

**ORDINANCE 1698  
WEST LINN, OREGON**

**AN ORDINANCE GRANTING A NONEXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO  
MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS TRANSMISSION  
SERVICES TO CONSTRUCT FIBER OPTIC CABLE INFRASTRUCTURE, APPROVING THE FORM OF A  
FRANCHISE AGREEMENT, AND AUTHORIZING SIGNATURE OF THE AGREEMENT**

**WHEREAS**, MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services ("MCImetro") desires to construct telecommunications infrastructure by installing fiber optic cable in the City of West Linn; and

**WHEREAS**, the fiber optic cable can be utilized to provide, among other things, telecommunications and Internet access services to businesses and institutions in and around West Linn, and could be utilized to connect public facilities, such as schools, police and fire stations, parks, libraries; businesses; and private citizens; and

**WHEREAS**, there may be significant benefits to the City and its residents once MCImetro's facilities are installed, such as receiving a fast, secure, and reliable connection; and

**WHEREAS**, the City has the authority to control the use of rights of way within the City and to obtain reasonable compensation for the use of rights of way pursuant to West Linn Municipal Code 9.020; and

**WHEREAS**, the West Linn Municipal Code provides that franchises shall be granted by an agreement approved by Council under an ordinance and that individual franchises do not need to be included in the Municipal Code and,

**WHEREAS**, the City may transition to a right of way management ordinance or other option in lieu of the current franchise system and, therefore, is in a position to grant only a one-year franchise with automatic annual renewals unless one party notifies the other party in writing not less than ninety (90) days prior to the expiration of the current term of the agreement that it will not renew the agreement for the next annual period.

**NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:**

**Section 1. Grant of Franchise.** The City of West Linn grants MCImetro a nonexclusive franchise under which MCImetro may place and maintain facilities in rights of way and certain other public places within the City of West Linn.

**Section 2. Terms of Agreement.** The franchise agreement between the City of West Linn and MCImetro attached as Exhibit A and incorporated by this reference is approved and provides the terms of the franchise.

**Section 3. Signature Authority.** The Council authorizes the City Manager to sign a franchise agreement substantially in the form of Exhibit A on behalf of the City.

**Section 4. Codification.** This ordinance shall not be codified in the West Linn Municipal Code.

**Section 5. Effective Date.** This Ordinance and the franchise, attached as Exhibit A, become effective 30 days after Council passage.

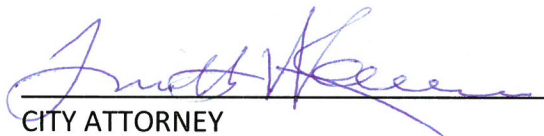
The foregoing Ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the 10th day of June, 2019, and duly PASSED and ADOPTED this 10<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
RUSSELL B. AXELROD, MAYOR

ATTEST:

  
\_\_\_\_\_  
KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

## TELECOMMUNICATIONS FRANCHISE AGREEMENT

**City:** City of West Linn, an Oregon municipal corporation  
**Franchisee:** MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, a Delaware corporation, its successors and assigns  
**Term:** One (1) year with renewals

### RECITALS

- A. Franchisee owns and operates telecommunications networks nationwide, including in Oregon, Washington, and California.
- B. Franchisee is extending its fiber optic cable network throughout the area to make its network available to cellular towers, businesses, other institutions, and possibly private citizens.
- C. Franchisee desires to extend its fiber network through the City of West Linn.
- D. The City finds it necessary to regulate the use of the public right of way and obtain reasonable compensation for its use.
- E. The City believes it is advantageous to the City and its residents to allow opportunities for additional fiber network providers to install infrastructure to increase competition.

### THE PARTIES AGREE AS FOLLOWS:

#### 1. DEFINITIONS.

- 1.1. Dark Fiber Service: providing or leasing fiber optic cable strands and bundles for private use to a customer.
- 1.2. Emergency: a situation involving, or where the failure of Franchisee to act would result in:
  - 1.2.1. an unscheduled outage affecting one or more customers, or
  - 1.2.2. danger to public safety.
- 1.3. Facilities: Franchisee's lines, anchors, wires, cables, conduits, laterals, and all other tangible components, fixtures and equipment necessary or convenient for the operation of Franchisee's fiber optic cable network within the Franchise Area.
- 1.4. Franchise: this Franchise Agreement as fully executed by the City and Franchisee and adopted by the City Council pursuant to an enacting ordinance.
- 1.5. Franchise Area: areas included in the West Linn city limits and any additional areas that may be annexed into the city limits during the term of this Franchise.
- 1.6. Gross Revenues: any and all revenues, in whatever form and from any and all products, services, charges, and all sources derived from Franchisee's operation of Facilities in the Franchise Area; including, but not limited to, the provision of Telecommunications Service, Dark Fiber Service, Internet Access Service, or any other good or service. Gross revenues derived from Franchisee's operation of Facilities in the Franchise Area shall include services: 1) originating or terminating in West Linn, Oregon, and 2) charged to a service address in West



Linn, Oregon, regardless of where the service is billed or paid. Gross revenues may be reduced by the total of uncollectible amounts, but those amounts must be included in gross revenues if and when collected. Gross Revenues shall not include sales taxes imposed by law on Franchisee's customers and revenues resulting solely from the transfer of funds between affiliates for the purpose of avoiding double-counting of revenues.

- 1.7. Internet Access Service: has the meaning given in ORS 305.822(1)(b).
- 1.8. Person: an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- 1.9. Public rights of way ("Public ROW"): area upon, over, along, and across the surface of, and the space above and below the streets, alleys, roads, highways, sidewalks, bridges, other public ways that the City has jurisdiction over, and public utility easements that are designated for providers of utility services and regulated under the West Linn Municipal Code.
- 1.10. Telecommunications: the transmission of information chosen by a person, between or among points specified by the person, without change in the form or content of the information sent or received.
- 1.11. Telecommunications Service: has the meaning given in 47 U.S.C. § 153(53).

## **2. GRANT OF FRANCHISE.**

- 2.1. The City grants to Franchisee a nonexclusive franchise to erect, construct, repair, maintain, upgrade and operate a fiber optic cable network ("fiber network") within the City's Public ROW. Franchisee has the right to install, repair, maintain, upgrade and operate its Facilities within the City's Public ROW for the purpose of providing Telecommunications Service, Internet Access Service and related services. This Franchise is not exclusive, and nothing in this Franchise shall prevent the City from granting others rights and privileges to utilize the Public ROW. This Franchise does not authorize Franchisee to provide cable service, as defined in 47 U.S.C. § 522(6). Franchisee understands that a separate cable franchise would be required for the provision of cable service.
- 2.2. All Facilities currently within the Public ROW, or installed during the Term, are covered by this Franchise and are deemed lawfully placed. The City may require relocation of Facilities in accordance with Section 8.

## **3. TERM.**

- 3.1. Initial Term. The Franchise Term ("Term") shall be one (1) year beginning on the effective date of the implementing Ordinance and terminating on the one year anniversary of the effective date of the implementing ordinance unless renewed (as set forth in Section 3.2 below) or terminated in accordance with this Franchise.
- 3.2. Renewal Term. This Franchise shall automatically renew for successive one (1) additional year terms, beginning on the anniversary of the expiration of the current term ("Renewal Term"), unless either party provides the other party written notice of its intent not to renew not less than ninety (90) days prior to



the expiration of the term then in effect. The City Manager shall be authorized to issue the notice not to renew. The Renewal Term may be terminated in accordance with this Franchise.

**4. CHARTER AND GENERAL ORDINANCES AND LAWS APPLY.**

- 4.1. To the extent authorized by law, this Franchise is subject to the Charter of the City of West Linn and the City's general ordinance provisions, including the applicable provisions of the West Linn Municipal Code, Community Development Code, and Public Works Standards, and state statutes and regulations in existence during the Term; provided, however, in the event of a conflict between the terms of this Franchise and such ordinances, codes, and standards, this Franchise shall control. The terms of this Agreement shall not be construed to violate any applicable law or regulation.
- 4.2. This Franchise shall not be construed to give Franchisee any credit or exemption from any nondiscriminatory, generally applicable:
  - 4.2.1. business tax, or other tax levied now or in the future,
  - 4.2.2. tax on Franchisee's taxable real or personal property, or
  - 4.2.3. permit fees or inspection fees required as a condition of construction for any improvements upon Franchisee's real property and imposed under a generally applicable ordinance or resolution.
- 4.3. City will administer this Franchise in a uniform, nondiscriminatory manner with respect to Franchisee and other similarly situated franchisees.

**5. FRANCHISEE'S WORK IN PUBLIC ROW.** Nothing in this Franchise shall waive the requirements of the various codes and ordinances of the City regarding permits, permit fees, business licenses, fees generally applicable to other similar businesses operating within the City, or the manner of construction unless the Franchise language specifically states otherwise.

**6. CITY AUTHORITY OVER PUBLIC ROW.** Nothing in this Franchise shall in any way be interpreted to prevent, or in any way limit, the City from:

- 6.1. modifying or performing any work in its Public ROW,
- 6.2. granting other franchises for use of Public ROW,
- 6.3. adopting general ordinances regulating the use of or activities in the Public ROW, or
- 6.4. exercising its rights, privileges or property interest in its Public ROW, whether currently owned or acquired in the future.

**7. CONSTRUCTION, MAINTENANCE, REPAIR OF PUBLIC ROW, AND BOND.**

- 7.1. Franchisee shall perform work in a good and workmanlike manner and in compliance with all rules, regulations, or ordinances which may, during the term of this Franchise, be adopted by the City, or any other authority having jurisdiction over Public ROW. Prior to commencing excavation or construction, Franchisee shall give (or cause to be given) appropriate notice to other

franchisees, licensees or permittees of the City that own or maintain facilities that may be affected by the proposed excavation or construction.

- 7.2. Franchisee shall obtain all necessary permits for excavation and construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City. The plans will be evaluated by the standards applied to the construction of other similar facilities in the City.
- 7.3. Franchisee may excavate or construct, as approved by the City, in any Public ROW for the purpose of placing, erecting, laying, maintaining or repairing Facilities. Franchisee shall repair and replace the excavated portion of the Public ROW in accordance with the West Linn Public Works Standards to at least the same condition that it was in prior to excavation. If Franchisee fails to restore the Public ROW to at least the same condition that it was in prior to excavation, the City shall give Franchisee written notice that the Public ROW must be restored by a specific date, not to exceed thirty (30) days from the date of the written notice. The City reserves the right to make necessary repairs and charge the cost to Franchisee if Franchisee fails to restore the Public ROW within the applicable timeframe. The City Engineer may also excuse Franchisee from restoring the Public ROW if the work is part of a coordinated project requiring another person to restore the Public ROW.
- 7.4. Franchisee shall construct and maintain its Facilities so that the Facilities do not interfere with City sewer systems, water systems, stormwater systems, or other City facilities. Franchisee must underground Facilities at existing or proposed traffic signal locations.
- 7.5. Construction Bond. When Franchisee is performing any construction work in or under the Public ROW, Franchisee shall post a full faith performance bond or irrevocable letter of credit, in benefit of the City, with good and sufficient surety approved by the City, in the sum of \$100,000, or the estimated value of the construction work, whichever is greater. The bond or letter of credit shall require Franchisee to perform each term and condition in Section 7. Franchisee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Franchisee's construction work by the City Engineer. Upon approval by the City Engineer, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this subsection. During the duration of the construction work, Franchisee shall file a copy of the bond or letter of credit, along with written evidence of payment of the premiums, with the Public Works Department to be filed with Franchisee's Public ROW permits. The bond or letter of credit shall be subject to approval by the City Attorney for adequacy and compliance with this subsection.

## **8. RELOCATION OF FACILITIES.**

- 8.1. Permanent Relocation Required by City.



- 8.1.1. *Relocation of Same Facilities.* This subsection covers permanent relocation of overhead Facilities that will remain overhead, and underground Facilities that will remain underground. The City shall have the right to require Franchisee to change the location of Facilities located in the Public ROW when it is necessary for any public project or public improvement in the Public ROW, and, unless otherwise agreed, the expenses of relocation shall be paid by Franchisee. The City agrees to provide a suitable location in the Public ROW, if such space is available, as mutually agreed, for Facilities, to accommodate and permit relocation and upgrade of Facilities in order to maintain sufficient service.
- 8.1.2. *Undergrounding Required.* In areas where other utilities have overhead facilities, Franchisee may also install and maintain overhead Facilities. Subject to the previous sentence, and as permitted by, and in accordance with City ordinance and any applicable law, administrative rule, or regulation, the City may require Franchisee to convert any overhead Facilities to underground Facilities at the same or different locations. Any such underground relocation shall be consistent with applicable long-term development plans or projects of the City, or as approved by the City in a uniform and non-discriminatory manner. The expense of relocation or removal shall be paid by Franchisee. However, if the City requests a subsequent relocation of all or part of the same Facilities less than two years after the initial relocation to accommodate for a public project, the subsequent relocation shall be at the expense of the City.
- 8.1.3. *Notice.* Except in the event of a public Emergency, City shall provide a minimum of 90 days written notice to remove/relocate Facilities. The City will endeavor to provide as much notice as commercially reasonable under the circumstances. If Franchisee fails to remove or relocate any such Facilities within 90 days after the date established by the City, the City may cause or effect such removal or relocation, performed by a qualified contractor, in accordance with applicable local, state and federal laws and regulations.
- 8.2. Temporary Relocation at Request of City. This subsection covers temporary relocation of overhead Facilities that will remain overhead, as well as underground Facilities that will remain underground. The City may require Franchisee to temporarily remove and relocate Facilities by giving a minimum of 60 days written notice to Franchisee. The City will endeavor to provide as much notice as commercially reasonable under the circumstances. Prior to such relocation, the City agrees to provide a suitable location in the Public ROW, as mutually agreed, or a temporary construction easement that allows the Franchisee to place its Facilities on the easement in order to maintain sufficient service until such time as the Franchisee moves its Facilities to their permanent location. The cost of temporary removal or relocation of Facilities that is necessary or convenient for public projects, as well as cost of replacing Facilities in their permanent location, shall be paid by Franchisee. However, if the City



requests a subsequent relocation of all or part of the same Facilities less than two years after the initial relocation, that is necessary or convenient for a public project, the subsequent relocation shall be at the expense of the City.

**8.3. Permanent and Temporary Relocation at Request of Third Party.**

In the event that any relocation of Franchisee Facilities is requested by or is to accommodate a third party, Franchisee shall be entitled to payment of its costs from the third party in advance of such relocation and not from the City. Such relocation shall be approved by the City. Third party shall provide a minimum of ninety (90) days written notice to relocate Facilities. If Franchisee fails to remove or relocate any such Facilities within ninety (90) days, or such other time period as agreed upon by Franchisee and such third party, and provided Franchisee's failure to relocate such facilities within such ninety (90) day period or other agreed upon time period is not the result of Franchisee suffering a force majeure event or other event beyond the control of Franchisee, the third party may cause or effect such removal or relocation, performed by a qualified contractor, in accordance with applicable local, state and federal laws and regulations. Franchisee is not obligated to relocate Facilities if the third party refuses to enter into an agreement to pay Franchisee's relocation costs.

**9. EMERGENCY REPAIRS.** Franchisee may conduct Emergency work at any time; however, Franchisee must provide the City Engineer with written or oral notice of Emergency work as soon as reasonably possible, and no later than five (5) business days, after the Emergency work has commenced. If permits are required by City, Franchisee shall apply for appropriate permits the next business day or as soon as reasonably possible following discovery of the Emergency. In any event, within thirty (30) days of beginning Emergency repairs or construction, Franchisee shall provide the City Engineer with a map in electronic, read-only format of the general location of excavations, repaving, and new facilities.

**10. REMOVAL OF FACILITIES.** If this Franchise is terminated or expires on its own terms and is not replaced by a new franchise agreement or similar authorization, the City may determine whether Facilities are to be removed from the Public ROW or remain in place. The City shall provide written notice of any requirement to remove Facilities and shall provide Franchisee sixty (60) days to comment on such requirement to remove Facilities. Following consideration of any such comments, the City Manager may issue an order requiring removal of Facilities within nine (9) months after such order is declared. After removal is complete, Franchisee shall repair and replace the excavated portion of the Public ROW in accordance with the West Linn Public Works Standards to at least the same condition that it was in prior to excavation in accordance with Section 7.3.

**11. INSURANCE.** Franchisee shall obtain and maintain in full force and effect, for the entire Term, the following insurance covering risks associated with Franchisee's ownership and use of Facilities and the Public ROW:

**11.1. Commercial Liability.** Commercial General Liability insurance covering all operations by or on behalf of Franchisee for Bodily Injury and Property Damage,

including Completed Operations and Contractors Liability coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate.

- 11.2. Automobile Liability. Business Automobile Liability insurance to cover any vehicles used in connection with its activities under this Franchise, with a combined single limit not less than Two Million Dollars (\$2,000,000.00) per accident.
- 11.3. Workers' Compensation Liability. Workers' Compensation coverage as required by law and Employer's Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00).
- 11.4. Certificate of Insurance. With the exception of Workers' Compensation and Employers Liability coverage, Franchisee shall name the City as an additional insured on all applicable policies. Other than renewals of such insurance policies in the ordinary course of Franchisee's business, no insurance policies shall be canceled or modified unless Franchisee provides thirty (30) days prior written notice to the City. Franchisee shall provide the City with a certificate of insurance evidencing such coverage as a condition of this Franchise and shall provide updated certificates upon request.
- 11.5. Index for Minimum Coverage. Franchisee is responsible for ensuring that its insurance coverage satisfies the increased minimums of this subsection. On July 1, 2019 and every July 1 for each subsequent year this Franchise is in effect, Franchisee shall ensure it has insurance coverage in the amount stated in subsections 11.1 through 11.3, increased in accordance with the Oregon Tort Claims Act by the lesser of:
  - 11.5.1. Three percent (3%), or
  - 11.5.2. The percentage increase, if any, in the cost of living for the previous calendar year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor.
- 11.6. In Lieu of Insurance. Franchisee is responsible for ensuring that its insurance coverage satisfies subsections 11.1 through 11.3 and the increased minimums in subsection 11.4. In lieu of the insurance policies required by this Section, Franchisee shall have the right to self-insure any and all of the coverage in this Section. If Franchisee elects to self-insure, it shall do so in an amount at least equal to the coverage requirements of this Section and in a form acceptable to the City. Franchisee shall provide proof of self-insurance to the City before this Franchise takes effect and upon future request by the City.

- 12. **TRANSFER OF FRANCHISE**. Franchisee may not sell, assign, transfer, or convey this Franchise to a third party without the City Council giving its consent in a duly passed ordinance. Prior to any proposed transfer, Franchisee shall be in full compliance with this Franchise and the proposed transferee shall agree in writing to be bound by this



Franchise. Upon obtaining consent of the City Council, this Franchise shall bind such third party. This Section does not prohibit:

- 12.1. the use of this Franchise and Franchisee's property as collateral for financing purposes in the ordinary conduct of Franchisee's, or an affiliate of Franchisee's, business;
- 12.2. the sale of tangible assets of the Franchisee in the ordinary conduct of Franchisee's business; or
- 12.3. a transfer to a transferee that is a parent of Franchisee, is an affiliate of Franchisee, or has a majority of its beneficial ownership held by Franchisee and whose primary business is the operation of telecommunications networks.

- 13. INDEMNIFICATION.** To the fullest extent permitted by law, Franchisee shall indemnify and hold harmless the City against any and all claims, damages, costs and expenses, including attorney's fees and costs, to which the City may be subjected as a direct and proximate result of any willful, intentionally tortious, negligent, or malicious acts and/or omissions of Franchisee, or its affiliates, officers, employees, agents, contractors or subcontractors, arising out of the rights and privileges granted by this Franchise. Franchisee shall not indemnify the City for negligent acts of the City that are outside the scope of this Franchise. The obligations imposed by this Section shall survive termination of this Franchise.

**14. COMPENSATION.**

- 14.1. Franchise Fee. In consideration for permission to use the Public ROW and the grant of this Franchise, the Franchisee shall pay to the City a franchise fee equal to seven percent (7%) of its Gross Revenues or a Minimum Annual Franchise Fee, whichever is greater. In the event any law or valid rule or regulation applicable to this Franchise limits franchise fees below the seven percent (7%) of annual Gross Revenues, Franchisee agrees to pay the maximum permissible amount, and if any applicable law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Franchisee shall pay the higher amount up to the maximum allowable by law, not to exceed seven percent (7%). City shall impose franchise and other fees on a non-discriminatory basis.

14.1.1. "Minimum Annual Franchise Fee" shall mean \$5,000 in the first year of this Franchise, and shall increase by \$1,000 for each one-year renewal term, if any until reaching a maximum of \$10,000 per year.

- 14.2. Placement of Conduit for City Use. Franchisee shall give prior notice in accordance with Section 18.8 to the City in the event of any new construction or installation of conduit within the City. Upon written request by the City, Franchisee shall place conduit for use by the City. Franchisee shall place such conduit in locations where Franchisee is also placing its own conduit. City shall pay Franchisee the incremental costs Franchisee incurs in placing such conduit. In placing such conduit, Franchisee will also place access points for City, but Franchisee shall not be responsible for placing fiber, tracer wire or splicing. The



City shall be responsible for obtaining any necessary authority for Franchisee to enter any premises necessary for placing conduit requested by the City.

- 14.3. Goods or Services in Lieu of Franchise Fee. In lieu of all or a portion of the franchise fee payments required under Section 14.1, Franchisee may, at its option, provide Telecommunications Services, Dark Fiber Services, Internet Access Services, or other goods and services to the City under mutually agreeable terms. Any mutually agreed upon arrangement for the provision of such goods and services shall be evidenced in writing in separate documentation. Franchisee may offset the franchise fee by the value of any such goods or services provided or discounted to the City based on the standard rates Franchisee charges to third-party customers for substantially equivalent services or based on the charges negotiated with the City.
- 14.4. Payment of Franchise Fees. The franchise fee set forth in Section 14.1 is payable quarterly, within 45 days after the end of each calendar quarter. Any payment not received by the City on or before the due date is subject to an interest charge at a rate equal to the statutory interest rate on judgments in Oregon, computed from the due date.
- 14.5. Acceptance of Payment. No acceptance of any payment shall be construed as an accord by City that the amount paid by Franchisee is the correct amount, nor shall acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of City. All amounts paid shall be subject to audit and computation by the City.
- 14.6. Franchise Fee Audit or Review. The City, or its designee, has the right to perform an audit or professional review of all of Franchisee's records related to franchise payments no more than once every two (2) years during the term to determine the accuracy of the amounts paid as franchise fees. Any audit or review shall be conducted by the City or its third party designee (who shall be compensated on a non-contingency fee basis) during normal business hours in such a manner as to minimize disruption to Franchisee's business. All records deemed necessary by the City for the audit shall be made available by Franchisee in a mutually agreeable format. Grantee agrees to give its full cooperation in any audit and to provide responses to inquiries within thirty (30) calendar days of a written request. The cost of the audit shall be paid for by the City; however, if the audit establishes that Franchisee has underpaid its franchise fees by five percent (5%) or more, Franchisee shall reimburse the City for the reasonable cost of the audit, up to a maximum of \$10,000, within thirty (30) days of the City's request for reimbursement.
- 14.7. Continued Payment after Expiration. If prior to expiration of this Franchise negotiations for a new franchise agreement are not completed, the terms of this Franchise, including the compensation requirements set forth in this Franchise shall continue and survive expiration of this Franchise until a new franchise agreement becomes effective and supersedes this Franchise or until the City notifies the Franchisee that it will not be renewing the Franchise.

**15. ANNEXATION.** Upon the annexation of any territory to the City, the rights granted in this Franchise shall extend to the annexed territory. All Facilities owned, maintained, or operated by Franchisee located within any Public ROW of the annexed territory shall be subject to all of the terms of this Franchise.

**16. RIGHT TO INSPECT.**

16.1. Records. Franchisee shall provide, upon request, maps of the Franchisee's Franchise Facilities, and any other related information required for the exercise of any other lawful right of Franchisee under this Franchise. The City agrees that such information is confidential and that the City will use such information only for the purpose of managing its Rights-of-Way and determining compliance with the terms of this Franchise. The City further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Oregon law.

16.2. Construction. Any work completed by Franchisee within the Public ROW may be inspected by the City to determine whether it has been placed in its approved location and in accordance with City requirements and standards according to Franchisee's permit issued by the City. If the City identifies non-conforming work, the City shall notify Franchisee, and Franchisee shall correct the non-conforming work with work conforming to the applicable standards at no cost to the City. Franchisee's corrections shall be completed within thirty (30) days after receipt of notice of non-conforming work from the City. If the corrections are not completed in thirty (30) days, the City shall allow Franchisee additional time to complete the work as long as Franchisee continues to diligently pursue corrections. The City shall determine, in its reasonable judgment, whether Franchisee is diligently pursuing the corrections. If Franchisee fails to correct the non-conforming work as set forth in this section, the City may correct the work with work conforming to the applicable standards and Franchisee shall reimburse the City for its costs. If Emergency work has been completed by Franchisee in the Public ROW, and the City determines such work was not completed in a City approved location or in accordance with City requirements and standards, the City shall notify Franchisee and provide Franchisee with sixty (60) days after the Emergency has passed to re-perform the work in a City approved location.

**17. TERMINATION.**

17.1. In addition to any other rights provided for in this Franchise, the City reserves the right to terminate this Franchise in the event that Franchisee materially violates any material provision of this Franchise, including, but not limited to those listed below, or for:

17.1.1. Failure to maintain the liability insurance or self-insurance required under Section 11;

17.1.2. Failure to comply with an audit per Section 14.5;

17.1.3. Failure to provide copies of requested information or the right to inspect construction under Section 16;



- 17.1.4. Failure to substantially comply with the construction requirements of Section 7;
- 17.1.5. Failure or unwillingness to pay its debts, which may be evidenced by a judgment of bankruptcy;
- 17.1.6. Failure to obtain and maintain any permit required by any regulatory body for the construction, maintenance, and operation of its Facilities; or
- 17.1.7. Engaging in fraud or deceit upon the City, persons or subscribers, concerning the rights and obligations granted under this Franchise.
- 17.2. Notice and Opportunity to Cure. The City shall provide Franchisee thirty (30) days prior written notice of its intent to exercise its rights under this Section, stating with reasonable particularity the reasons for such action. If Franchisee cures the basis for termination or if Franchisee initiates efforts reasonably satisfactory to the City to remedy the basis for termination and the efforts continue in good faith within the thirty (30) day notice period, the City shall not exercise its remedy rights. If Franchisee fails to cure the basis for termination or if Franchisee does not undertake and/or maintain efforts satisfactory to the City to remedy the basis for termination within the thirty (30) day notice period, then the City Council may impose any or all of the remedies available under this Section or Section 18.3.

## **18. MISCELLANEOUS PROVISIONS.**

- 18.1. Acceptance. Within thirty (30) days after the ordinance adopting this Franchise is passed by the City Council, Franchisee shall file with the City Recorder its written unconditional acceptance or rejection of this Franchise. If Franchisee files a rejection, or fails to file a written unconditional acceptance within thirty (30) days, this Franchise shall be null and void.
- 18.2. Compliance with Applicable Laws. Franchisee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or enacted in the future. Nothing contained in this Franchise shall be construed as authorizing the Franchisee, its officers, employees or agents, to violate any federal, state or local law. Nothing contained in this Section shall be construed as requiring Franchisee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.
- 18.3. Remedies and Penalties not Exclusive. All remedies and penalties under this Franchise, including termination, are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of a penalty is not a bar to recovery or enforcement by any other remedy or imposition of any other penalty. The City reserves the right to enforce the penal provisions of any City ordinance or resolution and to avail itself to any and all remedies available at law or in equity. Failure to enforce any term, condition or obligation of this Franchise shall not be construed as a waiver of a breach of any term, condition or obligation of this Franchise. A specific waiver of a particular breach of any term, condition or obligation of this Franchise shall not be a waiver of any other,



subsequent or future breach of the same or any other term, condition or obligation of this Franchise.

- 18.4. Authority. The parties acknowledge that the persons executing this Franchise on behalf of each entity have the legal power, right, and actual authority to bind their respective entities to the terms and conditions of this Franchise.
- 18.5. Nonwaiver. Franchisee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.
- 18.6. Attorney's Fees. In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the Court may adjudge reasonable attorney's fees and court costs including attorney's fees and court costs on appeal.
- 18.7. Governing Law. The provisions of this Franchise shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any questions arising under this Franchise must be brought in the Circuit Court of Clackamas County or the U. S. District Court in Portland.
- 18.8. Notice. All notices shall be made in writing and may be given by personal delivery, by mail, or facsimile transmission. Notices sent by mail should be addressed as follows:

<b>City of West Linn</b>	
Attn: Finance Department	<b>Copy to:</b> Public Works Department
22500 Salamo Road	Address: 22500 Salamo Road
West Linn, OR 97068	West Linn, OR 97068
Phone: 503-657-0331	Phone: 503-722-5500
Fax: 503-650-9041	Fax: 503-656-4106

<b>MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services</b>	
Attn: Franchise Manager	<b>Copy to:</b> Verizon Business Service
600 Hidden Ridge, Irving, TX 75038	Address: 1320 N. Courthouse Rd., Suite 900 Arlington, VA 22201 Attn: General Counsel, Network
Phone: 972-457-7420	
Fax:	

and when so addressed, shall be deemed given upon five (5) business days after deposit in the United States mail, postage prepaid, certified mail, return receipt requested. In all other instances, notice shall be deemed given at the time of actual delivery. Changes

may be made in the names and addresses of the person to receive notice by giving written notice pursuant to this paragraph.

- 18.9. Severability. In the event any provision or portion of this Franchise is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Franchise shall remain in full force and effect and shall in no way be affected or invalidated thereby.
- 18.10. Captions. The captions to sections of this Franchise are intended solely to facilitate reading and to reference the provisions of this Franchise. The captions shall not affect the meaning or interpretation of any section or provision of this Franchise.
- 18.11. Complete Agreement; Amendment. This Franchise and attached exhibits, if any, constitute the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Franchise shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no unspecified understandings, agreements, or representations, oral or written, regarding this Franchise. Franchisee by the signature of its authorized representative, acknowledges that he has read this Franchise, understands it and agrees to be bound by its terms and conditions.

**INTENDING TO BE BOUND**, the parties executed this Franchise on the date(s) shown below.

**MCImetro Access Transmission Services Corp.  
d/b/a Verizon Access Transmission Services**

  
Signature

Robert J. Hayes, Sr. Manager - Network Engrg & Ops  
Printed Name & Title

07-08-2019  
Date

**CITY OF WEST LINN**

  
Eileen Stein, City Manager

Eileen Stein, City Manager  
Printed Name & Title

7-9-19  
Date