AGREEMENT BETWEEN THE CITY OF BURLINGAME, CALIFORNIA AND MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS TRANSMISSION SERVICES FOR THE INSTALLATION OF TELECOMMUNICATIONS FACILITIES

This Agreement is entered into as of _____, 2019 ("Effective Date") by and between the City of Burlingame, California, a municipal corporation (the "City") and MCImetro Access Transmission Services Corp., a Delaware corporation, d/b/a Verizon Access Transmission Services ("Company").

RECITALS

A. Company is authorized to provide Telecommunications Services (as defined herein) in the State of California by the California Public Utilities Commission.

B. Company desires to install Facilities (as defined herein) from time to time within the Public Rights-Of-Way within City in order to provide Telecommunications Services.

C. City has the authority to regulate the terms and conditions for use of the Public Rights-Of-Way and land use within the corporate limits of the City.

D. The purpose of this Agreement is to provide the general framework within which Company will apply for necessary encroachment permits and install the Facilities within the corporate limits of the City. The parties do not intend the Agreement to give Company a right to the award of any such permits.

AGREEMENT

In consideration of the Recitals set forth above, the mutual promises and terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

1.1 **Company** – means Company, and its lawful successors or assigns.

1.2 **City** – means the City of Burlingame, a municipal corporation of the State of California, including the duly elected or appointed officers, agents, employees, and volunteers of the City of Burlingame, individually or collectively.

1.3 **City Engineer** – The City Engineer of the City of Burlingame, State of California, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

1.4 **Public Rights-Of-Way or "Rights-Of-Way"** – means the surface of and the space above and below any street, road, highway, right-of-way, alley, easement, pathway, sidewalk and other public way, including driveway, curb, gutter, paving or other surface and subsurface drainage structure or facility and any public place, or City property, now or hereafter existing as such within the City.

1.5 **Telecommunications Services** – means services that Company is authorized to offer and/or provide as of the date of this Agreement pursuant to any applicable Certificate of Public

Convenience and Necessity (CPCN) issued by the California Public Utilities Commission, including its existing CPCN approved by D98-12-083 which authorizes Company to provide resold and full facilities-based local exchange service, including access service, in the territories of the five Uniform Regulatory Framework companies, and interexchange services throughout the State of California. Telecommunications Services also includes provision by Company of internet access services, data transport service, cell site front- and back-haul and Facilities leasing to affiliates and third parties. This Agreement does not authorize Company to install wireless antennas or radios or provide personal wireless services.

1.6 **Facilities** – means fiber optic cables, coaxial and copper cables, Ethernet cables, conduits, converters, splice boxes, cabinets, handholes, manholes, vaults, equipment, drains, surface location marker, appurtenances, and related facilities located or to be located in the Public Rights-Of-Way of the City and used or useful for the transmission of telecommunications or provision of the means of transmission of telecommunications. This shall not mean commercial radio transmitting, relaying and/or receiving antennas, antenna support structures and/or ancillary facilities, including, but not limited to, equipment cabinets, facility components and similar structures or equipment and/or overhead service/transmission lines used for the purpose of transmitting, relaying and/or transmitting and/or receiving data, voice and/or paging services.

ARTICLE 2
INSTALLATION AND MAINTENANCE OF FACILITIES

2.1 **Permitted Installations.** During the term of this Agreement, Company may install, maintain, operate, relocate and remove the Facilities within the City's Public Rights-Of-Way subject to the issuance of required encroachment and building permits and approvals. The Facilities shall be shown and described in permit applications filed with the City Engineer and may be modified by subsequent permits approved by the City. All Facilities to be installed, maintained, operated, relocated and removed under this Agreement shall be underground in areas where all existing utilities are already underground or all new utilities are being installed underground; provided, however, that in those areas where poles exist and electric and telephone lines are overhead, Company may install fiber optic cables overhead if using the same poles (subject to the approval of the pole owner and City); and further provided that whenever and wherever the owner of the poles moves its plant from overhead to underground placement in an area, all Company's facilities must be relocated and moved underground as directed by the City Engineer, at Company's expense, and in accordance with then-existing City practices, policies and regulations.

2.2 **No Cost to City.** The construction, installation, operation, maintenance, and removal of any Facilities shall be accomplished (i) without cost or expense to the City and (ii) subject to the prior approval of the City Engineer. Company shall maintain any such Facilities at all times in good and safe condition and free from any nuisance to the satisfaction of the City Engineer.

2.3 **Compliance with Code**. Company shall comply with the provisions of the Burlingame Municipal Code, as may be amended from time to time (the "Code"), including Title 12 Streets and Sidewalk, Chapter 12.10 Encroachment Permit and, if applicable, Chapter 25 Wireless Communications Facilities. Company shall also comply with applicable provisions of the City's Zoning Code, as amended from time to time (the "Zoning Code"). In the event of a conflict between this Agreement and the Code and/or the Zoning Code, the provisions of the Code and/or the Zoning Code shall apply.

2.4 **Encroachment Permits**. All work performed by Company under this Agreement shall be made pursuant to individual encroachment permits. Company shall obtain encroachment permits from the City for the installation of the Facilities and for any other work or activities within the City's Public Rights-Of-Way as required by Chapter 12.10 of the Code. Company shall submit all plans, schedules, and information required by the Code and the City Engineer, consistent with the Code and all applicable laws. Company also shall pay all required processing, field marking, plan review, engineering and inspection costs, cash deposits, bonds or other security required by the City Engineer, consistent with the Code and all applicable laws, and the City's actual reasonable legal costs for outside counsel assistance in the preparation of this Agreement, prior to issuance of said permit in accordance with the City's rates in effect. All work within the Public Rights-Of-Way shall be performed in strict compliance with the terms and conditions of this Agreement, the Code, and the pertinent encroachment permit. Once a permit is issued, Company shall commence work and complete the construction and installation of the Facilities in accordance with the Code and any construction schedule approved by the City Engineer in the applicable permit.

2.5 **Compliance with Laws and Regulations**. Company shall at all times during the duration of this Agreement, comply with all applicable state, federal and local laws and regulatory requirements, including, without limitation, compliance with Company's Certificates of Public Convenience and Necessity, the California Environmental Quality Act, zoning laws, and construction codes. Company shall at all times employ reasonable care so as not to endanger personnel or property or unreasonably obstruct travel on any Public Rights-Of-Way and shall install, maintain and use commonly accepted industry methods and devices for preventing failures and accidents that are likely to cause damage, injury or nuisance to the public or other users of the Public Rights-Of-Way, public property or private property.

2.6 **Coordination of Excavation with Other Permittees**. Company shall coordinate work with other utilities using the Public Rights-Of-Way in accordance with Title 12 of the Code and the requirements imposed by any applicable encroachment permit.

2.7 **Membership In Underground Service Alert**. Pursuant to California Government Code Section 4216.1, Company shall become a member of Underground Service Alert-Northern California and shall field mark, at its sole expense, the locations of its underground Facilities upon notification in accordance with the requirements of Section 4216 of the State of California Government Code, as it now reads or may hereinafter be amended. Company shall furnish written proof of such membership to the City Engineer within thirty (30) days of obtaining such membership (or within 30 days of the date of this agreement if such membership has been obtained prior to the date of this agreement). Repeal or amendment of Government Code Section 4216.1 shall not negate Company's obligation to maintain such membership, unless such repeal or amendment disbands or eliminates Underground Service Alert-Northern California, and shall not negate any notice requirement to City. Company shall undertake and perform any work authorized by this Agreement in a skillful and workmanlike manner, free of defects.

2.8 **Facilities Maps**. Company shall promptly submit to City accurate as-built maps, plans and record drawings showing in detail the location, depth, and size of all Company Facilities in the Public Rights-Of-Way (collectively, the "Maps") within thirty (30) days of a request by the City Engineer. Such Maps shall be submitted in the form and with the detail reasonably required by the City Engineer. The Company shall provide, upon demand, copies of the Maps to other third parties interested in performing work within Public Rights-Of-Way for a reasonable charge upon request within thirty (30) days after such demand. The Company shall, moreover, at its sole

cost and expense, pothole its subsurface Facilities to a depth of 1' below the bottom of its subsurface Facilities within thirty (30) days of receipt of a written request from the City to do so.

2.9 **Contractors**. Any contractor or subcontractor used for the construction, installation, operation, maintenance or repair of the Facilities must be properly licensed under the laws of the state and all applicable local ordinances, and each contractor or subcontractor shall have the same obligations with respect to its work as Company would have under this Agreement and applicable law if the work were performed by Company. Company shall be responsible for the work of its contractors and subcontractors and that such work is performed consistent with this Agreement and applicable law, shall be responsible for all acts or omissions of contractors or subcontractors, and shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor. This section is not meant to alter tort liability of Company to third parties.

ARTICLE 3
LIMITATIONS AND RESTRICTIONS

3.1 Nothing in this Agreement shall be construed as granting or creating any franchise rights.

3.2 This Agreement is not a grant by City of any property interest but is made subject and subordinate to the prior and continuing right of City to use all the Public Rights-Of-Way, including but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroilers, cable television and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress, along, over, across and in said Public Rights-Of-Way.

3.3 This Agreement shall not create a vested right of any nature in Company to use the Public Rights-Of-Way. This Agreement is made subject to all easements, restrictions, conditions, covenants, encumbrances and claims of title which may affect the Public Rights-Of-Way, and it is understood that Company, at its own cost and expense, shall obtain such permission as may be necessary consistent with any other existing rights. No reference herein to "Public Rights-Of-Way" shall be deemed to be a representation or guarantee by City that its interest or other rights to control the use of such property is sufficient to permit its use for such purposes. It is not a warranty of title or interest in any Public Rights-Of-Way. It does not confer rights other than as expressly provided in the grant hereof, and, except for rights Company has under federal or state law, Company shall be deemed to gain only those rights to use as are properly in City and as City may have the undisputed right and power to give.

3.4 This Agreement only authorizes Company to use the portions of the Public Rights-Of-Way specifically described in one or more encroachment permits if and when issued by the City. It does not require the City to approve any particular encroachment permit applications (provided City is acting consistent with applicable laws and regulations), nor does it provide Company with any interest in any particular location within the Public Rights-Of-Way. This Agreement shall not be deemed to approve any particular design or installation technique. Certain specific physical design aspects of the Facilities and detailed approvals of the installation of the Facilities will occur through the issuance of specific permits and approvals by the City.

3.5 If Company proposes and is authorized by the Public Utilities Commission of California or the Federal Communications Commission to provide cable service (as such terms is defined in 47 U.S.C. § 522) and/or wireless telecommunications services to customers within the corporate limits of City, Company shall notify City in writing, as soon as practicable, but in no event later than thirty (30) days following such as decision by the California Public Utilities Commission and comply with City's applicable local ordinances, including any fee, franchise and/or permit requirements. Company acknowledges that any expansion or change in the character and nature of the services in general may increase City's regulatory authority over such service and/or product, and this may, at City's election, require Company to enter into a new Agreement consistent with the requirements of an existing or hereinafter-enacted City ordinance regulating such services, if all or any part of such services fall under the regulation, jurisdiction and authority of City.

3.6 This Agreement shall be for the non-exclusive use of the Public Rights-Of-Way. By executing this Agreement, City does not agree to restrict the use of the Public Rights-Of-Way in all or any part of the City by any person in the same business, a related business, or a competing business as Company.

3.7 Company is not authorized to use any City property located outside of the Public Rights-Of-Way nor any City-owned infrastructure located within the Public Rights-Of-Way without the prior express written agreement of the City.

ARTICLE 4
REQUIRED CASH DEPOSIT OR BOND

4.1 **Security**. Company will furnish and deliver to City, the following securities, each of which must be issued by a surety company duly and regularly authorized to do general surety business in the State of California, or such other surety as may be acceptable to the City Engineer:

(a) Performance Security. Company shall furnish and deliver a surety security (the "Durable Performance Security"), naming the City of Burlingame as the obligee, in the amount of not less than one hundred percent (100%) of the estimated cost of the installation Work or concurrently with the execution of this Agreement, which security must be reasonably acceptable to the City Engineer. The Durable Performance Security shall be conditioned upon the faithful performance of this Agreement and any work performed thereunder and shall be released by City one-year following the termination of this Agreement. This one (1) year period is to guarantee that any work is of good quality and free from any defective or faulty materials or workmanship. City may draw on the Durable Performance Security in the event of a default by Company or in the event that Company fails to fulfill any of its obligations under this Agreement. City may also draw on the Durable Performance Security to cover any reimbursements owed to City by Company. If City draws on the Durable Performance Security, it will notify Company of the amount drawn, and Company will promptly restore the Durable Performance Security to the full amount of not less than one hundred percent (100%) of the estimated cost of the installation Work. Upon completion of the installation Work, Company will replace the existing Durable Performance Security with an ongoing Durable Performance Security in the amount of $25,000 for the term of this Agreement, including all Renewal Terms. In the event that a bond issued pursuant to this Section of this Agreement is canceled by the surety, after proper notice and pursuant to the terms of said bond, Company shall, prior to the expiration of said bond, procure a replacement bond that complies with the terms of this Section of this Agreement.

4.2 **Additional Security.**

4.2.1 Whenever Company applies for an encroachment permit to perform work under this Agreement, it will provide City with an estimate of its cost for the work, including estimated labor costs. If City, in its sole discretion, determines that the Durable Performance Security provides insufficient security in relation to the proposed work, it may require Company to obtain an additional performance security in an amount City determines necessary to provide adequate security, but not in excess of the estimated cost of the work Company will perform (an "Additional Performance Security"), which security must be reasonably acceptable to the City Engineer. Each Additional Performance Security shall be conditioned upon the faithful performance of this Agreement and any work performed thereunder and shall be accepted by City one-year following the date the work for which it was obtained is completed, inspected, and accepted by the City Engineer. With respect to any proposed work, City may recover against both the Durable Performance Security and any applicable Additional Performance Security obtained to insure that work. If City draws on any Additional Performance Security, it will notify Company of the amount drawn, and Company will promptly restore such Additional Performance Security to its full original amount.

4.3 **Recovery**. So long as any securities described in Section 4.2 and 4.3 remain in place (each an "Existing Security"), they may be utilized by the City as provided herein for reimbursement of the City by reason of Company's failure to pay the City for actual costs and expenses incurred by the City with respect to the Facilities, including any expenses for removal under this Agreement.

4.3.1 In the event Company has been declared by the City to be in default of a material provision of this Agreement and if Company fails, within 30 days of receipt of the City's written default notice, to perform any of the conditions of this Agreement, or fails to begin to perform any such condition that may take more than 30 days to complete, and provided that Company has not been affected by a force majeure or other event beyond its control, City may thereafter obtain from the applicable Existing Security, after proper claim is made to the surety, an amount sufficient to compensate the City for its actual damages and/or expenses. Upon such withdrawal from an Existing Security, the City shall notify Company in writing, by First Class Mail, postage prepaid, of the amount withdrawn and the date thereof.

4.3.2 Thirty days after receipt of City's written notice of the cash deposit or bond forfeiture or withdrawal authorized herein, Company shall deposit such further cash or bond, or other security, as the City may require, which is sufficient to bring the amount of each Existing Security back to its original amount.

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

4.4 **Other Security Provisions.**

4.4.1 If any Existing Security is a corporate surety bond and, in the reasonable opinion of the City, any surety or sureties thereon become insufficient, Company shall renew or replace any such surety with good and sufficient surety or sureties within ten (10) days after receiving from City written demand thereof.

4.4.2 Any Existing Security consisting of corporate surety bonds shall be kept on file with the City Engineer. If a corporate surety bond is replaced by another approved bond, the replacement shall be filed with the City Engineer and made a part of and incorporated into this Agreement. Upon filing and approval by the City Engineer of a replacement bond, the former Existing Security shall be released.

4.4.3 If there is an increase to the estimated cost of any work, City may require Company to increase the amount of any Additional Performance Security and/or Additional Payment Security so that the applicable securities cover the entire estimated cost of the work. In addition, if there is any increase to the estimated cost of any work, City may also require Company to obtain an Additional Performance Security and/or Additional Payment Security even if such additional security had not been originally required with respect to the work.

ARTICLE 5
TERM AND TERMINATION

5.1 **Duration**. This Agreement shall remain in force for ten (10) years, subject to the City's authority to regulate the terms and conditions of Company's use of the Public Rights-Of-Way, and its right to terminate the Agreement pursuant to Section 5.2 below. If none of the grounds for termination listed in Section 5.2 exist at the end of the initial term (or any Renewal Term), the Agreement shall automatically renew for a one (1) year period (a "Renewal Term") on the same terms and conditions unless either party provides written notice to the other party at least six (6) months prior to the expiration of the then-current term stating it does not wish to renew the Agreement. For the sake of clarity, at the end of each Renewal Term this Agreement will renew for an additional Renewal Term unless it is terminated as described in the preceding sentence. In the event that Company loses its authorizations to use the Public Rights-Of-Way, including any CPCN, at any time during the initial term or a Renewal Term, then this Agreement shall automatically terminate.

5.2 **Termination**. The City may terminate this Agreement by giving thirty (30) days written notice of termination upon the occurrence of any of the following:

5.2.1 Reasonable determination by City that the provisions herein interfere with the use or disposal of the Public Rights-Of-Way or any part thereof by City. Where only a portion of Company's Facilities interfere with the use or disposal of the Public Rights-Of-Way, the City, at its sole discretion, may elect to require Company to relocate the said portion in accordance with Article 6 of this Agreement.

5.2.2 For failure, neglect, or refusal by the Company to fully and promptly comply with any and all of the conditions of this Agreement, or for nonuse in accordance with Section 6.2 herein, unless Company confirms within thirty (30) days of receipt of the notice that the cited condition has ceased, been corrected or, subject to the City's reasonable agreement, is diligently being pursued by the Company;

5.2.3 An order entered by a court of competent jurisdiction approving a petition in bankruptcy or ordering the dissolution, winding up or liquidation of Company or appointing a custodian, receiver, trustee, or other officer to administer a substantial part of Company's property.

5.2.4 The revocation, expiration or other loss of applicable permits or authorizations required by City, state or federal law for the use, maintenance or operation of the Facilities.

5.3 **Occupancy/Removal/Abandonment upon Termination**. Unless Company has another basis for its authorization to remain in the right-of-way, Company shall discontinue use of the Facilities immediately upon termination of this Agreement and within one hundred and twenty (120) days after termination of this Agreement, Company shall either completely remove the Facilities at Company's sole cost and expense or, with City approval, abandon the Facilities in place. The provisions of Articles 6.2-6.4 shall govern any such removal or abandonment. Notwithstanding the foregoing, the City Engineer may require a shorter period due to exigent circumstances and may authorize a longer period if it is in the public interest. If Company fails to remove the Facilities within the prescribed time period and the City has not approved abandonment in place, and Company has not been subject to a force majeure or other event beyond its control, the City may remove the Facilities at the expense of Company, and Company shall promptly reimburse the City for any and all expenses, including but not limited to administrative, legal and consultant costs, within thirty (30) days after receiving an invoice from the City.

ARTICLE 6
REMOVAL, RELOCATION AND ABANDONMENT

6.1 Upon receipt of a written demand from the City, Company, at its sole cost and expense, shall remove and relocate any Facilities installed, used and/or maintained by Company under this Agreement when such removal or relocation is made necessary (a) due to any work proposed to be done by or on behalf of the City or other governmental agency, including but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility, installation of curbs, gutters or landscaping and installation, construction, maintenance or operation of any underground or aboveground facilities such as sewers, drains, pipes, power lines, and tracks or (b) due to a reasonable determination by the City that the Facilities are detrimental to governmental activities. Company shall complete the removal or relocation within ninety (90) days of receipt of notice from the City or according to an agreed upon schedule with the City of no less than ninety (90) days. Notwithstanding the foregoing, the City Engineer may require a shorter period due to exigent circumstances and may authorize a longer period if it will not delay the public project. If Company fails to remove or relocate the facilities within the prescribed time period and Company has not been subject to a force majeure or other event beyond its control that would prevent removal and/or relocation, City may remove the facilities at the expense of Company, and Company shall promptly reimburse the City for any and all expenses, including administrative, legal and consultant costs, within thirty (30) days after receiving an invoice from the City. Any removal or relocation work by Company shall only be done pursuant to an encroachment permit. All of the foregoing shall be subject to all applicable rules, requirements and procedures of the California Public Utilities Commission.

6.2 **Abandonment of Facilities**. If any portion of the Facilities laid, installed, or constructed in the Public Rights-of-Way, other than redundant Facilities or Facilities for emergency use, are no longer used by Company or are abandoned for a period in excess of six (6) months, Company must notify the City Engineer and promptly submit all necessary applications for permits prior to commencing work to vacate and remove the Facilities. Alternatively, in its sole discretion the City may allow Company to abandon the Facilities, or any part thereof, in place and convey the Facilities to the City.

6.3 If Company fails to remove the Facilities as required by the City pursuant to Section 6.2 and provided Company has not been subject to a force majeure or other event beyond its control that would prevent removal, the City may, in its sole discretion, after providing written notice to Company (a) remove the Facilities at Company's sole expense, which expense Company shall promptly reimburse to the City within thirty (30) days after receiving an invoice for such expenses, including all administrative, legal and consultant costs or (b) deem the Facilities, or any part thereof, to have been abandoned and conveyed to the City.

6.4 **Repair of Public Rights-of-Way**. Whenever the removal or relocation of facilities is required under this Agreement or the Code, Company shall promptly repair and return the Public Rights-Of-Way and adjacent property to a safe and satisfactory condition to the City in accordance with the Code and with the generally applicable construction-related conditions and specifications established by the City according to its standard practice. If Company removes any Facilities from the Public Rights-Of-Way, company shall, within ten (10) days after such removal, give notice thereof to the City specifying the Right-Of-Way affected and the location thereof as well as the date of removal. Company agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense. If Company fails to do so and provided Company has not been subject to a force majeure or other event beyond its control that would prevent repair and restoration work, the City shall have the option to perform such work at Company's sole expense, which expense Company shall promptly reimburse to the City within thirty (30) days after receiving an invoice for such expenses, including all administrative, legal and consultant costs. Before proceeding with removal or relocation work, the Company shall obtain an encroachment permit from the City.

ARTICLE 7
DAMAGES

7.1 The Company shall be responsible for any damage to the City's street pavements, existing utilities, curbs, gutters, sidewalks due to its installation, maintenance, repair, or removal of its Facilities in the Public Rights-Of-Way and public utility or service easements, and shall repair, replace, and restore in kind the said damaged facilities at its sole expense.

7.2 Company shall be responsible to repair any premature deterioration of the surface or subsurface improvements caused by the Company's activities. This responsibility shall survive this Agreement or any abandonment of its Facilities for a period of two (2) years from the last date of any of Company's work in the City's right of way. The Company shall immediately on written notice from the City cause all necessary repairs to be completed; however, under no circumstances may the time for repairs exceed thirty (30) days from the date of City's notice to Company. In the event the repairs are not made, the City shall make repairs and bill the Company.

7.3 If any Public Right-Of-Way to be used by the Company has preexisting installation(s) placed in said Right-Of-Way, the Company shall assume the responsibility to verify the location of the preexisting installation and notify the City and any third party of the Company's proposed installation. The cost of any work required of such third party or the City to provide adequate space or required clearance to accommodate the Company's installation shall be borne solely by the Company.

ARTICLE 8
TAXES

8.1 Company agrees that it will be solely responsible for the payment of any and all lawful taxes, fees and assessments relating to its use and maintenance of the Facilities including but not limited to all taxes, fees and assessments listed in Company's Certificates of Public Convenience and Necessity issued by the California Public Utilities Commission. Pursuant to Section 107.6 of the California Revenue and Taxation Code, the City hereby advises, and Company recognizes and understands, that Company's use of the Public Rights-Of-Way may create a possessory interest subject to property taxation and that Company will be subject to the payment of property taxes levied on such interest.

ARTICLE 9
INDEMNIFICATION

9.1 **Indemnification**. To the fullest extent permitted by law, the Company, jointly and severally, for itself, its successors, agents, contractors or employees agrees to indemnify, defend, and hold the City, its directors, officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of, pertaining or relating to the actual or alleged negligence, recklessness or willful misconduct of the Company, its employees, subcontractors, or agents, or on account of the performance or character of the services, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, employees, agents, or volunteers. Company shall indemnify for any loss of or damage to property caused, directly or indirectly, by an act or omission of Company or its personnel or by any structures of encroachments placed in, on or under the surface of any Public Rights-Of-Way and the use, misuse or failure of any equipment or facility used by Company, or by Company personnel regardless of whether such equipment or facility is furnished, rented leased or loaned by or to Company. It is understood that the duty of the Company to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Notwithstanding the foregoing, for any design professional services, the duty to defend and indemnify City shall be limited to that allowed by state law. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve the Company from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

9.2 **Duty to Defend; Notice of Loss**. Company acknowledges and agrees that its obligation to defend the City under Section 9.1 (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of Section 9.1, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to Company by the City and continues at all times thereafter. The City shall give Company prompt notice of any Loss under Section 9.1 and Company shall have the right to defend, settle and compromise any such Loss; provided, however, that the City shall have the right to retain its own counsel if representation of City by the counsel retained by Company would be inappropriate due to conflicts of interest between City and Company. City's failure to notify Company promptly of any Loss shall not relieve Company of any liability to City pursuant to Section 9.1, unless such failure materially impairs Company's ability to defend such Loss. Company shall seek City's prior written consent to settle or compromise any Loss if Company contends that City shares in liability with respect thereto.

9.3 **Assumption of Risk**. Company shall assume all risk of damage to any and all other property of Company, or any property under the control or custody of Company while upon or near the Public Rights-Of-Way incident to the use of the Public Rights-Of-Way. Company releases City from any liability, including claims for damages or extra compensation, arising from construction delays due to any activities by City. Under no circumstances shall City be liable to Company for any loss of service downtime, lost revenue or profits or third-party damages.

9.4 **Survival.** Company's obligations under this Article 9 shall survive Termination of this Agreement.

9.5 **No Waiver**. The failure of either party on one or more occasions to exercise a right or to require compliance or performance under this Agreement 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 such party nor to excuse the other party from complying or performing, unless such right or such compliance or performance has been waived in writing.

ARTICLE 10
INSURANCE

10.1 **Minimum Insurance Requirements.** The Company shall procure and maintain for the duration of 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 Company, Company's agents, representatives, employees or subcontractors.

10.1.1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

(a) Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form GC 0001).

(b) Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.

(c) Worker's Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

10.1.2 Beginning of Work

Contractor shall maintain limits no less than:

(a) General Liability: $2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.

(b) Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage.

(c) Workers' Compensation and Employers Liability: Worker's compensation limits as required by the Labor Code of the State of California and Employers Liability limits of $1,000,000 per accident.

10.1.3 Deductibles and Self-insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

10.1.4 Other Insurance Provision

The policies are to contain, or be endorsed to contain the following provision:

(a) General Liability and Automobile Liability Coverages

(i) The City of Burlingame, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor, products and completed operations of the Contractor, premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Burlingame, its officers, officials, employees, or volunteers. The endorsement providing this additional insured coverage shall be equal to or broader than ISO Form CG 20 10 11 85 and must cover joint negligence, completed operations, and the acts of subcontractors.

(ii) The Contractor's insurance coverage shall be primary insurance as respects the City of Burlingame, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Burlingame, its officers, officials, employees, or volunteers shall be excess of the Contractor’s Insurance and shall not contribute with it.

(iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City of Burlingame, its officers, officials, employees, or volunteers.

(iv) The Contractor'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.

(b) Workers' Compensation and Employers Liability Coverage

(i) The insurer shall agree to waive all rights of subrogation against the City of Burlingame, its officers, officials, employees, or volunteers for losses arising from work performed by the Contractor for the City of Burlingame.

(c) All Coverages

(i) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty days prior written notice by certified mail, return receipt required, has been given to the City of Burlingame.

10.1.5 Acceptability of Insurers

(a) Insurance is to be placed with insurers with a Best's rating of no less than A-:VII and be authorized to conduct business with regard to the proffered lines of insurance in the State of California.

10.1.6 Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the City. All certificates and endorsements are to be received and approved by the City before work commences. Company shall make available for inspection, upon request from the City, a copy of insurance policies providing required insurance at Company's local office in the City or Company's nearest office to the City.

10.1.7 Indemnification Not Limited

Any insurance required to be obtained and maintained by Company under this Agreement shall not limit in any way Company's indemnification obligations under Article 9 of this Agreement.

ARTICLE 11
MISCELLANEOUS PROVISIONS

11.1 **Representations and Warranties.** Each party represents and warrants that it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement and that this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles. The Company represents and warrants that it has any and all authorizations and approvals from state and federal regulatory agencies including the California Public Utilities Commission and the Federal Communications Commission as are necessary for the activities and Facilities contemplated by the Agreement and that Company is in compliance in all material respects with its obligations under such authorizations.

11.2 **Notices**. All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted through first class United States mail, or by private delivery systems, to the following address or such other address of which a party may give written notice:

City:
City of Burlingame
Public Works Director
501 Primrose Road
Burlingame, CA 94010

Company:
Verizon Access Transmission Services
Attn: Franchise Manager
600 Hidden Ridge Drive, #E02E102
Irving, TX 75038

With CC (except for invoices) to:

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

11.3 **Service of Process.** Company shall designate a person in California who is authorized to accept service of process on behalf of Company.

11.4 **Operations Center**. Company's Operations Center shall be available to City staff 24 hours a day, 7 days a week, regarding problems or complaints resulting from the Facilities installed pursuant to this Agreement and may be contacted by telephone at: 1-800-MCI-WORK regarding such problems or complaints.

11.5 **Assignment**. Company shall not assign or transfer any interest in this Agreement nor the performance of any of Company's obligations hereunder, without the prior written consent of City (which consent shall not be unreasonably withheld), and any attempt by Company to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect; provided, however, Company may assign its rights and delegate its obligations hereunder without first obtaining the City's consent to a corporation, limited liability company, partnership or other business entity wholly controlled or owned by Company or to the purchaser of all or substantially all of the Company's assets. An assignment shall not be effective until the Assignee agrees in writing to comply with and be subject to all the terms and conditions of this Agreement, the Code, and the Zoning Code. This Agreement may be assigned in its entirety; however, Company shall remain liable for any outstanding obligations incurred prior to such assignment.

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

11.7 **Amendments**. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

11.8 **Severability**. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

11.9 **Survival**. All of the provisions, conditions and requirements of this Agreement shall be in addition to any and all other obligations and liabilities Company may have to the City at common law, by statute, or by contract, and shall survive the City's Agreement to Company and any renewals or extensions thereof. All of the provisions, conditions, regulations, and requirements contained in this Agreement 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.

11.10 **Governing Law and Venue**. This Agreement shall be subject to, and governed and construed by and in accordance with, the laws of the State of California. In the event that suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in San Mateo County, or in the United States District Court, Northern District of California.

11.11 **Successors**. This Agreement is binding upon the successors, assigns and transferees of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

CITY OF BURLINGAME, a California municipal corporation

_____
Lisa K. Goldman, City Manager

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

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

_____
Kathleen Kane, City Attorney

Attest:

_____
Meaghan Hassel-Shearer, City Clerk