public ways.

23.2: The operations of the City or other governmental entity in or upon the public ways.

23.3: The costs associated with any such relocation shall be handled in accordance with the §56-468.2 of the Code of Virginia, 1950, as amended.

Section 24: Emergency Removal or Relocation of Facilities. City retains the right and privilege to cut or move any telecommunications facilities located within the public ways or other areas of the City as City may determine to be necessary, appropriate or useful in response to any life-threatening emergency. City will endeavor to notify CenturyLink of such emergencies that may impact their telecommunications facilities. Nothing herein shall create any duties or obligations on City to so notify CenturyLink nor shall City, its officers, agents, employees, or volunteers in any way be liable for any failure to notify CenturyLink.

Section 25: Damage to CenturyLink's Facilities. Except for acts of gross negligence or willful misconduct, City, its officers, agents, employees, or volunteers who give of their time in the performance of City functions, shall not be liable for any damage to or loss of any CenturyLink's telecommunications services or telecommunications facilities within the public ways or any other areas of the City as a result of or in connection with any public works, public improvements,

construction, excavation, grading, filling, or work or activity or lack of any activity of any kind by or on behalf of City.

Section 26: Facilities Maps. CenturyLink shall provide City with "as built" drawings and an accurate map or maps to include a digitized map(s) in both printed and electronic form readable by the current version of Auto CAD and tied to the Virginia State Plane Coordinate System and tied to City's Survey Control monuments and geographic information system certifying the location of all telecommunications facilities within the City within sixty (60) days after completion of the installation of the backbone for CenturyLink's telecommunications system. CenturyLink shall, upon request, provide updated maps annually.

Section 27: Duty to Provide Information. Within fourteen (14) days of a written request from City, CenturyLink shall furnish City with information sufficient to demonstrate:

27.1: That CenturyLink has complied with all requirements of this Agreement.

27.2: That all municipal sales, telecommunications taxes, utility taxes or any other taxes or charges due City in connection with the telecommunications services or facilities provided by the CenturyLink have been properly collected and/or paid by CenturyLink.

27.3: All books, records, maps, and other documents maintained by CenturyLink with respect to its facilities within City's public ways shall be made available for inspection by representatives of City at least every six (6) months and at other reasonable times and intervals.

Section 28: Insurance and Bond Requirements.

28.1: Requirement of Insurance. CenturyLink shall, at its expense, obtain and maintain during the life of this Agreement the insurance and bond required by law and this Agreement. Any required insurance and bond shall be effective prior to the beginning of any work by CenturyLink within the City.

28.2 Commercial General Liability. CenturyLink shall maintain during the life of this Agreement Commercial General Liability insurance coverage on an occurrence basis insuring against all claims, loss, cost, damage, expense or liability from loss of life or damage or injury to persons or property arising out of any of the work or activity under or by virtue of this Agreement. The minimum limits of liability for this coverage shall be \$2,000,000 combined single limit for any one occurrence.

28.3: Contractual Liability. CenturyLink shall maintain during the life of this Agreement broad form Contractual Liability insurance including the indemnification obligation set forth in this Agreement.

28.4: Workers' Compensation. CenturyLink shall maintain during the life of this Agreement Workers' Compensation insurance covering CenturyLink's statutory obligation under the

laws of the Commonwealth of Virginia and Employer's Liability insurance for all its employees engaged in work under this Agreement.

28.5: Automobile Liability. CenturyLink shall maintain during the life of this Agreement Automobile Liability insurance. The minimum limit of liability for such insurance shall be \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this Agreement.

28.6: Umbrella Coverage. The insurance coverages and amounts set forth in the preceding subsections of this Section may be met by an umbrella liability policy following the form of the underlying primary coverage in a minimum amount of \$5,000,000. Should an umbrella liability insurance coverage policy be used, such coverage shall be accompanied by a certificate of endorsement stating that it applies to the specific policy numbers indicated for the insurance providing the coverages required by the preceding subsections, and it is further agreed that such statement shall be made a part of the certificate of insurance furnished by CenturyLink to City.

28.7: Pollution Liability Insurance. CenturyLink shall maintain during the life of this Agreement Pollution Liability insurance in the amount of \$1,000,000 each occurrence. Coverage shall be provided for bodily injury and property damage resulting from pollutants, which are discharged suddenly and accidentally. Also the insurance will provide coverage for cleanup costs.

28.8: Evidence of Insurance. All insurance shall meet the following requirements:

(a) CenturyLink shall furnish City a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies. Certificates of insurance shall include any insurance deductibles, the amount of such deductible being subject to approval by City.

(b) The required certificate or certificates of insurance shall include substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered, except after thirty (30) days written notice has been received by the City of Newport News, Virginia."

(c) The required certificate or certificates of insurance shall name the City of Newport News, its officers, agents, employees and volunteers as additional insureds.

(d) Insurance coverage shall be in a form and with an insurance company approved by City which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Agreement granted shall be authorized to do business in the Commonwealth of Virginia.

Section 29: Liability. Except for gross negligence or wilful misconduct committed by City or its officers, agents, employees or volunteers, CenturyLink agrees and binds itself to indemnify, keep and hold City, its officers, agents, employees and volunteers who give of their time in the

performance of City functions, free and harmless from any and all claims, causes of action, damages or any liability on account of any injury or damage of any type to any persons or property growing out of or directly or indirectly resulting from any act or omission of CenturyLink, including but not limited to: (a) CenturyLink's use of the public ways or other property in the City; (b) the acquisition, construction, reconstruction, erection, installation, operation, maintenance, repair or extension of CenturyLink telecommunications facilities; (c) the exercise of any right or privilege granted by or under this Agreement; or (d) the failure, refusal or neglect of CenturyLink to perform any duty imposed upon or assumed by CenturyLink by or under this Agreement. In the event that any suit or proceeding shall be brought against City at law or in equity, either independently or jointly with CenturyLink on account thereof, CenturyLink, upon notice given to it by City, will defend City in any such action or other proceeding at the cost of the CenturyLink. In the event of any settlement or final judgment being awarded against City, either independently or jointly with CenturyLink, then CenturyLink will pay any such settlement or judgment or will comply with such decree, pay all costs and expenses of whatsoever nature and hold City, its officers, agents, employees and volunteers who give of their time in the performance of City functions, harmless therefrom.

Section 30: Hazardous Materials.

30.1 While on or near City's property or easements or in its performance of this Agreement CenturyLink shall not transport, dispose of or release any hazardous substance, material, or waste, except as necessary in performance of its work under this Agreement; and in any event CenturyLink shall comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, solid wastes, and other pollution, and relating to the storage, transport, release, or disposal of hazardous material, substances or waste. Regardless of City's acquiescence, CenturyLink shall indemnify and hold City, its officers, agents, employees and volunteers harmless from all costs, claims, damages, causes of action, liabilities, fines or penalties, including reasonable attorney's fees, resulting from CenturyLink's violation of this paragraph and agrees to reimburse City for all costs and expenses incurred by City in eliminating or remedying such violations. CenturyLink also agrees to reimburse City and hold City, its officers, agents, employees and volunteers harmless from any and all costs, expenses, attorney's fees and all penalties or civil judgments obtained against any of them as a result of CenturyLink use or release of any hazardous substance or waste onto the ground, or into the water or air from, near or upon City's premises.

30.2 CenturyLink shall protect, indemnify, and hold harmless City from any and all demands for fees, claims, suits, actions, causes of action, or judgments based on the alleged infringement or violation of any patent, invention, article, arrangement, or other apparatus that may be used in the performance of any work or activity arising out of the use of any telecommunication facilities or the provision of telecommunication service.

Section 31: Performance and Labor and Material Surety. Before this Agreement is effective, and as necessary thereafter, CenturyLink shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to City as may be required by law or this Agreement.

Section 32: Bond. Within 10 consecutive calendar days after the effective date of this Agreement but before any construction is commenced, CenturyLink shall furnish to City a performance bond made payable to City in the amount required by City Code. The Performance Bond is to guarantee that the project is done in a proper manner without damage to the public ways or other areas of City. The bonds shall be written by a corporate surety acceptable to City and authorized to do business in the Commonwealth of Virginia. This bond shall remain in place until ninety (90) days after completion of construction of the backbone for CenturyLink's telecommunications facilities.

The bond shall guarantee, to the satisfaction of City:

- (a) timely completion of construction;
- (b) construction in compliance with applicable plans, permits, technical codes and standards;
- (c) proper location of the facilities as specified by City;
- (d) restoration of the public ways and other property affected by the construction;
- (e) the submission of "as-built" drawings after completion of the work as required by this Agreement; and
- (f) timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

Section 33: Coordination of Construction Activities. CenturyLink is required to cooperate with City.

33.1: Anytime CenturyLink plans expansion of its backbone system, CenturyLink shall provide City with a schedule of its proposed construction activities in, around or that may affect the public ways.

33.2: CenturyLink shall meet with City staff and other users of the public ways annually, or as otherwise determined by City, to schedule and coordinate construction in the public ways.

33.3: All construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer, to minimize public inconvenience, disruption or damages.

Section 34: Non-enforcement by City. CenturyLink shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of City, upon any one or more occasions, to insist upon CenturyLink's performance or to seek CenturyLink's compliance with any one or more of such terms or conditions of this Agreement.

Section 35: Construction Codes. Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations, specifically including the National Electrical Safety Code or other electrical code adopted by or mandated on City.

Section 36: Engineer's Certification. All permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

Section 37: Traffic Control Plan. All permit applications which involve work on, in, under, across or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent applicable local, state and federal laws and regulations, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

Section 38: Issuance of Permit. Within forty-five (45) days after submission of all plans and documents required of the applicant, including the detailed route diagram and description of facilities required by Section 1 of this Agreement, and payment of any fees required by this Agreement, and compliance with the provisions of the Code of Virginia, 1950, as amended, City, if satisfied that the applications, plans and document comply with all requirements of this Agreement, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as may be deemed necessary or appropriate.

Section 39: Construction Schedule. CenturyLink shall submit a written construction schedule to the City Engineer not less than ten (10) working days before commencing any work in or about the public ways. CenturyLink shall further notify the City Engineer not less than five (5) working days in advance of any excavation or work in the public ways and shall comply with the provisions of the Virginia Underground Utility Damage Prevention Act, § 56-265.14 et. seq. of the Code of Virginia, 1950, as amended, regardless of whether CenturyLink is required to do so by law.

Section 40: Compliance with Permit. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. City and its representatives shall be provided access to the work and such further information as it may reasonably require to ensure compliance with such requirements.

Section 41: Display of Permit. CenturyLink shall maintain a copy of the right-of-way construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by City at all times when construction work is occurring.

Section 42: Survey of Facilities. CenturyLink shall supply and specify the location of all facilities by depth, line, grade, proximity to other facilities or other standard. CenturyLink shall cause the location of such facilities to be verified, to the extent required, by a registered state surveyor. CenturyLink shall relocate, at its expense, any facilities which are not located in

compliance with permit requirements.

Section 43: Noncomplying Work. Upon order of City, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Agreement, shall be removed forthwith at the sole expense of CenturyLink.

Section 44: Completion of Construction. CenturyLink shall promptly complete all construction activities so as to minimize disruption of City ways and other public and private property. All construction work authorized by a permit within City ways, including restoration, must be completed within ninety (90) days of the date of issuance of the right-of-way construction permit.

Section 45: Landscape Restoration.

45.1: All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation maintenance, repair or replacement of telecommunications facilities by CenturyLink shall be replaced or restored, as nearly as may be practicable, to the condition existing prior to performance of work.

45.2: All restoration work within the public ways or other areas shall be done in accordance with landscape plans approved by the City Engineer.

Section 46: Responsibility of Owner. The owner of the facilities to be constructed and, if different, CenturyLink are responsible for performance of and compliance with all provisions of this Agreement.

Section 47: Controlling Law. This Agreement shall be construed and enforced in accordance with the substantive law of the City of Newport News, Virginia, the Commonwealth of Virginia and the United States of America, as well as any applicable local, state or federal regulations.

Section 48: Captions. The paragraph Captions and Headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 49: Nondiscrimination. CenturyLink shall not discriminate on the basis of race, religion, color sex or national origin in its employment practices, contacting or provision of services.

Section 50: Commencement of Work. CenturyLink will not commence work within the City until detailed plans have been provided to and approved by the City Engineer.

Section 51: Forum Selection. By virtue of entering into this Agreement, CenturyLink agrees and submits itself to a court of competent jurisdiction in the City of Newport News, Virginia, or in the United States District Court for the Eastern District of Virginia, Newport News Division, and further agrees that this Agreement is controlled by the laws of the Commonwealth of Virginia

or any applicable federal laws and that all claims, disputes and other matters shall be decided only by such court according to the laws of the Commonwealth of Virginia or any applicable federal laws or by any regulatory body with jurisdiction including the Federal Communications Commission.

Section 52: Removal of CenturyLink's Facilities. If City adopts a regulatory ordinance affecting telecommunications facilities, and if CenturyLink is awarded a license or otherwise has or is granted authority pursuant thereto, then on the effective date of any such award or authority, the terms and conditions of that regulatory ordinance shall supersede the terms and conditions of this Agreement to the extent they are inconsistent, and to that extent, this Agreement shall be automatically and immediately terminated. However, if CenturyLink is not awarded a subsequent license or otherwise granted rights by any future ordinance adopted or license granted by City, or if the term of this Agreement expires or the rights granted to CenturyLink by this Agreement are revoked by City, subject to applicable laws, CenturyLink shall immediately cease operations within the City and shall not be permitted to operate, maintain or repair its existing encroachments or facilities and shall promptly remove any and all of CenturyLink's facilities and equipment within the City, all at the sole cost of CenturyLink.

Section 53: Notices. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by a nationally recognized overnight courier, addressed as follows:

If to City to: City Manager
 2400 Washington Avenue
 Newport News, Virginia 23607

With copy to: City Attorney
 2400 Washington Avenue
 Newport News, Virginia 23607

If to CenturyLink to: CenturyLink Communications, LLC
 Attn: Gary Pace
 3TCW083
 100 CenturyLink Drive
 Monroe, Louisiana 71203

With copy to: CenturyLink Communications, LLC
 Attn: Jack Shives
 700 West Mineral Ave
 Littleton, Colorado 80120

City or CenturyLink may from time to time designate any other address for this purpose by written notice to the other party.

CenturyLink and City, as evidenced by the execution of this Agreement by the undersigned agents, each having been first duly authorized, do hereby agree to abide by its terms, conditions, and obligations.

Witness the following signatures:

CITY OF NEWPORT NEWS, VIRGINIA

**CENTURYLINK COMMUNICATIONS,
LLC**

By: _____
City Manager

By: _____

ATTEST:

City Clerk

Approved as to form:

City Attorney

Reviewed:

Senior Assistant City Attorney

sdm14319

