

**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONDUIT OCCUPANCY LICENSE AGREEMENT BETWEEN THE TOWN OF ADDISON AND MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS TRANSMISSION SERVICES, FOR OCCUPANCY IN THE TOWN OF ADDISON UNDERGROUND CONDUIT SYSTEM ON BELT LINE ROAD BETWEEN MIDWAY ROAD AND MARSH LANE, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**Section 1.** The Conduit Occupancy License Agreement between the Town of Addison and MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, for occupancy of the Town of Addison underground conduit system on Belt Line Road between Midway Road and Marsh Lane, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 13<sup>th</sup> day of November 2018.

\_\_\_\_\_  
Joe Chow, Mayor

ATTEST:

By: \_\_\_\_\_  
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

# EXHIBIT A

## CONDUIT OCCUPANCY LICENSE AGREEMENT

THIS CONDUIT OCCUPANCY LICENSE AGREEMENT ("Agreement"), is made and entered into as of the \_\_\_\_ day of November, 2018 ("Effective Date"), by and between the Town of Addison, Texas, a home-rule municipal corporation ("Town") and MClmetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, a Delaware corporation ("Verizon"). Town and Verizon may be referred to individually as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, Town owns an underground conduit system and associated communications network facilities on Belt Line Road, located underground in the right-of-way between Midway Road and Marsh Lane ("Town Owned Conduit"); and

WHEREAS, the Town Owned Conduit was constructed for the benefit of the Town; and

WHEREAS, Verizon made a request to Town to occupy a designated portion of the Town Owned Conduit to provide communications services for Verizon's network and to serve customers in the Town; and

WHEREAS, Town is willing to allow Verizon to occupy a designated portion of the Town Owned Conduit with Verizon-owned Duct and Fiber Optic Cable, and to construct a reasonable number of hand-holes for purposes of access in the Verizon Facilities along the route of the Town Owned Conduit, as identified on Exhibit "A", attached hereto and incorporated herein for all purposes, all being subject to the terms and conditions provided herein.

NOW THEREFORE, for good and valuable consideration, the Parties agree as follows:

### TERMS AND CONDITIONS

#### 1. DEFINITIONS.

"Conduit" means a pipe-like structure which may consist of polyvinyl chloride (PVC), high density polyethylene (HDPE), and other materials placed underground to contain Ducts and/or Fiber Cables as part of a communications network.

"Town Owned Conduit" means a single six-inch diameter Conduit owned by the Town and running underneath the Belt Line Road right-of-way from Midway Road to Marsh Lane, adjacent to Belt Line Road.

"Duct" means a single enclosed raceway for Fiber Cable and is sometimes installed in a Conduit. The term Duct may include micro-duct, inner duct, or other industry standard duct-like materials.

"Verizon Duct" means the Duct inside the Town Owned Conduit running parallel with Belt Line Road from Marsh Lane to Midway Road, licensed to Verizon pursuant to this Agreement, as depicted and described in Exhibit A.

"Facility" and "Facilities" means the various elements or components of an underground communications network, including without limitation Conduit, Ducts, Handholes, Manholes, and other ancillary materials, items, equipment, pull rope, mule tape, buried locate tape, markers and structures (e.g., pedestals and vaults).

"Fiber Optic Cable" means fiber optic communications cable.

"Handhole" means a structure placed in the ground and accessible from the surface that is used to provide access to Conduits, Ducts and/or Fiber Cables for the purpose of installing, operating, maintaining and repairing communications Facilities.

"Manhole" means a structure large enough to admit a person's entire body through an opening in the roof placed in the ground and accessible from the surface that is used to provide access to Conduits, Ducts and/or Fiber Cables for the purpose of installing, operating, maintaining and repairing communications Facilities.

"Applicable Law" means laws, rules, regulations, codes, ordinances, permit conditions, the National Electric Code, the National Electrical Safety Code, and the Blue Book, that govern, address, or apply to construction of underground Conduit systems in public rights of way in the Town.

#### 2. TERM; RENTAL; EXTENSIONS

This initial term of this Agreement shall be for seven (7) years from the Effective Date ("Initial Term"). Rental payments shall commence and be due at a total annual rental rate amount of Five Thousand Two Hundred Eighty and No/100 Dollars (\$5,280.00) to be paid to the Town on the anniversary of the Effective Date ("Rental Payment"). Rental Payments shall be equal to One Dollar (\$1.00) per linear foot of Verizon Duct on one side of Belt Line Road (\$1.00 x 5,280), pursuant to the depiction in Exhibit "A". The first annual Rental Payment shall be due upon the earlier to occur of (i) a date based upon the

# EXHIBIT A

date Verizon commences installation of the equipment in the Verizon Duct, or (ii) ninety (90) days following the Effective Date of this Agreement.

Upon agreement of the Parties, Verizon may make Rental Payments by electronic funds transfer and in such event, Town agrees to provide to Verizon bank routing information for such purpose upon request of Verizon.

As additional consideration for this Agreement, Verizon shall pay Town a one-time, non-refundable rental payment of One Thousand Five Hundred and No/100 Dollars (\$1,500.00), which shall be considered as "additional rent" for the Town Owned Conduit for the period beginning on the Effective Date of this Agreement until the date that rental payments commence, as provided above, which shall be paid within forty-five (45) days from the date of full execution of this Agreement by the Parties.

This Agreement shall automatically extend for two (2) additional five (5) year terms ("Extension Term(s)"), unless:

- a. Either party terminates it at the end of the then current term (including the Initial Term) by giving the other party written notice of the intent to terminate at least ninety (90) days prior to the end of the then current term;
- b. a change in municipal, county, state or federal law, rule or regulation results in increased costs to Town that are directly attributable to Verizon's tenancy, then Town shall have the option to terminate this Agreement, unless Town, in its absolute discretion, provides Verizon the option to agree in writing to reimburse Town for those actual increased costs incurred by Town; or
- c. Town reasonably determines that the public health, safety or general welfare of the citizens served by Town will be adversely impacted by Verizon's continued use of the Town Owned Conduit, Town may terminate this Agreement by giving Verizon ninety (90) days prior written notice of such termination.

The Rental Payment shall be increased on the first day of each anniversary (yearly) by an amount equal to two percent (2%) of the Annual Rent in effect during the previous year. The Initial Term and any Extension Term(s) shall be collectively referred to herein as the "Term".

### 3. VERIZON WORK

a) Work for Verizon: The ducts to be placed by Verizon (a 1 ½ inch diameter Duct) shall be for Verizon's sole use and occupancy ("Verizon Duct"). Town grants to Verizon a non-exclusive, revocable, license for the Term, as provided herein, to access and enter the Town Owned Conduit and Facilities in order to place, occupy, operate, lease, repair, restore, protect, maintain, and remove the Verizon Duct and Fiber Optic Cable. The license includes the right for Verizon to create new access points in the Town Owned Conduit and Facilities (with the Town's prior written consent), and to interconnect Verizon Conduit and Facilities with Town Owned Conduit and Facilities, as depicted in Exhibit "A". The license granted by this Agreement is subject and subordinate to: (a) the right of the Town to use the Town Owned Conduit and Facilities, other than the Verizon Duct, for any purpose deemed necessary by the Town in the exercise of its governmental functions, including the right to make any repairs, modifications, or other changes to the Town Owned Conduit and Facilities or to any area contiguous or adjacent to the Town Owned Conduit and Facilities; (b) any existing utility, drainage, or communication facility, or any other facility, located within, on, under, over, or upon the Town Owned Conduit, other than in the Verizon Duct; (c) all vested rights presently owned by any utility, communication, or other company, other than in the Verizon Duct; (d) any existing license, lease, easement, or other interest heretofore granted by the Town other than in the Verizon Duct; (e) the terms and conditions of this Agreement; and (f) Applicable Law.

### 4. MAINTENANCE AND REPAIR; REMOVAL

- a) Town shall maintain and repair the Town Owned Conduit and Facilities and keep them in good working order according to Applicable Law.
- b) Verizon shall maintain and repair its Duct, Fiber Optic Cable, and Facilities at its sole cost and expense and keep them in good working order according to Applicable Law. When conducting these activities, Verizon shall be responsible for any and all damages it causes to Town Owned Conduit and Facilities. The use of the Town Owned Conduit and Facilities under this Agreement by Verizon shall be conducted and performed in such a manner so as not to interfere with the public use of any public sidewalk, right-of-way, or street or to create a dangerous condition on any public sidewalk, right-of-way, or street. The Town's approval of any use of the Town Owned Conduit and Facilities shall not and does not relieve Verizon of any responsibility and liability for such use.

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c) Verizon acknowledges and agrees that any damage to or destruction of any Town property, including the Town Owned Conduit and Facilities, or to the property of any person or entity, located within or adjacent to the Town Owned Conduit and Facilities and arising out of Verizon's acts or omissions under or in connection with this Agreement, is the sole responsibility of Verizon, and Verizon shall promptly repair (or restore, as the case may be) any such property that is damaged or destroyed at no cost to the Town and to the satisfaction of the Town.

d) Verizon shall have the obligation to undertake emergency repair to the Verizon Duct upon request by the Town or when the Town needs to provide emergency repairs to the Town Owned Conduit and Facilities. When conducting these activities, Verizon shall be responsible for any damages it causes to the Town Owned Conduit and Facilities.

e) Each Party shall use reasonable commercial efforts to provide at least 48 hours prior written notice of all maintenance and repair activity sending notice to the contacts listed in Schedule 1. Notification of emergency repair activity may be undertaken without prior notice, if necessary, provided that continued efforts will be made to notify the other Party as soon as practicable under the circumstances. Each Party shall provide and staff a 24 x 7 x 365 telephone number, listed on Schedule 1 for the other Party to use to provide such notification.

f) Verizon agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of the Town. In the event any after-installed of Verizon's equipment causes such interference, and after Town has notified Verizon in writing of such interference, Verizon will take all steps necessary to correct and eliminate the interference, including but not limited to, at Town's option, powering down such equipment and later powering up such equipment for intermittent testing. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

g) Verizon shall, upon expiration of the term of this Agreement, or within ninety (90) days after any earlier termination of the Agreement, remove all of its Fiber Optic Cable, equipment, and all personal property, except the Duct, and restore the Town Owned Conduit and Facilities to its original condition, reasonable wear and tear excepted. Town agrees and acknowledges that all of the equipment, fixtures and personal property of Verizon shall remain the personal property of Verizon and Verizon shall have the right to remove the same at any time during the term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. If Verizon remains in the Town Owned Conduit after termination of this Agreement, Verizon shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the Fiber Optic Cable fixtures and all personal property are completed.

## 5. NETWORK RELOCATION

a) Town Owned Conduit segments or Facilities may be required to be relocated for any reason determined necessary by the Town, in its sole and absolute discretion. In that event, Town shall bear 100% of its own individual costs of relocating Town Owned Conduit and Facilities. Verizon shall bear 100% of its individual costs of relocating the Verizon Duct Fiber Optic Cable, and Facilities, upon the receipt of a written request from Town.

## 6. TERMINATION

a) The Agreement may be terminated: (i) by mutual agreement of the Parties; (ii) for uncured default; or (iii) by operation of the terms and conditions of this Agreement.

b) Default. In the event there is a breach by Verizon with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, Town shall give Verizon written notice of such breach. After receipt of such written notice, Verizon shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided Verizon shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Verizon commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Verizon shall advise Town in writing of the need for an extended period prior to the termination of the thirty (30) days. Town may not maintain any action or effect any remedies for default against Verizon unless and until Verizon has failed to cure the breach within the time periods provided in this paragraph. Notwithstanding the foregoing to the contrary, except in the case of an emergency as determined by Town that requires immediate correction, it shall be a default under this Agreement if Verizon fails, within fifteen (15) days after receipt of written notice of such breach, to perform an obligation required to be performed by Verizon if the failure to perform such an obligation interferes with Town's ability to conduct its business on the Property or perform its duties as a governmental entity; provided, however, that if the nature of Verizon's obligation is such that more than fifteen (15) days after such notice is reasonably required

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for its performance, then it shall not be a default under this Agreement if performance is commenced within such fifteen (15) day period and thereafter diligently pursued to completion.

In the event there is a breach by Town with respect to any of the provisions of this Agreement or its obligations under it, Verizon shall give Town written notice of such breach. After receipt of such written notice, Town shall have thirty (30) days in which to cure any such breach, provided Town shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Town commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Town shall advise Verizon in writing of the need for an extended period prior to the termination of the thirty (30) days. Verizon may not maintain any action or effect any remedies for default against Town unless and until Town has failed to cure the breach within the time periods provided in this paragraph.

c) Remedies. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the Town shall be due and payable by Verizon upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located; provided, however, either Party shall use reasonable efforts to mitigate its damages in connection with a default by the other.

## 7. CONFIDENTIAL INFORMATION

a) "Confidential Information" means Verizon materials, Verizon trade secrets, and other Verizon proprietary or business information provided to Town that is clearly labeled, marked or otherwise identified as "confidential" or "proprietary information," or, would otherwise normally be considered Confidential Information in the ordinary course and scope of business. Confidential Information shall not include information that was in the public domain at the time of disclosure; becomes generally known or available through no act or omission on the part of Verizon; is known, or becomes known, to Town from a source other than Verizon or its representatives, provided that disclosure by such source is not in breach of a confidentiality agreement with Verizon; or is independently developed by Town without violating any of its obligations under this Agreement;

b) Town agrees, to the best of its ability, to disclose Confidential Information only to employees, elected officials, agents and contractors of the Town with a need to know the Confidential Information or as otherwise required by code, statute, rule or regulation. However, Verizon acknowledges that Town is a governmental entity subject to the requirements of the Texas Public Information Act ("Act"), and therefore, Verizon agrees that the Town must comply with the provisions of the Act.

c) When a third party ("Requestor") not otherwise authorized to access Confidential Information under this Agreement makes a demand or request to Town for access to Verizon Confidential Information ("Request"), including the terms and conditions of this Agreement, Town will promptly notify Verizon of the Request, in accordance with the Act. Verizon shall then be solely responsible for taking whatever steps Verizon deems necessary to protect Verizon Confidential Information in a timely manner. Verizon shall be responsible for all costs associated with its pursuit of such steps, including the pursuit of any legal remedies.

d) Upon termination or expiration of this Agreement, Town shall make reasonable efforts to either return or destroy all Confidential Information; provided, however, any Confidential Information in electronic format as part of Town's off-site or on-site data archival process system, will be held by Town and kept subject to the terms of this provision or destroyed at Town's option. The obligations of this provision will survive termination or expiration of this Agreement.

## 8. INDEMNITY, LIABILITY AND LIMITED WARRANTY

a) VERIZON SHALL DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO THE TOWN), INDEMNIFY AND HOLD HARMLESS TOWN AND ITS ELECTED AND APPOINTED BOARDS, OFFICERS, AGENTS, AND EMPLOYEES ( "TOWN PERSONS") FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, AND LOSSES OF ANY NATURE WHATSOEVER, INCLUDING REASONABLE OUT-OF-POCKET ATTORNEYS' FEES AND COSTS, FOR DAMAGE OR INJURY TO PROPERTY OR PERSONS (INCLUDING DEATH) ARISING OUT OF OR CONNECTED WITH THE CONSTRUCTION, USE AND/OR MAINTENANCE OF THE VERIZON DUCT (COLLECTIVELY, "LOSSES"). IN THE EVENT OF ANY SUCH LOSSES, VERIZON, IN ADDITION TO DEFENDING, INDEMNIFYING AND HOLDING THE TOWN HARMLESS, SHALL ALSO REIMBURSE TOWN FOR ALL OF ITS REASONABLE, DOCUMENTED OUT-OF-POCKET COSTS TO MAKE NECESSARY REPAIRS TO THE TOWN OWNED CONDUIT.

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VERIZON SHALL PROMPTLY ADVISE THE TOWN IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY TOWN PERSON RELATED TO OR ARISING OUT OF VERIZON'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT VERIZON'S SOLE COST AND EXPENSE. THE TOWN PERSONS SHALL HAVE THE RIGHT, AT THE TOWN PERSONS' OPTION AND OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING VERIZON OF ANY OF ITS OBLIGATIONS HEREUNDER. THIS DEFENSE, INDEMNITY, AND HOLD HARMLESS PROVISION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

**Release.** Verizon does hereby RELEASE, WAIVE, ACQUIT, AND FOREVER DISCHARGE the Town and all other Town Persons from, and do COVENANT NOT TO SUE the Town or any other Town Persons for, any and all claims, liability, judgments, lawsuits, demands, harm, losses, damages, proceedings, actions, causes of action, fees, fines, penalties, expenses, or costs (including, without limitation, attorneys' fees and court costs) whatsoever for or related to personal injury of any kind or nature whatsoever (including death), or any damage to or destruction of any property, or any other harm or loss whatsoever, (collectively, "Damages"), which Verizon may sustain or suffer in connection with or related to this Agreement, including, without limitation, ANY and all DAMAGES which arise from, or are alleged or found to have been caused by, in whole or in part, the negligence OR GROSS NEGLIGENCE OF ANY TOWN PERSON, OR CONDUCT BY ANY TOWN PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

b) Each Party warrants it will comply with all applicable statutes, laws, rules and regulation in the exercise of its rights the performance of its obligations under this Agreement.

c) Limited Warranty

i) Verizon shall undertake all commercially reasonable efforts to pass through to the Town any manufacturer's warranty on any materials placed by Verizon for the Town.

ii) All work performed by Verizon shall be subject to a one (1) year warranty on labor. If the Town identifies defects in labor or workmanship during the one-year period following completion of installation of Town Facilities by Verizon, the Town shall promptly notify Verizon, and Verizon shall remedy the situation at its sole cost and expense.

iii) EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PARTIES MAKE NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, TO THE EXTENT PERMITTED BY LAW; AND EACH PARTY DISCLAIMS ALL OTHER WARRANTIES TO THE EXTENT PERMITTED BY LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND IMPLIED WARRANTIES ARISING FROM CUSTOM OR USAGE OF THE TRADE.

## 9. GENERAL PROVISIONS

a) No use of the Town Owned Conduit by Verizon shall vest in Verizon any easement or any ownership interest or other real property right in such Town Owned Conduit. Nor shall any easement or any other ownership or other form of property right in the Verizon Fiber Optic Cable or Facilities vest in the Town or a third party by virtue of the activities contemplated by this Agreement.

b) All work shall be promptly undertaken in accordance with all Applicable Law.

c) Any notice under this Agreement shall be given in writing and directed to the applicable Party below. Notice shall be deemed to have been delivered: (i) on the delivery date if delivered personally; or (iii) one (1) business day after deposit with a commercial overnight carrier. Either Party may from time to time change its address for purposes of this paragraph by giving the other Party notice of the change in accordance with this paragraph.

If to Town:            Director of Infrastructure and Development Services  
Town of Addison  
16801 Westgrove Drive  
Addison, Texas 76001  
(972) 450-2878

Brenda N. McDonald  
Messer, Rockefeller and Fort, PLLC  
6371 Preston Road, Suite 200  
Frisco, Texas 75034  
(972) 668-6400

If to Verizon:        Contracts Management  
400 international Pkwy.

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Richardson, TX. 75081  
Yodete Lane  
(972) 560-1589

- d) At all times during the Term of this Agreement, Verizon, at its sole expense, shall obtain and keep in force the required insurance as set forth in the attached Schedule 2 (Insurance Requirements).
- e) Except for disputes involving confidentiality, if a dispute arises between Verizon and Town pertaining to this Agreement ("Dispute"), prior to the initiation of legal action and within ten (10) days of receipt of a notice of dispute, representatives of the Parties will promptly meet in an attempt resolve the Dispute. If the Parties are unable to resolve the Dispute after this meeting, then the Parties shall be free to pursue any remedies available to them at law or equity.
- f) This Agreement may not be assigned without the written prior consent of the other Party, provided however that either Party may assign this Agreement, with prior written notice to the other Party: (i) to any successor by way of any merger, consolidation or other corporate reorganization of such Party or sale of all or substantially all of the assets of such Party, provided that such subsidiary or parent or successor assumes or is otherwise fully bound by all of the obligations of the assigning party under this Agreement; or (ii) in whole or in part to an Affiliate.
- g) Neither Party will be responsible for delay of performance due to reasonable causes beyond its control. Such delay automatically extends the time for performance in an amount equal to the period of the delay.
- h) If any provision of this Agreement is held to be invalid or unenforceable then such provision will be construed to reflect the intentions of the invalid or unenforceable provision, with all other provisions remaining in full force and effect.
- i) The failure of either Party to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to in writing by the party otherwise entitled to exercise or enforce it.
- j) This Agreement and any action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the State of Texas, without regard to its conflicts of laws provisions. Venue for any action under this Agreement shall be in a court of appropriate jurisdiction in Dallas County, Texas.
- k) The Parties may sign this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Facsimile and portable document format (PDF) signatures shall be binding as if original.
- l) This Agreement is solely for the benefit of Town and Verizon including Verizon Affiliates. It is not intended to benefit any third parties.
- m) Except as required by law, neither Party shall use the name or logo of the other party in marketing, advertising, promotional materials (e.g., marketing collateral), press releases or other public announcements without receiving the prior written consent of the other Party.
- n) Each Party shall be an independent contractor and not a partner or agent of the other. This Agreement will not be interpreted or construed as creating a joint venture, partnership or agency relationship between the Parties.
- o) In any legal proceeding pursuant to this Agreement, the prevailing party shall be entitled to recover its costs and attorney fees incurred during such proceeding.
- p) Nothing contained herein shall preclude Verizon or its Affiliates from pursuing or bidding on any future Town procurement opportunity or opportunities, and nothing in this Agreement is intended to limit future Verizon-Town bids or business opportunities in any way.
- q) Except as otherwise set forth in this Agreement, each Party will remain solely and independently responsible for its own expenses under or arising from this Agreement.
- r) This Agreement, including all Exhibits and Schedules, sets forth the entire agreement between the Parties relating to the subject matter hereof, and supersedes any and all prior or contemporaneous agreements and representations written or oral, of the Parties with respect to the subject matter set forth herein. Additions, variations or modifications to this Agreement may only be made in writing and signed by the Parties.
- s) The parties agree that this Agreement does not affect, limit or impair the sovereign immunity retained by the Town.
- t) Pursuant to Texas Government Code Chapter 2270, Verizon's execution of this Agreement shall serve as verification that the Verizon does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

# EXHIBIT A

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate as of the day and year first above written.

MCIMETRO ACCESS TRANSMISSION SERVICES  
CORP.

TOWN OF ADDISON, TEXAS

By: 

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

Name: L. Gisela Macedo

Name: Wesley S. Pierson, City Manager

Title: Sr Manager

Date: 11 / 2 / 2018

Date: \_\_\_\_\_

# EXHIBIT A

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

BEFORE ME, the undersigned authority, on this day personally appeared **Wesley S. Pierson** known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **Town of Addison, Texas** and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2018.

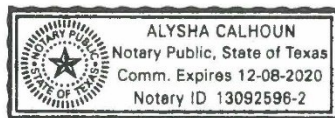
\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

STATE OF Texas §  
                                  §  
COUNTY OF Dallas §

BEFORE ME, the undersigned authority, on this day personally appeared **L. Gisela Macedo** known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to he/she is the duly authorized representative for **MCI Metro Access Transmission Services Corp.** and he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2<sup>nd</sup> day of November, 2018.



Alysha Calhoun  
\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: 12/8/20

# EXHIBIT A

Exhibit A



# EXHIBIT A

## Schedule 1

### Work Notification Contact Information

MCImetro:

NOC: (800) 873-7866

# EXHIBIT A

## Schedule 2 Insurance Requirements

Verizon shall procure and maintain and shall cause any sublicensee to procure and maintain substantially the same coverage with substantially the same limits as required of Verizon (Verizon and/or sublicensees shall be referred to hereinafter, as the context dictates, as "Contractor"), for the duration of the Agreement and any applicable sublicense entered into under and/or pursuant to the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Verizon or its employees.

### Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage or its substantial equivalent
2. Worker's Compensation/Employer Liability

### Limits of Insurance

Contractor shall maintain limits of:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, property damage, independent contractors, personal injury and contractual liability and \$2,000,000 general aggregate.
2. Commercial Automobile Liability Insurance at minimum combined single limits of \$1,000,000 per occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
3. Workers Compensation Insurance at statutory limits, including employer's liability coverage at minimum limits of \$1,000,000 each occurrence-each accident, \$1,000,000 by disease-each occurrence and \$1,000,000 by disease aggregate.
4. Umbrella Liability at minimum limits of \$1,000,000 each-occurrence \$4,000,000 aggregate with respect to primary commercial general liability, automobile liability and employer's liability policies.

### Other Insurance Provisions

The general liability and automobile liability policies are to contain, the following provisions:

1. Town, its officers, employees and volunteers shall be included as additional insureds as their interest may appear under this Agreement as respects: liability arising out of activities performed by Verizon; products and completed operations of Verizon; premises owned, occupied or used by Verizon; or automobiles owned, leased or borrowed by Verizon. The coverage shall contain no special limitations on the scope of protection afforded to Town, its officers, officials, employees or volunteers.
2. For any claims related to this project, Verizon's insurance coverage shall be primary insurance as respects Town, its officers, employees and volunteers. Any insurance or self-insurance maintained by Town, its officers, officials, employees or volunteers shall be excess of Verizon's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Town, its officers, officials, employees or volunteers.

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4. Verizon's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Verizon shall provide the Town a waiver of subrogation and a will give Town a thirty (30) day notice of termination.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to Town. Prior to the execution of this Agreement Verizon shall furnish Town a certificate of insurance, and applicable endorsements, as follows:

1. The Town shall be named as an additional insured with respect to general liability and automobile liability.
2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
3. A waiver of subrogation in favor of the Town of Addison shall be contained in the workers compensation and all liability policies.
4. All insurance policies shall be endorsed to require the insured to immediately notify the Town of Addison of any material changes in the insurance coverage.
5. All insurance policies shall be endorsed to the effect that the Town will receive at least thirty (30) days notice prior to cancellation or non-renewal of the insurance.
6. All certificates shall be mailed to Town of Addison, Purchasing Dept., P.O. Box 9010, Addison, Texas 75001 or emailed to [purchasing@addisontx.gov](mailto:purchasing@addisontx.gov).
7. All insurance policies, which name the Town as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.

All insurance shall be purchased from an insurance company who meets the following requirements:

1. Must be issued by a carrier, which is rated "A-" VII or better by A.M. Best's Key Rating Guide.
2. Licensed and admitted to do business in the State of Texas and is a subscriber to the Texas Guaranty Fund.

All insurance must be written on forms filed with and approved by the Texas State Board of Insurance. Certificates of insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

1. Set forth all endorsements and insurance coverages according to requirements and instruction contained herein.
2. Shall specifically set forth the notice-of-cancellation or termination provisions to the Town.

Verizon shall require any subcontractors to obtain and maintain substantially the same coverage with substantially the same limits as required by this Agreement.