

REIMBURSEMENT AGREEMENT FOR DUCT CONSTRUCTION

THIS REIMBURSEMENT AGREEMENT FOR DUCT CONSTRUCTION (“Agreement”) is made and entered into this ___ day of _____, 2020, (the “Effective Date”) by and between **MCIMETRO ACCESS TRANSMISSION SERVICES CORP.**, a Delaware corporation (“Utility”), d/b/a Verizon Access Transmission Services, having a business address at 600 Hidden Ridge, Irving, Texas 75038, and **CITY OF ANN ARBOR** (“Reimbursor”), having an address at 301 East Huron Street, Ann Arbor, Michigan 48104. The signatories to this Agreement shall be referred to individually as a “Party” and collectively as the “Parties”.

RECITALS

1. Reimbursor has requested that Utility construct underground conduit or duct (“Duct”) for Reimbursor’s ownership and use within Reimbursor’s public right-of-way by way of Work Statements, as described below (the “Project”) in connection with work to be performed by Utility. Reimbursor intends to use this Duct for its own operations and, if there is excess capacity, to allow governmental, academic, or other entities or persons to contract to use such excess capacity; the Duct is not intended to be for the public’s use generally and is not a public improvement (Reimbursor Duct”) in mutually agreed locations where Utility is also constructing Duct for its own use and subject to the terms of this Agreement.
2. Reimbursor will pay Utility for work it performs in support of the Project as set forth in Exhibit A attached hereto (the “Payment”).

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and covenants herein contained, the Parties agree as follows:

1. Whenever Utility intends to construct Utility duct within the City of Ann Arbor, it shall notify Reimbursor in accordance with this Agreement and Reimbursor shall have 30 days to notify Utility that it is exercising its option to have Utility construct Reimbursor Duct in the same location pursuant to this Agreement. If Reimbursor exercises such option, the Parties shall execute a Work Statement (as described below) for such Reimbursor Duct. Any Reimbursor Duct that Utility constructs shall be of the same quality of materials and engineering standards Utility uses in constructing its own duct.
2. Any Work Statement pursuant to this Agreement shall be in writing between the Parties and shall also:
 - Include substantially the following statement: “This is a Work Statement under the Reimbursement for Duct Construction Agreement between the City of Ann Arbor and MCI metro ACCESS TRANSMISSION SERVICES CORP dated...”
 - Be signed on behalf of both parties by their authorized representatives. The required signatures for the Reimbursor are: (a) City Administrator; (b) IT Director approved as to substance; and (c) City Attorney approved as to form and content.

- Contain the following three mandatory items:
 - Description and/or specifications of the Duct that Utility shall construct;
 - The Costs that Reimbursor shall be required to pay Utility for such Duct construction pursuant to the Costs in Exhibit A; and
 - The approximate time schedule for Utility to construct and complete the Reimbursor's Duct based on Utility's work schedule and Force Majeure, as later defined.

In addition, when applicable, the Work Statement may include such other terms and conditions as may be mutually agreeable between Parties. The Parties agree that in the event that a Work Statement conflicts with this Agreement, the terms of this Agreement shall prevail.

3. Reimbursor agrees that:

- (a) Consistent with Section 4 below, Reimbursor shall pay for duct and labor and incidental materials to install handholes according to the fixed costs set out in Exhibit A ("Costs") for Utility to construct the same for Reimbursor in connection with the Project. Such Costs listed in Exhibit A includes all costs Utility anticipates it will incur, including, but not limited to, labor, materials, construction, damages, administrative overhead, taxes, travel expenses, railroad right-of-way access and flagging fees, permit fees, legal fees and other reasonable out of pocket expenses. Notwithstanding anything to the contrary herein, the Costs do not include the handhole itself. Reimbursor shall supply the handholes to be installed by Utility prior to installation by Utility in advance of construction according to a schedule to be mutually agreed by the parties.
- (b) It waives any and all delay damage claims against Utility made by Reimbursor or any employee, representative agent, contractor or beneficiary of Reimbursor.
- (c) The Reimbursor Duct shall be a single two-inch Duct placed by Utility adjacent and parallel to the Utility's Duct and within same bore alignment for the route authorized under permit numbers or other specific descriptors.
- (d) Upon completion of any Work Statement and receipt of the Payment, ownership and title to the Reimbursor Duct will automatically pass from Utility to Reimbursor with no further action required on the part of either Party, or this Agreement and proof of payment received by Reimbursor shall act as proper documentation thereof.
- (e) Reimbursor may not access or use the Reimbursor Duct for any purpose until Utility receives the Payment.
- (f) Reimbursor shall be responsible for placing tracer wire and access points (manholes/handholes/vaults) for the Reimbursor Duct.
- (g) If Utility determines, in its sole discretion, to not complete construction of a particular route, Utility shall transfer to Reimbursor title to any Reimbursor Duct already constructed and neither Party shall have any further obligation with respect to the remainder of the route or related Work Statement, including obligation to pay Costs incurred.
- (h) Utility reserves all rights under applicable law.
- (i) Utility warrants that upon delivery, the Reimbursor Duct constructed as part of the Project shall be free of any liens, shall not be obstructed and shall meet the specifications set forth in this Agreement and the applicable Work Statement; otherwise, Utility is providing the Reimbursor Duct and all other work and materials associated with the Project on an "as is," "where is" basis, with no warranties of any kind, including, without limitation, implied warranties of merchantability or fitness for a particular purpose.

- (j) Utility shall not be required to place duct in the ground or on structures that do not meet Utility's engineering standards or where Reimbursor cannot provide sufficient documentation that it has secured necessary property rights, easements or other right-of-way rights for Utility to place its facilities in the designated location.
 - (k) Any party that prevails in any action to enforce the terms of this Agreement (including collection efforts) shall be entitled to reasonable attorneys' fees and costs due to such action.
 - (l) Reimbursor represents and warrants to Utility that, as of the Effective Date, this Agreement is not subject to City prevailing wage, living wage, or other such City laws requiring payment of wages in excess of minimum wage
4. Reimbursor may, at its own expense, inspect construction Utility performs in connection with the Project. Utility shall charge Reimbursor only for the Costs incurred for the Project set out in Exhibit A.
 5. In the event either Party terminates this Agreement pursuant to Section 9 below or Reimbursor directs Utility in writing to stop work on the Project or any Work Statement, Reimbursor shall be responsible to utility for Costs incurred by Utility prior to receipt of such termination or stop work notice and Project wind-down costs incurred by Utility.
 6. Following completion of any Work Statement, Utility shall make an accounting of final, unpaid, actual Costs of the Work Statement, and provide Reimbursor with a copy of the accounting and an itemized invoice therefor. Reimbursor agrees and shall pay Utility the amount on each invoice within thirty (30) days after receipt of each itemized invoice from Utility.
 7. Reimbursor shall perform no work, except required handhole placements within ten (10) feet on either side of the Reimbursor's facilities in the Project Area until the relevant Work Statement work has been completed or as otherwise mutually agreed by Reimbursor and Utility. If any such work is performed, Utility has a right to have an inspector on site during such work, and Utility's inspector may order Reimbursor, its employees, agents, representatives and contractors (for purposes of this Section 7, collectively, "Reimbursor") to immediately stop work if such work is placing Utility's facilities in imminent harm, and Reimbursor shall immediately comply with such order. Subject to the limitation set forth in this Section 7, Reimbursor shall give written notice to Utility at least forty-eight (48) hours, excluding Saturday, Sunday and legal holidays, in advance of commencement of any work in the immediate Project area. In the event of an emergency, Reimbursor shall provide telephonic notice to MCI at 1-800-MCI-WORK upon Reimbursor's discovery of the emergency.
 8. The obligations of Utility are subject to force majeure and Utility shall not be in default of this Agreement if any failure or delay in performance is caused by strike or other labor problems; accidents; acts of God; fire; flood; adverse weather conditions; material or facility shortages or unavailability; lack of transportation; the imposition of any governmental codes, ordinances, laws, rules, regulations or restrictions, including, without limitation, the necessity of obtaining permits or environmental assessments or environmental approvals;

condemnation or the exercise of rights of eminent domain; war, civil disorder or acts of terrorism; or any other cause beyond the reasonable control of Utility (“Force Majeure”).

9. The term of this Agreements shall be for a term of one year from the Effective Date and continue in automatic annual renewals until terminated by a Party as described below. Either Party may terminate this Agreement upon written notice to the other Party: (i) upon 120 days written notice; or; (ii) written notice from the non-breaching Party to the Party who breaches the terms of this Agreement and such breach is not cured within thirty (30) days of receipt of written notice to the non-breaching Party from the other Party of the details of such breach. Upon termination under (i) above, any uncompleted Work Statement shall be completed before such termination.
10. The terms of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
11. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, ITS EMPLOYEES, SUBCONTRACTORS, AND/OR AGENTS, OR ANY THIRD PARTY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR LOST PROFITS, FOR ANY CLAIM OR DEMAND OF ANY NATURE OR KIND, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF.
12. To the fullest extent permitted by law, Utility shall indemnify, defend and hold Reimbursor, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney’s fees resulting or alleged to result, in whole or in part, from any act or omission, which is in any way connected or associated with this Agreement, by Utility or anyone acting on Utility’s behalf under this Agreement. Utility shall not be responsible to indemnify Reimbursor for losses or damages caused by or resulting from Reimbursor’s negligence. The Provisions of this Section shall survive the expiration or earlier termination of this contract for any reason.
13. Utility shall procure and maintain during the life of this Agreement, including the guarantee period and during any warranty work, such insurance policies, including those set forth below, as will protect itself and Reimbursor from all claims for bodily injuries, death or property damage that may arise under this Agreement; whether the act(s) or omission(s) giving rise to the claim were made by the Utility, any subcontractor of Utility, or anyone employed by them directly or indirectly. Prior to commencement of any work under this Agreement, Utility shall provide to the Reimbursor documentation satisfactory to the Reimbursor, through Reimbursor-approved means (currently my COI), demonstrating it has obtained the required policies and endorsements. The certificates of insurance shall document that the Utility satisfies the requirements of Exhibit B of this Agreement, which is attached hereto and incorporated herein as if fully set forth. When requested, Utility shall provide the same documentation for its subcontractor(s) (if any).

14. This Agreement together with its Exhibits constitutes the entire agreement between the Parties and supersedes all contemporaneous or prior agreements between the Parties, whether written or oral, with respect to the subject matter of this Agreement. This Agreement may not be modified, supplemented or amended unless any such modification, supplement or amendment is incorporated into the Agreement via valid amendment signed by the authorized representatives of each Party. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Execution and exchange of signatures via facsimile or Adobe Acrobat portable document file (.PDF file extension) shall have the same force and effect as execution and exchange of originals. Each Party warrants that it has the full right and authority to enter into this Agreement. All necessary approvals and authority to enter into this Agreement have been obtained and the person executing this Agreement on behalf of each Party has the express authority to do so and, in so doing, to bind such Party hereto.
15. This Agreement shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this Agreement, Utility and Reimbursor agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this Agreement. The parties stipulate that the venue referenced in this Contract is for convenience and waive any claim of non-convenience. Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. The prohibition or invalidity, under applicable law, of any provision will not invalidate the remainder of the Agreement.
16. All notices under this Agreement shall be delivered to the respective party in the manner described herein to the address stated below or such other address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by electronic mail, next day express delivery service, certified mail, first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the Utility, it shall be addressed and sent to:

MCImetro Access Transmission Services Corp.
600 Hidden Ridge Drive
Irving, TX 75038
Attention: Manager, Right of Way

VZB-ROWContractNotices@one.verizon.com

Ref: Contract Number/PRL: _____ (if any)

With a copy to:

Verizon Legal Department
Attn: Network Legal Team
1300 I Street, NW
5th Floor
Washington, DC 20005

If Notice is sent to Reimbursor, it shall be addressed and sent to:

City of Ann Arbor
ATTN: IT Director
301 East Huron Street
Ann Arbor, Michigan 48104
Email: City IT Director (currently: tshewchuk@a2gov.org)

With a copy to: The City of Ann Arbor
ATTN: Office of the City Attorney
301 East Huron Street, 3rd Floor
Ann Arbor, Michigan 48104

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

(Signatures on next page)

for Reimbursor

for Utility

CITY OF ANN ARBOR

MCIMETRO ACCESS TRANSMISSION SERVICES CORP.

By: _____
Name: Christopher Taylor
Title: Mayor
Date: _____

By: _____
Name: Yodete A. Lane
Title: Sr. Manager Ntwk Eng. & Ops
Date: _____

By:
Jacqueline Beaudry, City Clerk

By:
Tom Crawford, Interim City Administrator

By:
Tom Shewchuk, IT Director

By:
Stephen Postema, City Attorney

Federal Tax ID# (If applicable): _____

Telephone: (734) 794-6551 xt. 45510

Email address: tshewchuk@a2gov.org

Billing Contact: City of Ann Arbor
Name: Tom Shewchuk – IT Director
Address: 301 East Huron Street
Ann Arbor, MI 48104

Exhibit A
COSTS FOR DUCT AND HANDHOLES

Fixed Costs to Install Reimbursor Duct and Handholes:

Install 2-inch Shadow Duct -	\$12.80 per foot of duct installed
Pull Cable into Shadow Duct -	\$ 1.95 per foot of cable installed in Shadow Duct
Install New Handhole in Hardscape (Not including Handhole) -	\$3,150 each
Install New Handhole in Softscape (Not including Handhole) -	\$1,650 each

Exhibit B
INSURANCE REQUIREMENTS

(1) Required insurance policies required under the Agreement include:

(a) Worker's Compensation Insurance in compliance with the statutory requirements of the state(s) of operation and Employers Liability Coverage in the following amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

(b) Commercial General Liability Insurance equivalent to Insurance Services Office form or current equivalent. Reimbursor shall be included as an additional insured as their interest may appear under this Agreement. There shall be no added exclusions or limiting endorsements specifically for the following coverages: Products and Completed Operations, Explosion, Collapse and Underground. The following limits of liability are required:

\$2,000,000 Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined.

\$3,000,000 General Aggregate

\$2,000,000 Personal and Advertising Injury

\$3,000,000 Products and Completed Operations Aggregate

(c) Commercial Automobile Liability Insurance equivalent to Insurance Services Office form or current equivalent covering all owned vehicles, all non-owned vehicles and all hired vehicles. Reimbursor shall be included as an additional insured as their interest may appear under this Agreement. There shall be no added exclusions or limiting endorsements that diminish Reimbursor's protections as an additional insured under the policy. The limits of liability shall be \$2,000,000 combined single limit each accident for Bodily Injury Liability or Property Damage Liability.

(2) Insurance required under subsection (1)(b) and (1)(c) above shall be considered primary as respects any other valid or collectible insurance that Reimbursor may possess, including any self-insured retentions Reimbursor may have; and any other insurance Reimbursor does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

(3) Upon receipt of notice from its insurer(s) Utility shall use commercially reasonable efforts to provide Reimbursor thirty (30) days' prior written notice of cancellation of any required coverage. Further, the certificate of insurance must state the policy number(s); name of insurance company(s); name and address of the agent(s) or authorized representative(s); name(s) and address of insured; project name; policy expiration date; and specific coverage amounts. Utility shall furnish Reimbursor with satisfactory certificates of insurance and blanket additional insured endorsements prior to commencement of any work. If any of the above

coverages expire by their terms during the term of this Agreement, Utility shall deliver proof of renewal to Reimbursor's IT Director within ten days of the expiration date.

(4) Any Insurance provider of Utility shall be authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by insurance companies licensed, authorized or permitted to conduct business in the state(s) of operation.

(5) Reimbursor reserves the right, upon prior written notice to, review and acceptance by Utility, to require additional coverage and/or coverage amounts as may be included from time to time for any work statement.

(6) The provisions of this Exhibit C shall survive the expiration or earlier termination of this Agreement for any reason.