

BILL NO. 02131601

ORDINANCE NO. 1592

**AN ORDINANCE AUTHORIZING THE CITY OF HAMILTON TO ENTER INTO A CONTRACT FOR A BUILDING ENTRY AGREEMENT WITH CENTURYLINK COMMUNICATIONS, LLC IN CONNECTION WITH COMMUNICATION SERVICES AT THE LIBRARY**

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF HAMILTON, MISSOURI AS FOLLOWS TO WIT:

**SECTION 1:** The Mayor and Clerk of the City of Hamilton, Missouri are hereby authorized on behalf of the City of Hamilton, Missouri, to sign Building Entry Agreement attached hereto as Exhibit A and made a part hereof in connection with communication services at the Library with CenturyLink Communications, LLC


**SECTION 2:** This ordinance repeals any prior ordinance or parts of any prior ordinance that might be in conflict herewith.

**SECTION 3:** This ordinance shall be in full force and effect from and after the date of its passage and approval.

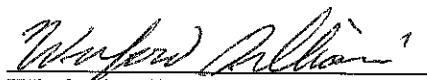
**SECTION 4:** That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Aldermen hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.


A copy of this Ordinance has been made available for public inspection prior to its adoption by the Board of Aldermen and this bill was read by title in the open meeting two times prior to its final passage.

Adopted by the Board of Aldermen this 10<sup>th</sup> day of February, 2016.

  
Sherria Kavanaugh, President  
of Board of Aldermen

Approved on this 10<sup>th</sup> day of February, 2016.

  
Winford Gilliam, Mayor

Attest:   
Debra Davis, City Clerk

*Suzanne - aye, Moss - aye, Trapper - aye, Kavanaugh - aye*

**BUILDING ENTRY AGREEMENT**

This Building Entry Agreement ("Agreement") is made and entered into as of the "Effective Date" (as defined below) by and between City of Hamilton ("Building Owner") and CenturyLink communications, LLC ("Licensee").

**BACKGROUND:**

Building Owner owns that certain real property having an address of 312 N. Davis, Hamilton, MO 64644 ("Property"), and owns the building located on the Property ("Building"). Building Owner is willing to grant a license to Licensee pursuant to the terms and conditions of this Agreement.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, Building Owner and Licensee agree as follows:

1. **License.** Building Owner grants Licensee a license ("License") so that Licensee can provide communications services to its customers, including tenants and occupants of the Building. This grant of License permits Licensee, its employees, agents, contractors and affiliates: (a) to enter into, access and use all parts of the Building, up to and including the roof and any of Building Owner's conduit, which is deemed necessary by Licensee for Licensee to construct, install, operate, maintain, upgrade, monitor and remove any cables and miscellaneous equipment (collectively, "Equipment") at any time or from time to time in order to provide such communications services; and (b) to construct, install, operate, maintain, upgrade, monitor and remove Equipment at any time and from time to time over, upon, under, through and along the Property (and in any of Building Owner's conduit that may be located on the Property), including entrance facilities from the public right of way to the Building, as is deemed necessary by Licensee so that Licensee can provide such communication services, as well as the right of reasonable ingress and egress over and across the Property to access such Equipment, provided however that the location of any of Licensee's equipment shall be approved by the building owner in advance of installation, such approval not to be unreasonably withheld, conditioned or delayed. Nothing contained in this Section will be construed as: (i) granting to Licensee any property or ownership rights in the Property or Building Owner's other real or personal property, except as may be provided for in this Agreement; (ii) granting to Building Owner any right, title or interest in and to the Equipment; or (iii) creating a partnership or joint venture between Building Owner and Licensee. Licensee will have exclusive use of any conduit it installs on the Property.

2. **Construction.** Prior to the commencement of any work in or near the Building (including periodic installation of the Equipment), Licensee will, at its expense, prepare and deliver to Building Owner plans describing all proposed work. Licensee will: (a) perform all work in a safe manner consistent with prudent construction standards; (b) perform all work in such a way as to minimize unreasonable interference with the operation of the Building; and (c) obtain prior to the commencement of any work all federal, state and municipal permits, licenses and approvals required in connection with such construction and work.

3. **Equipment.** All risk associated with the Equipment will be borne by Licensee. Building Owner will not interfere with Licensee's use, operation or maintenance of the Equipment. Building Owner will not be liable for damage to, theft of, misappropriation of, or loss of, the Equipment regardless of the cause, except if the cause is due to the negligence, unlawful activity or willful misconduct of Building Owner, its employees or agents. Within 90 days of the expiration or termination of this Agreement, Licensee will, either (i) at its expense, remove some or all Equipment and its personal property from the Building and the Property, and repair all damage caused by such removal, reasonable wear and tear excepted, or (ii) abandon some or all of the Equipment in place, unavailable for use.

4. **Termination; Term.** This Agreement will terminate upon the earliest to occur of: (a) the date

which is 30 days following Building Owner's notice to Licensee that Licensee is in default under this Agreement (unless Licensee has cured such default within such 30 day period); (b) the 30th day following written notice to Building Owner by Licensee of its intent to terminate this Agreement; (c) the date of a casualty to all or any portion of the Building if the result of such casualty is, in Licensee's reasonable judgment, to render the continued services by Licensee under this Agreement impractical; or (d) the date of condemnation or taking of all or any portion of the Building or the Property if the result of such condemnation or taking is, in Licensee's reasonable judgment, to render the continued services by Licensee under this Agreement impractical. Except as otherwise provided in the preceding sentence, this Agreement will have an initial term of ten years ("Initial Term"), commencing on the Effective Date, and thereafter will automatically renew for four successive five year terms so long as neither party gives a written notice to terminate at least 90 days prior to the last day of the then current term. At any time after the expiration of the Initial Term, if Licensee is not using the Equipment to provide services to any customer on an anniversary of the Effective Date, Building Owner may terminate this Agreement upon at least 60 days' prior written notice to Licensee. If, during this sixty day notice period, Licensee enters into an agreement with a customer to provide services, Building Owner's notice of termination will be ineffective. The time period in which this Agreement is in effect will be referred to in this Agreement as the "Term." The License cannot be revoked during the Term except as provided in this Section.

**5. Notice.** Whenever any notice or other communication (collectively, "Notice") is required or permitted under this Agreement, Notice must be in writing and sent by certified mail, return receipt requested, postage prepaid or by a nationally recognized overnight courier service to the following addresses:

If Notice to Building Owner:

City of Hamilton  
P.O. Box 217  
Hamilton, MO 64644

If Notice to Licensee:

CenturyLink  
100 CenturyLink Drive  
Monroe, LA 71203  
Attention: Construction Services, Network Real Estate

Notice will be deemed effective on the date shown on the return receipt if given by certified mail or the confirmation of delivery form if Notice is given by overnight courier service. Rejection, refusal to accept or the inability to deliver because of a changed address of which no Notice was given will be deemed to be receipt of Notice as of the date of rejection, refusal or inability to deliver. Either party may change its above address by giving Notice of such address change in the manner for giving Notice prescribed in this Section.

~~6. **Indemnification and Waiver.** Licensee will indemnify, defend and hold Building Owner harmless from and against any and all loss, cost, liability, claim, damage and expense of whatever kind, including reasonable attorneys' fees and court costs (collectively, "Damages") to the extent such Damages arise from Licensee's breach of this Agreement or Licensee's negligence or intentional misconduct. Building Owner will indemnify, defend and hold Licensee harmless from and against any and all Damages to the extent such Damages arise directly or indirectly from Building Owner's breach of this Agreement or Building Owner's negligence or intentional misconduct. Notwithstanding anything else contained in this Agreement, the parties waive any right to seek against each other any consequential damages, special damages and punitive damages. The provisions of this Section will survive termination of this Agreement.~~ Intentionally Omitted.

**7. Insurance.** Without limiting the liabilities or indemnification obligations of Licensee, Licensee

will, at all times during the Term, carry and maintain at its expense the following insurance from insurers with minimum Best's ratings of "A-VII" authorized to do business in the state where the Building is located: (a) Workers' Compensation insurance in accordance with the law of the state where any work under this Agreement is being performed including Employer's Liability insurance with limits not less than \$1,000,000 each accident; (b) Commercial General Liability Insurance with an occurrence limit of not less than One Million Dollars (\$1,000,000) and an aggregate limit of not less than Two Million Dollars (\$2,000,000) covering personal injury, bodily injury, death, property damage, products/completed operations and contractual liability; (c) Commercial Automobile Liability with limits not less than \$1,000,000 combined single limit per occurrence covering bodily injury and property damage for all owned, non-owned and hired vehicles used in connection with the performance of this Agreement; and (d) "All Risk" property insurance covering its Equipment and other personal property in sufficient amounts to cover any loss of such Equipment and personal property. At all times during the Term, Building Owner will carry and maintain at its expense "All Risk" property insurance covering the Building and its equipment in amounts not less than their full replacement cost, as well as commercial general liability insurance covering claims for bodily injury, death, personal injury and property damage with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.

Building Owner, its affiliates, subsidiaries, and parent, as well as the officers, directors, employees and agents of all such entities will be included as additional insureds on the policies described in subsections (b) and (c) above. The coverage described in subsection (b) will be primary and not contributory to insurance which may be maintained by Building Owner, subject to the indemnification provisions of this Agreement. Prior to Licensee commencing any work under this Agreement, Licensee will make available to Building Owner evidence of the insurance required herein. Evidence of Licensee's insurance is available at [www.centurylink.com/moi](http://www.centurylink.com/moi).

**8. Miscellaneous.** (a) Either party may assign this Agreement without the consent of the other party; (b) Building Owner acknowledges that the consideration received by it in connection with the grant License is the enhanced value of the Building to current or potential tenants or occupants attributable to the installation of the Equipment, and therefore, at no time will Building Owner charge Licensee any monetary fee or assessment of any kind in connection with the License and this Agreement; (c) Building Owner acknowledges that Licensee may retain third parties to exercise its rights under this Agreement, and Licensee will cause the removal from the Building or the Property of any such third party to which Building Owner reasonably objects and for which Building Owner gives notice of objection; (d) Licensee will not, at any time, record or attempt to record in the public records this Agreement or any memorandum of this Agreement; and (e) This Agreement represents the full understanding of the parties with respect to its subject matter and cannot be modified or amended except in a writing signed by all of the parties.

**9. Counterparts, Facsimile and Electronic Mail Signatures.** This Agreement may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Signatures to this Agreement may be transmitted by facsimile or electronic mail, and signatures so transmitted will be deemed the equivalent of delivery of an original signature.

**10 Effective Date.** This Agreement is effective on the date it is last signed by all parties ("Effective Date").

**"Licensee"**

CenturyLink Communications, LLC

By: Methuria L. Ra\*Shad  
Name: Methuria L. Ra\*Shad

**"Building Owner"**

City of Hamilton

By: Reinhold Gilliam - Mayor  
Name: Reinhold Gilliam - Mayor

Title: Supervisor Network Real Estate, Midwest Reg  
Signature Date: 2/12/16

Title: Mayer  
Signature Date: 2-11-16