

**ORDINANCE NO. 18-012**

AN ORDINANCE OF THE CITY OF CAMAS, WASHINGTON, GRANTING MCIMETRO ACCESS TRANSMISSION SERVICES CORP., D/B/A VERIZON ACCESS TRANSMISSION SERVICES, A NON-EXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A FIBER OPTIC TELECOMMUNICATIONS SYSTEM, IN, ALONG, UNDER, THROUGH AND BELOW PUBLIC RIGHTS-OF-WAY OF THE CITY OF CAMAS, WASHINGTON

WHEREAS, Verizon, through its wholly owned subsidiary MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services ("MCImetro") has requested a non-exclusive franchise with the City of Camas ("City") for a period of ten years for the operation of a fiber optic telecommunications system within the City Right-of-Way; and

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public Right-of-Way; and

WHEREAS, RCW 35A.47.040 grants the City broad authority to grant non-exclusive franchises; and

WHEREAS, MCImetro wishes to construct, operate and maintain a fiber optic telecommunications system within the City Right-of-Way; and

WHEREAS, the City Council finds that it is in the best interests of the health, safety and welfare of residents of the Camas community to enter into a non-exclusive franchise to MCImetro for the operation of a fiber optic telecommunications system within the City Right-of-Way.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CAMAS, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section I**

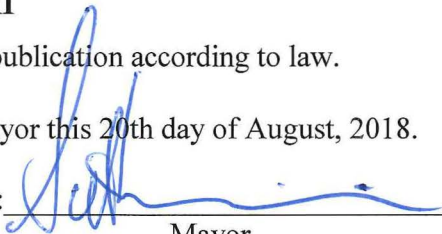
**Grant of Franchise**

The Franchise as set forth in the Franchise Agreement attached hereto as Exhibit "A" is hereby granted according to its terms.

**Section II**

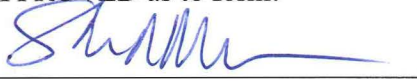
This ordinance shall take effect five (5) days after its publication according to law.

PASSED by the Council and APPROVED by the Mayor this 20th day of August, 2018.

SIGNED:   
Mayor

ATTEST:   
Clerk

APPROVED as to form:

  
City Attorney

## **EXHIBIT "A"**

### **FRANCHISE AGREEMENT FOR THE INSTALLATION AND MAINTENANCE OF FIBER OPTIC FACILITIES IN THE CITY OF CAMAS, WASHINGTON**

**Parties:**

**City of Camas**, a Washington Municipal Corporation ("City") And

**MCImetro Access Transmission Services Corp.** a Delaware Corporation and a wholly owned subsidiary of Verizon Communications Inc., d/b/a Verizon Access Transmission Services ("MCImetro").

**In consideration of the mutual promises set forth herein, the parties agree as follows:**

**Section 1. Definitions**

The following terms contained herein, unless otherwise indicated, shall be defined as follows:

1.1 **MCImetro:** MCImetro Access Transmission Services Corp. a Delaware Corporation and a wholly owned subsidiary of Verizon Communications Inc., d/b/a Verizon Access Transmission Services, and its respective successors and assigns.

1.2 **City:** The City of Camas, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas later added thereto by annexation or other means.

1.3 **Days:** Calendar days.

1.4 **Facilities:** All of the plant, equipment, fixtures, appurtenances, and other facilities necessary to furnish and deliver Telecommunications Services, including but not limited to wires, lines, conduits, cables, communication and signal lines and equipment, fiber optic cable, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to distribution and use of Telecommunications Services and all other facilities associated with the Telecommunications System located in the Right-of-Way, utilized by MCImetro in the operation of activities authorized by this Ordinance. The abandonment by MCImetro of any Facilities as defined herein shall not act to remove the same from this definition.

1.5 **Franchise:** This document and any amendments or modifications hereto.

1.6 **Permitting Authority:** The head of the City department authorized to process and grant permits required to perform work in the City's Right-of-Way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.

1.7 **Person:** An entity or natural person.

1.8 **Public Works Director or Director:** The head of the Public Works department of the City, or

in the absence thereof, the acting director, or the designee of either of these individuals.

1.9 Right-of-Way: As used herein shall refer to the surface of and the space along and below any street, road, highway, freeway, bridge, lane, sidewalk, alley, court, boulevard, sidewalk, parkway, drive, utility easement, and/or road Right-of-Way now or hereafter held or administered by the City of Camas.

1.10 Telecommunications Service: The transmission of information by wire, optical cable, or other similar means. For the purpose of this subsection, "information" means knowledge or intelligence represented by and form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this ordinance, Telecommunications Service excludes wireless communications, over-the-air transmission of broadcast television or broadcast radio signals.

1.11 Telecommunications System: The system of conduit, fiber optic cable, and supporting Facilities in the Rights-of-Way associated with MCImetro's provision of Telecommunications Services.

## **Section 2. Franchise Granted.**

2.1 Pursuant to RCW 35A.47.040, the City hereby grants to MCImetro, its heirs, successors, and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of ten (10) years, beginning on the effective date of this Ordinance.

2.2 This Franchise shall grant MCImetro the right, privilege and authority to locate, construct, operate, maintain, replace, acquire, sell, lease, and use a Telecommunications System in the Right-of-Way as approved under City permits issued by the Permitting Authority pursuant to this Franchise and City ordinances.

## **Section 3. Nonexclusive Franchise Grant.**

This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in any Right-of-Way. This Franchise shall in no way prevent or prohibit the City from using any Right-of-Way or other public property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, relocations, repairs, maintenance, establishment, improvement or dedication of the same as the City may deem appropriate.

## **Section 4. Franchise Subject to Federal, State and Local Law.**

Notwithstanding any provision contrary herein, this Franchise is subject to and shall be governed by all applicable provisions now existing or hereafter amended of federal, State and local laws and regulations.

## **Section 5. No Rights by Implication.**

5.1 No rights shall pass to MCImetro by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

5.1.1 Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

5.1.2 Any permit, agreement or authorization required by the City for Rights-of-Way users in connection with operations on or in Rights-of-Way or public property; or

5.1.3 Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise.

#### **Section 6. Conveyance of Rights.**

This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Rights-of-Way; it does not provide MCImetro with any interest in any particular location within the Rights-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

#### **Section 7. No Waiver.**

The failure of City on one or more occasions to exercise a right or to require compliance or performance under this Franchise or any other applicable State or federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City nor to excuse MCImetro from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

#### **Section 8. Other Ordinances.**

MCImetro agrees to comply with the terms of any lawful, generally applicable local ordinance, in effect upon adoption of this Franchise or as enacted or modified thereafter. In the event of a conflict between any ordinance and a specific provision of this Franchise, the Franchise shall control, provided however that MCImetro agrees that it is subject to the lawful exercise of the police power of the City.

#### **Section 9. Right-of-Way Vacation.**

If any Right-of-Way or portion thereof used by MCImetro is vacated by the City during the term of this Franchise, the City shall endeavor to specifically reserve the continued use of the Right-of-Way by MCImetro. Unless the City specifically reserves to MCImetro the right to continue the use of vacated Rights-of-Way, MCImetro shall, without delay or expense to the City, remove its facilities from such Right-of-Way and restore, repair or reconstruct the Right-of-Way where such removal has occurred. In the event of failure, neglect or refusal of MCImetro to restore, repair or reconstruct such Right-of-Way after thirty (30) days written notice from the City, the City may do such work or cause it to be done, and the reasonable cost thereof shall be paid by MCImetro within thirty (30) days of receipt of an invoice and documentation.

#### **Section 10. Relocation of Facilities.**

10.1 MCImetro agrees and covenants at no cost to the City, to relocate its Facilities when requested to do so by the City for a public project, provided that, MCImetro shall in all such cases have the privilege, upon approval by the City, to temporarily bypass, in the authorized portion of the same Right-of-Way any Facilities required to be relocated.

10.2 If the City determines that a public project necessitates the relocation of MCImetro's

existing Facilities, the City shall:

10.2.1 At least seventy-five (75) days prior to the commencement of such project, provide MCImetro with written notice of known Facilities requiring such relocation; and

10.2.2 Provide MCImetro with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for MCImetro's Facilities.

10.2.3 Meet with MCImetro, if requested, within five (5) business days to discuss the scope, requirements and challenges of the relocation work.

10.3 After receipt of such notice and such plans and specifications and meeting, MCImetro shall complete relocation of its Facilities at no charge or expense to the City at least ten (10) days prior to commencement of the project.

10.4 MCImetro may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise MCImetro in writing as soon as practicable if any of the alternatives is suitable to accommodate the work that otherwise necessitates the relocation of the Facilities. If so requested by the City, MCImetro shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by MCImetro as full and fair a consideration as the project schedule will allow. In the event the City ultimately determines that there is no other reasonable alternative, MCImetro shall relocate its Facilities as directed by the City and in accordance with Section 10.2.3 of this Franchise.

10.5 The City will notify MCImetro as soon as practical of any facilities that are not identified during the design of the public project, but are discovered during the course of construction and need to be relocated. MCImetro will work with the City to design and complete a relocation to facilitate the completion of the public project with minimum delay.

10.6 Failure to complete a relocation requested by the City in accordance with Section 10.2 of this Franchise by the date included in the notice provided for thereby may subject MCImetro to liquidated damages as provided in Section 29 of this Franchise, except in the event MCImetro suffers a force majeure or other event beyond its reasonable control. Alternatively, should the City's Project be delayed as a result of MCImetro's failure to complete a relocation requested in accordance with Section 10.2 of this Franchise and provided MCImetro has not suffered a force majeure or other event beyond its reasonable control, then City may, at MCImetro's sole expense, have the fiber optic cable relocated by City's contractor. In such event, Grantee shall pay the cost of relocation within 30 days of submission of an invoice by City. This Section shall only apply if applied in a non-discriminatory manner and it is necessary for all fiber optic cable and appurtenances to be moved in the same location.

10.7 The provisions of this Section of this Franchise shall in no manner preclude or restrict MCImetro from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person other than the City, where the improvements to be constructed by said person are not or will not become City-owned, operated or maintained, provided that such arrangements do not unduly delay a City construction project. The provisions of this Franchise are subject to RCW 35.99.060. In the event of a conflict between the provisions of this Franchise and the RCW, the RCW shall control.

10.8 MCImetro recognizes the need for the City to maintain adequate width for installation and maintenance of sanitary sewer, water and storm drainage utilities owned by the City and other public utility providers. Thus, the City reserves the right to maintain clear zones within the public right-of-way for installation and maintenance of said utilities. The clear zones for each Right-of-Way segment shall be noted and conditioned with the issuance of each Right-of-Way permit. If adequate clear zones are unable to be achieved on a particular Right-of-Way, MCImetro shall locate in an alternate Right-of-Way, obtain easements from private property owners, or propose alternate construction methods which maintain and/or enhance the existing clear zones.

#### **Section 11. MCImetro's Maps and Records.**

As a condition of this Franchise, and at its sole expense, MCImetro shall provide the City with typicals and as-built plans, maps, and records that show the vertical and horizontal location of its Facilities within the Right-of-Way using a minimum scale of one inch equals one hundred feet (1"=100'), measured from the center line of the Right-of-Way, which maps shall be in hard copy format acceptable to the City and in Geographical Information System (GIS) or other digital electronic format acceptable to the City. If digital route maps are provided, the format of the data for overlaying on the City's GIS mapping system shall utilize ESRI shapefile or Geodatabase for the file format, NAD\_1983\_StatePlane\_Washington\_South\_FIPS\_4602\_Feet as the horizontal datum, and shall be compatible with or can be imported into Arc GIS Version 9.2 or later. This information shall be provided no later than one hundred eighty (180) days after the effective date of this Ordinance and shall be updated within ten (10) business days of a reasonable request of the City.

#### **Section 12. Undergrounding.**

12.1 This Franchise is subject to the undergrounding requirements as may be required or later adopted by the Camas Municipal Code and consistent with applicable federal and Washington State law. MCImetro shall install all of its Facilities underground where all adjacent existing telecommunications and cable facilities are located underground. Any new Facilities to be located above-ground shall be placed on existing utility poles. No new utility poles shall be installed in connection with placement of new above-ground Facilities.

12.2 MCImetro will also share information necessary to facilitate joint-trenching and other undergrounding projects, and will otherwise cooperate with the City and other utility providers to serve the objective to maximize utility undergrounding where possible or as required.

#### **Section 13. Service to Public Buildings (intentionally blank)**

#### **Section 14. Excavation and Notice of Entry.**

14.1 During any period of relocation or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the Right-of-Way so as to minimize interference with the passage of traffic and the use of adjoining property. MCImetro shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or State law, including RCW 39.04.180, for the construction of trench safety systems.

14.2 Whenever MCImetro excavates in any Right-of-Way for the purpose of installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the City for a

permit to do so in accordance with the ordinances and regulations of the City requiring permits to operate in the Right-of-Way. In no case shall any work commence within any Right-of-Way without a permit. During the progress of the work, MCImetro shall not unnecessarily obstruct the passage or use of the Right-of-Way, and shall provide the City with plans, maps, and information showing the proposed and final location of any Facilities in accordance with Section 11 of this Franchise.

14.3 At least five (5) days prior to construction of Facilities consisting of digging, trenching, cutting, or other activities that may impact the utilization of the Right-of-Way for more than a four (4) hour period, MCImetro shall take reasonable steps to inform all apparent owners or occupiers of property within fifty (50) feet of said activities that a construction project will commence. The notice shall include, at a minimum, the dates and nature of the project and a toll-free or local telephone number that the resident may call for further information. A pre-printed door hanger may be used to satisfy MCImetro's obligations under this Section of this Franchise.

14.4 At least twenty-four (24) hours prior to entering Right-of-Way within ten (10) feet of private property to construct Facilities consisting of digging, trenching, cutting, or other activities that may impact the utilization of the Right-of-Way, MCImetro shall post a written notice describing the nature and location of the work to be performed adjacent to the affected private property as well as the information listed in Section 13.3 of this Franchise. MCImetro shall make a good faith effort to comply with the property owner/resident's preferences, if any, regarding the location or placement of Facilities that protrude above the prior ground surface level, if any, consistent with sound engineering practices.

### **Section 15. Stop Work.**

On notice from the City that any work is being conducted contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, consistent with applicable law, or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the work may immediately be stopped by the City. The stop work order shall:

15.1 Be in writing;

15.2 Be given to the Person doing the work and be posted on the work site;

15.3 Be sent to MCImetro by email at the address given herein, provided the recipient of such email confirms receipt by reply email, which confirmation shall not include an automatic delivery or read receipt;

15.4 Indicate the nature of the alleged violation or unsafe condition; and

15.5 Establish conditions under which work may be resumed.

### **Section 16. Emergency Work, Permit Waiver.**

In the event of any emergency where any Facilities located in the Right-of-Way are broken or damaged, or if MCImetro's construction area for their Facilities is in such a condition as to place the health or safety of any person or property in imminent danger, MCImetro shall immediately take any necessary emergency measures to repair or remove its Facilities without first applying for and obtaining a permit as required by this Franchise. However, this emergency provision shall not

relieve MCImetro from later obtaining any necessary permits for the emergency work. MCImetro shall apply for the required permits not later than the next business day following the emergency work.

**Section 17. Recovery of Costs.**

MCImetro shall be subject to all permit fees associated with activities undertaken pursuant to this Franchise or other ordinances of the City. If the City incurs any costs and/or expenses for review, inspection or supervision of activities undertaken pursuant to this Franchise or any ordinances relating to a subject for which a permit fee is not established, MCImetro shall pay the City's reasonable costs and reasonable expenses. In addition, MCImetro shall promptly reimburse the City for any costs the City reasonably incurs in responding to any emergency involving MCImetro's Facilities. If the emergency involves the facilities of other utilities operating in the Right-of-Way, then the City will allocate costs among parties involved in good faith. Said costs and expenses shall be paid by MCImetro after submittal by the City of an itemized billing by project of such costs.

**Section 18. Dangerous Conditions, Authority for City to Abate.**

18.1 Whenever installation, maintenance or excavation of Facilities authorized by this Franchise causes or contributes to a condition that appears to substantially impair the lateral support of the adjoining Right-of-Way, public or private property, or endangers any person, the City may direct MCImetro, at MCImetro's expense, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.

18.2 In the event MCImetro fails or refuses to promptly take the directed action, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent injury or damages to persons or property, the City may take such actions as it believes are necessary to protect persons or property and MCImetro shall reimburse the City for all costs incurred.

**Section 19. Safety.**

19.1 MCImetro, in accordance with applicable federal, State, and local safety rules and regulations shall, at all times, employ ordinary care in the installation, maintenance, and repair of its Facilities utilizing methods and devices commonly accepted in their industry of operation to prevent failures and accidents that are likely to cause damage, injury, or nuisance to persons or property.

19.2 All of MCImetro's Facilities in the Right-of-Way shall be constructed and maintained in a safe and operational condition, in accordance with applicable federal, State, and local safety rules and regulations.

19.3 The City reserves the right to ensure that MCImetro's Facilities are constructed and maintained in a safe condition. If a violation of any applicable safety regulation is found to exist, the City will notify MCImetro in writing of said violation and establish a reasonable time for MCImetro to take the necessary action to correct the violation. If the correction is not made within the established time frame, the City, or its authorized agent, may make the correction. MCImetro shall reimburse the City for all reasonable costs incurred by the City in correcting the violation.

## **Section 20. Authorized Activities.**

This Franchise is solely for the location, construction, installation, ownership, operation, replacement, repair, maintenance, acquisition, sale, lease, and use of the Telecommunications System and associated Facilities for providing Wholesale and Retail Telecommunications Services. MCImetro shall obtain a separate franchise for any operations or services other than these authorized activities.

## **Section 21. Administrative Fee and Utility Tax.**

21.1 Pursuant to RCW 35.21.860, the City is precluded from imposing franchise fees upon a telephone business, as defined in RCW 82.16.010, or a Service Provider for use of the Right-of-Way, as defined in RCW 35.99.010, except a utility tax or actual administrative expenses related to the franchise incurred by the City. MCImetro does hereby warrant that its operations, as authorized under this Franchise, are those of a Service Provider as defined in RCW 35.99.010.

21.2 MCImetro shall be subject to a \$5,000 administrative fee for reimbursement of costs associated with the preparation, processing and approval of this Franchise Agreement, including wages, benefits, overhead expenses, meetings, negotiations and other functions related to the approval. The administrative fee excludes normal permit fees required for work in the Right-of-Way. Payment of the one-time administrative fee is due 30 days after Franchise approval.

21.3 If RCW 35.21.860 is amended to allow collection of a franchise fee, this Franchise Agreement shall be amended to require franchise fee payments.

## **Section 22. Indefeasible Rights of Use.**

22.1 An Indefeasible Right of Use ("IRU") is an interest in MCImetro's Facilities which gives MCImetro's customer the right to use certain Facilities for the purpose of providing Telecommunication Services; an IRU does not provide the customer with any right of physical access to the Facilities to locate, construct, replace, repair or maintain the Facilities, or any right to perform work within the Right-of-Way.

22.2 A lease or grant of an IRU regarding MCImetro's Facilities shall not require that the holder of the lease or IRU to obtain its own franchise or pay any fee to the City, PROVIDED THAT, under such lease or grant of an IRU, MCImetro: (i) retains exclusive ownership of such Facilities, (ii) remains responsible for the location, relocation, construction, replacement, repair and maintenance of the Facilities pursuant to the terms and conditions of this Franchise, and (iii) remains responsible for all other obligations imposed by this Franchise.

## **Section 23. Indemnification.**

23.1 MCImetro agrees to indemnify, save and hold harmless, and defend the City, its elected officials, officers, authorized agents, boards and employees, acting in official capacity, from and against any liability, damages or claims, costs, expenses, settlements or judgments arising out of, or resulting from the granting of this Franchise or MCImetro's activities, or any casualty or accident to Person or property that occurs as a result of any construction, excavation, operation, maintenance, reconstruction or any other act done pursuant to the terms of this Franchise, provided that the City shall give MCImetro timely written notice of its obligation to indemnify the City. MCImetro shall not indemnify the City for any damages, liability or claims resulting from the

City's sole negligence, willful misconduct, or breach of obligation of the City, its officers, authorized agents, employees, attorneys, consultants, or independent contractors for which the City is legally responsible, or for any activity or function conducted by any Person other than MCImetro.

23.2 In the event MCImetro refuses to undertake the defense of any suit or any claim, after the City's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and MCImetro's refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of MCImetro, then MCImetro shall pay all of the City's reasonable costs and reasonable expenses for defense of the action, including reasonable attorneys' fees of recovering under this indemnification clause, as well as any judgment against the City.

Should a court of competent jurisdiction or such other tribunal as the parties agree shall decide the matter, determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of MCImetro and the City, its officers, employees and agents, MCImetro's liability hereunder shall be only to the extent of MCImetro's negligence. It is further specifically and expressly understood that the indemnification provided in Section 22 of this Franchise constitutes MCImetro's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

#### **Section 24. Insurance.**

24.1 Insurance Term. MCImetro 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 operations or activities performed by or on MCImetro's behalf with the issuance of this franchise.

24.2 No Limitation. MCImetro's maintenance of insurance as required by the agreement shall not be construed to limit the liability of MCImetro to the coverage provided by such insurance, or otherwise limit the Public Entity's recourse to any remedy available at law or in equity.

24.3 Minimum Scope of Insurance. MCImetro shall obtain insurance of the types and coverage described below:

24.3.1 Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from operations, products-completed operations, and stop-gap liability. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Public Entity shall be named as an additional insured under MCImetro's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.

24.3.2 Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

24.4 Minimum Amounts of Insurance. MCImetro shall maintain the following insurance limits:

24.4.1 Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

24.4.2 Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

24.5 Other Insurance Provision. MCImetro's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the Public Entity. Any Insurance, self-insurance, or self-insured pool coverage maintained by the Public Entity shall be excess of the Applicant's insurance and shall not contribute with it.

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

24.7 Verification of Coverage. MCImetro shall furnish the Public Entity with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of MCImetro before issuance of the Permit.

24.8 Notice of Cancellation. MCImetro shall provide the Public Entity with written notice of any policy cancellation, within two business days of their receipt of such notice.

24.9 Failure to Maintain Insurance. Failure on the part of MCImetro to maintain the insurance as required shall constitute a material breach of the Franchise Agreement entitling the City to Liquidated Damages under Section 28, below, or such other and further relief provided for herein or by law. Alternatively, the Public Entity may, after giving five business days' notice to MCImetro to correct the breach, immediately terminate the Franchise.

24.10 Public Entity Full Availability of Applicant Limits. If MCImetro maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by MCImetro, irrespective of whether such limits maintained by MCImetro are greater than those required by this Permit or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by MCImetro.

#### **Section 25. Abandonment of MCImetro's Facilities.**

No portion of the Facilities laid, installed, or constructed in the Right-of-Way by MCImetro may be abandoned by MCImetro without the express written consent of the City. Any plan for abandonment or removal of MCImetro's Facilities must be first approved by the Public Works Director, which shall not be unreasonably withheld or delayed, and all necessary permits must be obtained prior to such work.

#### **Section 26. Restoration After Construction.**

MCImetro shall, after any abandonment approved under Section 25 of this Franchise, or any installation, construction, relocation, maintenance, or repair of Facilities within the Franchise area, promptly complete all restoration work and promptly repair any damage caused by such work at

its sole cost and expense. MCImetro agrees to complete all restoration in accordance with the approved permit issued by the City, consistent with the City's Engineering Design Standards, for the work in question.

26.1 If MCImetro should fail to leave any portion of the excavation in a condition that meets the City's specifications per the CMC, the City may, on five (5) days' notice to MCImetro, which notice shall not be required in case of an Emergency Situation, cause all work necessary to restore the excavation to a safe condition. MCImetro shall pay to the City the reasonable cost of such work; which shall include, among other things, the City's overhead in obtaining completion of said work (provided that in no event shall such overhead exceed 5% of the total costs, fees and expenses of third parties).

26.2 Any surface or subsurface failure occurring during the term of this Agreement caused by any excavation by MCImetro, normal wear and tear excepted, shall be repaired to the City's specifications, within thirty (30) days, or, upon five (5) days written notice to MCImetro, the City may order all work necessary to restore the damaged area to a safe and acceptable condition and MCImetro shall pay the reasonable costs of such work to the City, including City overhead (provided that in no event shall such overhead exceed 5% of the total costs, fees and expenses of third parties).

26.3 In the event the work includes cutting and patching existing road surfaces resulting in the degradation of the projected lifespan of the roadway, MCImetro shall compensate the City for the reasonable projected costs resulting from the work, as estimated by the City Engineer or designee.

26.4 MCImetro agrees that if any of its actions under the Franchise materially impair or damage any City property, survey monument, or property owned by a third-party, MCImetro will restore, at its own cost and expense, the impaired or damaged property to the same condition as existed prior to such action. Such repair work shall be performed and completed to the reasonable satisfaction of the Public Works Director.

#### **Section 27. Bond or Letter of Credit.**

Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, MCImetro shall cause to be furnished a bond or Letter of Credit executed by a corporate surety or financial institution authorized to do business in the State of Washington, in a sum to be set and approved by the Director of Public Works, consistent with the provisions of the CMC, as sufficient to ensure performance of MCImetro's obligations under this Franchise. The bond shall be conditioned so that MCImetro shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Franchise, and to erect or replace any defective work or materials discovered in the replacement of the City's streets or property within a period of two years from the date of the replacement and acceptance of such repaired streets by the City.

MCImetro may meet the obligations of this Section of this Franchise with one or more bonds acceptable to the City. In the event that a bond issued pursuant to this Section of this Franchise is canceled by the surety, after proper notice and pursuant to the terms of said bond, MCImetro shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section of this Franchise.

## **Section 28. Recourse Against Bonds and Other Security.**

So long as the bond is in place, it may be utilized by the City as provided herein for reimbursement of the City by reason of MCImetro's failure to pay the City for actual costs and expenses incurred by the City to make emergency corrections under Section 17 of this Franchise, to correct Franchise violations not corrected by MCImetro after notice, and to compensate the City for monetary remedies or damages reasonably assessed against MCImetro due to material default or violations of the requirements of City ordinances.

28.1 In the event MCImetro has been declared to be in default of a material provision of this Franchise by the City and if MCImetro fails, within thirty (30) days of mailing of the City's default notice, to pay the City any penalties, or monetary amounts, or fails to perform any of the conditions of this Franchise, or fails to begin to perform any condition that may take more than 30 days to complete, the City may thereafter obtain from the bond, after a proper claim is made to the surety, an amount sufficient to compensate the City for its damages. Upon such withdrawal from the bond, the City shall notify MCImetro in writing, by First Class Mail, postage prepaid, of the amount withdrawn and date thereof.

28.2 Thirty (30) days after the City's mailing of notice of the bond forfeiture or withdrawal authorized herein, MCImetro shall deposit such further bond, or other security, as the City may require, which is sufficient to meet the requirements of this franchise.

28.3 The rights reserved to the City with respect to any bond are in addition to all other rights of the City whether reserved by this Ordinance or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond shall constitute an election or waiver of any rights or other remedies the City may have.

## **Section 29. Liquidated Damages.**

29.1 The City and MCImetro recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of MCImetro's breach of certain provisions of this Franchise. Accordingly, instead of requiring such proof, the City and MCImetro agree that MCImetro shall pay to the City, the sum set forth below for each day or part thereof that MCImetro shall be in breach of specific provisions of this Franchise. Such amount is agreed to by both parties as a reasonable estimate of the actual damages the City would suffer in the event of MCImetro's breach of such provisions of this Franchise.

29.1.1 Subject to the provision of written notice to MCImetro and a thirty (30) day right to cure period, the City may assess against MCImetro liquidated damages as follows: two hundred dollars (\$200.00) per day for any material breach of the Franchise.

29.1.2 The City shall provide MCImetro a reasonable extension of the thirty (30) day right to cure period described in Section 29.1.1 of this Franchise if MCImetro has commenced work to cure the violation, is diligently and continuously pursuing the cure to completion and requested such an extension, provided that any such cure is completed within one hundred and twenty (120) days from the written notice of default.

29.1.3 If liquidated damages are assessed by the City, MCImetro shall pay any liquidated damages within forty-five (45) days after they are assessed and billed.

29.1.4 In the event MCImetro fails to cure within the specified cure period, or any agreed

upon extensions thereof, liquidated damages accrue from the date the City notifies MCImetro that there has been a violation.

29.2 The recovery of amounts under Section 29.1.1 of this Franchise shall not be construed to limit the liability of MCImetro under the Franchise or an excuse for unfaithful performance of any obligation of MCImetro. Similarly, the parties agree imposition of liquidated damages are not intended to be punitive, but rather, for City cost recovery purposes.

### **Section 30. Remedies to Enforce Compliance.**

In addition to any other remedy provided herein, the City and MCImetro each reserve the right to pursue any remedy to compel the other to comply with the terms of this Franchise, and the pursuit of any right or remedy by a party shall not prevent such party from thereafter declaring a breach or revocation of the Franchise.

### **Section 31. Modification.**

The City and MCImetro hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such amendment. City agreement shall be binding only upon City Council approval of any substantive alteration, amendment or modification of this Agreement.

### **Section 32. Force Majeure.**

This Franchise shall not be revoked, nor shall MCImetro be liable for damages, due to any act or omission that would otherwise constitute a violation or breach that occurs without fault of MCImetro or occurs as a result of circumstances beyond MCImetro's reasonable control. Provided, however, MCImetro acts diligently to correct any such act or omission.

### **Section 33. City Ordinances and Regulations.**

Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate lawful ordinances regulating the performance of the conditions of this Franchise, including any reasonable lawful ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control, by appropriate lawful regulations, the location, elevation, and manner of construction and maintenance of any fiber optic cable or of other Facilities by MCImetro. MCImetro shall promptly conform to all such regulations, unless compliance would cause MCImetro to violate other requirements of law.

### **Section 34. Acceptance/Liaison.**

MCImetro's written acceptance shall include the identification of an official liaison who will act as the City's contact for all issues regarding this Franchise. MCImetro shall notify the City of any change in the identity of its liaison. MCImetro shall accept this Franchise in the manner hereinafter provided in Section 43 of this Franchise.

### **Section 35. Survival.**

All of the provisions, conditions and requirements of Sections 10, Relocation of Facilities; 13, Excavation And Notice Of Entry; 17, Dangerous Conditions; 22, Indemnification; 24, Abandonment of MCImetro's Facilities; and 25, Restoration After Construction, of this Franchise shall be in addition to any and all other obligations and liabilities MCImetro may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to MCImetro and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the parties and all privileges, as well as all obligations and liabilities of each party shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever such party is named herein.

### **Section 36. Severability.**

If any section, sentence, clause or phrase of this Franchise Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise Ordinance. In the event that any of the provisions of this Franchise Ordinance or of this Franchise are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this Franchise and may amend, repeal, add, replace or modify any other provision of this Franchise Ordinance or of the Franchise granted herein, or may terminate this Franchise.

### **Section 37. WUTC Tariff Filings, Notice Thereof.**

If MCImetro intends to file, pursuant to RCW Chapter 80.28, with the Washington Utilities and Transportation Commission (WUTC), or its successor, any tariff affecting the City's rights arising under this Franchise, MCImetro shall provide the City with fourteen (14) days prior written notice.

### **Section 38. Binding Acceptance.**

This Franchise shall bind and benefit the parties hereto and their respective successors and assigns.

### **Section 39. Assignment.**

This Franchise shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale or otherwise, without the written approval of the City. The City's approval shall not be unreasonably withheld or delayed. Any reasonable costs associated with the City's review of any transfer proposed by MCImetro shall be reimbursed to the City by the new prospective Franchisee, if the City approves the transfer, or by MCImetro if said transfer is not approved by the City.

39.1 The City shall receive notice and approve any proposed change in control of MCImetro or assignment of this Franchise to a subsidiary or affiliate of MCImetro, which causes a change in control of the Franchisee. The City shall be notified but need not approve changes or assignments that do not result in a change in control of the Franchisee. Neither approval nor notification shall be required for mortgaging purposes.

39.2 A change in control shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised or changes in business form that act to materially reduce the resources available to MCImetro to perform its obligations under the Franchise granted herein.

39.3 A lease or grant of an Indefeasible Right of Use ("IRU") in the Telecommunications System, the associated Facilities, or any portion thereof, to another Person, or an offer or provision of capacity or bandwidth from the Telecommunications System or associated Facilities shall not be considered an assignment for purposes of this Section of this Franchise, PROVIDED THAT, under such lease, IRU, or offer, MCImetro: (i) retains ownership over the Tele-communications System, (ii) remains responsible for the location, construction, replacement, repair and maintenance of the Telecommunications System pursuant to the terms and conditions of this Franchise, and (iii) remains responsible for all other obligations imposed hereunder.

#### **Section 40. Alternate Dispute Resolution.**

If the City and MCImetro are unable to resolve disputes arising from the terms of the Franchise granted herein, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to an alternate dispute resolution process in Clark County agreed to by the parties. Unless otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.

#### **Section 41. Venue.**

If alternate dispute resolution is not successful, the venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or Clark County Superior Court.

#### **Section 42. Entire Agreement.**

This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

#### **Section 43. Notice.**

Any notice or information required or permitted to be given to the City or to MCImetro under this Franchise may be sent to the following addresses unless otherwise specified:

If to the City, the notice shall be sent to:

CITY OF CAMAS  
City Administrator  
616 NE 4<sup>th</sup> Avenue  
Camas, WA 98607

If to MCImetro, the notice shall be sent to:

MCIMETRO ACCESS TRANSMISSION SERVICES CORP.  
D/B/A VERIZON ACCESS TRANSMISSION SERVICES  
Attn: Franchise Manager  
600 Hidden Ridge  
Mailcode: HQE02E88  
Irving, TX 75038

with an additional copy (except for invoices) to:

Verizon Business Services  
1320 N. Courthouse Road, Suite 900  
Arlington, VA USA 22201  
Attn: General Counsel, Network & Technology

Either party can alter their official address for notifications provided in this Section of this Franchise by providing the other party written notice thereof.

**Section 44. Directions to City Clerk.**

The City Clerk is hereby directed to publish this Ordinance in full and forward certified copies of this ordinance to MCImetro. MCImetro shall have thirty (30) days from receipt of the certified copy of this ordinance to execute this Franchise Agreement. If MCImetro fails to execute this Franchise in accordance with the above provisions, this Franchise shall be null and void.

**Section 45. Publication Costs.**

MCImetro shall reimburse the City for the cost of publishing this Franchise ordinance within thirty (30) Days of receipt of the City's invoice.

**Section 46. Effective Date.**

This ordinance shall take effect and be in full force five (5) Days after the date of publication.

**Signed by the duly authorized representative of the parties as set forth below:**

**MCImetro**

MCImetro Access Transmission Services Corp.  
d/b/a/ Verizon Access Transmission Services,  
a Delaware Corporation

By: Robert J. Hayes  
Name: ROBERT J. HAYES  
Title: SR. MGR. NETWORK ENG.

**City**

City of Camas  
a Washington Municipal Corporation

Scott Higgins  
by Scott Higgins, Mayor


PASSED BY THE CITY COUNCIL ON THE 20<sup>TH</sup> OF AUGUST, 2018.

**ATTEST:**

A handwritten signature in blue ink that reads "Bernie Bacon". The signature is written in a cursive style and is positioned above a horizontal line.

City Clerk

**APPROVED AS TO FORM:**

A handwritten signature in blue ink that reads "John A. Moran". The signature is written in a cursive style and is positioned above a horizontal line.

City Attorney