

(Published in The Morning Sun on August 26, 2022)

ORDINANCE NO. S-1088

AN ORDINANCE OF THE CITY OF PITTSBURG, KANSAS, GRANTING TO MCIMETRO ACCESS TRANSMISSION SERVICES LLC, D/B/A VERIZON ACCESS TRANSMISSION SERVICES (MCIMETRO), ITS SUCCESSORS AND ASSIGNS, A TELECOMMUNICATIONS FRANCHISE AND PRESCRIBING THE TERMS OF SAID GRANT AND RELATING THERETO.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PITTSBURG, KANSAS:

This Franchise Agreement ("Agreement") is entered into as of August 23, 2022 ("Effective Date") by and between the City of Pittsburg, a municipal corporation (the "City"), and MCImetro.

RECITALS

A. MCImetro owns, maintains, operates and/or controls, in accordance with regulations promulgated by the Federal Communications Commission and the Kansas Corporation Commission (hereinafter "KCC"), telecommunications networks serving MCImetro's customers through advanced fiber optic facilities. Such facilities are in public rights-of-way (hereinafter "ROW"), among other locations, in the State of Kansas.

B. MCImetro seeks to enter the City of Pittsburg's (the "City") ROW, and other real property of the City, to install, maintain and operate a fiber network (the "Network"), so that MCImetro and/or its customers (the "Customers") may provide data and telecommunications services to the enterprises, residents and visitors of the City and others (the "Services").

C. Some features of the Network may include, without limitation, telephone and telecommunications lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment comprising MCImetro's system located within the Public right-of-Way, designed and constructed for the purpose of providing Telecommunication Services, and will include other equipment as technology evolves, in a configuration and at locations to be filed and identified through the City permit process ("Facility" or "Facilities").

E. MCImetro desires to obtain from City as permitted by law, and City is willing to grant to MCImetro as required by law, the right to access the Public ROW to locate, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities in a manner consistent this Agreement.

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

SECTION 1 INSTALLATION OF THE NETWORK

1.1 Permitted Installation. MCImetro may at MCImetro's sole cost and expense and during the term of this Agreement, locate, construct, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities subject to the terms and conditions of this Agreement. MCImetro shall undertake and perform any work authorized by this Agreement in a skillful and workmanlike manner.

1.1.1 Installation Specifications. The installation of the Facilities shall be made in accordance with plans and specifications as may be approved by the City and after obtaining all necessary permits for all work in the ROW and/or on City property. Such approval review shall be made no later than forty-five (45) days from application date, and under exceptional circumstances the time may be extended an additional forty-five (45) days upon agreement of the Parties. The Parties understand and agree that Facilities outside of the Public ROW may require additional easements for underground fiber to connect to Network within the Public ROW. Such additional easements shall be located so as not to interfere with the City's use of its property. For each installation of Facilities, MCImetro shall provide to the City plans, specifications, a construction work breakdown, and anticipated construction timeframes for the installation of Facilities no later than forty-five (45) days prior to the planned start of the installation. MCImetro shall, at the written request of the City, attend a planning session regarding an installation proposed by MCImetro. The location, depth of the fiber underground, and any other requirements shall be approved in writing by the City prior to construction of the Facilities at that specific location, approval of which shall not be unreasonably withheld, conditioned or delayed. Approval of plans and specifications and the issuance of any permits by the City shall not release MCImetro from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. MCImetro shall be responsible for notifying the City and all other relevant parties immediately upon discovery of such omissions and/or errors and with obtaining any amendments for corrected City-approved permits, as may be necessary. MCImetro shall be responsible for all costs associated with the permitting process, including, but not limited to, repairs and replacement of City ROW. Such permits and approval requirements detailed in this section shall not be unreasonably withheld, conditioned or delayed by the City and any conditions or requirements shall be in accordance with federal, state, and local laws.

1.1.2 Temporary Construction. The installation of the Facilities shall be performed in accordance with traffic control plans for temporary construction work that are approved by the City, which approval shall not unreasonably be withheld, conditioned or delayed.

1.1.3 Construction Schedule. If requested by the City, at least ten (10) days prior to the installation of the Facilities, MCImetro shall deliver to the City a schedule for the proposed work related to the construction of the Facilities, as well as a list of the names of all agents and contractors of MCImetro's authorized by MCImetro to access the City ROW and City owned property on MCImetro's behalf.

1.1.4 Coordination of Work. MCImetro shall be responsible for coordination of work to avoid any interference with existing utilities, substructures, facilities and/or operations within the ROW. MCImetro shall be the City's point of contact-all communications shall be through MCImetro. MCImetro shall be solely responsible for communicating with Kansas One-Call.

1.1.5 Inspection by City. The City shall have commercially reasonable access to inspect any work conducted by MCImetro during the installation, maintenance and/or repairs of the Facilities.

1.1.6 Other Utility Providers. When necessary, MCImetro shall coordinate with other utility providers for other needed utility services. MCImetro and the City will reasonably cooperate with the other utility providers regarding the location of any meter, pole, and other apparatuses required for each Site.

1.1.7 Existing Utility Poles. MCImetro may attach its Facilities to an existing utility pole pursuant to a properly executed agreement with the pole owner, provided, however, that any necessary replacement of the pole in order to accommodate the attachment shall be subject to the proper exercise of the City's police powers, and in no instance shall MCImetro erect a new pole within an existing aerial pole line absent the City's prior authorization.

1.2 Compliance with Laws. This Agreement is subject to the terms and conditions of all applicable federal, state and local Laws and the Parties shall comply with any such Laws in the exercise of their rights and performance of their obligations under this Agreement. "Laws" or "Law" as used in this Agreement means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the City or other governmental entity or agency having joint or several jurisdiction over the Parties' activities under this Agreement or having jurisdiction that is applicable to any aspect of this Agreement that are in force on the Effective Date and as they may be enacted, issued or amended during the term of this Agreement.

1.2.1 Zoning Regulations. Zoning regulations shall not apply to installations within the Public ROW.

1.3 Permits. MCImetro shall obtain all ministerial permits (the "Permits") and pay those fees associated therewith relating to the installation of the Network as currently allowed by Law.

1.3.1 Encroachment Permits. MCImetro shall obtain any necessary encroachment permits from the City for the installation of the Network and for any other work within the City's ROW or other real property of the City, if required by the City's Municipal Code ("Code").

1.3.2 Building Permits. MCImetro shall obtain any necessary building permits from the City for the installation of the Network and for any other work within the City's ROW or other real property of the City, if required by the Code or State Law.

1.3.3 Compliance with Permits. All work within the City's ROW or other real property of the City shall be performed in strict compliance with all applicable Permits and all applicable regulatory requirements.

1.3.4 Fee Increases. If prior to the second anniversary of the date hereof, the City increases the permitting fees described in the Sections above, and if with respect to all similarly situated franchisee license agreements executed by the City in such 2-year period the franchisee or licensee is subject to a similar fee provision, then MCImetro will pay to the City the increased fees as if the increased fee schedule had been in effect as of the date hereof upon being billed therefor by the City.

1.4 Placement of MCImetro Facilities. MCImetro shall coordinate the placement of its Facilities in the Public ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City Engineer.

1.4.1 Placement of City Facilities. Should the City decide that it is in its interest to include capacity in addition to the Facilities planned by MCImetro during the installation, it will communicate this decision to MCImetro in writing prior to the start of any construction and MCImetro shall, if technically feasible, include this additional capacity in its installation. The additional capacity will be defined during the planning process outlined in 1.1.1 and may include, but is not limited to, conduit, handholes, enclosures, and fiber-optic cable lines. The additional capacity shall be determined no later than thirty (30) days prior to the planned start of the installation. The City shall reimburse MCImetro for the cost of the additional capacity. The City's cost will be limited to the actual material and direct labor costs of the additional facilities only. The additional facilities shall be inspected by the City along with the MCImetro Facilities and shall not interfere with the operation and maintenance of MCImetro Facilities. The additional facilities shall remain the exclusive property of the City. City may not resell the additional facilities to any third party. As long as MCImetro owns and operates facilities installed in the City limits, the City shall not directly compete with MCImetro's use of its facilities, where "directly compete" means provision of services that MCImetro is actually providing to its customers in Pittsburgh, except for services the City provides as of the Effective Date. The City retains the right to provide services to "community anchor institutions", defined as schools, libraries, hospitals and other medical providers, public safety entities, institutions of higher education, and community support organizations that facilitate greater use of broadband by vulnerable populations, including low-income, the unemployed, and the aged.

1.5 New Streetlight Poles and Existing Streetlight Poles. It is understood that MCImetro may build new poles or other such facilities required for the installation of the Facilities which would comply with all encroachment and building permits, applicable City, state and federal specifications, and Laws ("New Poles"). The Parties agree that in areas where there are existing poles, MCImetro will work with the owner of that existing pole to collocate facilities but only when the pole owner is willing to allow such attachment and where such attachment is feasible from a safety, technical, and engineering (structural and radio frequency coverage) perspective.

1.5.1 City Use of New Poles. The Parties understand and agree that the City may use any New Poles for City purposes, including but not limited to streetlights and other lighting so long as such use does not interfere MCImetro's use of its Network or Facilities. MCImetro shall reasonably cooperate with the City when using the New Poles.

1.5.2 City-Owned Lights. Except for the installation of the lights and ancillary equipment on or in the New Poles and/or as set forth in section 1.5.3, below, MCImetro shall not be responsible for maintenance, repair, or replacement of City-owned lights, light bulbs and equipment or equipment owned by third parties authorized by the City on the New Poles.

1.5.3 Damage to New Poles. If a New Pole falls or is damaged such that there is an imminent threat of harm to persons or property, then the City may cause the New Pole to be removed to the side of the street or a location that City believes reasonably eliminates the risk of

such imminent threat of harm to persons or property. MCImetro shall, after written notice from the City that any New Pole has been damaged or removed, cause the New Pole to be repaired or replaced within thirty (30) days after the City's written notice. The cost to repair and/or replace any New Pole, including the replacement City streetlight, bulb and ancillary equipment shall be paid by MCImetro; provided, however, that if the New Pole is damaged or destroyed by the City or a third-party user that the City has given the right to use the New Pole, then the City and/or its third-party user shall pay the cost to repair and/or replace the New Pole. To the extent that MCImetro seeks reimbursement from a third party either directly or through applicable insurance, the City shall assign to MCImetro any rights the City may have against such third party for such claims.

1.6 Franchise and Permit Fees. MCImetro is solely responsible for the payment of all lawful franchise and permit fees in connection with MCImetro's performance under this Agreement.

1.6.1 5% Franchise Fee for all Gross Revenues. In consideration of this Franchise Agreement and the fact that as of the Effective Date MCImetro will not be providing Local exchange service (as defined in K.S.A. 12-2001(c)(7)), MCImetro agrees to remit to the City a franchise fee of five percent (5%) of Gross Revenues, or \$1,000.00 annually, whichever is greater ("Gross Revenue Franchise Fee"). "Gross Revenues" as used herein means revenues derived from services provided within the corporate boundaries of the City which include: (A) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (G) any other operating revenue derived from leasing MCImetro's dark fiber and indefeasible rights of use ("IRU") fees. Gross Revenues shall be reduced by bad debt expenses that are attributable to Sections (A) through (G) as referenced within this Section 1.6.1. Uncollectible and late charges shall not be included within Gross Revenues. MCImetro shall pay its Gross Revenue Franchise Fee on the 15th day of the second month following the month in which the Gross Revenue is received.

1.6.2 5% Franchise Fee for all Gross Receipts. If at any time during the term of this Franchise Agreement, MCImetro does provide, or intends to provide, Local exchange service (as defined in K.S.A. 12-2001(c)(7)), MCImetro will provide notice to the City. Thereafter, MCImetro will no longer remit the Gross Revenue Franchise Fee, but instead, MCImetro shall remit to the City a franchise fee of five percent (5%) of Gross receipts as defined in K.S.A. 12-2001(c)(6) ("Gross Receipts Franchise Fee") in compliance with K.S.A. 12-2001(j). MCImetro shall pay its Gross Receipts Franchise Fee on the 15th day of the second month following the month in which the Gross Receipts is received.

1.6.3 Ministerial Application Fees. Upon execution and approval of this Agreement, MCImetro shall pay to the City a one-time application fee in the sum of \$2,500.00 to recover the City's costs associated with the review and approval of this Agreement. The City certifies that such application fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Agreement.

1.6.4 **Accounting Matters.** MCImetro shall keep accurate books of account at its principal office in Basking Ridge, NJ, or such other location of its choosing for the purpose of determining the amounts due to the City under §1.6 above. No more than once per year, the City may inspect MCImetro's books of account relative to the application of the franchise fees required under subsection 1.6.1 of this Agreement any time during regular business hours on thirty (30) days' prior written notice and may audit the books from time to time at the City's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under § 1.6.1 above. The City agrees to hold in confidence any non-public information it learns from MCImetro to the fullest extent permitted by Law.

1.7 **Access to the Facilities.**

1.7.1 **MCImetro Access to Facilities for Repair.** MCImetro will be given reasonable access to each of the Facilities in the City ROW or City owned property for the purposes of routine installation, repair, maintenance or removal of Facilities. If any such maintenance activities have the potential to result in an interruption of any City services at the Facility, MCImetro shall provide the City with a minimum of three (3) days prior written notice of such maintenance activities. Such maintenance activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services.

1.7.2 **City Observation.** MCImetro shall allow a representative of the City to observe any repair, maintenance or removal work performed at the Facilities.

SECTION 2 TERM AND TERMINATION

2.1 **Term.** This Franchise Agreement shall be effective for an initial term of two (2) years from the effective date of this ordinance. Thereafter, this franchise will automatically renew for additional one (1) year terms, unless either party notifies the other party of its intent to terminate the franchise at least ninety (90) days prior to the termination of the then current term. The additional term(s) shall be deemed a continuation of this franchise ordinance and not as a new franchise ordinance or amendment. Under no circumstances shall this franchise ordinance exceed twenty (20) years from the effective date of the franchise ordinance. In no event, shall the City be permitted to terminate MCImetro's right under this Agreement to place Facilities in the ROW unless terms of the Agreement are breached and/or local, state, or federal law permit. At the conclusion of the twenty (20) year period the parties hereto agree to negotiate a new franchise in good faith in the event MCImetro is still providing services hereunder.

2.1.1 **90 Day Remedy Period.** If the Agreement is breached by MCImetro, then the provisions of Section 8 (Default) shall govern the parties hereto.

2.2 **Termination of Use.** Notwithstanding Section 2.1 above, MCImetro may terminate its use of any or all of the Network by providing the City with ninety (90) days prior written notice. In the event of any such termination, MCImetro's payment obligations to the City shall terminate simultaneously with the termination of use, provided MCImetro removes its equipment and restores the Facilities, as set forth in Section 3, below, prior to the termination date.

SECTION 3 REMOVAL AND RELOCATION

3.1 **Removal Due to Public Project.** Upon receipt of a written demand from the City pursuant to this Section 3, MCImetro, at its sole cost and expense, shall remove and relocate any part of the Network, constructed, installed, used and/or maintained by MCImetro under this Agreement, whenever the City reasonably determines that the removal and/or relocation of any part of the Network is needed for any of the following purposes: (a) due to any work proposed to be done by or on behalf of the City or any 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, water mains, drains, storm drains, pipes, gas mains, poles, powerlines, telephone lines, cable television lines and tracks; (b) because any part of the Network is interfering with or adversely affecting the proper operation of City-owned light poles, traffic signals, or other City facilities or operations; or (c) to protect or preserve the public health and safety. The City shall cooperate with MCImetro in relocating any portion of the Network removed pursuant to this Section 3.1 in a manner that allows MCImetro to continue providing service to its customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of that portion of the Network relocated under this Section 3.1. No permitting or other fees may be charged by the City for a removal occurring under this Section.

3.2 **Removal Due to Termination.** No later than one hundred sixty (160) days after termination of this Agreement pursuant to the provisions of this Agreement, MCImetro shall, at its sole cost and expense, remove the Network or the terminated portion thereof and, if such removal disturbs the locations or adjacent property (including City ROW, City facilities added under section 1.4.1, or City real property), restore each Facility and its adjacent property to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by MCImetro to the Facility or adjacent property, or as otherwise required by the City. For New Poles, MCImetro shall install a new streetlight or facility as directed by City's Public Works Director, or his or her designee.

3.3 **Abandonment.** In the event MCImetro ceases to operate and abandons the Network, or any part thereof, for a period of ninety (90) days or more, MCImetro shall, at its sole cost and expense and within the time period specified in Section 3.2, vacate and remove the Network or the abandoned part thereof. If such removal disturbs the Facility or adjacent property (including City ROW, City facilities added under section 1.4.1, or City real property), MCImetro shall also, at its sole cost and expense, restore the Facility or adjacent property to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by MCImetro to the Facility or adjacent property. Alternatively, the City may allow MCImetro, in the City's sole and absolute discretion, to abandon the Network, or any part thereof, in place and convey it to the City.

3.4 **No Relocation Compensation.** The parties understand and agree that neither the City nor MCImetro are entitled to compensation for any relocation of its Network that may be required under Section 3.1. MCImetro is not entitled to relocation assistance or any other compensation or benefits under the Uniform Relocation Assistance Act or any other applicable provision of law upon termination of this Agreement.

SECTION 4 MAINTENANCE AND REPAIR

4.1 **Electricity Use.** MCImetro shall pay for the electricity and other utilities services it consumes in its operations at the rate charged by the servicing utility company.

4.2 **Maintenance and Repair.** MCImetro shall, at MCImetro's sole cost and expense, perform all maintenance and repairs reasonably needed to maintain the Network in good condition and neat and orderly appearance, and in compliance with all applicable Laws. In the event any part of the Network requires replacement because such part cannot be repaired, MCImetro shall, at MCImetro's sole cost and expense, replace the irreparable part of the Network. MCImetro shall not cause rubbish, garbage or debris on or around its Network or the Facilities and shall not permit any rubbish, garbage or debris to accumulate on or around in any enclosed areas around the Facilities. If the City gives MCImetro written notice of a failure by MCImetro to maintain the Facilities, MCImetro shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

4.3 **Appearance.** MCImetro shall cooperate with the City on all issues of aesthetics and appearance. MCImetro shall follow all legally binding City policies, state and local ordinances with respect to aesthetics. This includes, but is not limited to, historic site and/or locations of significant importance. All locations of DAS systems must be aesthetically approved by the City, in a manner consistent with other approvals within these Restrictions.

4.4 **Repair of ROW.** MCImetro shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by MCImetro's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of the facilities in the City's ROW. MCImetro shall promptly repair such damage and return the City's ROW and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards or to the property owner if not the City. MCImetro's obligations under this Section 4.4 shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the City's ROW by MCImetro to the City.

4.5 **Bond.** MCImetro shall provide a bond in an amount reasonably determined by the City during the construction of the Network to represent the estimated cost of MCImetro's obligations under Sections 3 and 4 of this Agreement, which the City may require MCImetro to increase from time to time to reflect the reasonable estimated cost of performing such obligations, to secure performance of MCImetro's obligations under Sections 3 and 4, not to exceed \$100,000.

SECTION 5 TAXES

5.1 **Taxes.** MCImetro agrees that it will be solely responsible for the payment of any and all applicable taxes, fees and assessments levied on its ownership, use and maintenance of the facilities and this Agreement. Pursuant to Section 79-5a01 et seq. of the Kansas Revenue and Taxation Code, the City hereby advises, and MCImetro recognizes and understands, that MCImetro's use of the City's ROW, the New Poles, and/or other non-ROW city property and facilities may create a possessory interest subject to real property taxation and that MCImetro may be subject to, and responsible for, the payment of real property taxes levied on such interest. MCImetro will cooperate with the Crawford County Assessor in providing any information necessary for the Assessor to make a property tax determination. MCImetro reserves the right to challenge any such assessment, and the City agrees to cooperate with MCImetro in connection with any such challenge.

SECTION 6 INDEMNIFICATION

6.1 **Indemnity.** MCImetro shall indemnify, defend, and hold harmless the City, its councilmembers, officers, employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent resulting from activities undertaken by MCImetro pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the City, its councilmembers, officers, employees, agents, or contractors or any third party. The City shall promptly notify MCImetro of any claim, action or proceeding covered by this Section 6.1.

6.2 **Waiver of Claims.** MCImetro waives all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any portion of the facilities, or any loss or degradation of the services provided by the facilities resulting from any event or occurrence except for any loss, damage, or injury to any portion of the facilities, or any loss or degradation of the services provided by the facilities resulting from the gross negligence or willful misconduct of the City.

6.3 **Limitation of City's Liability.** The City will be liable, if at all, only for the cost of repair to damaged portions of the Facilities arising from the negligence or willful misconduct of City, its employees, agents, or contractors. The City, its agents, officers, employees, or contractors, shall not be liable for any damage from any cause whatsoever to the Facilities, specifically including, without limitation, damage, if any, resulting from the City's maintenance operations adjacent to the Facilities or from vandalism or unauthorized use of the Facilities, except to the extent such damage is caused by the negligence or willful misconduct of City, its agents, officers, employees or contractors. The City will in no event be liable for indirect or consequential damages.

6.4 **Limitation of MCImetro's Liability.** In no event shall MCImetro be liable for indirect or consequential damages in connection with or arising from this Agreement, or its use of the Network, New Poles, and ROW or other City real property.

SECTION 7 INSURANCE

7.1 **Insurance Requirements.** MCImetro shall obtain and maintain at its sole cost and expense for the duration of this Agreement insurance pursuant to the terms and conditions described in this Section.

(a) **Insurance.** MCImetro shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(i) **Commercial General Liability:** A policy or Commercial General Liability Insurance, with limits of \$2,000,000 per-occurrence for bodily injury, personal injury, death, loss and property damage and \$4,000,000 general aggregate covering claims arising out of resulting from the use and occupancy of the premises and the operations conducted thereon by MCImetro.

(ii) **Commercial Automobile Liability:** A policy or policies of Commercial Automobile

Liability Insurance in an amount of \$1,000,000 combined single limit each accident for bodily injury and property damage covering all owned, non-owned and hired vehicles utilized by MCImetro in performing the work covered by this Agreement

(iii) **Workers' Compensation and Employer's Liability:** Workers' compensation limits as required by the Labor Code, and Employer's Liability limits of \$1,000,000 each accident/disease/policy limit.

(b) **Other Insurance Provisions.** The policies shall contain, or be endorsed to contain, the following provisions:

(i) **General Liability and Automobile Liability Coverage.**

(1) The City, and its elected and appointed council members, board members, commissioners, officers and officials (the "Insureds") shall be included as additional insureds as their interest may appear under this Agreement on all required insurance policies, except for Workers' Compensation and Employer's Liability policies.

(2) MCImetro's insurance coverage shall be primary insurance as respects the Insureds with respect to the matters covered by this Agreement. Any insurance or self-insurance maintained by the Insureds shall be in excess of MCImetro's insurance and shall not contribute with it.

(3) Any failure of MCImetro to comply with reporting provisions of the policies shall not affect coverage provided to the Insureds.

(4) MCImetro's insurance shall apply separately to each of the Insureds against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Each of the Insureds is subject to all policy terms and conditions and has an obligation, as an Insured, to report claims made against them to the insurance carrier.

(ii) **Worker's Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the Insureds for losses arising from work performed by MCImetro in the City's ROW.

(iii) **All Coverages.** Upon receipt of notice from its insurer(s) MCImetro shall provide the City with (30) days' prior written notice of cancellation of any required coverage.

(c) **Acceptability of Insurers.** Insurance shall be placed with insurers with an A.M. Best rating of no less than A-: VII.

(d) **Verification of Coverage.** MCImetro shall furnish the City with certificates of insurance required by this Section 7. The certificates for each insurance policy are to be signed by an authorized representative of the insurer. All certificates are to be received and reasonably approved by the City before work commences.

(e) **Secondary Parties.** In the event MCImetro hires any subcontractors, independent contractors or agents ("Secondary Parties") to locate, place, attach, install, operate, use, control, replace, repair or maintain the Network, MCImetro shall require Secondary Parties to obtain and maintain insurance commensurate to the work such Secondary Parties perform.

SECTION 8

DEFAULT

8.1 **Default.**

8.1.1. **Defined.** A "Default" shall be deemed to have occurred under this Agreement if a party fails to cure a breach of this Agreement within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

8.1.2. **Remedies.** Upon the failure of a party to timely cure any breach after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may, subject to the terms of Section 6.3 (Limitation of Liability), terminate this Agreement and pursue all remedies provided for in this Agreement and/or any remedies it may have under applicable law or principles of equity relating to such breach.

8.2 **City Termination Right.** In addition to the remedies set forth in Section 8.1.2, the City shall have the right to terminate this Agreement if (i) the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the public right of way; or (ii) if MCImetro's licenses are terminated, revoked, expired, or otherwise abandoned. Such termination rights shall be subject to MCImetro's rights to just compensation, if any, for any taking of a protected property right.

8.3 **No Waiver.** A waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matter subsequently occurring.

8.4 **Interest.** If MCImetro fails to make any payment under this Agreement when due, such amounts shall accrue interest from the date such payment is due until paid, including accrued interest, at an annual rate of ten percent (10%) or, if lower, the highest percentage allowed by law.

SECTION 9 INTERFERENCE

9.1 **Non-Interference with Non-Public Safety Communications Systems.** MCImetro shall operate the facilities in a manner that will not cause interference with City non-public safety communications systems and to the services and facilities of other licensees or lessees of City property located at or near the Facilities that were in operation prior to the installation of the facilities or that are in operation prior to any modifications MCImetro may make to the Network.

9.2 **Non-Interference with Public Safety Communications Systems.** MCImetro's Facilities shall not cause interference with public safety communications systems operated by City or any other public agency, regardless of the date such systems thereof have been placed in service. Nor shall MCImetro's Network and Facilities cause interference with the City's use of the New Poles for their intended purpose as streetlights, traffic lights, and/or stand- alone poles.

9.3 **Correction of Interference.** If such interference with the Facilities described in Sections 9.1 and 9.2 occur, MCImetro shall, upon receipt of written notice thereof from City, immediately commence commercially reasonable, diligent, efforts to correct or eliminate such interference. If such interference cannot be corrected by MCImetro to the reasonable satisfaction of City within the cure period set forth for in the City's notice, which notice shall not be less than 90 days, such interference shall be deemed a material breach under this Agreement and City may terminate this Agreement. If the interference is an emergency or a danger to public health and safety, the City shall be entitled to require correction in a time period necessary to avoid the emergency or public health and safety issue. Interference caused by actions of MCImetro's Customer(s) remain the responsibility of MCImetro.

SECTION 10 MISCELLANEOUS PROVISIONS

10.1 **Nonexclusive Use.** MCImetro acknowledges that this Agreement does not provide MCImetro with exclusive use of the City's ROW or any municipal facility and that City retains the right to permit other providers of communications services to install equipment or devices in the City's ROW and on municipal facilities. The parties hereto specifically agree that all such franchises issued to telecommunications providers shall be competitively neutral and not unreasonable or discriminatory in nature.

10.2 Most Favored Nation. All of the benefits and terms granted by the City herein are at least as favorable as the benefits and terms granted by the City to any future franchisee of the public ROW engaged in the same or similar business described in this Franchise Agreement. Should the City enter into any subsequent agreement of any kind no matter what nomenclature is attached thereto with any other franchisee during the term of this Franchise Agreement, which Agreement provides for benefits or terms more favorable than those contained in this Franchise Agreement, then this Franchise Agreement shall be deemed to be modified effective as of the date of such more favorable agreement to provide MCImetro with those more favorable benefits and terms. The City shall notify MCImetro promptly of the existence of such more favorable benefits and terms and MCImetro shall have the right to receive the more favorable benefits and terms immediately. If requested in writing by MCImetro, the City shall amend this Franchise Agreement to contain the more favorable terms and conditions.

10.2.1 Most-Favored Municipality. Should MCImetro after the Parties' execution and delivery of this Agreement enter into a franchise agreement with another city of the first class in this State for the same type of services and scope of right-of-way use as in this Agreement, which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such agreement, are in the City's reasonable opinion substantially superior to those in this Franchise Agreement, the City shall have the right to require that MCImetro, and all other similarly situated providers, modify their franchise agreements to incorporate the same or substantially similar superior benefits. All modifications to franchise agreements under this Section 10.2.1 shall be competitively neutral and not unreasonable or discriminatory in any way.

10.3 Notices. All notices which shall or may be given pursuant to this Agreement shall be in writing and served by (1) electronic mail; and (2) personally served or transmitted through first class United States mail, or by express mail providing for overnight delivery, postage prepaid, to the following address or such other address of which a party may give written notice:

City: City of Pittsburg
201 W. 4th St.
Pittsburg, KS 66762
Attention: City Manager

MCImetro: MCImetro Access Transmission Services LLC
d/b/a Verizon Access Transmission Services
600 Hidden Ridge
Irving, TX 75038
Attn: Franchise Manager
With copy to (except for invoices) (which copy will not constitute notice):
Verizon Legal Department
Attn: Network Legal Team
1300 I Street, NW
5th Floor
Washington, DC 20005

Such notice shall be deemed made when personally delivered; if mailed via first class U.S. Mail, such notice shall be deemed made three (3) calendar days after the date of deposit in the U.S. Mail; if mailed via express/overnight mail, such notice shall be deemed made two (2) calendar days after the date of deposit in a designated overnight delivery mailbox or other like facility. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

10.4 Sublease/Assignment. If MCImetro assigns, sublets, enters into a franchise license or concession agreement, changes ownership of the Network or voting control of MCImetro, mortgage, encumber, pledge, hypothecate or other transfer (including any transfer by operation of law this Agreement or any interest therein) MCImetro will provide notice of a transfer within a reasonable time.

10.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors, assigns and transferees.

10.6 Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this Agreement. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

10.7 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 or provisions 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.

10.8 Governing Law. This Agreement shall be interpreted and enforced according to, and the parties' rights and obligations governed by, the domestic law of the State of Kansas or applicable federal law, without regard to laws regarding choice of applicable law. Any proceeding or action to enforce this Agreement, or otherwise directly related to this Agreement shall occur in the state courts located in Crawford County, Kansas.

10.9 Survival of Terms. All of the terms and conditions in this Agreement related to payment, removal due to termination or abandonment, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this Agreement.

10.10 Captions and Paragraph Headings. Captions and paragraph headings used herein are for convenience only. They are not a part of this Agreement and shall not be used in construing this Agreement.

10.11 Drafting. The parties agree that this Agreement is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party.

10.12 Execution in Counterparts. This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

10.13 Authority to Execute This Agreement. Each person or persons executing this Agreement on behalf of a party, warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations under this Agreement without the approval or consent of any other person or entity.

10.14 No Warranty by the City. The City makes no representations or warranties regarding the suitability, condition or fitness of the locations for the installation, maintenance or use of the New Poles or the Facilities.

10.15 Agreement Applicable Only to the Facilities. This Agreement shall not be construed to permit construction, installation, maintenance or use of Facilities on any property other than the City ROW.

10.16 No Abrogation of Legal Responsibilities. The City's execution of this Agreement shall not abrogate, in any way, MCImetro's responsibility to comply with all permitting requirements or to comply with all Laws with respect to its performance of the activities permitted under this Agreement.

10.17 Contractual Interpretation. In the interpretation and application of its rights under this Franchise Agreement, the City will act in a reasonable, non-discriminatory, and competitively neutral manner in compliance with all applicable federal, state, and local laws and regulations.

10.18 Effective Date of Ordinance. This Ordinance shall be effective upon its final passage and publication as required by law.

ADOPTED AND PASSED by the Governing Body of the City of Pittsburg, Kansas, this
23rd day of August, 2022.



CITY OF PITTSBURG, KANSAS

By: Cheryl L. Brooks
Cheryl Brooks, Mayor

ATTEST:

Tammy Nagel
Tammy Nagel, City Clerk

MCImetro ,

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____