

**MCIMETRO ACCESS TRANSMISSION SERVICES CORP.**

**And**

**CITY OF HENDERSON, NEVADA**

**TELECOMMUNICATIONS USE AGREEMENT**

**CMTS #21598**

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## TELECOMMUNICATIONS USE AGREEMENT

THIS TELECOMMUNICATIONS USE AGREEMENT ("Agreement") is entered into by and between the City of Henderson, a municipal corporation and political subdivision of the State of Nevada (the "City") and MCImetro Access Transmission Services Corp., d/b/a Verizon Access Transmission Services, a Delaware corporation ("Company") and is effective as of the date of City Council action, as reflected on the signature page below (the "Effective Date").

### Recitals

- A. City is the owner of City Rights-of-Way; and
- B. Company is registered with the PUCN as a provider of Telecommunications Services and holds a certificate of public convenience and necessity (CPC 2209 Sub 2); and
- C. Company has applied to City for permission to construct, maintain, manage and operate Facilities in the ROW, Facilities on or in Municipal Facilities, Facilities on a Company Pole, and Facilities on or in Third-Party Structures to enable Company to provide Telecommunications Services and to enable Company customers that are Qualified Service Providers to provide Commercial Mobile Service and/or Commercial Mobile Radio Service; and
- D. Company wishes to locate, place, install, operate, control, repair and maintain Facilities in the ROW, Facilities on or in Municipal Facilities, Facilities on a Company Pole, and Facilities on or in Third-Party Structures for the purpose of providing Telecommunications Services; and
- E. Company is willing to compensate City in exchange for a grant and right to use and physically occupy portions of the ROW, Municipal Facilities, Third-Party Structures, and the privilege of doing business pursuant to this non-exclusive franchise.

### Agreement

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

**1. Definitions.** For all defined terms (whether defined in this Section 1 or elsewhere in this Agreement), when not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural and the masculine gender includes the feminine gender. Unless otherwise expressly stated, words not defined herein shall be given their common and ordinary meaning.

When initially capitalized, the terms that follow and their derivations shall apply to this Agreement and have the following meanings:

**1.1** “Affiliate” means each person or entity which falls into one or more of the following categories: (a) each person or entity having, directly or indirectly, a controlling interest in Company; (b) each person or entity in which Company has, directly or indirectly, a controlling interest; or (c) each person or entity that, directly or indirectly, is controlled by a third party which also directly or indirectly controls Company. An Affiliate shall in no event mean any creditor of Company solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, Company.

**1.2** “Assignment” or “Transfer” means any transaction in which: (a) any ownership or other right, title or interest of more than fifty percent (50%) in Company or its Facilities in the City is transferred, sold, assigned, leased or sublet, directly or indirectly, in whole or in part; (b) there is any change or transfer of control of Company or its Facilities in the City; (c) the rights and/or obligations held by Company under this Agreement are transferred, directly or indirectly, to another party; or (d) any change or substitution occurs in the managing general partners of Company, if applicable. An “Assignment” shall not include a mortgage, pledge or other encumbrance as security for money owed.

**1.3** “Commence Installation” means the date that Company commences to install its Facilities or Company Pole, or any modification of either of the foregoing, in accordance with the applicable Licensed Location Authorization.

**1.4** “Commence Operation” means the date that Company uses the Facilities that are in a location pursuant to a Licensed Location Authorization to transmit, route, or provide Telecommunications Service in accordance with this Agreement.

**1.5** “Commercial Mobile Radio Service” has the meaning given to the term “commercial mobile radio service” in 47 CFR § 20.3.

**1.6** “Commercial Mobile Service” has the meaning given to the term “commercial mobile service” in 47 U.S.C. § 332(d).

**1.7** “Company Pole” means pole(s) or similar vertical structure(s) approved by City to be installed and used by Company in the ROW in accordance with this Agreement and owned and installed by Company for the primary purpose of physically supporting a Facility.

**1.8** “Decorative Streetlight Pole” means any Streetlight Pole that: (a) is made from a material other than metal; or (b) incorporates artistic design elements not typically found in standard metal Streetlight Poles. The term Decorative Streetlight Pole includes any historically or architecturally significant or designated Streetlight Poles.

**1.9** “Electronic Marker” means a Marker that contains a passive antenna that can be identified with detection equipment and does not require an internal power source.

**1.10** “Facilities” means (a) fiber-optic cables, connectors, amplifiers, transmitters, wires, instruments, and associated equipment, each of which is compliant with all applicable FCC regulations and is owned and/or operated by Company to transmit, route, or provide a Telecommunications Service; (b) Company-owned Markers; (c) Company-owned Tracer Wires; and, (d) Company-owned conduit, handholes, manholes, pedestals, cabinets, and related fixtures to be constructed, installed and operated by Company in compliance with this Agreement and with all applicable Laws .

**1.11** “Information Service” has the meaning given to the term “information service” in 47 U.S.C. § 153(24).

**1.12** “Laws” means any and all federal, state and local constitutions, statutes, ordinances, charters, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, or orders, and any requirements of City or other governmental agency having joint or several jurisdiction over the parties to this Agreement, including the Code of Federal Regulations (CFR), Henderson Municipal Code (HMC), Nevada Revised Statutes (NRS), Nevada Administrative Code (NAC) and United States Code (U.S.C.), as the foregoing may be amended from time to time.

**1.13** “Licensed Location” means a location in the Right-of-Way in which Company is authorized pursuant to this Agreement to place its Facilities, to place its Facilities on or in a Third-Party Structure, to place a Company Pole, to place Facilities on a Company Pole, or to place Facilities on or in Municipal Facilities, and for which City has issued a Licensed Location Authorization in whatever form the City determines is appropriate for the type of authorization sought by Company.

**1.14** “Marker” means a device that physically designates the location of a subsurface Facility at intermittent locations along, within, or immediately above the subsurface Facility and includes, without limitation, an Electronic Marker.

**1.15** “Municipal Facilities” means Streetlight Poles, Decorative Streetlight Poles, or City-owned lighting fixtures, City-owned cables, or City-owned conduit.

**1.16** “PUCN” means the Public Utilities Commission of Nevada.

**1.17** “Qualified Service Provider” means a person that has received from the PUCN a certificate of public convenience and necessity to provide Commercial Mobile Service or Commercial Mobile Radio Service using the Facilities.

**1.18** “Rights-of-Way” or “ROW” means the surface of, and the space above and below, any and all public highways, streets, roads, alleys, and avenues, as the same now or may hereafter exist within the City, excluding (as now or hereafter established within the City) (a) State highways; (b) public streets, roads, alleys, and avenues predominantly used for public freeway or expressway purposes or a City park; (c) public streets, roads, alleys, and avenues where Company’s use is not expressly permitted by the granting

instrument; and (d) City streets, roads, alleys, and avenues that are not typically open to the general public.

**1.19** “School Zone Flasher” means any pole that is owned by City, is located in the ROW, and is used for traffic signal or traffic control purposes for a school.

**1.20** “Standards Manual” means any requirements for the design, construction, installation, operation, maintenance, condition, modification, repair, relocation or removal of Facilities and supplements to the provisions of the HMC that are prepared and made public by the Department of Public Works as revised from time to time at the discretion of the Director of Public Works.

**1.21** “Streetlight Pole” means any standard-design pole for the support of a light fixture, is owned by City and is used for street lighting purposes. Standard-design is defined as a pole in conformance with streetlights approved for use in Henderson as shown in the Uniform Standard Drawings, Clark County Area, latest edition, or as authorized by City in a written agreement. Streetlight Pole does not include Traffic Signal Poles, School Zone Flashers, or any pole located in the parking lot of any City facility, park or other non-roadway facility.

**1.22** “Telecommunications Service” or “Services” has the meaning given to the term “telecommunications service” in 47 U.S.C. § 153(53).

**1.23** “Third-Party Structures” means poles, conduit, or other structures in the ROW lawfully owned and operated by a third party(ies) and lawfully located in the ROW.

**1.24** “Tracer Wire” means a locating wire that is installed inside or immediately adjacent to a subsurface Facility and is connected to a transmitter that carries a signal that can be read by a receiver above the surface of the ground for the detection of the location of the subsurface Facility.

**1.25** “Traffic Signal Pole” means any standard-design pole that is owned by City, is located in the ROW, and is used for traffic signal or traffic control purposes, including School Zone Flashers and the controller cabinet and all appurtenances related to the operation of the traffic signal system.

**2. Term.** This Agreement shall be effective as of the Effective Date and shall extend for a period of ten (10) years, unless it is earlier terminated by either party in accordance with the provisions herein (“Initial Term”). The parties may upon mutual written agreement extend this Agreement for one additional period of two (2) years on the same terms and conditions as set forth herein (“Renewal Term”), provided that Company is not in default of any of its obligations under this Agreement at the time of renewal. The Initial Term and Renewal Term are collectively referred to herein as the “Term.”

**3. Representation Concerning Services; Termination For Cause; Termination for Convenience by Company; Termination of Licensed Location Authorization.** Company acknowledges that its rights to use the ROW under this Agreement arise out of its status under Title 47 of the United States Code as a provider of Telecommunications Service, and Company represents that it is and will at all times during the Term remain a provider of Telecommunications Service as so defined. At any time that Company ceases to operate in the State of Nevada as a provider of Telecommunications Service under federal law, City shall have the option, in its sole discretion and upon six (6) months' prior written notice to Company, to terminate this Agreement without any liability to Company related directly or indirectly to such termination and to require Company to remove Company's Facilities and restore the ROW and Municipal Facilities in accordance with all requirements in this Agreement, including those in Subsection 6.12. Company shall have the option, in its sole discretion and upon six (6) months' written notice to City, to terminate this Agreement, provided Company is not in default of any of its obligations under this Agreement. Company may terminate a Licensed Location Authorization by providing City thirty (30) days prior written notice and, before the termination of such Licensed Location Authorization is effective, by removing all Facilities and any Company Pole from the Licensed Location and by restoring the ROW and Municipal Facility in accordance with all requirements in this Agreement, including those in Subsection 6.12. Upon termination of this Agreement or upon the Company terminating a Licensed Location Authorization, in lieu of requiring Company to remove some or all of the Company-owned conduit, City may require Company to (a) transfer ownership of, all rights to, and title to some or all of that conduit to City in consideration of City not requiring Company to remove the particular conduit; and (b) deliver a signed bill of sale in a form acceptable to City that conveys all rights, title, and interest to City in that conduit and certifies that the conduit is free of all liens and other encumbrances.

**4. Scope of Agreement.** Any and all rights expressly granted to Company under this Agreement, which shall be exercised at Company's sole cost and expense, shall be subject to the prior and continuing right of City under applicable Laws to use any and all parts of the ROW exclusively or concurrently with any other person or entity, and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the ROW. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in Company a real property interest in land, including any fee, leasehold interest, or easement. Nor does this Agreement grant Company the right to provide any "video service" (as such term is defined in NRS 711.141) without a valid State-of-Nevada-issued certificate or other required authorization for such service.

**4.1 ROW Authorization.** Subject to Company complying with all of the terms and conditions of this Agreement and with all applicable Laws, including the requirements in Chapter 455 of the NRS and NAC, and subject to Company first obtaining all required easements, permits and approvals, including Company complying with Section 4, Section 6 of this Agreement, HMC Titles 11 and 19 and other applicable provisions of this Agreement and the HMC, City hereby authorizes and permits Company to enter upon the ROW and only in a Licensed Location within the ROW install, operate, maintain,

control, manage, and remove authorized Facilities and Company Poles in accordance with the applicable Licensed Location Authorization –for the purpose of providing Telecommunications Services.

**4.2 Request for Licensed Location.** Following the procedures set forth in Section 4, Section 6 of this Agreement, and other applicable provisions of this Agreement and in the HMC, Company shall submit to City’s authorized representative applications for permits prior to placing any Facilities or Company Pole in ROW, in accordance with requirements set forth in the HMC. Applications may require Company to provide information on the minimum and maximum intensity of noise generated by the Facilities, the proposed design showing the proposed Facilities or Company Pole, the configuration of any proposed installation of Facilities, the proposed location of the Facilities or Company Pole, the proposed location of the Facilities or Company Pole in relation to existing or planned-future utilities, the structure Company proposes to install the Facilities on or in (specifically, in or on a Municipal Facility or on a City-owned building, on Company Pole, on or in a Third-Party Structure, or in another Facility), and any other documents necessary for City to review the application or requested by City, such as a noise study. Within any such application for a Licensed Location Authorization, Company shall clearly depict proposed power (if applicable), method of detecting underground Facilities, cable routes and connections and any proposed pavement trenching or cuts. If any Facility is or is proposed to be located in, on, above, or under real property not owned by City in fee, Company (a) shall obtain and maintain all consents, permits, licenses, easements or grants that are necessary for the lawful exercise of the authorization(s) granted by City to Company under this Agreement; and (b) by using such real property for the installation, operation, maintenance, management, and removal of a Facility, represents to City that Company has obtained and shall maintain all consents, permits, licenses, easements or grants that are necessary for the lawful exercise of the authorization(s) granted by City to Company under this Agreement. If Company believes such other consents, permits, licenses, easements or grants are not necessary, Company shall represent to City in connection with Company’s application for a Licensed Location(s) that Company’s use of such real property not owned by City in fee for a Company Pole and/or Facility is allowed by, is consistent with, does not violate, and does not overburden City’s easement for, prescriptive right for, or other right to use such real property. Company is hereby notified of City’s Five Year No Cut Policy and City’s desire to minimize any pavement cuts that, as determined by City in its sole discretion, significantly reduce the longevity of the public’s investment in the roadway network. This process is separate and apart from any application Company must submit to City in accordance with HMC Title 11 or 19.

**4.3 Electrical Power at Licensed Location.** Company will be solely responsible for establishing electrical power services for its Facilities as necessary and for the payment of all electrical utility charges to the applicable electric service provider based upon applicable tariffs. Company shall not electrically connect its Facilities to, nor draw any electric power from, any Municipal Facility, Traffic Signal Pole or City-owned facility.



Company shall obtain City's approval of the location and installation of any facilities required for electrical power to a Facility in a Licensed Location and shall use commercially reasonable efforts to minimize disruption to the public and to the ROW.

**4.4 Installation on or in Municipal Facilities.** The City Manager or City Manager's designee must approve in writing any Facilities being installed on or in a Municipal Facility. If Company wishes to install Facilities on a Decorative Streetlight Pole and that Decorative Streetlight Pole is located within a community regulated by a homeowner's association, Company must also submit the proposed Facilities and their installation configuration to the homeowner's association for review and provide any comments to City.

**4.4.1** Before installing Facilities on a Streetlight Pole, Company shall cause a Nevada-licensed engineer to perform a structural analysis of the Streetlight Pole and provide to City the written results of that structural analysis (stamped by that engineer), including "load" (structural) calculations. Notwithstanding the foregoing sentence, Company shall not install Facilities on a Streetlight Pole that City determines is structurally inadequate to accommodate the Facilities. If the City determines that Company has selected a Streetlight Pole that is structurally inadequate to accommodate Facilities or, in accordance with Subsection 6.6, Company elects to replace the Streetlight Pole with one that is capable of housing the Facilities inside the Streetlight Pole, Company may at its sole cost and expense replace the Streetlight Pole with one that (a) is structurally adequate to accommodate the Facilities, following the procedures set forth in the first sentence of Subsection 4.4.1, (b) is installed by a Nevada-licensed contractor, and (c) is consistent with surrounding Streetlight Pole and acceptable to and approved by City or is otherwise approved for use under Exhibit A.

**4.4.2** If Company is authorized by City to replace a Streetlight Pole under Subsection 4.4.1 and/or under Subsection 6.6, Company guarantees, regardless of City's authorization and acceptance, all work Company and its contractors/subcontractors perform and all Streetlight Poles Company furnishes under this Agreement against defects in materials and workmanship for a period of two (2) years following City's acceptance of the Streetlight Pole ("Initial Warranty Period"). Company also guarantees any corrective work and replaced or repaired Streetlight Pole against defects for an additional two-year period following completion of the work ("Subsequent Warranty Period" and, together with the Initial Warranty Period, the "Warranty Period"). City may, at its option and Company's sole cost, either itself remedy or require Company to remedy any defect in materials or workmanship provided by Company or its contractors/subcontractors that develop during the Warranty Period. The option and obligation to repair extend to any damage to facilities or work caused by the particular defect or repair of the defect. Company must remedy the defect(s) to City's satisfaction. Should City choose to remedy a defect, Company must pay

City all amounts it incurred within sixty (60) days after receiving an invoice from City. Company also agrees to sign and deliver a bill of sale in a form acceptable to City that conveys all of Company's rights, title, and interest to City in the Streetlight Pole Company replaced and certifies that the Streetlight Pole is free of all liens and other encumbrances.

**4.4.3** In the event that, ten (10) feet or higher above ground level, routine streetlight bulb maintenance or graffiti abatement must be performed on a Streetlight Pole on which Company has installed Facilities, City will notify Company and Company will perform such maintenance at Company's sole expense. In such case, City will contact Company at the contact telephone number referenced in Subsection 15.3 and Company will promptly schedule its contractor to perform the required streetlight bulb maintenance or graffiti abatement. If Company fails to respond within seven (7) days from such contact, City may deactivate said Facilities to perform or contract with a third-party to perform the necessary streetlight bulb maintenance or graffiti abatement at City's expense and City will have no liability to Company for any loss to Company arising from such work.

**4.4.4** In the event of an emergency or to protect the public health or safety, prior to City accessing or performing any work on a Streetlight Pole on which Company has installed Facilities, City may require Company to immediately deactivate such Facilities if any City employee or agent must move closer to the Facilities than the minimum distance posted by Company on the particular Facilities. In such case, City will contact Company at the contact telephone number referenced in Subsection 15.3 to request immediate deactivation. If Company fails to respond in a manner timely to the emergency situation, City may deactivate said Facilities to perform necessary work and City will have no liability to Company arising out of the performance of such work.

**4.5 Installation on Third-Party Structures.** Company may seek permission from the owner of a Third-Party Structure to install its Facilities on or in that structure. To the extent Company's plans trigger a requirement to obtain construction permits from the City under HMC, Company shall obtain such permits.-Company shall submit to City's authorized representative under this Agreement a proposed design showing any proposed installation of Facilities and showing the Third-Party Structure facilities Company proposes to use and shall otherwise follow the procedures set forth in Subsection 4.2, HMC Title 19 and other applicable provisions of this Agreement and the HMC. Subject to Company obtaining the written permission of the owner(s) of the affected Third-Party Structure(s), to Company furnishing to City acceptable documentation that such permission has been obtained, and to Company complying with the terms and conditions of this Agreement, including without limitation Subsection 4.2, City hereby provides Company the authorization to use the ROW as set out in Subsection 4.1, including the authority to enter upon the ROW and to install, operate, maintain, manage, and remove

such Facilities in a Licensed Location in or on such Third-Party Structures. Company acknowledges that if City revokes a third-party owner's right to be in the ROW or requires the Third-Party Structure to be removed or relocated, Company will be required to remove and relocate its Facilities in accordance with this Agreement.

**4.6 Use of City-Owned Buildings Outside ROW.** In the event that no Municipal Facility or Third-Party Structure is functionally suitable or installation of the Facilities underground is physically impossible and if there is a City-owned building outside the ROW in the area of the requested Licensed Location that is available (as solely determined by City) and capable of supporting the Facilities (as demonstrated through documentation provided by Company), Company may request use of the City-owned building instead of installing a new Company Pole. Company shall submit to City's authorized representative under this Agreement a proposed design showing any proposed installation of Facilities and showing the City-owned building Company proposes to use and shall otherwise follow the procedures set forth in Subsection 4.2, HMC Title 19 and other applicable provisions of this Agreement and the HMC. City, in its sole discretion, may deny Company's request. The installation, if any, of Facilities on a City-owned building, shall be subject to a duly authorized contract executed between Company and City, Company's payment of compensation in accordance with that contract, Company's compliance with applicable Laws, and Company complying with the terms and conditions of this Agreement, including without limitation Subsection 4.2.

**4.7 Installation of Company Pole and Facilities on Company Pole.**

**4.7.1** Company acknowledges there is a preference to install Facilities underground in conduit or aurally on an existing structure to minimize the visual impact associated with the proliferation and clustering of poles. In the event that no Municipal Facilities or Third-Party Structure is technically feasible for use, installation of the Facilities underground is not technically feasible for use, City determines a City-owned building is not available or suitable for use, or City does not approve such an installation(s), Company may, at its sole cost and expense, install a Company Pole; provided, however that Company follows the procedures set forth in Subsection 4.2, Section 6, HMC Title 19 and other applicable provisions of this Agreement and the HMC and obtains all permits, consents, and approvals required for initial installation of the proposed Company Pole and any Facilities installed on a Company Pole and thereafter any modification of a Company Pole and additional Facilities installed on an approved Company Pole.

**4.7.2** Notwithstanding Subsection 4.7.1, Company may install a Company Pole in the ROW only if (a) Company represents in writing and demonstrates to City that the failure to approve the Company Pole in the ROW would prohibit or have the effect of prohibiting the provision of Commercial Mobile Service, Commercial Mobile Radio Service, and/or Telecommunications Service, and (b) the City Manager or City Manager's designee approves such additional Company Pole installation(s) in writing on that basis.

**4.7.3** Company shall provide nondiscriminatory, fair, and reasonable access to all Company Poles and Facilities in accordance with the provisions at 47 U.S.C. § 224 and 47 C.F.R. § 1.1401 *et seq.* and any statute or regulation adopted by the state of Nevada implementing the state's regulatory authority over pole attachments and/or use of Facilities, shall follow the procedures set forth in this Agreement and required by applicable Laws, including Subsection 4.2, Section 6, and HMC Title 19, and shall obtain all permits, consents, and approvals required for the initial installation or the modification of any proposed third-party Facilities installed on a Company Pole or in the Facilities in a Licensed Location.

**4.7.4** All Company Poles and above-ground Facilities must conform as closely as practicable to the design and color of poles or structures existing in the vicinity of such Company Poles and above-ground Facilities. Company is responsible for all maintenance, repair and liability for all Facilities and Company Poles.

**4.8 No Interference.** Company, in the performance and exercise of its rights and obligations under this Agreement, shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities, cable television, location monitoring services, public safety and other equipment and utility or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Law or this Agreement.

**4.9 Permits; Default.** Whenever Company is in default in any of its obligations under this Agreement, after notice and lapse of any applicable cure period, City may deny further encroachment, excavation or similar permits until such time as Company cures all of its defaults.

**4.10 Compliance with Laws.** Company shall comply with all applicable Laws, including, without limitation, Chapter 455 of the NRS and NAC and all noise control Laws, in the exercise and performance of its rights and obligations under this Agreement.

**4.11 Ownership and Use of Facilities and Company Poles.** Company represents, warrants and covenants that (a) the Facilities and any Company Poles installed pursuant to this Agreement will be owned and utilized by Company in connection with the provision of Telecommunications Services in accordance with applicable Law, and (b) Company is not authorized to and shall not use the Facilities or Company Poles to offer or provide any other services not specified and authorized herein.

**4.12 Nonexclusive Use Rights.** Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to Company under this Agreement shall be non-exclusive, and shall be subject and subordinate to (a) the continuing right of City to use, and to allow any other person or persons to use, any and all parts of the ROW or Municipal Facilities, exclusively or concurrently with any other

person or persons, and (b) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively “Encumbrances”) which may affect the ROW or Municipal Facilities now or at any time during the Term, including, without limitation, any Encumbrances granted, created or allowed by City at any time. The City reserves the right to vacate, alter, or close any ROW.

**4.13 Change of Law.** All applicable provisions of the HMC and the Standards Manual, each as amended from time to time, and all provisions of this Agreement shall be binding upon Company, its successors, and permitted assignees. This Agreement shall be automatically amended to conform to any amendment to the HMC or the Standards Manual to the maximum extent permitted by applicable Law. If there is a conflict between a provision in the HMC or the Standards Manual, each as amended from time to time, and a provision in this Agreement, the HMC or Standards Manual provision shall control; provided that, to the extent the amended HMC or Standards Manual provision materially changes the obligations or liabilities of the Company pursuant to this Agreement, Company may terminate this Agreement by providing City with thirty (30) days’ written notice. Company’s provision of such notice of termination constitutes Company’s agreement that it will satisfy any outstanding Agreement obligations owed to City under this Agreement, including the payment of any outstanding amounts due to the City and the removal of its Facilities and Company Poles in accordance with this Agreement. If any Laws (other than the HMC or the Standards Manual) and any binding, non-appealable judicial interpretations thereof that govern any aspect of the rights or obligations of the parties under this Agreement shall change after the Effective Date and such change makes any aspect of such rights or obligations inconsistent with the then-effective Laws, then the parties agree that either party may terminate this Agreement or the parties may promptly amend this Agreement as reasonably required and mutually agreed to accommodate and/or ensure compliance with any such legal or regulatory change.

**4.14 Licensed Locations.** Company shall install its Facilities and Company Poles only in the Licensed Locations.

**4.15 Facilities and Company Poles Subject to Relocation and Removal.** Any Facility or Company Pole installed in the ROW or on or within a Municipal Facility is subject to relocation or removal from the ROW or Municipal Facility in accordance with Subsection 6.8.

**4.16 Camouflage; Noise Minimization.** Company shall use best efforts to camouflage, conceal, or otherwise minimize the visual impact of Company Poles and of above-ground Facilities whether installed on a Municipal Facility, Third-Party Structure, or Company Pole by employing screening, concealment, camouflage, or other stealth techniques so that the Facilities and Company Poles are architecturally integrated with existing buildings, structures and landscaping, including height, color, style, massing,

placement, design and shape, and therefore do not stand out when viewed with the naked eye.

**5. Compensation.** Company agrees that it will pay to City or to such payee at such address as City may from time to time designate by written notice to Company, without deduction, set off, prior notice or demand, all lawful fees and compensation in connection with Company's performance under this Agreement and in accordance with the HMC, including those set forth below.

**5.1 Business License.** The business license fee, if any, shall be due and payable in accordance with applicable provisions of HMC Title 4.

**5.2 Wireline Fee.** Company shall pay to City a fee for each Telecommunications Facility contained in a License Authorization in the amounts published by City, and as adjusted from time to time, and manner determined by the City in accordance with the HMC (the "Wireline Fee"). At City's sole discretion, City and Company may mutually agree in writing upon the provision of Company facilities or services to City in lieu of payment of all or a portion of the Wireline Fee.

**5.3 Annual Adjustment to Wireline Fee.** Effective commencing on the first anniversary of the Effective Date and continuing annually thereafter during the Term, the Wireline Fee shall be increased in accordance with the HMC.

**5.4 [Intentionally omitted]**

**5.5 Delinquent Payment.** If Company fails to timely pay any business license fees or other amounts due and payable under this Agreement, Company will pay interest and penalties on such delinquent fees as specified by the applicable provisions of the HMC.

**5.6 Taxes and Assessments Payment.** Company must also pay any applicable local/special improvement district assessments, property taxes, ad valorem taxes, or other applicable taxes, fees, and charges, including any exactions, fees, or charges that are applicable Company's real property development or use as required by City ordinance, the HMC, the NRS, or other applicable Law.

**6. Construction.** All construction in the ROW, of Facilities, and of Company Poles shall be performed by a State of Nevada licensed contractor. Company shall comply with all applicable federal, State, and City technical specifications and requirements and all applicable Laws related to the construction, installation, operation, maintenance, management, and control of the Facilities and Company Poles. Company shall not install, maintain, or operate any Company Pole or Facilities in the ROW, or install, maintain, or operate any Facilities on or in a Municipal Facility, without first receiving a Licensed Location Authorization for each location and in accordance with the requirements in this Agreement. Company is solely responsible for ensuring compliance with applicable Laws, including the Americans with Disabilities Act and Chapter 455 of the NRS and NAC, and for maintaining sight visibility zones (SVZs) as identified in HMC Title 19. Company shall cause all construction work in the ROW to be performed in such a

Telecommunications Use Agreement (MCImetro Access Transmission Services Corp.)

CMTS #21598

(Rev. 3/2019)

manner as to ensure a minimum of delay or inconvenience to City and the public and to not create any hazardous condition and shall prosecute such work diligently until completion. At City's request, Company shall provide City a construction schedule, coordinate its construction activities with City, and correct any deficiencies identified by City in connection with construction work in the ROW. In no event shall any work that requires a lane or street closure be performed from 7:00 a.m. to 9:00 a.m. or from 4:00 p.m. to 6:00 p.m. except for emergency repairs and only if Company first obtains the written permission of the City's Director of Public Works, Parks & Recreation for such emergency repairs. In no event shall any work within the Right-of-Way be performed until after Company obtains a City-approved traffic control plan. Company, its contractors and subcontractors, and all work shall comply with the terms of that traffic control plan.

**6.1 Commencement of Installation and Operation.** Company shall Commence Installation of its Facilities or Company Pole approved by City through a Licensed Location Authorization no later than six (6) months after the date Company obtains all required permits and approvals to install the Facilities or Company Pole in the Licensed Location and shall Commence Operation no later than twelve (12) months after obtaining said permits and approvals. Failure to Commence Operation within twelve (12) months from the date Company obtains all required permits and approvals to install the Facilities or Company Pole in the Licensed Location shall be considered a default of a material covenant or term of this Agreement.

**6.2 Obtaining Other Required Permits.** Installing the Facilities and Company Poles requires various other permits from City. Company shall apply for the appropriate permits , pay any standard and customary permit fees and reference the CMTS # of this Agreement on each application for such permits. City shall promptly respond to Company's requests for permits and shall otherwise cooperate with Company in facilitating the deployment, maintenance or modification of the Facilities in the ROW in a reasonable and timely manner. Permit conditions may include, without limitation, (a) approval by City of traffic control plans prepared by Company for Company's work in City ROW; (b) approval by NDOT of traffic control plans prepared by Company for Company's work within ROW controlled by NDOT; (c) adherence to time restrictions for work in streets as specified by City and/or NDOT; (d) standard and specialized conditions in City-issued permits, including restricting lane and street closures to certain hours. Company and Company's contractor and any subcontractors are required to comply with all permit conditions and have a copy of all permits in their physical possession prior to commencing and while performing any physical work in the ROW.

**6.3 Location and Drawings of Facilities and Company Poles.** Company shall provide to City the proposed locations of Company's planned initial installation of Facilities in the form of a map or on an annotated aerial photograph, either of which must be in a format acceptable to City, promptly after Company's field review of available Municipal Facilities and prior to deployment of the Facilities. For Facilities that are designed to include more than one conduit, the maps and drawings shall show the overall

size, material and configuration of the duct bank. Prior to Commencement of Installation of the Facilities in the ROW or in or on any Municipal Facility, Company shall obtain written approval from the authorized representative of City for such installation in the ROW or upon such Municipal Facility from City pursuant to and in accordance with Section 4 and Subsection 6.2. City may approve or disapprove a location and installation, based upon reasonable regulatory factors consistent with HMC Title 19 and other applicable provisions of the HMC, including but not limited to the ability of the Municipal Facility to structurally support the Facilities, the location of other present or future communication or other utility facilities, efficient use of scarce physical space to avoid premature exhaustion, potential interference with other utility facilities and services, the public safety and other critical services. Upon the completion of each installation or modification, Company promptly shall furnish to City in a hard copy and electronic format acceptable to City an as-built drawing or annotated aerial photograph that depicts the exact location, including as applicable depth, of each of the foregoing Company Poles, Facilities, Third-Party Structures, and Municipal Facilities. Company shall not modify a Facility or Company Pole unless and until Company has complied with Subsection 6.11 and City approves an amendment of the Licensed Location Authorization for that Facility or Company Pole.

**6.4 Height and Use of Median Restrictions.** Notwithstanding anything to the contrary in this Agreement, no portion of the Facilities shall extend higher than thirty-six (36) inches above the height of any above-ground structure on which a Facility is installed. In the case of a new installation or modification by Company, the overall height of a Company Pole and Facility installed on it shall not exceed thirty-five (35) feet above grade unless otherwise approved by City through the HMC Title 19 process. Company shall not place any of its Facilities, on, over, or within the median portion of any ROW without first obtaining the written permission of the City's Director of Public Works, Parks & Recreation.

**6.5 Location in Right-of-Way.**

**6.5.1 Installing Facilities Underground.** Company Poles and underground Facilities shall be placed in accordance with any specifications used by the City regarding the location of Facilities. Company Poles and Facilities shall not impede pedestrian or vehicular traffic in the Right-of-Way. If a Company Pole or Facility is installed in a location that is not in accordance with the plans approved by City or is installed in a location approved by City but City determines that the approved location impedes pedestrian or vehicular traffic or does not comply – or otherwise renders the Right-of-Way non-compliant – with applicable Laws, including the Americans with Disabilities Act, then Company shall remove the Facility or Company Pole and, as applicable, restore the ROW to its before condition: (a) within thirty (30) days after City notifies Company of the noncompliance; or (b) within twenty-four (24) hours after receiving oral or written notice from City if City determines the Company Pole or Facility might



create a safety issue. If Company does not remove the Company Pole or Facility by the deadline identified in City's notice, Company shall be subject to a one thousand dollar (\$1,000) per day penalty until such Company Pole or Facility is removed and the ROW restored, regardless of whether or not Company's contractor, subcontractor, or vendor installed the Company Pole or Facility, City approved the location of the Company Pole or Facility, or City has not approved a new location for the Company Pole or Facility.

**6.5.2 Detecting Facilities Installed Underground.** In each underground Facility that cannot be detected from or above the surface of the ground by means of either the material incorporated into the underground Facility or the Facilities within the underground Facility, Company shall install a permanent device that provides a means of detecting location and depth of each underground Facility through the use of a noninvasive method from or above the surface of the ground. Such a device includes, without limitation, an Electronic Marker, Marker, or Tracer Wire. All conduit runs shall have Tracer Wire installed in the conduit prior to restoration or paving. If Company uses a device that physically designates the location of an underground Facility and such device is not located along the entire length of the underground Facility but rather is placed intermittently, Company shall use a sufficient number of permanent devices, place them at the termini and middle of the subsurface Facility, place them immediately adjacent to or inside the subsurface Facility, and space each device no more than two hundred fifty (250) feet apart along the length and at all boxes, junctions, bends and angle points.

**6.6 Street Furniture and Cabinets.** Without limitation of HMC Title 15, Company understands that above-ground street furniture and cabinets for Facilities located in the ROW are generally prohibited and that any such installation of above-ground street furniture or cabinets for Facilities will be required to be placed in an easement on private property adjacent the ROW and will require additional approvals and/or permitting under HMC Title 11, HMC Title 19, and other applicable Laws. Notwithstanding anything in the foregoing and to the extent permissible under HMC Title 15, with respect to Facilities that Company would typically install in above-ground street furniture or cabinets, Company may instead (a) house, install, and camouflage such Facilities inside the Municipal Facility, Third-Party Structure, or Company Pole on which Company is authorized to install associated Facilities pursuant to a Licensed Location Authorization, or (b) install such Facilities in a subsurface vault within the ROW, provided that under either (a) or (b) Company obtains City's approval of the particular installation through a Licensed Location Authorization, follows the procedures set forth in Section 4, Section 6, and other applicable provisions of this Agreement and in the HMC, and pays all costs associated with such installation, including without limitation replacing the Municipal Facility, Third-Party Structure, or Company Pole and any relocation costs of any public improvements and public utilities facilities to accommodate such installation. Company agrees to comply with City's current ordinances regarding such installations as well as

any future regulations that may be adopted by City respecting such installations. In no instance shall the installation of any of Company's Facilities or any appurtenant structures block pedestrian walkways in ROW, result in violation of the Americans with Disabilities Act, violate any clearance requirements, or obstruct sight visibility as defined by City ordinance or Regional Transportation Commission of Southern Nevada standard drawings.

**6.7 Visual Impact of Cross-Arm Installations.** Company agrees that, in order to minimize the visual impact of its Facilities on a Third-Party Structure, in any instance where a cross-arm is set on such a structure as the locus for the installation of Facilities, Company shall use best efforts to work with the applicable third parties to ensure that such Facilities shall be installed at a point on the cross-arm that is acceptable to City. If, however, the third party does not accommodate City's request, Company shall be allowed to install the Facilities in a fashion required by the third party and consistent with the approval received from City through the HMC Title 19 process.

**6.8 Relocation and Displacement of Facilities or Company Poles.**

**6.8.1** Company shall, at City's direction and upon sixty (60) days' prior written notice (or with less notice in event of an emergency), relocate Facilities or Company Poles at Company's sole cost and expense whenever City determines that the relocation is necessary to accommodate the construction, modification, completion, repair, relocation, or maintenance of a City or other public project or to accommodate any other public work that City might find desirable. Company shall, at City's direction and upon thirty (30) days' prior written notice (or with shorter notice in event of an emergency), relocate Facilities or Company Poles at Company's sole cost and expense whenever City determines that the relocation is necessary to accommodate a City or public project or to avoid or prevent the Facilities from interfering with or adversely affecting proper operation, modification, repair, relocation, or maintenance of Municipal Facilities, traffic signals, communications, or other City-owned facilities. Company shall, at City's direction and immediately prior written or oral notice, relocate Facilities or Company Pole at Company's sole cost and expense whenever City reasonably determines that the relocation is necessary to protect or preserve the public health or safety. In any such case, Company shall prosecute such work diligently until completion, and City shall use reasonable efforts to afford Company a reasonably equivalent alternate location if one is available. Before relocating the Facilities or a Company Pole to an alternate location in the ROW, Company must submit to City a new application for a Licensed Location following the procedures set forth in Section 4 and Section 6 and must also submit any applications required by HMC Title 11 and Title 19.

**6.8.2** If Company shall fail to relocate any Facilities or Company Pole as requested by City within a reasonable time under the circumstances in accordance with Subsection 6.8.1, City shall be entitled to remove or relocate the Facilities or

Company Pole (without liability to Company or its customers), to restore the ROW and any Municipal Facilities, and to charge Company for the actual costs and expenses of such work, including, without limitation, reasonable administrative costs and the cost of storage of Company's property (collectively, "Removal Charges") at Company's sole cost and expense, without further notice to Company, and without City incurring any liability. Company shall pay to City the Removal Charges within thirty (30) days after receiving a written invoice from City. Upon City's receipt of payment of the Removal Charges, City shall promptly make available to Company the Facilities and Company Pole removed by City pursuant to this Subsection at no liability or cost to City. If City does not receive payment of the Removal Charges within such 30-day period, or if Company does not claim the Facilities or Company Pole(s) within thirty (30) days after the foregoing having been made available by City after Company's payment of the Removal Charges, any Facilities or Company Pole(s) remaining on or about the ROW, Municipal Facilities, or stored by City after City's removal thereof may, at City's option, be deemed abandoned property and City may dispose of such Facilities and Company Pole(s) in any manner allowed by Law. Alternatively, City may elect to take title to the abandoned Facilities and Company Pole(s), in which case Company shall submit to City an instrument satisfactory to City transferring to City the ownership of the Facilities and Company Pole(s).

**6.8.3** To the extent City has actual knowledge thereof, City will attempt promptly to inform Company of the displacement or removal of any Municipal Facility on which any Facilities are located. If the Municipal Facility is damaged or downed for any reason, and as a result is not able to safely hold the Facilities, City will have no obligation to repair or replace such Municipal Facility for the use of Company or the installation of its Facilities. Company shall bear all risk of loss as a result of damaged or downed Municipal Facilities pursuant to Subsection 6.13, and may choose to replace such Municipal Facilities in accordance with the applicable provisions in this Agreement, including Section 4.

**6.8.4** Within ten (10) days after completing a relocation, Company shall send City written notice, confirming that Company has removed and, as applicable, relocated the Facilities or Company Pole in accordance with the requirements in Subsection 6.8. After Company or City has removed the Facilities or Company Pole and receives Company's written notice, City will issue a notice terminating the Licensed Location Authorization for the removed Facilities or Company Pole.

**6.9 Relocations at Company's Request.** In the event Company desires to relocate any Facilities from one Municipal Facility to another, Company shall so advise City by submitting an application to modify the applicable Licensed Location Authorization. City will use reasonable efforts to accommodate Company by making another reasonably equivalent Municipal Facility(ies) available for use, at no cost to City, in accordance with and subject to the terms and conditions of this Agreement.

**6.10 Damages Caused by Company.** Company shall, at its sole cost and expense and to the satisfaction of City: (a) remove, repair or replace any of its Facilities that are damaged, becomes detached or Company has not used for Telecommunications Services for a period of more than ninety (90) days; and/or (b) repair any damage to ROW, Municipal Facilities or property, whether public or private, caused by Company, its agents, employees or contractors in their actions relating to installation, operation, repair, removal, or maintenance of a Facility or Company Pole, including any vegetation then- or thereafter-located within or near the Licensed Location. Except in the case of an emergency (which is defined to be the sudden and immediate threat of harm to a person or personal property), Company shall not cut, trim, or remove vegetation in the ROW unless approved in writing by the Director of Public Works, Parks & Recreation. If there is such an emergency, Company shall notify the Director of Public Works, Parks & Recreation as soon as practicable and provide a written description of the emergency and work performed in that notice. If Company cuts, trims, or removes vegetation in the ROW, Company shall restore the affected ROW to its prior condition, reasonable wear and tear excepted, in compliance with then-applicable requirements or conditions in the HMC and permits. If Company does not remove, repair or replace such damage to its Facilities, Company Pole, or to ROW, Municipal Facilities or other property or restore the ROW, City may, upon thirty (30) days' prior written notice to Company, perform or cause to be performed such removal, repair, replacement, or restoration on behalf of Company and Company shall pay the actual costs incurred by City for such removal, repair, replacement, or restoration. If any damage or detachment of a Facility or Company Pole causes a public health or safety emergency, as reasonably determined by City, City may immediately perform reasonable and necessary repair or removal work (but not any technical work on Company's Facilities) or restoration work on behalf of Company and will notify Company as soon as practicable; provided, however, such repair work may only involve reinstallation of Company's Facilities to a Municipal Facility or repair of the Municipal Facility itself, and shall not include any technical work on Company's Facilities. Upon the receipt of a demand for payment by City, Company shall within thirty (30) days after such receipt reimburse City for the full cost of removing, repairing, replacing and/or restoring the Facilities, Company Pole, the Municipal Facility, or the ROW. The terms of this Subsection 6.10 shall survive the expiration, completion or earlier termination of this Agreement.

**6.11 Change in Facilities or Company Pole.** If Company proposes to modify a Facility or Company Pole that is different in any material way (*e.g.*, increase in weight, increase in a dimension, increase in the number of cables or conduit, or change to external appearance) from the Facility or Company Pole approved in a Licensed Location Authorization, Company shall first submit an application to modify the Licensed Location Authorization, following the procedures set forth in Section 4 and Section 6 and must also submit any applications required by HMC Title 11 and Title 19. In addition to any other submittal requirements, Company shall provide "load" (structural) calculations stamped and signed by a Nevada-licensed engineer, for all Municipal Facilities on which it has installed above-ground Facilities that Company wishes to modify.

**6.12 Removal of Facilities and Company Poles.** Company shall promptly, safely and carefully remove all of its Facilities and Company Poles from the ROW and restore the ROW and Municipal Facilities to their original condition, reasonable wear and tear excepted, (a) before this Agreement expires, (b) before Company's termination of a Licensed Location Authorization becomes effective, (c) within sixty (60) days' after City's written notice terminating this Agreement, or (d) within sixty (60) days' after City's written notice terminating a Licensed Location Authorization, as applicable. If Company fails to complete the removal of the Facilities and Company Poles and the restoration activities before this Agreement expires, before Company's termination of a Licensed Location Authorization becomes effective, or on or before the sixtieth (60th) day subsequent to the issuance of City's notice, as applicable, then City, upon written notice to Company, shall have the right at City's sole election, but not the obligation, to remove Company's Facilities from all Municipal Facilities (without liability to Company or its customers), to remove Company Poles (without liability to Company or its customers), to restore the ROW and Municipal Facilities and to charge Company for the actual costs and expenses of such work, including, without limitation, Removal Charges. Company shall pay to City the actual costs and expenses of such work within thirty (30) days after receiving a written invoice from City. Upon City's receipt of payment of the invoice, City shall promptly make available to Company the Facilities and Company Poles removed by City pursuant to this Subsection at no liability or cost to City. If City does not receive payment of the invoice within such 30-day period, or if City does not elect to remove the Facilities or Company Poles and restore the ROW and Municipal Facilities after Company's failure to do so after the 60-day-removal period expires, or if Company does not claim the Facilities and Company Poles within thirty (30) days after the foregoing having been made available by City after Company's payment of the Removal Charges, any Facilities and Company Poles remaining on or about the ROW, Municipal Facilities, or stored by City after City's removal thereof may, at City's option, be deemed abandoned property and City may dispose of such Facilities and Company Poles in any manner allowed by Law. Alternatively, City may elect to take title to the abandoned Facilities and Company Poles, in which case Company shall submit to City an instrument satisfactory to City transferring to City the ownership of the Facilities and Company Poles. The terms of this Subsection shall survive the expiration, completion or earlier termination of this Agreement.

**6.13 Risk of Loss.** Company acknowledges and agrees that Company bears all risk of loss or damage or relocation or replacement of its Facilities and Company Poles installed in the ROW pursuant to this Agreement from any cause, and City shall not be liable for any cost of repair or replacement of damaged or destroyed Facility or Company Pole, including, without limitation, damage caused by City's removal of the Facility or Company Pole, except to the extent that such loss or damage was solely and proximately caused by the intentional conduct or negligent acts or omissions of City, including, without limitation, each of its elected officials, department directors, managers, officers, agents, employees, and contractors, subject to the limitation of liability provided in Subsection 7.3.

**7. Indemnification and Waiver.**

**7.1 Indemnification.** Company agrees to indemnify, defend, protect, and hold harmless City, its council members, officers, employees, and agents (“City Indemnitees”) from and against any and all claims, demands, losses, including Municipal Facility warranty invalidation, damages, liabilities, fines, charges, just compensation, penalties, arbitration proceedings, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney’s fees and costs of defense (collectively, the “Losses”) for personal injury (including death), damage to real property, damage to tangible property, or Losses claimed by a third-party, including by a Qualified Service Provider or provider of Telecommunications Service, directly or proximately resulting from activities undertaken by or on behalf of Company pursuant to this Agreement, except to the extent caused by the intentional conduct or negligent acts or omissions of a City Indemnitee or City contractor. Company further agrees to indemnify, defend, protect, and hold harmless City and City Indemnitees from and against any and all Losses in connection with: (a) Company’s use of real property not owned by City in fee for Facilities or a Company Pole; or (b) Company’s use of a Municipal Facility or use of ROW that is not allowed by, is inconsistent with, is a violation of, or overburdens City’s easement for, prescriptive right for, or other right to use such real property; or (c) City’s withholding of documents or information submitted by Company from inspection or copying under Subsection 15.11. Company’s defense and indemnification obligations are contingent on the City providing prompt notice of any such claims or Losses. Company shall have the right to retain counsel of its own choice, to settle all or any part of the litigation on terms acceptable to Company (and, where such terms directly obligate or affect the City, acceptable to the City). Company agrees to keep the City Attorney’s Office informed of the status and progress of all litigation involving the City that has been tendered to Company or its insurance carrier.

**7.2 Waiver of Claims.** Company hereby waives any and all claims, demands, causes of action, and rights it may have against City, during or subsequent to the Term, on account of any Losses, damage, or injury to any Facility or Company Pole or any loss or degradation of the Telecommunications Services, Information Services, Commercial Mobile Service, Commercial Mobile Radio Service, or service to a Qualified Service Provider as a result of any event or occurrence which is beyond the reasonable control of City.

**7.3 Limitation on City’s Liability.**

**7.3.1** City shall be liable for the cost of repair (or if repair is not feasible, replacement) to damaged Facilities and Company Poles proximately caused by the willful misconduct of City or its employees.

**7.3.2** City shall be liable for the cost of repair (or if repair is not feasible, replacement) to damaged Facilities and Company Poles proximately caused by the negligence of City or its employees.

**7.3.3** Notwithstanding the foregoing Subsection 7.3.1 and Subsection 7.3.2, City's total liability under this Agreement shall be limited to the aggregate Wireline Fees paid by Company to City in the calendar year in which such liability arises, and City shall not be liable to Company for any indirect or consequential damages in connection with this Agreement.

**7.4 Waiver of Punitive and Consequential Damages.** Both parties hereby waive the right to recover special, punitive or consequential damages from the other party in connection with this Agreement; however, this waiver shall not limit or apply to Company's obligation to provide insurance under Section 9, Company's indemnity obligations under Section 7 or Company's obligation to provide security under Section 8.

**7.5 No Waiver of NRS Chapters 41 and 268 Protections.** Notwithstanding anything to the contrary in this Agreement, City does not waive the rights and protections afforded the City under NRS Chapter 41 or NRS Chapter 268.

The terms of this Section 7 shall survive the expiration, completion or earlier termination of this Agreement.

## **8. Security for Performance.**

**8.1 General Requirements.** As security for compliance with the terms of this Agreement and applicable provisions of the HMC, Company shall, no later than ten (10) days after the issuance of a permit by City to install Company's Facilities and prior to the placement of any Facilities in the ROW or on or in a Municipal Facility, provide security to City in the form of, at Company's sole discretion, either cash deposited with City, or (provided the terms and conditions of the security are acceptable to City and issued by a bank or surety, as applicable, satisfactory to City) an irrevocable letter of credit or a performance bond to remain in full force and effect for the Term, payable in each instance to City, in an amount of ninety thousand dollars (\$90,000) ("Security Funds"). After the Effective Date and no later than five (5) business days after City issues the Licensed Location Authorization for the Facilities or Company Pole that triggers the increase in the amount of the Security Funds, Company shall increase the amount of the Security Funds in accordance with the requirements in the preceding sentence and as follows or as otherwise provided under the HMC:

- (A) Ten thousand dollars (\$10,000) for each Company Pole authorized in the ROW that is less than or equal to thirty-five (35) feet in height; and

- (B) Fifteen thousand dollars (\$15,000) for each Company Pole authorized in the ROW that is more than thirty-five (35) feet in height but less than or equal to fifty (50) feet in height; and
- (C) Twenty-five thousand dollars (\$25,000) for each Company Pole authorized in the ROW that is more than fifty (50) feet in height but less than or equal to seventy (70) feet in height; and
- (D) Fifty thousand dollars (\$50,000) for each Company Pole authorized in the ROW that is more than seventy (70) feet in height; and
- (E) After City issues Licensed Location Authorizations for above-ground Facilities installed on a Municipal Facility or on a Company Pole that total one hundred (100) linear feet, one hundred dollars (\$100.00) for each additional batch of Licensed Location Authorizations that authorize one hundred (100) linear feet of Facilities to be installed on a Municipal Facility or on a Company Pole; and
- (F) After City issues Licensed Location Authorizations for underground Facilities installed in a Municipal Facility or in a Company Facility that total five hundred seventy one (571) linear feet, one thousand dollars (\$1,000) for each additional batch of Licensed Location Authorizations that authorize five hundred seventy one (571) linear feet of Facilities to be installed in a Municipal Facility or in a Company Facility.

City may claim all or a portion of the Security Funds, as increased, as payment for removal, restoration, or other charges assessed in accordance with Subsection 6.5, Subsection 6.8, Subsection 6.10, Subsection 6.12, or another provision in this Agreement, as payment for liquidated damages assessed in accordance with Section 12, and to recover losses resulting from Company's failure to perform any of its obligations under this Agreement, including the installation of Facilities, Company Poles, or appurtenances that are not authorized by a Licensed Location Authorization.

**8.2 Bond Requirements.** If bonds are used to satisfy these security requirements, they shall be in accordance with the following:

**8.2.1** All bonds shall, in addition to all other costs, provide for payment of reasonable attorneys' fees.

**8.2.2** All bonds shall be issued by a surety company authorized to do business in the State of Nevada, and which is listed in the U.S. Department of the Treasury Fiscal Service (Department Circular 570, current revision): Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.



**8.2.3** Company shall require the attorney-in-fact who executes the bonds on behalf of the surety to affix thereto a certified and current copy of his or her power of attorney.

**8.2.4** All bonds prepared by a licensed nonresident agent must be countersigned by a registered agent per NRS 680A.300.

**8.2.5** All bonds shall guarantee the performance of all of Company's obligations under this Agreement and all applicable Laws.

**8.3 Replenishment of Security.** If at any time City draws upon the Security Funds, as increased, Company shall within thirty (30) days after receiving notice from City replenish such Security Funds to the amount required by Section 8.1, as such amount is increased by Section 8.1 or modified by Section 8.4.

**8.4 Security Adjustments.** If this Agreement is renewed or otherwise extended beyond the Initial Term, the amount of Security Funds required by Section 8.1 shall be increased by an amount equal to two and one-half percent (2.5%). Security amount changes shall be effective as of July 1 following the fifth anniversary date of this Agreement. Company shall provide the increased Security Funds to City on or before July 15 following the fifth anniversary date of this Agreement.

**9. Insurance.** Company shall procure and maintain, and cause its contractors to procure and maintain, at all times during the Term and until all of their obligations under this Agreement have been discharged, insurance identified in Subsection 9.1. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until City has received at least thirty (30) days' advance written notice of such cancellation or change. Company shall be responsible for notifying City of such change or cancellation. Unless prohibited by applicable Law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against City, its council members, officers, employees, and insurers, except if losses are caused by the sole negligence of City.

**9.1 Minimum Scope and Limits of Insurance.** Company shall provide coverage with limits of liability not less than those stated below. The limits may be met by a combination of primary and excess or umbrella insurance. The policies, excluding workers' compensation and employers' liability, shall be endorsed to include City and its council members, officers, and employees as additional insureds with respect to liability arising out of activities performed by, or on behalf of Company, including completed operations and vehicles owned, leased, hired or borrowed by Company.

**9.1.1 Commercial General Liability insurance – Occurrence Form**

Each Occurrence:	\$1,000,000
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Products – Completed Operations Aggregate: \$1,000,000  
General Aggregate: \$2,000,000

**9.1.2 Commercial Automobile Liability**

Combined Single Limit: \$2,000,000, including bodily injury and property damage for any owned, leased, hired, and borrowed vehicles used in the performance of this Agreement.

**9.1.3 Workers' Compensation and Employers' Liability**

Workers' Compensation: Statutory

Employers' Liability:

Each Occurrence: \$1,000,000  
Disease/Employee: \$1,000,000  
Disease/Policy Limit: \$1,000,000

**9.2 Filing of Certificates and Endorsements.** Prior to the commencement of any work in connection with this Agreement, Company shall file with City the required original certificate(s) of insurance with endorsements, which shall state the following:

- (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
- (b) [intentionally omitted]
- (c) that Company's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that City may possess, including any self-insured retentions City may have; and any other insurance City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and
- (d) that Company's insurance company for the Commercial General Liability insurance policy waives any right of recovery or subrogation the insurance company may have against City, its council members, officers, employees, and insurers, as specified in the above paragraph.

The certificate(s) of insurance with endorsements and notices shall be mailed to City at the address specified in Section 10.

**9.3 Insurer Criteria.** Any insurance provider of Company shall be admitted and authorized to do business in the State of Nevada and shall carry a minimum rating

assigned by A.M. Best & Company's Key Rating Guide of "A" Overall and a Financial Size Category of "VII". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

**9.4 Severability of Interest.** "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

**10. Notices.**

**10.1 Method of Providing Notice.** All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; or (b) by means of prepaid courier service, addressed as follows:

If to City:  
CITY OF HENDERSON  
Attn: Director of Public Works  
240 South Water Street  
P.O. Box 95050  
Henderson, NV 89009-5050

with a copy to:

CITY OF HENDERSON  
Attn: City Traffic Engineer  
240 South Water Street  
P.O. Box 95050  
Henderson, NV 89009-5050

CITY OF HENDERSON  
Attn: City Attorney  
240 South Water Street  
P.O. Box 95050  
Henderson, NV 89009-5050

If to Company:  
MCImetro Access Transmission Services Corp.  
d/b/a Verizon Access Transmission Services  
Attn: Franchise Manager HQE02E102  
600 Hidden Ridge  
Irving, TX 75038

with a copy to:

Verizon Business Services, Inc.  
1320 N. Courthouse Road, Suite 900  
Arlington, VA 22201  
Attn: Vice President and Deputy General Counsel

**10.2 Date of Notices; Changing Notice Address.** Notices shall be deemed given upon receipt in the case of personal delivery, on the third business day after the date of mailing if mailed by certified mail, or on the date officially recorded as delivered according to the record of delivery if delivered by courier. Each Party may change its contact information for purposes of this Agreement by giving written notice to the other party in the manner set forth above.

**11. Default and Cure.**

**11.1 Default and Notification.** This Agreement is granted upon each and every condition herein and each of the conditions is a material and essential condition to the granting of this Agreement. Except for causes beyond the reasonable control of Company, and subject to Subsection 11.2 below, if Company fails to comply with any of the material conditions and obligations imposed hereunder, if such failure continues for more than thirty (30) days after written demand from City to commence the correction of such noncompliance on the part of Company, and if a Company representative and the City Manager have met to discuss the noncompliance (provided such a meeting is requested in writing by Company within ten days after receiving the written demand), City shall have the right to revoke and terminate this Agreement and/or a particular Licensed Location Authorization in addition to any other rights or remedies set forth in this Agreement or provided by Law.

**11.2 Cure Period.** If the nature of the violation is such that it cannot be fully cured within thirty (30) days due to circumstances not under Company's control, the period of time in which Company must cure the violation shall be extended by the City Manager, for a period to be determined at City Manager's sole discretion and in writing, for such additional time reasonably necessary to complete the cure, provided that: (a) Company has promptly begun the process to cure; and (b) Company is diligently pursuing its efforts to cure in the City Manager's reasonable judgment.

**12. Liquidated Damages.**

**12.1 Amounts.** If Company fails to cure any noncompliance with the terms and conditions of this Agreement within the time allowed under Subsection 11.1 and Subsection 11.2, after City gives Company reasonable notice of such noncompliance and an opportunity to be heard by the City Manager, City may assess the following liquidated damages for such noncompliance:

**12.1.1** Failure to comply with City's non-discriminatory requirements concerning actual usage of the ROW or Municipal Facilities, including but not limited to any Company-caused defaults resulting in construction-delay claims against City: \$500.00 per day, for each day such failure continues.

**12.1.2** Failure to comply with any other provisions of this Agreement, including but not limited to failure to provide in a reasonable timeframe data, documents, reports, or information to City, or to provide insurance or security for the performance of Company's obligations hereunder: \$100.00 per day, for each day such failure continues after the cure period has ended.

**12.2 Payment of Damages.** Any liquidated damages assessed pursuant to this Section 12 shall be due and payable by check mailed or delivered to the Director of Finance, at the address provided for in Section 10, not later than thirty (30) days after City provides Company with written notification of the assessment.

**12.3 Remedy not Penalty.** Company agrees that any failures specified in Subsection 12.1 shall result in injuries to City and its citizens and institutions, the compensation for which would be difficult to ascertain and prove, and that the amounts specified in Subsection 12.1 are liquidated damages, not a penalty or forfeiture.

**13. Assignment.** This Agreement shall not be Assigned or Transferred by Company without the express written consent of City, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Assignment or Transfer of the rights and obligations of Company to an Affiliate or to any successor in interest or entity acquiring more than fifty percent (50%) of Company's stock or assets shall not require the consent of City, provided that: (a) any such assignee or transferee assumes all of Company's obligations hereunder, including all obligations and/or defaults under this Agreement occurring prior to the Assignment or Transfer (whether known or unknown), and provides City with written notice of acceptance of that assumption or the effectiveness of that assumption by operation of law; (b) the assignee or transferee provides City with a copy of an appropriate certificate of public convenience and necessity from the PUCN; and (c) the assignee or transferee has a valid City business license.

**14. Records; Audits.**

**14.1 Recordkeeping.** Company will establish and maintain an accounting system and accurate and complete records in accordance with generally accepted accounting principles and applicable Law for the purpose of determining the amounts due to City under this Agreement. Company will also maintain accurate and complete records of the Facilities and Company Poles installed and the location of all Facilities and Company Poles installed. All such records are subject to audit by City.

**14.2 Maps, As-Built Drawings, and Operational Data.** Company will maintain on file maps, as-built drawings, and operational data pertaining to its Facilities and Company Poles, which City may inspect at any time during normal business hours upon reasonable

notice to Company. Upon City's request, Company shall furnish, as soon as practical and without charge, current maps and as-built drawings either in a hard-copy printed form, electronic form, or in such other format or compatible database specified by City, showing the location and dimension of any existing and proposed Facilities, but not other proprietary information, used in operating the Facilities.

**14.3 Additional Records.** City may require Company to produce the records identified in Section 14.1 and any such additional information, records, and documents from time to time that City may determine are appropriate in order to reasonably monitor compliance with the terms of this Agreement. Company agrees to collect and produce to City such supplementary information as needed.

**14.4 Production of Records.** Company shall provide records within twenty (20) business days after a request by City for production of the same unless City agrees to additional time. Such records shall be made available at the City of Henderson City Hall. Failure to provide records in a timely manner shall subject Company to liquidated damages under Section 12. If any person other than Company maintains records on Company's behalf, Company shall be responsible for making such records available to City for purposes of this Subsection 14.4.

**15. Miscellaneous Provisions.** The provisions that follow shall apply generally to the obligations of the parties under this Agreement.

**15.1 Waiver of Breach.** The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

**15.2 Severability of Provisions.** If any one or more of the provisions of this Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

**15.3 Contacting Company.** Company shall be available to the employees of any City department having jurisdiction over Company's activities 24 hours a day, seven days a week, regarding problems or complaints resulting from the installation, operation, maintenance, repair, or removal of the Facilities or Company Poles. City may contact the network control center operator at telephone number 1-800-MCIWORKS (1-800-624-9675) regarding such problems or complaints and Company shall make every effort to investigate and resolve them within three (3) business days of receipt. Within four (4) business days of receipt, Company shall provide City with a written report that describes how Company resolved the problem or complaint and, if Company cannot resolve a problem or complaint within three (3) business days of receipt, Company shall include an

explanation of why resolution could not be reached within that period and describe the actions that Company has taken or will take to resolve the problem or complaint and the timeline to reach a resolution of the problem or complaint. Upon request, Company shall provide City with a written monthly report, in a form satisfactory to City, summarizing such problems or complaints received by Company and the resolutions thereof for the preceding month. At City's written request and within ten (10) days of such a request, Company shall confirm in writing (and provide City documentation) that the particular Facility or Company Pole that is the subject of the problem or complaint complies with all applicable FCC regulations. Company shall affix and maintain a permanent, weatherproof label, tag, or similar mark displaying such telephone number, in a conspicuous location on each Company Pole, on any above-ground Facilities, and on all street furniture cabinets or vaults used in connection with Facilities.

**15.4 Governing Law.** This Agreement shall be governed and construed by and in accordance with the laws of the State of Nevada, without reference to its conflicts of law principles.

**15.5 Forum.** All actions between any parties to this Agreement that arise from or relate to this Agreement shall be initiated in the courts of Clark County, Nevada or the federal district court with jurisdiction over Clark County, Nevada. Company agrees that it shall not initiate an action that arises from or relates to this Agreement against City in any other jurisdiction. Company irrevocably agrees to submit to the exclusive jurisdiction of the courts located in Clark County, Nevada or the federal district court with jurisdiction over Clark County, Nevada over any dispute or matter that arises from or relates to this Agreement.

**15.6 Consent Criteria.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

**15.7 Representations and Warranties.** Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the party's respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in Subsection 4.5 above.

**15.8 Amendment of Agreement.** This Agreement may not be amended except pursuant to a written instrument signed by both parties with the same formality as this Agreement.

**15.9 No Waiver.** A party shall not be excused from complying with any of the terms or conditions of this Agreement because the other party does not, on one or more occasions, insist upon or to seek compliance with any such terms or conditions or because of any failure on the part of a party to exercise, or to delay in exercising, any

right or remedy hereunder. Nor shall a party's single or partial exercise of a right or remedy or failure to require full performance from the other party preclude a party's right to exercise its rights and remedies or enforce each and every provision in this Agreement.

**15.10 Entire Agreement.** This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

**15.11 Public Records.**

**15.11.1** City is a governmental entity and subject to the public records Laws and regulations set forth in chapter 239 of the NRS and NAC. Therefore, City's records are public records and are subject to inspection and copying by any person unless there is an applicable exception or the record is declared by applicable Law to be confidential. Company is advised, and acknowledges, that the Agreement and documents provided in connection with this Agreement become a public record and, unless the information is declared by applicable Law to be confidential or is otherwise excluded from the public records disclosure requirements, may be subject to inspection and copying.

**15.11.2** If Company believes any information it submits should be considered confidential or proprietary in nature, or contains trade secrets (as defined in NRS 600A.030), Company shall mark the page or pages that contain such information "CONFIDENTIAL." If Company fails to do the foregoing, such information shall be deemed to not be confidential. The Company may also furnish City with a summary sheet identifying each and every page that contains information so marked, represent in writing on that sheet that protections exist under applicable Law to preserve the integrity, confidentiality and security of the information, and specify with particularity the factual and legal basis thereof.

**15.11.3** If City receives a public records request that applies to this Agreement (either specifically or otherwise), it will analyze the documents provided in connection with this Agreement to see if the information so marked may legally be withheld from inspection and copying. City takes no responsibility and is not liable for release of (1) any information not so marked and summarized or (2) any information that is so marked and summarized in the event that City determines in its sole and absolute discretion that City must provide the information because an applicable exception does not apply or the information is not declared by applicable Law to be confidential. The City will use commercially reasonable efforts to notify Verizon before releasing any documents marked "CONFIDENTIAL" so that Verizon may contest or otherwise take legal action against such request.



**15.12 Non-Exclusive Remedies.** No provision in this Agreement made for the purpose of securing enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies herein provided are deemed to be cumulative, including any penal provision in a City ordinance or resolution.

**15.13 No Third-Party Beneficiaries.** Except for City Indemnitees who are intended beneficiaries of Company's obligations in Section 7, nothing expressed or implied in this Agreement is intended to create for the public, or any member thereof, or any person not a party to this Agreement, a third-party beneficiary right, interest or remedy, or to authorize any such person to maintain a suit for personal injuries or property damage pursuant to any term, provision, condition, undertaking, warranty, representation, or agreement contained in of this Agreement.

**15.14 Construction of Agreement.** The terms and provisions of this Agreement shall not be construed strictly in favor of or against either party, regardless of which party drafted any of its provisions. This Agreement shall be construed in accordance with the fair meaning of its terms. When followed by an example, the words "include," "includes," and "including" are to be read as if they were followed by the phrase "without limitation."

**15.15 Effect of Acceptance.** Company: (a) accepts and agrees to comply with this Agreement and all applicable federal, state, and local laws and regulations; (b) agrees that this Agreement was granted pursuant to processes and procedures consistent with applicable law; and (c) agrees that it will not raise any claim to the contrary or allege in any claim or proceeding against City that at the time of acceptance of this Agreement any provision, condition or term of this Agreement was unreasonable or arbitrary, or that at the time of the acceptance of this Agreement any such provision, condition or term was void or unlawful or that City had no power or authority to make or enforce any such provision, condition or term. Without limitation of the foregoing, there is hereby reserved to each of City and Company every right and privilege granted to each such party under applicable law with respect to the performance and enforcement of this Agreement, and each party, by the execution and delivery of this Agreement, shall not be deemed in any way to waive, relinquish, release or abrogate any such lawful rights and privileges.

**15.16 Time is of Essence.** Time is of the essence with regard to the performance of all of Company's obligations under this Agreement.

**15.17 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties to this Agreement in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Copies of documents or signature pages bearing original signatures, and executed documents or signature pages delivered by telefax or

facsimile or by e-mail transmission of an Adobe© file format document (also known as a PDF file), shall, in each such instance, be deemed to be, and shall constitute and be treated as, an original signed document or counterpart, as applicable.

**15.18 Relationship of the Parties.** It is understood that the contractual relationship between City and Company is such that Company is not an agent of City for any purpose and City is not an agent of Company for any purpose.

**15.19 Performance of Acts on Business Days.** Any reference in this Agreement to time of day refers to local time in Nevada. All references to days in this Agreement refer to calendar days, unless stated otherwise. Any reference in this Agreement to a “business day” refers to a day that is not a Friday, Saturday, Sunday or observed as a holiday by City. If the final date for payment of any amount or performance of any act required by this Agreement falls on a Friday, Saturday, Sunday or holiday, that payment is required to be made or act is required to be performed on the next business day.

**15.20 Headings; Exhibits; Cross References.** The section titles contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement, nor should they be used to aid in any manner in the construction of this Agreement. All references in this Agreement to Sections, Subsections and Exhibits are to Sections, Subsections and Exhibits in this Agreement, unless otherwise specified. All Exhibits, and any attachments to an exhibit, are incorporated into and made a part of this Agreement. Unless the context otherwise requires, the singular includes the plural and the plural includes the singular and the neuter includes the feminine and masculine.

**15.21 Independent Contractor.** Neither Company nor City is, nor will they be deemed to be, for any purpose, the agent, representative or employee of the other by reason of this Agreement. Nothing in this Agreement or any agreement or subcontract by Company will create any contractual relationship between Company’s employee, agent, or contractor and the City.

**15.22 No Property Interest Acquired.** Nothing in the awarding of this non-exclusive franchise, the authorization to use ROW or the execution of this Agreement shall in any way be construed as establishing a property interest or any other entitlement other than to permit Company to enforce the terms of this Agreement.

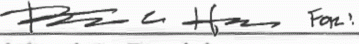
**15.23 Authority.** Each party has taken all actions as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery of it, and the performance contemplated in it. The individuals executing this Agreement state and acknowledge that they are authorized and empowered to do so on behalf of the party so designated.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed as of the Effective Date.

**CITY:**


CITY OF HENDERSON


DocuSigned by:  
By:  For:  
Richard A. Derrick  
City Manager

Date of City Council Action: April 9, 2019

ATTEST:

Approved as to Content:

DocuSigned by:  
  
Sabrina Mercadante, MMC  
City Clerk

DocuSigned by:  
  
Ed McGuire  
Director of Public Works

Approved as to Funding:

Approved as to Form:

DocuSigned by:  
  
Jim McLaughlin  
~~XXXXXXXXXX~~ Chief Financial Officer

DocuSigned by:  
 DS  
ER  
Nicholas G. Vaskov  
City Attorney

**COMPANY:**

MCIMETRO ACCESS TRANSMISSION  
SERVICES, CORP., D/B/A VERIZON  
ACCESS TRANSMISSION SERVICES

DocuSigned by:  
By: Robert Hayes  
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Printed Name: Robert J. Hayes

Title: Sr. Manager Network Engineering



## Certificate Of Completion

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Document Pages: 36	Signatures: 5
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Stormi Decker
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	PO Box 95050
	Henderson, NV 89009-5050
	stormi.decker@cityofhenderson.com
	IP Address: 205.174.30.97

## Record Tracking

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## Signer Events

Edward Mcguire  
ed.mcguire@cityofhenderson.com  
Public Works Director  
City of Henderson  
Security Level: Email, Account Authentication (Optional)

## Signature

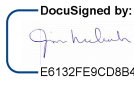
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Signed: 4/15/2019 7:36:14 AM

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Jim McIntosh  
jim.mcintosh@cityofhenderson.com  
Finance Director  
City of Henderson  
Security Level: Email, Account Authentication (Optional)

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Signature Adoption: Uploaded Signature Image  
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**Electronic Record and Signature Disclosure:**  
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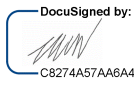
Zachary Redman  
zachary.redman@cityofhenderson.com  
Assistant City Attorney  
City of Henderson  
Security Level: Email, Account Authentication (Optional)

DS  
  
Signature Adoption: Pre-selected Style  
Using IP Address: 174.237.3.157  
Signed using mobile

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Signed: 4/15/2019 3:12:01 PM

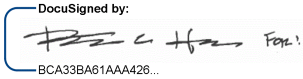
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Nicholas G. Vaskov  
nicholas.vaskov@cityofhenderson.com  
City Attorney  
City of Henderson  
Security Level: Email, Account Authentication (Optional)

DocuSigned by:  
  
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Signature Adoption: Uploaded Signature Image  
Using IP Address: 205.174.30.97


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Signed: 4/16/2019 7:28:42 AM

**Electronic Record and Signature Disclosure:**  
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Signer Events	Signature	Timestamp
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**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Sabrina Mercadante COH  
 Sabrina.Mercadante@cityofhenderson.com  
 City Clerk  
 City of Henderson  
 Security Level: Email, Account Authentication (Optional)



Signature Adoption: Uploaded Signature Image  
Using IP Address: 205.174.30.97

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 Signed: 4/16/2019 2:48:54 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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FI\_GATEKEEPER  
 FI\_GATEKEEPER@cityofhenderson.com  
 City of Henderson  
 Security Level: Email, Account Authentication (Optional)



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Completed using mobile

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 Completed: 4/15/2019 2:55:41 PM

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CAO\_Gatekeeper  
 CAO\_GATEKEEPER@cityofhenderson.com  
 City of Henderson  
 Security Level: Email, Account Authentication (Optional)



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**Electronic Record and Signature Disclosure:**  
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CAO\_Gatekeeper  
 CAO\_GATEKEEPER@cityofhenderson.com  
 City of Henderson  
 Security Level: Email, Account Authentication (Optional)



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**Electronic Record and Signature Disclosure:**  
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CMO\_Gatekeeper  
 CMO\_GATEKEEPER@cityofhenderson.com  
 City of Henderson  
 Security Level: Email, Account Authentication (Optional)



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**Electronic Record and Signature Disclosure:**  
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<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		

Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
Stormi Decker stormi.decker@cityofhenderson.com City of Henderson Security Level: Email, Account Authentication (Optional)	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue;">VIEWED</div>	Sent: 4/15/2019 7:25:54 AM Viewed: 4/15/2019 7:26:13 AM
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Carbon Copy Events	Status	Timestamp
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CCO RECORDS ccorecords@cityofhenderson.com City of Henderson Security Level: Email, Account Authentication (Optional)	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue;">COPIED</div>	Sent: 4/16/2019 2:48:57 PM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		

Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Completed	Security Checked	4/16/2019 2:48:57 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Henderson (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.



**How to contact City of Henderson:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: ryan.kosso@cityofhenderson.com

**To advise City of Henderson of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at ryan.kosso@cityofhenderson.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Henderson**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to ryan.kosso@cityofhenderson.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Henderson**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to ryan.kosso@cityofhenderson.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> <li>•Allow per session cookies</li> <li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li> </ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Henderson as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Henderson during the course of my relationship with you.