

## FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** effective as of \_\_\_\_\_, 2020, by and between the **CITY OF FOLEY, ALABAMA**, a municipal corporation, (hereinafter referred to as the "City") and **MCIMETRO ACCESS TRANSMISSION SERVICES CORP. d/b/a VERIZON ACCESS TRANSMISSION SERVICES**, a Delaware corporation, whose address is One Verizon Way, Basking Ridge, NJ 07920 (hereinafter referred to as the "Franchisee").

**WHEREAS** the City has and reserves the right to exercise control over the highways, streets, alleys and public places and to require City's consent before using such highways, streets, alleys, and public places; and

**WHEREAS** State law, confers to the City certain rights and requirements for franchises and permission to use the public ways of City; and

**WHEREAS** the Franchisee has requested from City a franchise to use the streets and public ways of the City to conduct business as a communications services provider; and

**WHEREAS** the City and the Franchisee desire to outline the terms of the franchise.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and intending to be legally bound thereby, the City and Franchisee enter into this Franchise Agreement and agree as follows:

**SECTION 1. GRANT OF NON-EXCLUSIVE FRANCHISE.** A non-exclusive franchise is hereby granted to Franchisee to construct, maintain and operate in, over, under, across and through the public rights-of-way of the City, a fiber-based communications system within the City and any future additions thereto to commence on the \_\_\_\_\_ day of 2020, the duration of such franchise to be a period of ten (10) years. The grant of this non-exclusive franchise is for the use by the Franchisee for the purpose of providing telecommunication and communications services, including leasing of facilities, to customer locations within the City as may be authorized by the Alabama Public Service Commission or federal law, other than cable and wireless services as defined below. Franchisee shall not provide services directly regulated by the Alabama Public Service Commission (PSC) unless authorized by the PSC. Franchisee is permitted to operate a telecommunications system as defined by the Telecommunications Act of 1996. Franchisee shall not operate a cable system as defined in the Cable Communications Policy Act of 1984 (47 USCA §521 et seq., as amended) without first having obtained a separate cable franchise with the City.

When used herein, the term "facilities" shall mean all or any part of a network of fiber optic cables and all related property, including but not limited to, conduit, carrier pipe, fiber optic cables, poles, handholes, manholes, repeaters, power sources, and other attachments and appurtenances necessary for the fiber-based communications system and located within the City's rights of way.

**SECTION 2. GENERAL TERMS.** Franchisee, for the duration of this franchise and for the purposes hereinabove expressed, shall have the privilege to construct, operate, lease, and maintain facilities and to make any and all necessary excavations therefore, in, over, under, across and through all or any of the portions of the streets, alleys, avenues or public ways of the City and to utilize, with permission of the affected utility companies, their facilities within public rights-of-way for the purpose of operating a fiber-based communications system within the City, to be exercised in such manner only, however, as to offer the least interference with the public use of said streets, alleys, avenues and public ways; and Franchisee shall

be subject to and shall comply with all laws and ordinances of the City and shall be further subject to and shall comply with all rules, regulations and other restrictions of the City set forth herein. The granting of this franchise shall not prohibit the City from granting other non-exclusive franchises or otherwise allowing or making other uses of the City's rights-of-way. The granting of this franchise shall in no way interfere with or hinder the use by the City of the rights-of-way for any purpose.

### **SECTION 3. CONSTRUCTION OF FACILITIES.**

(a) All work shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Franchisee in strict conformity with the laws and regulations of the City in effect at the time of such excavation or other work. Franchisee shall obtain any required permits in accordance with City code (including, but not limited to any permits required by Sections 4-76 and 10-72 of the Code of Ordinances for the City of Foley). In the event such requirements and specifications conflict in any respect with the legal requirements of any federal, state or municipal law or regulation, such legal requirements shall govern on all points of conflict, but in all other respects, the City's requirements and specifications shall apply.

(b) In emergencies involving service outages, Franchisee shall proceed with all necessary operations without first obtaining the permit, but shall obtain the required permit at its earliest opportunity.

(c) Immediately upon completion of repairs or installation of any facility, Franchisee shall refill and compact any trench or excavation to the standards required by the City and, if applicable, the State of Alabama Department of Transportation's "Standard Specifications of Roads and Structures." Franchisee shall promptly restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material or other materials or structure damaged in the course of its work at Franchisee's sole expense to the condition in which it previously existed, to the City's reasonable satisfaction.

(d) In any case where a public right-of-way is being excavated, disturbed or encumbered by Franchisee, Franchisee shall take all precautions required by law, in particular, the Manual on Uniform Traffic Control Devices, or otherwise necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals, and other devices necessary or proper to give notice and warning to the public of the existence of actual conditions present. Nothing in this paragraph shall alter or waive any rights enjoyed by Franchisee or any other party under Alabama's underground damage prevention law (Ala. Code Title 37, Section 37-15-1, -11).

In addition to the above requirements, Franchisee agrees to the following conditions, limitations, and restrictions related to the installation of its facilities in, on or through any portion of the Rights-of-Way:

(a) Franchisee shall hold a pre-construction meeting with City at least ten (10) days prior to beginning any construction to advise City of its planned activities.

(b) Franchisee agrees to supply the City with digital drawings of construction plans ten (10) days prior to construction and digital as-built drawings within six (6) months of the completion of any construction. Final drawings will be supplied in Autocad 2000 using NAD 83 coordinates, GIS format, or such other digital formats as are reasonably acceptable to the Parties.

(c) Franchisee agrees to "white-line" its locates.

(d) Franchisee lines, where possible, shall have at least a 12” separation vertically and 24” separation horizontally from all City utility lines, including gas lines, water lines and sewer lines.

(e) Franchisee agrees, where possible, to stay three (3) feet away, measured horizontally, from power poles unless it is utilizing such poles pursuant to a pole attachment arrangement.

(f) Franchisee or Franchisee’s contractor will request locates and City shall provide locates of its facilities as required by Alabama’s 811 law and regulations. Franchisee hand hole and clean-up crews will set hand holes and complete clean-up for each section within 2-3 work days after placement of conduit, weather permitting.

(g) Franchisee shall clear the streets of any drill mud, debris and other obstructions that accumulate as a result of Franchisee’s construction activities and will not permit its activities to create a hazard to any persons or property. In the event that any such drill mud, debris or other obstruction caused by Franchisee’s activities encroaches upon the street, Franchisee shall take immediate corrective action to remove the same.

(h) If streets and other Public Ways are damaged by Franchisee, its employees, agents or contractors in installation or subsequent maintenance and repair of its Facilities, Franchisee, upon written notice from the City and at Franchisee’s sole expense, shall promptly repair and restore such streets or public ways to the same or better condition than such streets or public ways were in prior to such damage, and to the reasonable satisfaction of the City.

(i) Franchisee shall contact affected property owners to discuss any repairs, dress-up or clean-up of such owners’ property necessitated by the installation of Franchisee’s fiber optic cable, and shall perform any necessary repair, dress-up or clean-up to such property at Franchisee’s sole expense.

(j) At all times during and after the installation of fiber optic lines, Franchisee shall respond to all emergency locates to locate its fiber optic lines as required by Alabama’s 811 law and regulations.

(k) At all times, Franchisee shall be responsible for safety at, about and around its work and shall, at its sole expense, provide safe and adequate traffic control when necessary and at its own expense provide full and complete warnings to safeguard the public and to prevent injury or damage, including, but not limited to, any and all signage, cones, markings, lighting and otherwise deemed, in the sole discretion of Franchisee, to be adequate and Franchisee shall assume all liability for any injury or damage in any way related directly, or indirectly to the provision or non-provision or inadequate provision of such controls, warnings, etc., and shall, at its sole expense, defend the City any and all actions in any way related to any injury or damage claimed to be the result of inadequacies in traffic control, warnings, or otherwise.

(l) Franchisee shall have the authority to trim trees and natural growth on the Rights-of-Way which may affect its Telecommunications System in the Service Area to prevent interference with Franchisee’s Facilities in accordance with the City ordinance regarding tree cutting and removal.

(n) Franchisee shall, on the request of any Person holding a permit to move a building temporarily raise or lower its aerial Facilities, if any, to facilitate the moving of such buildings. The expense of such temporary removal or raising or lowering of such aerial Facilities shall be paid by the Person requesting the same, and Franchisee shall have the authority to require such payment in advance. Franchisee shall be given at least sixty (60) days' advance notice to arrange such temporary aerial Facility alterations.

(o) Provided that Franchisee is, at all times, in compliance with the Ordinances and Codes of the City of Foley, then the decision of when and where to construct its Facilities is solely within the discretion of Franchisee as is the determination of what Services to provide and where to provide them within the City during the Term.

(p) Franchisee shall comply with any current or future City Ordinances requiring the placement of Equipment underground. Nothing herein is intended to obligate Franchisee to bear the cost of placing existing Equipment underground pursuant to a current or future City Ordinance.

(q) The City may, at any time, in case of fire, disaster, or other Emergency, cut or move Equipment in which event the City shall not incur any liability to Franchisee. If circumstances do not permit Franchisee to be consulted prior to any such cutting or movement of Equipment, the City shall provide notice to Franchisee promptly after any action taken by the City. All costs to repair or replace such Equipment damaged or destroyed by the reasonable action of the City shall be borne by Franchisee.

**SECTION 4. RELOCATION OF FACILITIES.** The use herein allowed is subject to the needs and requirements of the City in the operation of its right-of-way and in the improvement and use of its property. Franchisee shall relocate at no expense to the City any facilities installed or maintained in, on or under any right-of-way, as may be necessary to facilitate any public purpose whenever directed to do so by City. Nothing in this agreement is intended to eliminate or waive any right Franchisee may have to reimbursement under applicable law or the terms of any public funding grant for a project.

**SECTION 5. FRANCHISEE FEE; CONDITIONS.**

(a) As consideration for this franchise, the Franchisee shall pay to the City an amount equal to five percent (5%) of the Gross Revenue, as defined herein, collected by the Franchisee. Commencing the month following the month this franchise becomes effective, the franchise fee shall be paid quarterly on the 20th day of April, July, October and January; such fee shall be for revenues received by the Franchisee for the preceding quarter. The Franchisee shall furnish to the City with each payment of compensation required by this section a written statement, showing the amount of Gross Revenue of the Franchisee within the City for the period covered by the payment. Such statement will be accorded confidential treatment to the extent permitted by law. Upon receipt of such payment, the City shall issue a receipt to the Franchisee.

(b) As used in this Agreement, Gross Revenue shall mean all revenues (exclusive of sales tax) collected by Franchisee from the provision of intrastate telecommunications services pursuant to this franchise within the corporate limits of the City.

Notwithstanding the foregoing, the term Gross Revenue shall not include: (i) Any tax of general applicability imposed upon the Franchisee; (ii) any regulatory fees or surcharges collected from customers as

well as amounts reflecting cost-recovery of regulatory fees and surcharges (iii) those revenues that the Franchisee receives from another telecommunications service provider and upon which the other telecommunications service provider has paid or will pay a franchise fee; (iv) pass through revenues which are in turn paid to a local exchange carrier for interconnection for long distance service; and (v) revenues that the Franchisee receives from its corporate parent, subsidiary, or affiliate.

(c) Payment of money under this section shall in no way limit or inhibit any of the privileges or rights of the City, whether under this franchise or otherwise. Nothing in this Agreement is intended to alter, amend modify or expand the taxes and fees that may lawfully be assessed on Franchisee's business activities under this franchise under applicable law. Nothing in this Agreement shall be construed to prevent Franchisee from passing through some or all of the franchise fee to its customers.

(d) In consideration of the agreement of the Franchisee to make such franchise payments, the City agrees that no additional business license fee shall be imposed upon or required of the Franchisee by the City during the term of this franchise. This provision shall not exempt the property of the Franchisee from lawful ad valorem taxes and local improvement district assessments. This provision shall also not exempt the Franchisee from conditions, exactions, fees and charges, which are generally applicable during Franchisee's real property development or use as required by the City's ordinances.

(e) In the event that services comparable to the Franchisee's become available to residents and/or businesses of the City by a competitor of the Franchisee, and the competitor's comparable services are not subject to City taxes, fees or other charges equivalent to those required of Franchisee, the taxes, fees or other charges required under this Franchise shall be suspended and the Franchisee will have no liability to the City until such time as its competitors are subject to taxes, fees or other charges that are equivalent to those required of Franchisee.

**SECTION 6. INDEMNIFICATION.** In consideration for the permissions herein granted, Franchisee hereby agrees to indemnify, defend and hold harmless the City (including its Mayor and Council, appointed boards and commissions, officials, officers and employees) from all claims of any kind and nature resulting from personal injury to any person or damage to property arising out of the acts or omissions of Franchisee while exercising any of the rights or privileges granted by this franchise. This obligation is contingent upon the City giving Franchisee prompt notice of any such claim, and full cooperation in Franchisee's defense of the same, and does not apply to any settlement, release or compromise entered into by City without Franchisee's prior written consent. The terms and provisions of this section are intended to be for the benefit of the City and Franchisee and are not intended to be for the benefit of any third party. Notwithstanding the foregoing, Franchisee shall not be obligated to indemnify the City for Claims resulting from the negligent or willful acts of the City or its representatives.

**SECTION 7. BOND OR CERTIFICATE OF DEPOSIT.** Franchisee shall obtain and maintain, or cause to be obtained and maintained, during the entire term of the franchise, a corporate surety bond, or certificate(s) of deposit assigned to the City in the amount of Twenty-Five Thousand Dollars (\$25,000), both to guarantee the timely construction and full activation of Franchisee's system and to secure the faithful performance of Franchisee of all its obligations provided under the franchise.

**SECTION 8. INSURANCE REQUIREMENTS.** Franchisee shall at all times comply with the insurance requirements set forth in Exhibit A, attached hereto and incorporated herein, and upon request (and prior to undertaking any work in the ROW), provide the City with certificates evidencing such coverages.

**SECTION 9. ASSIGNMENT.** This Agreement and the related rights and privileges may not be assigned or otherwise transferred without the express written consent of the City, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, prior consent shall not be required for transfer to any company which is owned or controlled or under common control and with the same direct parent as Franchisee, and which is intended after such transfer to remain under the ownership or control of that parent or an entity under common control or with the same direct parent. The new franchisee shall be equally subject to all the obligations and privileges of this Agreement including any amendments, which will remain in effect, as if the new franchisee was the original Franchisee. Further, the City must be provided with written notice within 60-days of the assignment.

**SECTION 10. FORFEITURE AND TERMINATION.** In addition to all other rights and powers of the City, the City reserves the right to forfeit and terminate this franchise and all rights and privileges of the Franchisee in the event of a material breach of its terms. The City shall notify the Franchisee in writing of any breach specifying the nature of the breach. The Franchisee shall have thirty (30) days after the date of such notice to come back into compliance unless such period is extended by the City. For any period of performance or cure under this Agreement, the time period within which Franchisee is to perform or cure, as the case may be, shall be extended, without liability to Franchisee, for at least as long as Franchisee's ability to perform or cure is delayed for reasons beyond Franchisee's control provided that Franchisee shall employ all commercially reasonable efforts to eliminate or mitigate the impact of said reasons and to thereafter reasonably accelerate, where feasible, its performance or cure.

**SECTION 11. CONFIDENTIALITY.** To the fullest extent permissible under applicable law, the City shall protect from disclosure any confidential, proprietary information, including maps, submitted to or made available by the Franchisee to the City under this Agreement, provided that the Franchisee clearly labels the information which the Franchisee deems to be confidential, proprietary information as such.

**SECTION 12. RESERVATION OF RIGHTS.** It is hereby reserved to Franchisee every right and privilege available to Franchisee under applicable law, and Franchisee by its execution of this Agreement, shall not be deemed in any way to waive, relinquish, release or abrogate any of its lawful rights and privileges.

**SECTION 13. ALABAMA LAW GOVERNS.** In any controversy or dispute under this franchise, the laws of the State of Alabama and any applicable federal law shall apply to the extent such law has not been superseded or preempted.

**SECTION 14. RULE OF APPLICATION.** The Parties understand and agree that the City's administration of its rights of way and the use of them by providers of telecommunications services must be administered on a competitively neutral and nondiscriminatory basis. Accordingly, if any term, condition, obligation, or other requirement of this Agreement applicable to MCImetro is not similarly imposed upon, or enforced or enforceable against, other similarly situation providers in similar circumstances, said term, condition, obligation or other requirement shall be deemed automatically waived as regards its applicable to MCImetro in that situation, and the City shall not seek to enforce such terms, conditions, obligations, or other requirements except on a competitively neutral and nondiscriminatory basis.

**SECTION 15. NOTICE.** Any notice required or permitted under this franchise shall be deemed given if sent by (a) registered or certified mail, return receipt requested, postage prepaid, or (b) nationally recognized overnight courier with a tracking capability, and addressed as follows:

To the City:

City of Foley  
Attn: Revenue Officer  
P.O. Box 1750  
Foley, AL 36536

With a copy to:  
Attorney for the City of Foley  
Attn: Christopher Conte  
150 Government St., Ste. 2000  
Mobile, AL 36602

To the Franchisee:

Franchises and Right-of Way  
Attn: Franchise Manager  
600 Hidden Ridge  
Mailcode: HQE02E102  
Irving, TX 75038

With a copy to:  
Verizon Legal Department  
Attn: Network Legal Team  
1300 I Street, NW  
5th Floor  
Washington, DC 20005

For invoices:  
Verizon  
Attn: Contract Admin.  
6929 N. Lakewood Ave. MD 5.3-4009  
Tulsa, OK 74117

or such other address as may be designated in the future in writing by either party. Notices shall be effective on the date of delivery.

**SECTION 16. EFFECTIVE DATE AND PUBLICATION.** This franchise shall take effect after the Ordinance authorizing this franchise is approved by City Council.

**SECTION 17. MODIFICATION.** This franchise, including all documents specifically incorporated herein, cannot be changed orally but only by an agreement in writing properly executed by the parties.

**SECTION 18. SEVERABILITY.** Should any part, term or provision of this franchise be held invalid or unenforceable by any court of competent jurisdiction, such part, term, or provision shall be deemed a separate, distinct and independent provision and such holding shall not invalidate or render unenforceable any other provision of this franchise.

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IN WITNESS WHEREOF, the parties have executed this franchise as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF \_\_\_\_\_, a municipal corporation

By: \_\_\_\_\_

Its: Mayor

ATTEST

\_\_\_\_\_

City Clerk

\_\_\_\_\_

(Franchisee)

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

Witness



## Exhibit A – Insurance Requirements

A. The Franchisee shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Franchisee, or its employees in the amounts and types set forth below:

1. Commercial Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a combined single limit for bodily injury and property damage of \$1,000,000.00 each accident. Coverage shall be written on Insurance Services Office (ISO) form or a substitute form providing equivalent liability coverage.

2. Commercial General Liability insurance with limits of \$1,000,000.00 each occurrence for bodily injury and property damage and, \$2,000,000.00 general aggregate including premises-operations, independent contractors personal injury and advertising injury and contractual liability \$2,000,000.00 products-completed operations aggregate limit. Coverage shall be written on Insurance Services Office (ISO) form or a substitute providing equivalent coverage. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The City shall be included as an additional insured as their interest may appear under this Franchise under the Franchisee's Commercial General Liability insurance policy with respect to the work performed under this Franchise using ISO Additional Insured Endorsements or substitute endorsements providing equivalent coverage.

3. Professional Liability insurance with limits \$1,000,000.00 per claim and aggregate covering the negligent actions of the Franchisee in the performance of professional services under this Franchise.

4. Workers' Compensation coverage in compliance with the statutory requirements of the state(s) of operation and Employer's Liability with a limit of \$1,000,000.00 each accident/disease/policy limit.

B. The insurance policies shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Franchisee's insurance and shall not contribute with it.

C. Upon receipt of notice from its insurer(s) the Franchisee shall provide the City with thirty (30) days' prior written notice of Cancellation.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A-VII.

E. Verification of Coverage. Franchisee shall furnish the City with certificate of insurance and blanket additional insured endorsements evidencing the insurance requirements of Franchisee before commencement of the work.

F. Franchisee shall have the right to self-insure any or all of the above-required insurance.

G. Franchisee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.