

**THE CITY OF PARK HILLS, KENTUCKY**

**ORDINANCE NO. 10, 2019**

**AN ORDINANCE CLOSING A PORTION OF AMSTERDAM ROAD  
PURSUANT TO KRS §82.405**

WHEREAS, KRS §82.405(1) provides a method for a municipality to close a public way;

WHEREAS, under §2.8 of the Development Agreement with Condoview, LLC, the City of Park Hills agreed to close the northbound portion of the existing Amsterdam Road in Park Hills;

WHEREAS, pursuant to §2.8 of the Development Agreement with Condoview, LLC, the City of Park Hills desires to close and abandon an area containing 1.454 acres of land and more particularly shown in the Plat attached as Exhibit A;

WHEREAS, Condoview, LLC, and the City of Park Hills, have been identified as the only property owners in or abutting the portion of the public way to be closed;

WHEREAS, all property owners in or abutting the public way have provided written notarized consent stating their agreement to the closing of the public way; and

WHEREAS, written notice of the proposed closing was given to or waived by all property owners in or abutting a portion of the public way to be closed.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PARK HILLS, KENTUCKY, as follows:**

**SECTION I**

That pursuant to KRS §82.405, the Park Hills City Council hereby gives written consent to the closure and abandonment of the hereinafter described public right-of-way.

**SECTION II**

That the Park Hills City Council hereby makes the following findings of fact:

1. Condoview, LLC, and the City of Park Hills, have been identified as the only property owners in or abutting the portion of Amsterdam Road being closed;
2. Written notice was given to or waived by all property owners in or abutting the portion of the portion of Amsterdam Road being closed; and

3. All property owners in or abutting the portion of Amsterdam Road being closed have given their written notarized consent to the closing. The written consents are made part of this ordinance.

### **SECTION III**

That the Park Hills City Council hereby closes and abandons the portion of Amsterdam Road shown in the Plat attached at Exhibit A and described as follows:

Situated in the City of Park Hills, County of Kenton, Commonwealth of Kentucky, on the east side of Amsterdam Road (Southbound) and being part of a parcel conveyed to City of Park Hills in Deed Book 421, Page 504; part of a parcel conveyed to City of Park Hills, Kentucky in Deed Book 434, Page 105, and part of a parcel conveyed to City of Park Hills in Volume C4185, Page 64 of the Kenton County Clerk's Records at Covington, Kentucky and being more particularly described as follows:

Begin at a found 1/2" iron pin (PLS#3663) at the intersection of the existing westerly right of way line of Hamilton Road (40' R/W) with the westerly line of a 3.097-acre tract conveyed to Condoview, LLC as recorded in Volume C6174, Page 9, said iron pin being near the intersection of the northward projection of the common line of Lots 348 and 349 with the existing westerly right-of-way line of Hamilton Road as shown on Park Hills Subdivision, Plat of Lots 335 to 353, inclusive, as recorded on Plat #463, thence, with the westerly line of said 3.097-acre Condoview, LLC tract, North 24° 45' 21" East, 214.56 feet to a set 5/8" iron pin and the TRUE POINT OF BEGINNING:

thence from the TRUE POINT OF BEGINNING thus found, departing the westerly line of said 3.097-acre tract, and with a new division line through said City of Park Hills, Kentucky the following two courses: South 74° 35' 03" West, 53.96 feet to a set 5/8" iron pin;

thence, North 65° 48' 29" West, 122.96 feet to a set 5/8" iron pin;

thence, with a line parallel to, and 25 feet east of, the proposed centerline of Amsterdam Road (to be reconstructed) the following four courses: along a curve to the right, having a central angle of 23° 20' 43", a radius of 362.50 feet, an arc length of 147.70 feet, and a chord bearing North 35° 51' 53" East, 146.68 feet to a set 5/8" iron pin;

thence, North 47° 32' 14" East, 99.39 feet to a set 5/8" iron pin;

thence, with a curve to the left, having a central angle of 44° 18' 12", a radius of 372.10 feet, an arc length of 287.72 feet, and a chord bearing North 25° 23' 08" East, 280.61 feet to a set 5/8" iron pin;

thence, North 03° 14' 02" East, 61.11 feet to a set 5/8" iron pin on the southerly line of a 1.2226-acre tract conveyed to The City of Park Hills, Kentucky in Volume C2804, Page 6, also being the northwesterly corner of City of Park Hills, Kentucky as recorded in Deed Book 434, Page 105;

thence, with the south line of said 1.2226-acre tract and with the north line of said City of Park Hills, Kentucky as recorded in Deed Book 434, Page 105, North 86° 01' 41" East, 56.81 feet to a set 5/8" iron pin on the west line of Parcel No. 1 (former right-of-way parcel) conveyed to City of Park Hills in Volume C4185, Page 64;

thence, with the common line of said 1.2226-acre tract and said Parcel No. 1, North 29° 00' 01" East, 138.10 feet to a set 5/8" iron pin on an existing East corporation line of the City of Park Hills, Kentucky;

thence, departing the easterly line of said 1.2226-acre tract and with said corporation line and with a new division line through said Parcel No. 1, South 11° 07' 21" West, 228.02 feet to a set 5/8" iron pin on the East line of said Parcel No. 1, the same being on the west line of a 18.575-acre tract conveyed to Condoview, LLC in Volume C6174, Page 9;

thence, departing said corporation line, and with the common line of said Parcel No. 1 and said 18.575-acre tract, South 29° 00' 01" West, 104.04 feet to a found 1/2" iron pin (PLS#3663);

thence, departing said Parcel No. 1 and with the common line of said 18.575-acre tract and the City of Park Hills, Kentucky as recorded in Deed Book 434, Page 105, South 12° 23' 30" West, 49.96 feet to a set 5/8" iron pin at a common west corner of the above mentioned 18.575-acre and 3.097-acre Condoview, LLC tracts;

thence, with the common line of said 3.097-acre tract and City of Park Hills, Kentucky as recorded in Deed Book 434, Page 105, South 24° 45' 21" West, 327.86 feet to the TRUE POINT OF BEGINNING.

Containing 1.454 acres of land.

All set corners are 5/8" x 30" iron pins with a plastic cap stamped "Chris Gephart PLS 3292" unless otherwise noted. The reference meridian is based on NAD83 (2011) Kentucky State Plane coordinates, North Zone (1601).

#### **SECTION IV**

Any and all ordinances in conflict with this ordinance shall be, and hereby are, repealed to the extent of said conflict.

#### **SECTION V**

If any part of this ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this ordinance are severable.

#### **SECTION VI**

That this ordinance shall become effective upon its passage and shall be published under KRS §83A.060(9) and other applicable law. This ordinance may be published by summary.

Passed by City Council on \_\_\_\_\_, 2019.

CITY OF PARK HILLS, KENTUCKY

By: \_\_\_\_\_  
Kathy Zembrodt, Mayor

ATTEST:

\_\_\_\_\_  
Julie Alig, City Clerk

FIRST READING: \_\_\_\_\_

SECOND READING: \_\_\_\_\_

PUBLICATION: \_\_\_\_\_

Commonwealth of Kentucky     )  
  ) SS:  
County of Kenton                    )

On this day \_\_\_\_\_, before me personally appeared Kathy Zembrodt, who did execute the foregoing instrument on behalf of the City of Park Hills in her capacity as Mayor, and she acknowledged that she voluntarily executed the same.

\_\_\_\_\_  
Notary Public

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

## ORDINANCE NO. 11, 2019

**ORDINANCE CONFIRMING THE SALE AND AWARDED A NON-EXCLUSIVE FRANCHISE TO MCI METRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS TRANSMISSION SERVICES FOR A TERM OF TEN (10) YEARS WITH OPTION TO RENEW FOR TWO ADDITIONAL FIVE YEAR TERMS FOR A TELECOMMUNICATIONS FRANCHISE AGREEMENT AND FOR THE CONSTRUCTION, PLACEMENT, MAINTENANCE AND OPERATION OF FACILITIES FOR THE TRANSMISSION, DELIVERY, PROVISION AND SALE OF TELECOMMUNICATIONS SERVICES ALONG, IN, ON, OVER AND UNDER THE PUBLIC RIGHT-OF-WAY WITHIN THE CITY OF PARK HILLS, KENTUCKY ("CITY"); ALL UPON THE TERMS, CONDITIONS AND COVENANTS CONTAINED IN THE TELECOMMUNICATIONS FRANCHISE AGREEMENT.**

WHEREAS, Resolution No. 14, 2019, adopted by the City Council, on September 9, 2019 (the "Establishment Resolution"), provided for the creation, establishment and sale of a non-exclusive Franchise, for a term of ten (10) years, to construct, install, replace, repair, monitor, maintain, use, operate and remove Facilities (as such terms and other capitalized terms hereinafter are defined in the Franchise Agreement referenced below) and related equipment and appurtenances for the transmission, distribution, delivery and sale of telecommunications services from points either within or without the corporate limits of this City, to this City and the inhabitants thereof, and from and through this City to persons, corporations and municipalities beyond the limits thereof, and for the sale of telecommunications and other related telecommunications purposes; and

WHEREAS, the said Establishment Resolution, as required by Section 164 of the Kentucky Constitution, also established a sealed bid process which includes advertising the invitation for bids, and awarding the Franchise to the successful bidder(s);

WHEREAS, after publication of said advertisement the City received a timely bid from MCI Metro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services ("Franchisee") to acquire said telecommunications franchise; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PARK HILLS, KENTUCKY, AS FOLLOWS:

### SECTION I

Based upon the foregoing recitals and acting in accordance with Sections 163 and 164 of the Constitution of the Commonwealth of Kentucky and applicable Kentucky law, and subject to the terms, conditions and covenants set forth in that certain Telecommunications Franchise Agreement for Telecommunications Services and Facilities in the Right-of-Way, a copy of which is attached hereto and made a part hereof as "Attachment A" (hereinafter the "**Franchise Agreement**"), that a non-exclusive Telecommunications Franchise created by this Ordinance and the Establishment Ordinance be, and it hereby is, granted and awarded to Franchisee and its permitted assigns, for the cost of advertising and the sale of a Telecommunications System and Telecommunications Services Franchise, plus the Application Fee, the Franchise Fee and such other compensation, all as set forth in the Franchise Agreement. The Franchise Fee is hereby established at five percent (5%) of the Gross Receipts and shall

be paid annually as provided in the Franchise Agreement. The Franchise granted and awarded in this Ordinance only authorizes Franchisee to provide the telecommunications services specifically authorized in the Franchise Agreement.

## **SECTION II**

The term of the Franchise granted in this Ordinance and as provided in Section 4 (Term) of the Franchise Agreement shall be for a period of ten (10) years with the option to renew for two additional terms of five (5) years.

## **SECTION III**

All prior ordinances, municipal orders, or policies or parts thereof in conflict herewith, are to the extent of such conflict, hereby repealed.

## **SECTION IV**

That the mayor of the City is hereby authorized to sign the Franchise Agreement to memorialize the sale and award by the City to the Franchisee of said Franchise subject to the terms and conditions reflected in the Establishment Ordinance and this Ordinance. Further, the mayor is hereby authorized to negotiate such changes to the Franchise Agreement as he or she may deem necessary or desirable, so long as such changes do not affect the overall substance of this Ordinance and the Franchise Agreement.

## **SECTION V**

That the statements set forth in the Preamble to this Ordinance are hereby incorporated in this Ordinance by reference, the same as if set forth at length herein.

## **SECTION VI**

All rights and privileges granted in this Ordinance and the Franchise Agreement are, at all times during the aforesaid term, subject to all lawful exercise of the police and legislative powers of the City. Franchisee shall comply with all applicable laws, ordinances and regulations which the City has adopted or shall adopt, applying to the public generally and to other franchisees, licensees, or grantees.

## **SECTION VII**

The Provisions of this Ordinance are severable and the invalidity of any provision of this Ordinance shall not affect the validity of any other provisions hereof, and such other provisions shall remain in full force and effect as long as they remain valid in the absence of that provision determined to be invalid.

## **SECTION VIII**

Upon its passage, this Ordinance shall be published according to law, and said publication may be in summary form.

## **SECTION IX**

This Ordinance and shall be in full force and effect when passed, recorded, and published according to law. Said publication may be in summary form.

CITY OF PARK HILLS, KENTUCKY

By: \_\_\_\_\_  
Kathy Zembrodt, Mayor

ATTEST:

\_\_\_\_\_  
Julie Alig, City Clerk

Date of First Reading: \_\_\_\_\_

Date of Second Reading and Enactment: \_\_\_\_\_

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



## TELECOMMUNICATIONS FRANCHISE AGREEMENT

This Telecommunications Franchise Agreement ("Agreement") is entered into and made effective as of November \_\_\_\_, 2019 ("Effective Date"), by and between the City of Park Hills, Kentucky, a municipal corporation and city of the home rule class ("City"), and MCImetro Access Transmission Services Corp., doing business as Verizon Access Transmission Services ("Franchisee").

### **Section 1. Non-Exclusive Franchise Granted Subject to Conditions.**

A. The City hereby grants to Franchisee, subject to the conditions prescribed in this Agreement, the non-exclusive franchise rights and authority ("Franchise") to construct, install, replace, repair, monitor, maintain, use, operate and remove its equipment and facilities necessary for a wireline fiber optic telecommunications system ("Facilities") in, under, on, across, over, and through, those specified areas of right-of-way as set forth and described in the plan attached hereto as Exhibit A ("Franchise Area"). Franchisee hereby accepts the Franchise granted pursuant to this Agreement.

B. The foregoing franchise rights and authority shall not be deemed to be exclusive to Franchisee and shall in no way prohibit or limit the City's ability to grant other franchises, permits, or rights along, over, or under the areas to which this Franchise has been granted to Franchisee. This Franchise shall in no way interfere with existing utilities or in any way limit, prohibit, or prevent, the City from using its rights-of-way or affect the City's jurisdiction over such rights-of-way in any way consistent with applicable law.

**Section 2. Franchise Limitations.** This Agreement does not authorize Franchisee to construct, install, operate, or place or attach any equipment associated with or for cellular antenna towers, small cell towers, or small cell systems. City does not warrant the suitability of any portion of its rights-of-way for the purposes for which Franchisee may desire to use them under this Agreement, nor does the City warrant the condition of any structure, pole, or other improvement currently located within the City's rights-of-way. Franchisee hereby accepts the City's rights-of-way and all publicly owned improvements located therein on an AS-IS, WHERE-IS, and WITH ALL FAULTS basis.

**Section 3. Authority.** The City Administrator or his or her designee is hereby granted the authority to administer and enforce the terms and provisions of this Agreement and may develop such lawful and reasonable rules, policies, and procedures as he or she deems necessary to carry out the provisions contained herein.

**Section 4. Franchise Term.** The franchise rights granted herein shall remain in full force and effect for a term period of ten (10) years from the Effective Date of this Agreement ("Term"). The Term of this Agreement shall be automatically renewed for up to two (2) additional periods of five (5) years each ("Renewal Term"), unless either the City or Franchisee provides the other party written notice of their intention not to renew the Term of this Agreement at least 180 days prior to the expiration date of the then current Term or Renewal Term, as the case may be;

provided however, the total duration of the Term of this Agreement shall not exceed twenty (20) years as provided under Section 164 of the Kentucky Constitution.

**Section 5. Acceptance of Terms and Conditions.** Failure on the part of Franchisee to provide an executed original of this Agreement to the City Clerk within sixty (60) calendar days of the City Council's passage of the Ordinance approving this Agreement shall be deemed a rejection thereof by Franchisee and shall result in this Agreement being null and void, having no further force or effect and all rights granted under this Agreement shall then terminate.

**Section 6. Construction Provisions and Standards.** The following provisions shall be considered mandatory and failure to abide by any conditions described herein shall be deemed as noncompliance with the terms of this Agreement.

**A. Permit Required.** No installation, construction, expansion, or material modification of the Facilities shall be undertaken in the Franchise Area without first obtaining all required right of way use and/or construction permits as required under all applicable ordinances of the City and under all regulations and other requirements of Planning and Development Services of Northern Kentucky ("PDS").

**B. Construction Standards.** Any construction, installation, maintenance, and restoration activities performed by or for Franchisee within the Franchise Area shall be constructed and located so as to produce the least amount of interference with the free passage of pedestrian and vehicular traffic. All work and improvements made by Franchisee shall be so performed in a safe and good and workmanlike manner, and in compliance with all applicable federal, state, and local laws. The Facilities shall be concealed or enclosed, as much as possible, in a box, cabinet, or other unit, and external cables and wires installed on poles shall be sheathed or enclosed in a conduit, so that wires are protected and are visually minimized as much as possible. Franchisee shall not locate any overhead wires or cables across any roadway without the express prior approval of the City. In the performance of any work by Franchisee relating to its Facilities under this Agreement, Franchisee, at its sole cost and expense, shall restore and repair any damage to the City's rights-of-way or any public improvements located therein, to their original condition as existed prior to the commencement of such work.

**C. Relocation.** Whenever the City causes a public improvement to be constructed within the Franchise Area, and such public improvement requires the relocation of Franchisee's Facilities, the City shall provide Franchisee with written notice requesting such relocation along with plans for the public improvement that are sufficiently complete to allow for the initial evaluation, coordination and the development of a relocation plan. The City and Franchisee shall meet at a time and location determined by the City to discuss the project requirements including critical timelines, schedules, construction standards, utility conflicts, as-built requirements, and other pertinent relocation plan details. The City shall not be liable to Franchisee for any lost revenues or any other costs incurred by Franchisee in relocating its Facilities due to a relocation as a result of a City public improvement project.

**D. Removal or Abandonment.** Upon the removal from service of any Facilities within the Franchise Area, Franchisee shall comply with all applicable standards and requirements prescribed by the City and/or PDS for the removal or abandonment of said Facilities. No Facilities constructed or owned by Franchisee may be abandoned in place without the express prior written consent of the City.

**F. "One-Call" Location & Liability.** Franchisee shall subscribe to and maintain membership in the regional "call before you dig" utility location service and shall promptly locate all of its lines upon request. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers which are a direct result of work performed for any City project for which Franchisee has failed to properly locate its Facilities within the prescribed time limits and guidelines established.

**G. As-Built Plans Required.** Franchisee shall maintain accurate engineering plans and details of all installed system Facilities, within the City limits, and upon request by the City, shall provide such information in both paper form and electronic form using the most current Autocad version (or other mutually-agreeable format) prior to close-out of any permit issued by the City and any work undertaken by Franchisee pursuant to this Agreement.

**H. Compliance.** Franchisee shall at all times comply with all rules, regulations, and policies promulgated by the Kentucky Public Service Commission, and shall at all times maintain in good standing any licenses, certificates of need, and other governmental approvals authorizing Franchisee to engage in the activities permitted under this Agreement.

**I. Tree Trimming.** Franchisee shall have the right, at its own expense, to trim trees located in or overhanging the City rights-of-way and that are interfering with the operation of its Facilities and/or related equipment only to the extent necessary to keep the branches of the trees from coming into contact with such Facilities. All trimming and pruning shall comply with all applicable ordinances of the City. Notwithstanding the foregoing and prior to engaging in such activity, Franchisee shall submit to the City a tree trimming or pruning plan for approval. Franchisee shall secure the consent of the private property owner, upon whose property the tree or bush is located, prior to cutting or trimming such tree or bush. Any person engaged by Franchisee to provide tree trimming or pruning services shall be deemed, for purposes of this Agreement, an employee or agent of Franchisee, and in no event shall such person be deemed an employee or agent of the City.

**Section 7. Insurance.** Franchisee shall maintain liability insurance written on a per occurrence basis during the full term of this Agreement for injuries and property damages. The policy or policies shall afford insurance covering all operations, vehicles, and employees with the following limits and provisions:

1. Commercial general liability insurance with limits of not less than \$2,000,000 each occurrence combined single limit for bodily injury and property damage, including contractual liability; personal and advertising injury; explosion hazard, collapse hazard, and underground property damage hazard; products; and completed operations.
2. Commercial automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, covering all owned, non-owned, leased, and hired automobiles, as applicable.
3. Worker's compensation insurance with limits as required by applicable law.

Such insurance shall include as additional insured and/or loss payee the City, shall apply as primary insurance, and shall stipulate that no insurance affected by the City will be called on to contribute to a loss covered thereunder. Upon receipt of notice from its insurer(s), Franchisee shall use all commercially reasonable efforts to provide at least thirty (30) calendar days prior written notice of cancellation to the City. Franchisee may utilize primary and umbrella liability insurance policies to satisfy insurance policy limits required herein.

**Section 8. Other Permits & Approvals.** Nothing in this Agreement shall relieve Franchisee from any obligation to obtain approvals or necessary permits from applicable federal, state, and local authorities for all activities in the Franchise Area.

**Section 9. Transfer of Ownership.** The rights, privileges, benefits, title, or interest provided by this Agreement shall not be sold, transferred, assigned, or otherwise encumbered, without the prior written consent of the City, which consent may be conditioned upon such transferee agreeing in writing to be bound by all of the terms and conditions of this Agreement. Approval shall not be required for any transfer from Franchisee to another person or entity controlling, controlled by, or under common control with Franchisee or if Franchisee adopts a new company name without a change in control. Franchisee may license fibers to other users operating a telecommunications services business or service providers without the consent of the City provided that Franchisee remains solely responsible for the terms and conditions outlined in this Agreement, provides the City with written notice of licenses or leases for such purposes, and such licensee or lessee shall have agreed in writing to assume the obligations to pay the fees set forth in Section 10 of this Agreement directly to City. The licensing or lease of fibers for other uses shall require a separate assignment, franchise or right of way agreement approved by the City.

**Section 10. Fees.** It is the intention of the City that Franchisee compensate City for the use of the City's rights-of-way, as they are valuable assets of the City that: (a) the City acquired and maintains at the expense of its taxpayers and citizens; (b) the City holds in trust for the benefit of its citizens; and (c) the grant to Franchisee of the use of the City's rights-of-way is a valuable right without which Franchisee would be required to invest substantial capital in right-of-way acquisition costs. Accordingly, it is the intention of the City and Franchisee to obtain and to pay a fair and reasonable compensation for grant of this Franchise.

- A. Permit Fees. Franchisee shall pay to City all fees required in obtaining permits and processing permit applications for the Facilities as now codified, or as shall be in the future, codified pursuant to any ordinance of City, or pursuant to its permit application fee structure generally applicable to all other users of City rights-of-way.
- B. Franchise Fees. In addition to the fees set forth in Section 10.A above, Franchisee shall be obligated to pay an annual franchise fee equal to five percent (5.00%) of Gross Receipts received from customers and subscribers, or other users located within the Franchise Area and such obligation shall commence on the earlier of the completion date of the installation of the Facilities, or the date when the Facilities become commercially operational. All franchise fees and other compensation due and payable under this Agreement shall be paid automatically by Franchisee without any notice or other request from City. "**Gross Receipts**" means any and all revenues or receipts (as determined in accordance with generally accepted accounting principles), including cash, credits, or other consideration of any kind or nature, derived directly or indirectly from the telecommunications system being provided through the Facilities including: (a) revenues and receipts which Franchisee receives in connection with its telecommunications services or other services provided in accordance with this Agreement; (b) revenues and receipts which Franchisee receives from its customers or subscribers, including residential, industrial and commercial entities within the Franchise Area for the sale, transmission, rendering and/or provision of its telecommunications services, under rates, temporary or permanent, whether authorized or not by the Public Service Commission and represents amounts billed under such rates, as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments; and (c) any revenues and receipts received for rendering other services, products or charges (including installation, maintenance and service charges) relating or pertaining to, or in connection with, the telecommunications system being provided through the Facilities. Notwithstanding the foregoing, "Gross Receipts" shall not include revenue received by Franchisee in providing internet access services within the Franchise Area unless and until the incumbent local exchange provider is also paying to the City the same franchise fee that Franchisee is required to pay under this Agreement, and shall not include any revenue or rents received by Franchisee from renting or leasing its Dark Fiber to another telecommunications service provider that is sending its own telecommunications signals, not controlled by Franchisee, across such Dark Fiber, provided that Franchisee shall have advised such licensee or lessee that it must provide its agreement in writing to pay all applicable fees and obligations to the City, including to pay the fees set forth in this Section 10 as provided for in Section 9 of this Agreement. The Franchise Fee shall be paid by Franchisee on an annual basis and shall be made directly to the City within thirty (30) days after the expiration of each calendar year. Simultaneously with the payment of the Franchise Fee, Franchisee shall file with the City a detailed revenue statement clearly showing the Gross Receipts received by Franchisee during the preceding year and certified by an officer of Franchisee attesting to the accuracy, completeness and veracity of the revenue figures consistent with the definition of Gross Receipts as defined in this Agreement.



**Section 11. Notices.** Any notice to be served upon the City or Franchisee shall be delivered to the following addresses respectively by either personal delivery or by nationally recognized overnight delivery service:

CITY:

City of Park Hills, Kentucky  
Attn: Mayor  
1106 Amsterdam Road  
Park Hills, Kentucky 41011

FRANCHISEE:

MCImetro Access Transmission Services Corp.  
Attn: Franchise Manager HQE02E102  
600 Hidden Ridge  
Irving, Texas 75038

With copy to:

Hemmer DeFrank Wessels PLLC  
Attn: Todd V. McMurtry, Esq.  
250 Grandview Drive, Suite 500  
Fort Mitchell, Kentucky 41017

With copy to (except for invoices):

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

**Section 12. Indemnification.** To the extent permitted by applicable law and except with respect to Claims based on the City's gross negligence or willful misconduct, Franchisee shall at all times fully defend, indemnify, protect and save harmless the City and its elected officials, non-elected officers, employees, agents and representatives (individually, an "Indemnatee" and collectively, the "Indemnitees"), from and against any and all occurrences, claims, demands, actions, suits, proceedings, liabilities, losses, fines, penalties, damages, expenses, costs including reasonable attorneys' fees (collectively, "Claims"), which might be claimed now or in the future, and which arise out of, or be caused by, whether directly or indirectly: (a) the installation, construction, operation, modification, maintenance, repair, and removal of the Facilities; (b) the acts or omissions of Franchisee, or its contractors, subcontractors, employees, and agents; (c) Franchisee's failure to comply with the provisions of any applicable law to which it or the Facilities are subject; and (d) Franchisee's failure to comply with the terms and conditions contained in this Agreement.

**Section 13. Environmental Laws.** Franchisee shall comply with, and shall cause its contractors, sub-contractors and vendors to comply with, all rules, regulations, statutes or orders of the U.S. Environmental Protection Agency, the Kentucky Department for Environmental Protection and any other governmental agency with the authority to promulgate and enforce environmental rules and regulations applicable to Franchisee's use of any portion of the City rights-of-way under this Agreement ("Environmental Laws"). Franchisee shall promptly reimburse the City for any costs, expenses, fines or penalties levied against the City because of Franchisee's failure, and/or the failure of its contractors, subcontractors and/or vendors to comply with Environmental Laws. Neither Franchisee, nor its contractors, subcontractors or vendors shall possess, use, generate, release, discharge, store, dispose of or transport any hazardous or toxic materials on, under, in, above, to or from its work sites except in compliance with the Environmental Laws. "Hazardous Materials" mean any substances, materials or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state or local laws, regulations, ordinances or orders. Franchisee shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids,

materials or substances in the City's storm sewer system or sanitary sewer system or elsewhere on or in the City rights-of-way in violation of the Environmental Laws.

**Section 14. Severability.** If any section, sentence, clause or phrase of this Agreement is held to be invalid or unenforceable, the remaining sections, sentences, clauses and phrases shall not be affected thereby, and shall remain in full force and effect legally binding upon the parties hereto.

**Section 15. Reservation of Rights.** The parties agree that this Agreement is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, orders, and ordinances. Accordingly, any provision of this Agreement or any local ordinance which may conflict with or violate the law shall be invalid and unenforceable, whether occurring before or after the execution of this Agreement, it being the intention of the parties to preserve their respective rights and remedies under the law, and that the execution of this Agreement does not constitute a waiver of any rights or obligations by either party under the law.

**Section 16. Police Powers.** Nothing contained herein shall be deemed to affect the City's authority to exercise its police powers. Franchisee shall not by this Agreement obtain any vested rights to use any portion of the City rights-of-way except for the locations approved by the City and then only subject to the terms and conditions of this Agreement. This Agreement and the permits issued thereunder shall be governed by applicable City ordinances in effect at the time of application for such permits.

**Section 17. Governing Law.** This Agreement shall be governed by the domestic laws of the Commonwealth of Kentucky, and federal laws of the United States of America which may preempt state laws.

**Section 18. Counterparts.** This Agreement may be executed in counterpart signature pages by the parties hereto.

**Section 19. Authorization.** The entering into of this Agreement has been authorized by the City by passage of Resolution No. \_\_\_\_\_ - 2019.

**Section 20. Organization and Standing.** Franchisee is a telecommunications provider duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized to conduct business in the Commonwealth of Kentucky. Franchisee has all requisite power and authority to own or lease its properties and assets, subject to the terms of this Agreement, to conduct its businesses as currently conducted, to offer telecommunications services within the Commonwealth of Kentucky, and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby.

**Section 21. Relationship of Parties.** Franchisee shall be responsible and liable for its contractors, subcontractors, sublicensees and vendors. The City has no control or supervisory powers over the manner or method of Franchisee's, or its contractors', subcontractors' and sublicensees' performance under this Agreement. All personnel Franchisee uses or provides are its employees, contractors, subcontractors or sublicensees and not the City's employees, agents, or subcontractors for any purpose whatsoever. The relationship between City and Franchisee is at all times solely that of franchisor and franchisee, not that of partners or joint venturers.

**Section 22. Entire Agreement.** This Agreement merges the prior negotiations and understandings of the parties and embodies the entire agreement of the parties.

**Section 23. Amendment.** This Agreement may only be amended or modified by a written instrument executed by all of the parties hereto.

**Section 24. Non-Waiver.** If either party fails to require the other to perform a term or condition of this Agreement, that failure does not prevent the party from later enforcing that term or condition. If either party waives a breach of this Agreement by the other party, that waiver does not waive a later subsequent breach of this Agreement.

**Section 25. Mechanics Liens.** Franchisee shall keep all portions of the City's rights-of-way wherein its Facilities and related equipment are located or placed free from any mechanics liens or encumbrances arising from any work performed, materials furnished, or obligations incurred by or at the request of Franchisee. If any lien is filed against the City's rights-of-way or any portion thereof or other property belonging to the City as a result of the acts or omissions of Franchisee or its employees, agents, or contractors, Franchisee shall discharge the lien or bond the lien off in a manner satisfactory to the City within thirty (30) days after Franchisee receives written notice from any party that the lien has been filed.

IN WITNESS WHEREOF, the parties have hereunto set their signatures as of the Effective Date described above.

CITY:

FRANCHISEE:

City of Park Hills, Kentucky

MCImetro Access Transmission Services Corp.  
(d/b/a Verizon Access Transmission Services)

By: \_\_\_\_\_  
Kathy Zembrodt - Mayor

By: \_\_\_\_\_  
Robert J. Hayes – Sr. Mgr. Ntwk Eng & Ops



**EXHIBIT A**

FRANCHISE AREA

**MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services**  
**Planned Fiber Routes**  
**City of Park Hills, KY**

