

CITY OF BROOK PARK, OHIO

P/C 4-14-19-SAFETY  
CA 5-14-19  
1st R 5-14-19 SPONKILL  
2nd R \_\_\_\_\_  
3rd R \_\_\_\_\_  
B/C \_\_\_\_\_

ORDINANCE NO. 11083-2019

INTRODUCED BY: MAYOR GAMMELLA

AN ORDINANCE  
AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE AGREEMENT  
WITH MCIMETRO ACCESS TRANSMISSION SERVICES CORP.,  
DBA VERIZON ACCESS TRANSMISSION SERVICES TO OCCUPY AND  
USE THE VARIOUS PUBLIC RIGHTS-OF-WAY OF THE CITY FOR THE  
INSTALLATION, MAINTENANCE AND OPERATION OF WIRELINE  
TELECOMMUNICATIONS FACILITIES,  
AND DECLARING AN EMERGENCY

WHEREAS, the City of Brook Park is the owner in fee of all public rights-of-way within the City and is responsible for the competent management of such rights-of-way in furtherance of the public interest generally, and specifically to preserve, coordinate and optimize the various existing and future uses of the public right-of-way for the benefit of Brook Park residents; and

WHEREAS, management of the public right-of-way is a matter of local concern, protected by the first clause of Section 3 of Article 18 of the Ohio Constitution; and

WHEREAS, MCImetro Access Transmission Services Corp., d/b/a/ Verizon Access Transmission Services seeks authority of the City of Brook Park to install, maintain and operate certain wireline telecommunications facilities in the public right-of-way subject to the approval and supervision of the City Engineer pursuant to Chapter 901 of the Codified Ordinances; and

WHEREAS, this Ordinance is enacted expressly as an exercise of local self-government, pursuant to the first clause of Section 3 of Article 1 of the Ohio Constitution; and

WHEREAS, the public interest, convenience and necessity will not be harmed by the grant of authority requested, subject to the terms and conditions of the license authorized herein.

NOW, THEREFORE BE IT ORDAINED by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: The Mayor is hereby authorized to enter into a License Agreement with MCImetro Access Transmission Services Corp., dba Verizon Access Transmission Services, a subsidiary of

Version, a Delaware Corporation ("Licensee") for the installation, maintenance and operation of wireline telecommunications pursuant to the License Agreement, which is hereby made a part of and attached as Exhibit "A."

**SECTION 3:** It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

**SECTION 4:** This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety of said City, and for the further reason that City Council deems it necessary to authorize the Mayor to enter into a License Agreement with MCI metro Access Transmission Services Corp., dba Verizon Access Transmission Services, as soon as possible, therefore, provided this Ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately from and after its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: May 14, 2019  
Special Council

[Signature]  
PRESIDENT OF COUNCIL

ATTEST: Michelle Blazak  
CLERK OF COUNCIL

APPROVED: [Signature]  
MAYOR

5/16/19  
DATE

I HEREBY APPROVE THE WITHIN INSTRUMENT AS TO LEGAL FORM AND CORRECTNESS

[Signature]  
DIRECTOR OF LAW

I, Michelle Blazak, Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinance resolutions was made by posting true copies at six of the most public places in said municipality as determined by Ordinance No. 4838-197: location City Hall 6161 Engle Road, Police Station 17401 Holland Road, #1 Fire Station 5590 Smith Road, #2 Fire Station 22530 Ruple Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library 6165 Engle Road, for a period of fifteen days.

**CERTIFICATE**  
Michelle Blazak, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance Resolution No. 11083-2019 passed on the 14th day of May 2019 by said council.  
Michelle Blazak  
Clerk of Council

commencing May 20th  
Michelle Blazak  
MICHELLE BLAZAK  
Clerk of Council

	Yea	Nay
Stemm	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mencini	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Orcutt	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Burgio	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Poindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Salvatore	<input checked="" type="checkbox"/>	<input type="checkbox"/>



LICENSE AGREEMENT

Project Name: MCI metro Fiber/Conduit - Brookpark Rd. (Ford)  
Project Number: 1-2019

This REVOCABLE LICENSE ("License"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Brook Park, Ohio, a municipal corporation (hereinafter referred to as the "City") as licensor and *MCI metro Transmission Services Corp.*, hereinafter collectively referred to as the "Licensee") as licensee.

WITNESSETH, that in consideration of the mutual obligations and covenants herein, the parties hereto do mutually agree as follows:

1. Recital. The Licensee is the owner of certain real property ("Licensee's Property") located at \_\_\_\_\_, in Brook Park, Ohio and more particularly described as (give legal description/filing information/street address): \_\_\_\_\_

The City is the owner of a certain real property, easement or public right-of-way ("City's Property") in the vicinity of, contiguous to, abutting or within Licensee's Property, and more particularly described in a certain Dedication Deed/Plat (give legal description/filing information/street address) and known as:

If the City's Property is an easement, then give legal description and filing information: \_\_\_\_\_

2. License. Subject to the terms and conditions of this License, the City licenses Licensee to construct, install, operate, maintain, replace, and remove \_\_\_\_\_ (hereinafter referred to as the "Facility") within the City's Property at the following location, as more particularly shown on the drawing which is attached hereto as **Exhibit A** and made a part of this License:

Location: \_\_\_\_\_ hereinafter referred to as the "Location").

3. Use. The Licensee shall use the Facility for the purpose described above and will not use it for any other purpose whatsoever without first obtaining the written consent of the City.



Unless specifically provided otherwise herein, the Licensee shall have no right to locate any surface installation on any part of the rights-of-way or to fence the rights-of-way or any part thereof.

4. Compensation. As compensation for this License, the Licensee shall pay the City a one-time administrative fee of \$500.00 plus the sum of Not Applicable for Project No. 1-2019 Dollars (\$ -- ) for each year this License is in effect (hereinafter referred to as the "Annual Fee").

The Annual Fee shall be paid to the City at the office of the City Building Department upon execution of this License, and by the same month and day each year thereafter for the term of this License (*Not Applicable for Project No. 1-2019*).

5. Term. Termination and Removal. This License will remain in effect for a period of ninety-nine (99) years from the date of execution of this License, so long as the need for the Facility exists and the Facility continues to function as initially intended (hereinafter referred to as the "Term"), unless terminated and revoked as a result of:

- a. The Licensee's uncured (within thirty (30) days after written notice) breach of term of this License; or
- b. The City's giving the Licensee written notice one (1) year in advance of termination (provided that any termination by the City shall be pursuant to all applicable law, including a hearing before City Council if requested by Licensee); or
- c. The Licensee's giving the City written notice one (1) year in advance of termination; or
- d. An order of a court of competent jurisdiction.

Upon termination of this License and any renewal hereof, the Licensee shall abandon the use of the Facility, and shall remove the Facility and restore the City's Property as nearly as possible to the condition it was in prior to removal, all at the sole expense of the Licensee.

If, after termination and within thirty (30) days after being directed to do so by the City, the Licensee fails to remove the Facility and restore the City's Property, the City may perform the work and the Licensee shall reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the costs of such work.

Termination of this License for any reason shall not release the Licensee from any liability or obligation relating to the installation, operation, maintenance, or removal of the Facility or any other term of this License.

6. Renewal of License. If both the City and the Licensee wish to extend the Term of this License, then, before the expiration of the Term, the City and the Licensee shall enter into good faith negotiations, the object of which will be to agree upon the terms of a renewal of this License. The agreement of the City shall not be withheld unreasonably. If an agreement is reached, all terms, including the agreed-upon consideration shall be reduced to a writing signed by both parties.

7. Location, Installation, Maintenance and Removal. At its own expense, the Licensee shall install and construct the Facility of such material, and in a manner that will not at any time be a source of danger to, or interfere with the City's present or future use of the City's Property, or the use of the City's Property by any utility presently franchised by the City, or interfere with its use as a public way. If during installation it becomes evident that the Licensee's proposed installation will interfere with existing City installations or any existing underground installations, then the Licensee shall modify its installation within the Location to avoid the conflict, after obtaining the City's approval for the change, at the sole expense of the Licensee.

The Facility shall be constructed, installed, and maintained in conformity with plans and specifications, which must be approved in advance by the City and which are made a part of this License by reference, and with recognized standards, applicable federal, state, or local laws, codes ordinances and regulations. Before performing any construction, the Licensee's contractors shall obtain all permits and insurance required by the City for work within the right-of-way and will pay all fees and reimburse the City for all reasonable and necessary costs incurred in inspecting and supervising the work performed.

After installation of the Facility, the Licensee shall be responsible for maintaining and immediately repairing/replacing/repaving, to original condition, at Licensee's sole cost and expense, all resulting trenches, fence, curbs, gravel, pavement, landscaping, utilities or culverts damaged by Licensee, its employees, agents or representatives which results directly or indirectly from its operations to the full but reasonable satisfaction of the City, in accordance with the latest version of Cuyahoga County Department of Public Works Standard Construction Drawings/Specifications, ODOT CMS, or as directed by the City. Licensee shall regrade and reseed all areas disturbed by construction and place barriers to prevent erosion of the topsoil in the construction area. Reseeding shall be accomplished during the first appropriate seeding season following regrading.

Facility/equipment requires routine maintenance that would disrupt public right of way on a periodic basis:     Yes             No

If, in the judgment of the City, the Licensee at any time fails to perform its obligations under this section, the City, at the City's option, may perform whatever work the City deems necessary for the public safety, health and welfare, and the Licensee shall reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the costs of performing such work. However, the City is not required to perform such work, and any failure by the City to perform the Licensee's obligations shall not release the Licensee from liability for any loss or damage caused by the Licensee's failure to perform its obligations.

Installation, maintenance, and removal of the Facility shall be accomplished in a manner which will not unreasonably impede City access on the Route or impede its use for operation and maintenance of infrastructure, as determined by the City. The timing and manner of such construction, maintenance, and removal shall be done in compliance with the City's requirements.

If the Facility or any part thereof is the cause of an emergency condition, and the City determines that the situation makes it unreasonable to notify the Licensee or await action by the Licensee, the City may take over whatever actions it deems necessary to remedy the emergency situation at the sole expense of the Licensee, which will reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the costs of such actions.

8. As-Builts. Upon completion of the construction and installation of the Facility, the Licensee shall promptly provide the City with one set of reproducible as-built, record drawings, reflecting construction and installation as actually accomplished.

9. Location Markers and Marking. As deemed necessary the Licensee shall furnish, install, and place signs required by the City to give notice and location of the Facility.

Licensee shall install permanent markers situated so as not to impede use of the Route by the City, members of the public or currently franchised utilities on each side of the Route where the Facility crosses the Route. The permanent markers shall indicate the location of the Facility, the name and address of Licensee, and a telephone number to contact for information regarding the Facility. Licensee shall conduct periodic inspections of the markers to insure that such markers are legible and in place as required herein.

The Licensee shall provide access to the location of the Facility whenever requested to do so by the City, and franchised utility or any licensed contractor excavating along the route.

10. Insurance. During the Term of this License, including renewals, if any, the Licensee shall obtain and maintain liability insurance in an amount of not less than \$1,000,000.00 combined single limit for accidents or occurrences which cause bodily injury, death or property damage to any member of the public caused by or related to the construction, installation, operation, maintenance replacement, removal or other activity related to the Facility. The insurance policy shall provide coverage per occurrence and shall state the project name and project number. The insurance policy shall name the City of Brook Park, its employees and elected officials, as their interest may appear, as additional insured. Any cancellation provision must provide that if the policy is canceled prior to the expiration date of the License, materially changed or not renewed, the issuing company will mail thirty (30) days written notice to the City, Attention: Building Commissioner. A certificate of insurance in compliance with the above must be furnished to the City prior to the City's execution of this License.

11. Damages and Indemnity. The Licensee shall repair or pay for all actual damages done to the City Property and improvements, or to the improvements of the City's Tenants caused by Licensee's Operations.

The Licensee shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Licensee agrees to indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of the Licensee, its

agents, representatives, contractors or subcontractors or arising from the failure of the Licensee, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Licensee herein. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of Ohio.

This indemnity shall not apply to any liability, claims, damages, losses or expenses, including attorney's fees, arising out of bodily injury to persons or damage or damage to property caused by or resulting from, in whole or in part, the negligent act or omission of the City, or the agents or employees of the City.

12. City Use. The City reserves the right to place along, under, across and over the Route and the Facility as many roads, streets, sidewalks, passageways, conduits, electric light and power lines, waterlines, storm drains, sanitary sewer lines, gas lines, telephone poles and telephone lines, and other utilities and facilities as the City may desire.

13. Interference with City. Whenever, after the Licensee installs the Facility, it is the City's good faith, reasonable determination that the Facility is not located as indicated on as-built plans provided to the City by the Licensee, and the Facility interferes with the City's reasonable use of the City's Property, the Licensee shall immediately relocate the Facility to another location approved in advance by the City, at the Licensee's sole expense, restoring the surface as nearly as possible to its prior condition.

If the Facility is at the location indicated on the as-built plans provided to the City by the Licensee and the Facility interferes with the City's reasonable use of its City's Property, the City will provide written notice to the Licensee that relocation of the Facility is required and the Licensee shall relocate the Facility within sixty (60) days of notice to the new location as approved in advance by the City, at the Licensee's sole expense, restoring the surface as nearly as possible to its prior condition.

14. Interference with Utility. Whenever, after the Licensee installs the Facility, it is determined that the Facility is not located as indicated on as-built plans provided to the City by the Licensee, and the Facility interferes with the reasonable use of the City's Property by a utility franchised by the City prior to execution of this License, the Licensee shall immediately relocate the facility to a location within the Route approved in advance by the City. None of the related costs shall be paid by the City. The Licensee and the previously-franchised utility shall determine between themselves who will pay the cost of relocation and restoration of the surface.

If the Facility is at the location indicated on the as-built plans provided to the City by the Licensee and it is alleged by a utility franchised by the City prior to the execution of this License that the Facility interferes with the previously-franchised utility's use of the City's Property, the Licensee shall make a good faith effort to negotiate with the previously-franchised utility to resolve any conflict. None of the related costs shall be paid by the City. The Licensee and the previously-franchised utility shall determine between themselves who will pay the cost of relocation and restoration of the surface.

15. Installation by Third Party. If any road, street, sidewalk, passageway, conduits, electric light or power line, waterline, storm drain, sanitary sewer line, gas line, telephone pole, telephone line or other utility, appurtenances or facility is placed along or across the Facility by any entity other than the City, and the construction requires the Licensee to relocate the Facility, then that entity and the Licensee shall determine between themselves who will pay the cost of relocation and the restoration of the surface. None of the related costs shall be paid by the City.

16. Entire Agreement. This License contains the entire agreement of the parties regarding the Facility and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

17. Changes. Changes to this License are not binding unless made in writing, signed by both parties.

18. Captions. The captions to the sections or paragraphs of this License are not part of this License and will not affect the meaning or construction of any of its provisions.

19. Binding Effect. This License is binding upon and inures to the benefit of the successors and/or assigns of the parties.

20. Compliance with Laws. The Licensee and its contractors shall comply with all federal, state, and local laws, ordinances, regulations, and rules and will not discriminate illegally against any person. The Licensee's attention is specifically drawn to ORC 3781.25 through 3781.38 regarding protection of utility lines.

21. Applicable Law. This License is governed by and construed and enforced in accordance with the laws of the State of Ohio.

22. Construction and Severability. If any part of this License is held to be invalid or unenforceable, the remainder of this License will remain valid and enforceable if the remainder of the License is reasonably capable of completion.

23. Assignment. The Licensee shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City which consent shall not be unreasonably withheld.

24. Notice. For purposes of giving formal written notice to the Licensee, the Licensee's address is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

For purposes of giving formal, written notice of the City, the City's address is:

Mayor  
City of Brook Park  
6161 Engle Road  
Brook Park, Ohio 44142

Copies of any notices to the City must also be given to:

Building Commissioner  
City of Brook Park  
6161 Engle Road  
Brook Park, Ohio 44142

Written notice must be made either personally or by regular United States Mail. If the notice is mailed, the notice will be complete when deposited in the United States Mail, postage paid, and addressed as required in this section. Notice of change of address will be given in the same manner as required by this section. Notice of discontinued use of the Facility by the Licensee will be given in the same manner as required by this section and within thirty (30) days of such action.

25. Approval Required. This License Agreement shall not become effective or binding until approved by the City of Brook Park's Designated Representative.

26. Run with the Property. This Agreement shall be binding upon Licensee's Property, its successors and assigns and shall run with title to the Property. The Licensee shall be the property owner or agents working for the utility company. Contractor or third party installation group is not acceptable.

**LICENSEE:**

By [signature]: \_\_\_\_\_

Name [print]: \_\_\_\_\_

Title: \_\_\_\_\_

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

Company/Utility Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_

Other (fax, e-mail): \_\_\_\_\_

**CITY OF BROOK PARK:**

By [signature]: \_\_\_\_\_

Name [print]: \_\_\_\_\_

Title: \_\_\_\_\_

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

LICENSEE NOTARY

STATE OF OHIO                    )  
  )  
COUNTY OF CUYAHOGA        )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by [name of person:] \_\_\_\_\_, [title or capacity, for  
instance, "President", "General Partner" or "Managing Member":] \_\_\_\_\_ on  
behalf of [name of Licensee:] \_\_\_\_\_.

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

My commission expires:  
  
\_\_\_\_\_

CITY NOTARY

STATE OF OHIO                    )  
  )  
COUNTY OF CUYAHOGA        )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, \_\_\_\_\_, on behalf of the City of Brook Park,  
Ohio a municipal corporation.

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

My commission expires:  
  
\_\_\_\_\_