



Agenda Report

File #: 19-0041

**AGENDA REPORT
REQUEST FOR CITY COUNCIL ACTION**

DATE: 1/16/2019

TO: Honorable Mayor and City Council Members

FROM: Public Works Department

SUBJECT:

City Council consideration of a Right-of-Way Encroachment License Agreement for Telecommunication Facilities between the City and MCIMetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services.

RECOMMENDED ACTION:

That the City Council approve and authorize the Mayor to execute a Right-of-Way Encroachment License Agreement for Telecommunication Facilities between the City and MCIMetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services.

ANALYSIS:

Verizon Access Transmission Services ("Verizon") is proposing to construct, install, maintain and operate telecommunication facilities within the Public Right-of-Way. Specifically, these facilities will consist of citywide aerial cable, buried fiber, fiber distribution boxes and all related appurtenances to support the deployment of their growing 5G network. Corona Municipal Code Chapters 12.32 and 5.14 requires the approval of a Right-of-Way Encroachment License Agreement to permit these activities.

The Right-of-Way Encroachment License Agreement ("Agreement") identifies the types of facilities and encroachment rights, limitations and restrictions that Verizon shall comply with during the Agreement term, which is set to expire after 10 years if not renewed. This Agreement does not allow Verizon to construct or install facilities on any property owned by the City including any new or modifications to City utility poles or street light standards.

The cost to install and maintain the facilities will be borne by Verizon and no budget change or funding allocation is necessary in order to execute this Agreement.

COMMITTEE ACTION:

Not applicable.

STRATEGIC PLAN:

This items supports multiple goals from the City's Strategic Plan, including 1) Promote Public Safety, Objective c: Ensure adequate funding for investment and improvement in the infrastructure that support public safety, 2) Enhance Economic Development with a Focus on Hi-Tech Opportunities, Objective a: Support economic development efforts that bring in higher paying jobs, and 3) Actively Engage in Public and Private Partnerships to Provide Services and Amenities, Objective b: Proactively develop partnerships with local and regional business interest and agencies. Completion of the project installed telecommunication infrastructure contributes to the communication capabilities of the City's residents, businesses, and public services.

FISCAL IMPACT:

Not applicable.

ENVIRONMENTAL ANALYSIS:

This action is categorically exempt pursuant to Section 15301(b) of the Guidelines for the California Environmental Quality Act (CEQA), which states that a project which consists of operation, repair, maintenance, permitting, or minor alteration of existing facilities of investor-owned utilities used to provide public utility services involving negligible expansion of use beyond that existing at the time this action is approved does not have a significant impact on the environment, and is therefore exempt from CEQA. This action is also categorically exempt pursuant to Section 15302(c) of the CEQA Guidelines, which states that a project which consists of replacement or reconstruction of existing utility facilities involving negligible expansion of capacity does not have a significant impact on the environment, and is therefore exempt from CEQA. This action is also categorically exempt pursuant to Section 15303(d) of the CEQA Guidelines, which states that a project which consists of construction or installation of new small utility equipment and facilities does not have a significant impact on the environment, and is therefore exempt from CEQA. Finally, this action is categorically exempt pursuant to Section 15304(f) of the CEQA Guidelines, which states that a project which consists of minor alterations in the condition of land, such as minor trenching and backfilling where the surface is restored, does not have a significant impact on the environment, and is therefore exempt from CEQA. This action involves the approval of a Right-of-Way Encroachment License Agreement, as required by Corona Municipal Code Chapters 12.32 and 5.14 to permit the installation of fiber-optic cables, either underground or aerial on existing structures, within the public right-of-way to support the deployment of 5G technology. The installation of the fiber optic facilities will involve a negligible, if any, expansion of the use of the public right-of-way for telecommunications facilities and the licensee is required to repair and restore any City streets, utilities, curbs, gutters, sidewalks, private property or any portion of the public right-of-way that is damages as a result of the installation of the fiber optic facilities. Therefore, no further environmental analysis is required for this action.

PREPARED BY: MICHELE HINDERSINN, P.E., SENIOR ENGINEER

REVIEWED BY: TOM KOPER, P.E., ASSISTANT PUBLIC WORKS DIRECTOR

REVIEWED BY: NELSON D. NELSON, P.E., PUBLIC WORKS DIRECTOR

REVIEWED BY: KERRY D. EDEN, ASSISTANT CITY MANAGER/ADMINISTRATIVE SERVICES

File #: 19-0041

DIRECTOR

REVIEWED BY: MICHELE NISSEN, ASSISTANT CITY MANAGER

SUBMITTED BY: DARRELL TALBERT, CITY MANAGER

Attachment: Right-of-Way Encroachment License Agreement

CITY OF CORONA

**RIGHT-OF-WAY ENCROACHMENT LICENSE AGREEMENT
FOR TELECOMMUNICATIONS FACILITIES
(TELECOM-ROWELA) (CMC CHAPTERS 12.32 & 5.14)**

**MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS
TRANSMISSION SERVICES
(CITY WIDE)**

1. PARTIES AND DATE.

This Agreement (“Agreement”) is made and entered into this 16th day of January, 2019 (“Effective Date”) by and between the City of Corona, a municipal corporation organized under the laws of the State of California with its principal place of business at 400 South Vicentia Avenue, Corona, California 92882 (“City”) and MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, a Delaware Corporation, with its principal place of business at 600 Hidden Ridge, HQE02E102, Irving, TX 75038 (“Licensee”). City and Licensee are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

2. RECITALS.

2.1 Licensee.

Licensee is a Corporation duly organized and existing under the laws of the State of Delaware and authorized by the Public Utilities Commission of the State of California or the Federal Communications Commission, or both, under a Certificate of Public Convenience and Necessity (“CPCN”) to provide Telecommunications services.

2.2 Project.

Licensee desires to construct, install, maintain and operate the Telecommunications Facilities (as defined in Section 3.1.5) within a portion of the Public Right-of-Way identified as the Encroachment Area (as defined in Section 3.1.2).

3. TERMS.

3.1 Definitions. Unless otherwise indicated, the following definitions shall apply to this Agreement.

3.1.1 Director. The term “Director” shall mean the individual designated as the Director of Public Works of the City, or his or her designee, and any other individual, person, division or department of the City as may, from time to time, exercise functions equivalent or similar to those now exercised by the Director of Public Works.

CA\DD\16000.13001\10196396.10

3.1.2 Encroachment Area. The term "Encroachment Area" shall mean the specific portion of the Public Right-of-Way set forth on the map attached as Exhibit "A" and incorporated herein by reference, in, upon, above, beneath, or across which Telecommunications Facilities owned by Licensee are or will be constructed, installed, maintained and/or operated pursuant to the terms and conditions of this Agreement. Exhibit "A" may be modified during the term of this Agreement with the approval of the Director of Public Works, which approval must be obtained prior to any construction by Licensee in any portion of the Public Right-of-Way. As further provided in Section 3.12.1, Licensee shall ensure that Exhibit "A" is promptly modified, as necessary, to maintain an accurate map of the location of Telecommunications Facilities that are owned or operated by Licensee within the City.

3.1.3 Applicable Law. The term "Applicable Law" means any order, certificate, judicial decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, administrative order, or other requirement of any municipality, county, state, federal, or other agency having joint or several jurisdiction over the parties to this Agreement, in effect either at the time of execution of this Agreement or at any time during the location of the Telecommunications Facilities in the Encroachment Area including, without limitation, any regulation or order of an official entity or body. A reference to "Applicable Law" shall include, without limitation, any lawful provision of the Corona Municipal Code ("CMC") or any other City ordinance, policy, regulation, or standard specifications.

3.1.4 Public Right-of-Way. The term "Public Right-of-Way" means the area in, upon, above, beneath, or across any of the following that has been dedicated to the public and maintained under public authority or by others and that is located within the city limits: streets, roadways, highways, avenues, boulevards, lanes, alleys, courts, sidewalks, pathways, medians, parkways, easements, rights-of-way, or similar public property that the City from time-to-time authorizes to be included within the definition of a public right-of-way or street, including, without limitation, all public utility easements and public service easements as the same now or may hereafter exist that are under the jurisdiction of the City. This term shall not include any other real or property owned the City, including, without limitation, any and all new or existing City utility poles or street light standards located in the public right-of-way or elsewhere, or any property owned by any person or agency other than the City, except as provided by Applicable Law or pursuant to an agreement between the City and any person.

3.1.5 Telecommunications Facilities. The term "Telecommunications Facilities" shall mean fiber optic cables, conduits, converters, splice boxes, cabinets, handholes, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities located by Licensee or to be located by Licensee in the Encroachment Area and used or useful for the transmission of Telecommunications Services, including those described and depicted in Exhibit "B" attached hereto and incorporated herein by reference. Licensee hereby certifies that the descriptions and drawings in Exhibit "B" are true, complete and accurate as of

CA\DD\16000.13001\10196396.10

the date of this Agreement. Licensee shall promptly modify Exhibit "B" as necessary to maintain an accurate description of the Telecommunications Facilities that are owned or operated by Licensee within the City. Notwithstanding the foregoing, in no event shall the term "Telecommunications Facilities" include any facilities for which the City is authorized under Applicable Law to impose on Licensee (by way of example but not limitation, cable service (as such term is defined in 47 U.S.C. § 522), broadcast television, community antenna service or wireless service), for the right to be in the Public Right of Way, a tax, fee or charge in excess of the reasonable costs of providing the service or which may be levied for general revenue purposes.

3.1.6 Telecommunications Services. The term "Telecommunications Services" shall have the same meaning as that term is defined in the United States Code, 47 U.S.C. 153 (53) or any other use authorized by and licensed to Licensee by the Federal Communications Commission ("FCC") or the California Public Utilities Commission ("CPUC"). Notwithstanding the foregoing, Telecommunications Services also means all those certain types of communications services and related services that are not presently regulated or otherwise unlawful, so long as such services are provided only with the Telecommunications Facilities defined in Section 3.1.5 above.

3.2 Incorporation of CMC Chapters 5.14 and 12.32. The provisions of Chapters 5.14 and 12.32 of the CMC, as amended or superseded, are hereby incorporated into this Agreement by reference as though set forth in full herein to the fullest extent applicable to Licensee, the Telecommunications Facilities or the Telecommunications Services. Specifically, the requirements set forth in CMC Section 5.14.040(D)(2) shall apply to Licensee, the Telecommunications Facilities or the Telecommunications Services.

3.3 Encroachment Rights; Limitations; Restrictions.

3.3.1 Authorization. Subject to the terms and conditions of this Agreement and all Applicable Law, City hereby licenses and permits Licensee to construct, install, maintain, operate, protect, remove, and replace the Telecommunications Facilities in, under, over, across and along the Encroachment Area for the purposes of providing Telecommunications Services. Any work performed pursuant to the rights granted to Licensee under this Agreement shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner subject to the prior review and reasonable approval of the Director, which review and approval shall not be unreasonably withheld, delayed or denied. Licensee's use of the Encroachment Area shall comply with Applicable Law and Licensee shall not use, or permit the use of, the Encroachment Area for any purpose other than providing Telecommunications Services. Licensee shall not construct or operate any facilities or structures in addition to those depicted or listed in Exhibit "B" or otherwise make any modifications to the Telecommunications Facilities without the City's consent.

3.3.2 Encroachment Permit Required. As further provided in Section 3.9 of this Agreement, prior to any work or construction in the Public Right-of-Way, Licensee shall obtain an encroachment permit from the City.

3.3.3 Undergrounding. Licensee's Telecommunications Facilities shall be placed underground consistent with the requirements of CMC Section 12.32.160(E).

3.3.4 No Interference. Except as permitted by Applicable Law or this Agreement, in the performance and exercise of its rights and obligations under this Agreement, Licensee shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and municipal property without the approval of the owner(s) of the affected property or properties. Licensee shall operate the Telecommunications Facilities as follows: (i) in a manner that complies with Licensee's FCC issued and regulated frequency licenses; (ii) in a manner that will not cause unreasonable interference or disturbance which is measurable in accordance with then existing industry standards to the equipment of other permittees, licensees or lessees of the City, provided that the installations of such permittees', licensees' or lessees' facilities predate that of Licensee's Telecommunications Facilities and are operating in compliance with applicable FCC non-interference rules; and (iii) in a manner that will not cause interference which is measurable in accordance with then existing industry standards with City communications systems regardless of when such systems are installed or their use commences.

3.3.5 Protection of Utilities. Licensee agrees during the term of this Agreement to protect all utilities, including, but not limited to, water, sewer, electrical, propane or cable, if any, within the Encroachment Area. If any such utilities in the Encroachment Area are damaged as a result of the Licensee's actions, Licensee agrees to either repair the damage or reasonably compensate City for the cost to repair the damage. Nothing in this Agreement shall alter or waive any rights enjoyed by Licensee or any other party under California's Call Before You Dig ("DigAlert") laws.

3.3.6 Not a Property Interest. This Agreement is not a grant by the City of any property interest. Any and all rights expressly granted to Licensee under this Agreement, which shall be exercised at Licensee's sole cost and expense, shall be subject and subordinate to the prior and continuing right of the City under Applicable Law to use all the Public Right-of-Way in the performance of its duties, including, but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing, and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliers, cable television, and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress, along, over, across, and in said Public Right-of-Way. The preceding sentence shall not be construed to give City the right to damage or destroy Licensee's Telecommunications Facilities.

CA\DD\16000.13001\10196396.10

3.3.7 Subject to Existing Encumbrances. This Agreement is made subject and subordinate to all easements, restrictions, conditions, covenants, encumbrances, and claims of title which may affect the Public Right-of-Way which are recorded in the public record or of which City notifies Licensee in writing on or before the date of this Agreement, and it is understood that Licensee, at its own cost and expense, shall obtain such permission as may be necessary and consistent with any other existing rights.

3.3.8 No Franchise Rights. Nothing in this Agreement shall be construed as granting or creating any franchise rights.

3.4 Maintenance. Licensee, on behalf of itself and its employees, officers, agents and contractors, agrees to take all prudent action to protect the Encroachment Area from any damage or injury caused by the exercise of this Agreement. Licensee shall immediately notify the City of any damage or injury to the Encroachment Area. Licensee shall maintain the Encroachment Area and the Encroachment in a clean, healthy and attractive condition to the reasonable satisfaction of the Director.

3.5 Title to Telecommunications Facilities. Title to the Telecommunications Facilities shall be held solely by Licensee. The Telecommunications Facilities shall remain the personal property of Licensee and shall not be treated as real property or become a part of the Encroachment Area or the Public Right-of-Way even though affixed thereto.

3.6 Telecommunications Services. Licensee provides Telecommunications Services in California pursuant to all Applicable Law, including, without limitation, its Certificates of Public Convenience and Necessity received from the PUC. The type of services Licensee offers to its customers through the Telecommunications Facilities in the Encroachment Area consists of communications services, including voice, data, video, dial tone, teleconferencing, cell site front- and back-haul, and leasing Telecommunications Facilities to affiliates and third parties, which are presently permitted by Applicable Law. If the nature and character of Licensee's service changes to include additional services, including community antenna television systems or cable service (as such term is defined in 47 U.S.C. § 522), Licensee shall give City as much advance written notice as practicable, up to and including three (3) months' prior notice, of its intent to change the service provided by way of the Telecommunications Facilities installed under this Agreement, and comply with the City's lawful requirements. Licensee acknowledges that any expansion or changes in the regulatory authority over such services may, if mandated by law, require Licensee to enter into a new Agreement consistent with the requirements of a City ordinance regulating such services or the expansion or change in services, if such service changes fall under the lawful regulation, jurisdiction, and authority of City in accordance with Applicable Law.

3.7 Reservation of Rights.

3.7.1 Regulation of Telecommunications Services. The City reserves any and all rights it may have now or in the future to legally regulate or otherwise condition the use of the Telecommunications Facilities and related technology, activities and services to be provided pursuant to the installation subject to this Agreement.

3.7.2 Imposition of Fees or Charges. The City's approval of this Agreement is not a waiver of and is without prejudice to any right City may have under Applicable Law to regulate, tax or impose fees or charges on Licensee or any right Licensee may have under the law to provide Telecommunications Services through the Telecommunications Facilities pursuant to Applicable Law. Licensee shall be subject to any future taxes, fees or charges that the City lawfully imposes consistent with Applicable Law on the Telecommunications Services and/or Telecommunications Facilities in the future. Nothing herein shall affect in any way City's power or right to impose or collect any tax or fee on users or providers of the services to be provided by Licensee in a manner consistent with Applicable Law. Nothing herein is intended to impose regulations or conditions on Licensee that City is preempted from imposing by Applicable Law.

3.8 Removal, Relocation and Abandonment.

3.8.1 Removal for City Projects. Subject to the provisions of this Section 3.8, Licensee shall remove or relocate, without cost or expense to City, any Telecommunications Facilities installed, used, and maintained under this Agreement if and when made necessary by any lawful change of grade, alignment, or width of any street required by the City, including the construction, maintenance, or operation of any underground subway or viaduct by City and/or the construction, maintenance, or operation of any other City underground or aboveground facilities, including, without limitation, any sewer, storm drain, conduits, gas, water, electric or other utility system or pipes owned by the City or any other public agency. In the event all or any portion of the Encroachment Area occupied by the Telecommunications Facilities shall be needed by City or in the event the existence of the Telecommunications Facilities shall be considered detrimental to City governmental activities, including, but not limited to, interference with City construction projects, or it conflicts vertically and/or horizontally with any proposed City installation, Licensee shall remove and relocate the Telecommunications Facilities to such other location or locations within the Public Right-of-Way as may be designated by City. Said removal or relocation shall be completed within ninety (90) days of notification by City; provided that if removal or relocation cannot reasonably be accomplished within ninety (90) days, then Licensee shall commence such removal or relocation within such ninety (90) days and thereafter continue the same diligently until completion thereof. In the event the Telecommunications Facilities are not removed or relocated within the period of time specified in the preceding, City may cause the same to be done at the sole cost and expense of Licensee by a contractor qualified and authorized under Applicable Law to remove or relocate the

CA\DD\16000.13001\10196396.10

Telecommunications Facilities. Nothing in this Agreement is intended to eliminate or waive any right Licensee may have to reimbursement under Applicable Law or the terms of any public funding grant for a project.

3.8.2 Emergencies. In the event of an emergency repair of City facilities in proximity to the Telecommunications Facilities, which repair may conflict with or threaten the Telecommunications Facilities, Licensee shall immediately, upon notice by City, provide a representative to the repair site. Protective measures, as determined by the Licensee's representative, at the election of the City, may be undertaken by the City at Licensee's expense. Should City not elect to perform such protective action, Licensee shall provide the resources to conduct the protective measures upon City's demand under the direction of the City and in a manner consistent, in the City's sole discretion, with the execution of the City's responsibilities in the emergency. Priority shall be given to activities necessary to restore City services and for public safety. As an alternative to the above procedures, in the event of a pressing emergency to public safety, City may remove the Telecommunications Facilities without notification to Licensee in order to access City facilities. In the event that either City or Licensee removes any portion of the Telecommunications Facilities, it shall be Licensee's responsibility to obtain all required City permits and approvals for reconstruction and re-installation of the Telecommunications Facilities. All costs associated with reconstruction and re-installation of the removed Telecommunications Facilities shall be the responsibility of Licensee.

3.8.3 Abandonment. If any portions of the Telecommunications Facilities covered under this Agreement are no longer used by Licensee, or are abandoned for a period in excess of six (6) months, Licensee shall notify City and shall either promptly vacate and remove the Telecommunications Facilities at its own expense or, at City's discretion, may abandon some or all the Telecommunications Facilities in place. After such removal or abandonment, Licensee shall have no further obligations to the City.

3.8.4 Repair of Public Right-of-Way. When removal or relocation are required under this Agreement, Licensee shall, after the removal or relocation of the Telecommunications Facilities, at its own cost, repair and return the Public Right-of-Way on which the Telecommunications Facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City according to its standard practice. Should Licensee remove the Telecommunications Facilities from the Public Right-of-Way, Licensee shall, within ten (10) days after such removal, give notice thereof to City specifying the right-of-way affected and the location thereof as well as the date of removal. Before proceeding with removal or relocation work, Licensee shall obtain a street excavation permit from the City.

3.9 Encroachment Permit and Fees. Licensee shall apply for an encroachment permit for all work and each job within the Public Right-of-Way. Licensee shall furnish detailed plans of the work and other such information as required by the Director and shall pay all

processing, field marking, engineering, and inspection fees prior to issuance of a permit in accordance with the rates in effect at the time of submission of the permit. Upon the request of Licensee, City will bill Licensee for such fees on a quarterly basis rather than collecting such fees with each application submittal. If Licensee requests quarterly billing, Licensee shall deposit an amount, as determined by the Director, that is equal to the estimated total costs for City services associated with Licensee's anticipated work within the Public Right-of-Way during the following quarter ("Deposit"). Thereafter, the City will provide quarterly itemized invoices to Licensee for any costs incurred by the City in connection with Licensee's work within the Public Right-of-Way that exceed the Deposit. Licensee shall, within 30 days of receiving such invoice, review the statement and pay all charges thereon. All work within the Public Right-of-Way shall be constructed and installed consistent with the plans submitted to the Director pursuant to this Section 3.9 and in accordance with the CMC, the requirements of the Director (applied in a manner consistent with Applicable Law and City standards), existing easements and right-of-way grants benefiting other utility companies, and as further provided for in the provisions of this Agreement.

3.10 Performance Bond.

3.10.1 General Requirements. As provided for in CMC Section 12.32.120, prior to the issuance of an encroachment permit, Licensee shall provide City with a performance bond naming City as obligee in the amount equal to one hundred percent (100%) of the value of the work to be performed by or on behalf of Licensee within and affecting the Public Right-of-Way to guarantee and assure the faithful performance of Licensee's obligations under this Agreement. City shall have the right to draw against the surety bond in the event of a default by Licensee or in the event that Licensee fails to meet and fully perform any of its obligations; provided that Licensee is first given written notice of any intent to draw against the bond and an opportunity to cure. Following completion of the work by Licensee and its inspection and acceptance by the Director, the performance bond shall remain in effect to the extent of twenty-five percent (25%) of the value of the work to guarantee and assure that faithful performance of Licensee's obligations under this Agreement for a period of one (1) year from the City's acceptance of the work. City shall have the right to draw against the bond in the event of a default by Licensee or in the event that Licensee fails to meet and fully perform any of its obligations. The form of the performance bond shall be furnished and reasonably approved by the City.

3.10.2 Annual Blanket Bond. Within the Director's sole but reasonable discretion, in lieu of a bond for each work project performed, Licensee may be authorized to provide a blanket performance bond covering all work to be performed under this Agreement during a City fiscal year (July 1st through June 30th). The Director may determine what the penal sum of the bond shall be based upon the Director and Licensee mutually agreeing upon a reasonable determination of one hundred percent (100%) of the value of work estimated to be performed by or on behalf of Licensee at any given time during the fiscal year. Notwithstanding the foregoing, if Director and Licensee cannot agree upon the value of the work estimated to be

CA\DD\16000.13001\10196396.10

performed by or on behalf of Licensee at any given time during the fiscal year, Licensee shall be required to provide a performance bond for each work project performed hereunder pursuant to Section 3.10.1. Such blanket performance bond shall comply with Section 3.10.1 and CMC Section 12.32.120 in all other respects.

3.11 Damage to Facilities in the Public Right-of-Way.

3.11.1 Damage to Public Right-of-Way. Licensee shall be responsible for any damage to City street pavements, existing utilities, curbs, gutters, sidewalks, any private property or improvements, or any portion of the Public Right-of-Way to the extent attributable to its installation, maintenance, repair or removal of its Telecommunications Facilities in the Encroachment Area and shall repair, replace and restore in kind any such damaged facilities at its sole expense and in accordance with City standards.

3.11.2 Pre-Existing Facilities. If the Encroachment Area to be used by Licensee has preexisting facilities or installation(s) placed in the Public Right-of-Way, Licensee shall assume the responsibility to verify the location of the preexisting facility or installation and notify City and any third party of Licensee's proposed installation. The cost of any work required of such third party or City to provide adequate space or required clearance to accommodate Licensee's Telecommunications Facilities shall be borne solely by Licensee.

3.11.3 Dangerous Condition. If, in City's reasonable judgment, the Telecommunications Facilities create a substantial risk of harm to persons or property, City may, after twenty-four (24) hours advance telephone or written notice to Licensee, perform such work City deems necessary to reduce or mitigate such risk of harm. Notwithstanding the foregoing, the City shall have the right to immediately perform any work the City deems necessary in its sole discretion to reduce or mitigate an immediate risk of harm created by the Telecommunications Facilities. Within forty-five (45) calendar days after a bill is rendered to Licensee, Licensee shall reimburse City for all reasonable costs and expenses incurred by City in performing such work. Failure on the part of City to perform the obligations of Licensee shall not release Licensee from liability hereunder for any loss or damage occasioned thereby.

3.12 Records and Field Locations.

3.12.1 Maintenance of Accurate Maps of Telecommunications Facilities. Licensee shall maintain accurate maps and improvement plans of the Telecommunications Facilities located within the City. The maps and plans are to accurately show in detail the location, size, depth and description of all Telecommunications Facilities as constructed. Prior to City acceptance of the work, Licensee shall deliver to the Director free of charge such maps and plans of all Telecommunications Facilities installed within said Public Right-of-Way. When required by the City for the purpose of confirming the location of Telecommunications Facilities to accomplish the design or construction of public facilities by City, Licensee shall, at its sole

CA\DD\16000.13001\10196396.10

cost and expense, expose by potholing to a depth of one (1) foot below the bottom of its subsurface Telecommunications Facilities, within thirty (30) days of receipt of a written request from City to do so. The City shall use the information contained in the maps and plans only as needed to manage the Public Right-of-Way, including, but not limited to, coordination of construction schedules, prevention of interference among the various utilities and systems in the Public Right-of-Way, and enforcement of building and zoning regulations. To the fullest extent permitted by the Law, City agrees to keep such maps and plans confidential or, in the event of a required disclosure under Applicable Law, to endeavor to notify Licensee of the need for disclosure in order to allow Licensee sufficient time to obtain a nondisclosure agreement from the party seeking disclosure or, in the case of a judicial or administrative requirement, a protective order.

3.12.2 Underground Services Alert. Licensee shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark, at its sole expense, the locations of its underground Telecommunications Facilities upon notification in accordance with the requirements of Article 2 of Chapter 3.1 of Division 5 of Title 1 of the State of California Government Code 9 (commencing with Section 4216), as it now reads or may hereinafter be amended.

3.13 Work Standards.

3.13.1 Standard of Care. Licensee shall perform all work under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Licensee shall comply with all standards imposed by the City and shall conduct such work with the least possible hindrance or interference to the Public Right-of-Way. Licensee shall execute and maintain its work so as to avoid injury or damage to any person or property.

3.13.2 Laws and Regulations. Licensee shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the work under this Agreement, including all Cal/OSHA requirements, and shall give all notices required by law. Licensee shall be liable for all violations of such laws and regulations in connection with such work. If the Licensee performs any work knowing them to be contrary to such laws, rules and regulations and without giving written notice to the City, Licensee shall be solely responsible for all costs arising therefrom. Licensee shall defend, indemnify and hold City, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.13.3 Air Quality. In exercising its rights under this Agreement, Licensee must fully comply with all Applicable Laws, including, but not limited to, those pertaining to

CA\DD\16000.13001\10196396.10

emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Licensee shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Licensee shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of Applicable Law by Licensee, its subcontractors, or others for whom Licensee is responsible under its indemnity obligations provided for in this Agreement.

3.13.4 Environmental Laws. In exercising its rights under this Agreement, Licensee must fully comply with all Applicable Laws, including, but not limited to, those pertaining to the environment and protection of natural resources, including, but not limited to, the National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA").

3.14 Condition of Encroachment Area; Hazardous Substances.

3.14.1 Defined. For purposes of this Agreement, the term "Hazardous Substances" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Law"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or

federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (d) asbestos.

3.14.2 No Warranties for Encroachment Area. City makes no warranty or representation whatsoever concerning the Encroachment Area, including without limitation, the condition, fitness or utility for any purpose thereof, of any improvements thereto, or compliance with Applicable Law. Licensee's right to use the Encroachment Area is strictly on an "as is" basis with all faults. City hereby disclaims all warranties whatsoever, express or implied, regarding the condition of the soil, water, or geology on the Encroachment Area, and any warranty of merchantability or habitability or fitness for a particular purpose.

3.14.3 Hazardous Substances Prohibited. Except as otherwise specifically permitted under the terms of this Agreement, Licensee shall not use, create, generate, store, deposit, dispose of or allow any Hazardous Substances on, under, about or within the Encroachment Area in violation of any Applicable Law or other requirement listed in this Agreement.

3.14.4 Disclosure and Removal of Hazardous Substances. Licensee shall, within forty-eight (48) hours of the discovery by Licensee of the presence of, or believed presence of, a Hazardous Substance within the Encroachment Area, give written notice to City in the event that Licensee knows or has reasonable cause to believe that any release of Hazardous Substance brought onto the Encroachment Area by Licensee or its employees or agents has come or will come to be located on, under, about or within the Encroachment Area. The failure to disclose in a timely manner the release of a Hazardous Substance brought onto the Encroachment Area by Licensee or its employees or agents, including but not limited to, an amount which is required to be reported to a state or local agency pursuant to law (e.g., California's Hazardous Materials Storage and Emergency Response Act, Health and Safety Code Section 25550 et seq.) shall be grounds for termination of this Agreement by City for default, in addition to actual damages and other remedies provided by law. Licensee shall immediately clean-up and completely remove all Hazardous Substances placed by Licensee or its employees or agents on, under, about or within the Encroachment Area, in a manner that is in all respects safe and in accordance with Applicable Law. In the event Hazardous Substances at the Encroachment Area are discovered, Licensee shall disclose to City the specific information regarding Licensee's discovery of such Hazardous Substances placed on, under, about or within the Encroachment Area by Licensee or its employees or agents, and provide written documentation of its safe and legal disposal as required by law.

3.15 Insurance.

3.15.1 Time for Compliance. Prior to issuance of an encroachment permit for any work permitted under this Agreement, Licensee shall provide evidence reasonably satisfactory to the City that it has secured all insurance required under this section. Failure to

CA\DD\16000.13001\10196396.10

provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.15.2 Minimum Requirements. Licensee shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with work performed under this Agreement by the Licensee, its agents, representatives, employees or subcontractors. Licensee shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001 or equivalent, code 1 (any auto), or if Licensee has no owned autos, Code 8 (hired) and 9 (non-owned); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Licensee shall maintain limits no less than: (1) Commercial *General Liability*: \$2,000,000 per occurrence for bodily injury and property damage and \$4,000,000 general aggregate including personal and advertising injury; (2) Commercial *Automobile Liability*: \$2,000,000 combined single limit each accident for bodily injury and property damage covering all owned, non-owned and hired vehicles; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of \$1,000,000 each accident/disease/policy limit.

3.15.3 Insurance Endorsements. The insurance policies shall contain or be endorsed (amended) to include the following provisions:

(A) General Liability. The general liability policy shall: (1) include City, its directors, officials, officers, employees and volunteers as additional insureds as their interest may appear under this Agreement with respect to liability arising out of work or operations performed by or on behalf of the Licensee, including materials, parts or equipment furnished in connection therewith (the endorsement form shall be at least as broad as ISO Form CG 20 10 11 85 or both CG 20 37 and one of the following: CG 20 10, CG 20 26, CG 20 33 or CG 20 38, or their equivalent); and (2) the insurance coverage shall be primary insurance coverage as respects the City, its directors, officials, officers, employees, agents, and volunteers (the endorsement form shall be at least as broad as ISO CG 20 01 04 13). Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and

volunteers shall be excess of the Licensee's insurance and shall not be called upon to contribute with it in any way.

(B) Waiver of Subrogation – Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Licensee.

(C) All Coverages. If Licensee maintains broader coverage and/or higher limits than the minimums shown above, the City is entitled to the broader coverage and/or higher limits maintained by Licensee. Thus, any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

3.15.4 Other Provisions; Endorsements Preferred. Licensee shall endeavor to provide endorsements regarding the following provisions, but nonetheless understands, acknowledges and agrees that the following provisions shall apply and that failure to comply shall be considered to be a breach of this Agreement by Licensee:

(A) Waiver of Subrogation – All Other Policies. Licensee hereby waives all rights of subrogation any insurer of Licensee's may acquire against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of any insurance policy which arise from work performed by the Licensee. Licensee understands, acknowledges and agrees that this provision is in full force and effect even if the City does not receive a waiver of subrogation endorsement from the insurer.

(B) Notice. Licensee shall either: (1) require its insurer to provide thirty (30) days prior written notice to the City before coverage is suspended, voided, or canceled; or (2) notify City in writing that such notice is not available and forward any notice of such actions to the City within two (2) business days from date of receipt by Licensee. Licensee understands, acknowledges and agrees that this provision is in full force and effect even if the City does not receive a waiver of subrogation endorsement from the insurer.

3.15.5 Claims Made Policies. The following provisions shall apply to all policies that provide coverage on a claims-made basis: (A) the retroactive date must be shown and must be before the date on which any work under this Agreement commence; (B) the insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work; and (C) if coverage is canceled or not renewed and is not replaced with another claims-made policy with a retroactive date prior to the date on which any work under this Agreement commence, Licensee must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the work.

3.15.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Licensee to provide proof of ability to pay losses and related investigation, claims administration and defense expenses within the deductible or self-insured retention. The deductible or self-insured retention may be satisfied by either the named insured or the City.

3.15.7 Acceptability of Insurers. Unless under the circumstances a different rating is otherwise acceptable to the City in its sole and absolute discretion, insurance is to be placed with insurers which are satisfactory to the City and which meet either of the following criteria : (1) an insurer with a current A.M. Best's rating no less than A-:VII and licensed as an admitted insurance carrier in California; or (2) an insurer with a current A.M. Best's rating no less than A-:X and authorized to issue the required policies in California.

3.15.8 Verification of Coverage. Licensee shall furnish City with original certificates of insurance, as well as amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement. All documents must be received and approved by the City before any work commence; provided, however, that failure to obtain the required documents prior to the commencement of work shall not waive Licensee's obligation to provide them. The City reserves the right to review complete, certified copies of all required insurance policies, at any time, which upon request from the City, Licensee shall make available at Licensee's local office in the City, or, if Licensee does not have an office in the City, at Licensee's office closest to the City.

3.15.9 Reporting of Claims. Licensee shall report to the City, in addition to Licensee's insurer, any and all insurance claims submitted by Licensee in connection with any work performed under this Agreement.

3.15.10 Sub-contractors. All sub-contractors shall comply with each and every insurance provision of this Section 3.15. Licensee shall therefore not allow any sub-contractor to commence work on any subcontract to perform any part of the work until it has provided evidence satisfactory to the City that the sub-contractor has secured all insurance required under this Agreement.

3.15.11 Special Risk or Circumstances. The City reserves the right, in its sole and absolute discretion, to modify the requirements of this Section 3.15, including limits, based on any of the following: (A) the nature of the risk of the work performed under this Agreement; (B) the prior experience of the insured; (C) the rating or other quality or characteristic of the insurer; (D) any special or unique coverage issues; and (E) any other special or unique circumstances.

3.16 Limits of City Liability.

3.16.1 Damage to Telecommunications Facilities. In no event shall City be liable under any theory to Licensee for any damage to the Telecommunications Facilities caused by any excavation or work performed by any other persons or by the City at or near the location of Telecommunications Facilities except and to the extent caused by the City's gross negligence or willful misconduct. City shall not be liable under any theory to Licensee for any indirect, special, punitive or consequential damages including, but not limited to, any claim for loss of services, lost revenue or profits or third-party damages.

3.16.2 Risk of Loss; No Obligation to Pursue Third Parties. Except as expressly provided for herein, Licensee understands, acknowledges and agrees that Licensee bears all risks of loss, damage, relocation and/or replacement of the Telecommunications Facilities under this Agreement from any cause whatsoever. City shall not be liable for any cost related to a loss, damage, relocation and/or replacement of the Telecommunications Facilities, including, without limitation, anything caused by any work by or on behalf of City involving any Public Right-of-Way or the removal of any Telecommunications Facilities pursuant to the terms of this Agreement, except to the extent caused by the gross negligence or willful misconduct of City or its employees, contractors, or agents. In the event that the City seeks reimbursement or damages of any kind from any third party responsible for damage to City property, City is under no obligation to pursue reimbursement or damages on behalf of Licensee.

3.16.3 No Liability for Approval of Plans. Nothing in this Agreement shall be deemed to make City or any officer or employee of City responsible or liable to Licensee or any other person by reason of City's approval of plans for any work under this Agreement or by reason of any inspection of the Telecommunications Facilities conducted by the City.

3.17 Term; Termination.

3.17.1 Term. The term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date, unless earlier terminated as provided herein. This Agreement may also be renewed pursuant to the provisions of CMC Section 12.32.100, which currently requires a renewal application to be filed not more than one (1) year and not less than six (6) months before the expiration of the term of this Agreement.

3.17.2 City Termination. In the event Licensee defaults, or fails to keep, fulfill or perform any of the terms or conditions of this Agreement and fails to remedy such default within ninety (90) days after delivery of written notice from the City of such default, or, if such cure cannot reasonably be completed within said ninety (90) day period, Licensee fails to commence such cure within said ninety (90) day period and thereafter diligently continue to cure the default until completion thereof, City may declare this Agreement terminated. Upon such declaration of termination, this Agreement shall be cancelled and all of the rights and privileges of Licensee under this Agreement shall be deemed surrendered.

3.17.3 Licensee Termination. Licensee may terminate this Agreement at any time upon thirty (30) days prior written notice to City. Such termination by Licensee shall not relieve Licensee of any obligation to the City regarding any existing breach of this Agreement.

3.17.4 Effect of Termination. Within sixty (60) days after termination of this Agreement, if requested by City, Licensee shall remove the Telecommunications Facilities from the Encroachment Area and repair and restore the Public Right-of-Way to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City according to its standard practice. Notwithstanding such termination, Licensee's obligations under Section 3.18 shall survive termination of this Agreement.

3.18 Indemnification. To the fullest extent permitted by law, Licensee shall defend (with counsel of City's choosing), indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of, pertaining to, or incident to any alleged willful misconduct or negligent acts, errors or omissions of Licensee, its officials, officers, employees, subcontractors, consultants or agents in connection with any activities of Licensee under this Agreement, including without limitation the payment of all settlement amounts, expert witness fees and attorney's fees and other related costs and expenses. The City's selection of legal counsel shall be subject to the consent of the Licensee, which consent shall not be unreasonably withheld; provided, however, that Licensee's refusal to accept a tender of defense by City shall be deemed to be an unreasonable withholding of consent by Licensee as to City's selection of legal counsel. To the extent that the City selects the City's in-house legal counsel, Licensee hereby consents to such selection. Licensee's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers. Notwithstanding the foregoing, the obligations of Licensee under this section shall not apply, as set forth in CMC Section 12.32.200, to the extent that any claim, demand, cause of action, cost, expenses, liability, loss, damage or injury to property or persons, including wrongful death, is caused by the negligence or willful misconduct of the City, its directors, officials, officers, employees, volunteers and agents as determined by a court or administrative body of competent jurisdiction.

3.19 General Provisions.

3.19.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

Licensee:

MCImetro Access Transmission Services Corp. d/b/a

CA\DDN\6000.13001\10196396.10

Verizon Access Transmission Services
Attention: Franchise Manager
600 Hidden Ridge, HQE02E102
Irving, TX 75038

With a copy (except for invoice) to:

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

City:

City of Corona
400 South Vicentia Avenue
Corona, CA 92882
Attn: Director of Public Works

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class certified, postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.19.2 Licensee Contact for Complaints. Licensee's Network Operations Control Center shall be available to City staff 24 hours a day, seven (7) days a week, to respond to problems or complaints resulting from the Telecommunications Facilities installed pursuant to this Agreement and may be contacted by telephone at 1-800-MCI WORK (1-800-624-9675).

3.19.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County or in the federal courts serving Riverside County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Licensee must comply with the claim procedures set forth in Government Code Sections 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Licensee. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Licensee shall be barred from bringing and maintaining a valid lawsuit against the City.

3.19.4 Taxes. Licensee acknowledges that the execution of this Agreement for the Encroachment Area may create a taxable possessory interest pursuant to Revenue Taxation Code Section 107, as amended from time to time, subjecting Licensee to pay any and all taxes levied on this interest in government owned real property. A taxable possessory interest exists when a person or entity has the right to a beneficial use of tax exempt, government owned real property whether rent is paid or not. These possessory interest taxes are to be paid by Licensee directly to the County Tax Collector and shall be kept current, without delinquency. LICENSEE IS ADVISED TO CONTACT THE COUNTY ASSESSOR PRIOR TO ENTERING INTO THIS AGREEMENT FOR INFORMATION. All possessory taxes are assessed yearly as of January 1st of each year. If the payment of the taxes become delinquent, City may consider the failure to pay taxes owed a breach of this Agreement and grounds for termination. The person or entity in actual or constructive possession of the property on the lien date is liable for the tax for the entire year. There is no provision for proration of the taxes. Upon termination of the occupancy and thereby the taxable possessory interest, Licensee is still responsible for the remaining portion of the tax bill through the end of that year. In addition to the possessory taxes described herein, Licensee shall pay during the term of this Agreement, without abatement, deduction, or offset, any and all other real and personal property taxes, general and special assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed during the term of this Agreement by any governmental agency or entity on or against the Encroachment Area or personal property located on or in the Encroachment Area. Nothing in this Section is intended to alter, amend, modify or expand the taxes and/or fees that may lawfully be assessed on Licensee for the services provided pursuant to this Agreement under Applicable Law.

 Licensee's Initials

3.19.5 Time of Essence. Time is of the essence for each and every material provision of this Agreement; provided, however, that neither Party shall be found in default or liable for damages, including but not limited to, delay damages, in the event such Party suffers a force majeure or other event beyond the control of that Party.

3.19.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.19.7 Assignment or Transfer. Notwithstanding Section 3.19.6, Licensee shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City as provided for in CMC Section 12.32.140. Any attempt to subcontract or take any other action not authorized herein shall be null and void, and any subcontractors, assignees, hypothecates or transferees shall acquire no right or interest by reason of such action.

3.19.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Licensee include all personnel, employees, agents, and subcontractors of Licensee, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.19.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.19.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.19.11 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.19.12 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.19.13 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

3.19.14 Authority to Enter Agreement. Licensee has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.19.15 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.19.16 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations,

CA\DD\16000.13001\10196396.10

understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.19.17 Force Majeure. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default, or considered to be a default, where delays or defaults are due to the force majeure events of war, acts of terrorism, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes or lack of transportation, weather-caused delays, inability to secure necessary labor, materials or tools, delays of any contractors, subcontractor or supplier, which are not attributable to the fault of the Party claiming an extension of time to prepare or acts or failure to act of any government (“**Enforced Delay**”). An extension of time for any such force majeure cause shall be for the period of the Enforced Delay and shall commence to run from the date of occurrence of the delay; provided however, that the Party which claims the existence of the delay has first provided the other Party with written notice of the occurrence of the delay within ten (10) calendar days of the commencement of such occurrence of delay. The Parties to this Agreement expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of any of them which may have provided a basis for entering into this Agreement and which occur at any time after the execution of this Agreement, are not force majeure events and do not provide any Party with grounds for asserting the existence of a delay in the performance of any covenant or undertaking which may arise under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement, but that such inconvenience or hardship is not a force majeure event and does not excuse the performance by such Party of its obligations under this Agreement.

[SIGNATURES ON NEXT 2 PAGES]

CITY'S SIGNATURE PAGE FOR
RIGHT-OF-WAY ENCROACHMENT LICENSE AGREEMENT
FOR TELECOMMUNICATIONS FACILITIES
(TELECOM-ROWELA) (CMC CHAPTERS 12.32 & 5.14)
MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS
TRANSMISSION SERVICES
(CITY WIDE)

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

CITY OF CORONA

By: _____
Jason Scott
Mayor

Attest:

Sylvia Edwards
City Clerk

Approved as to Form:

Dean Derleth
City Attorney

LICENSEE'S SIGNATURE PAGE FOR
RIGHT-OF-WAY ENCROACHMENT LICENSE AGREEMENT
FOR TELECOMMUNICATIONS FACILITIES
(TELECOM-ROWELA) (CMC CHAPTERS 12.32 & 5.14)
MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS
TRANSMISSION SERVICES
(CITY WIDE)

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS
TRANSMISSION SERVICES
a Delaware Corporation

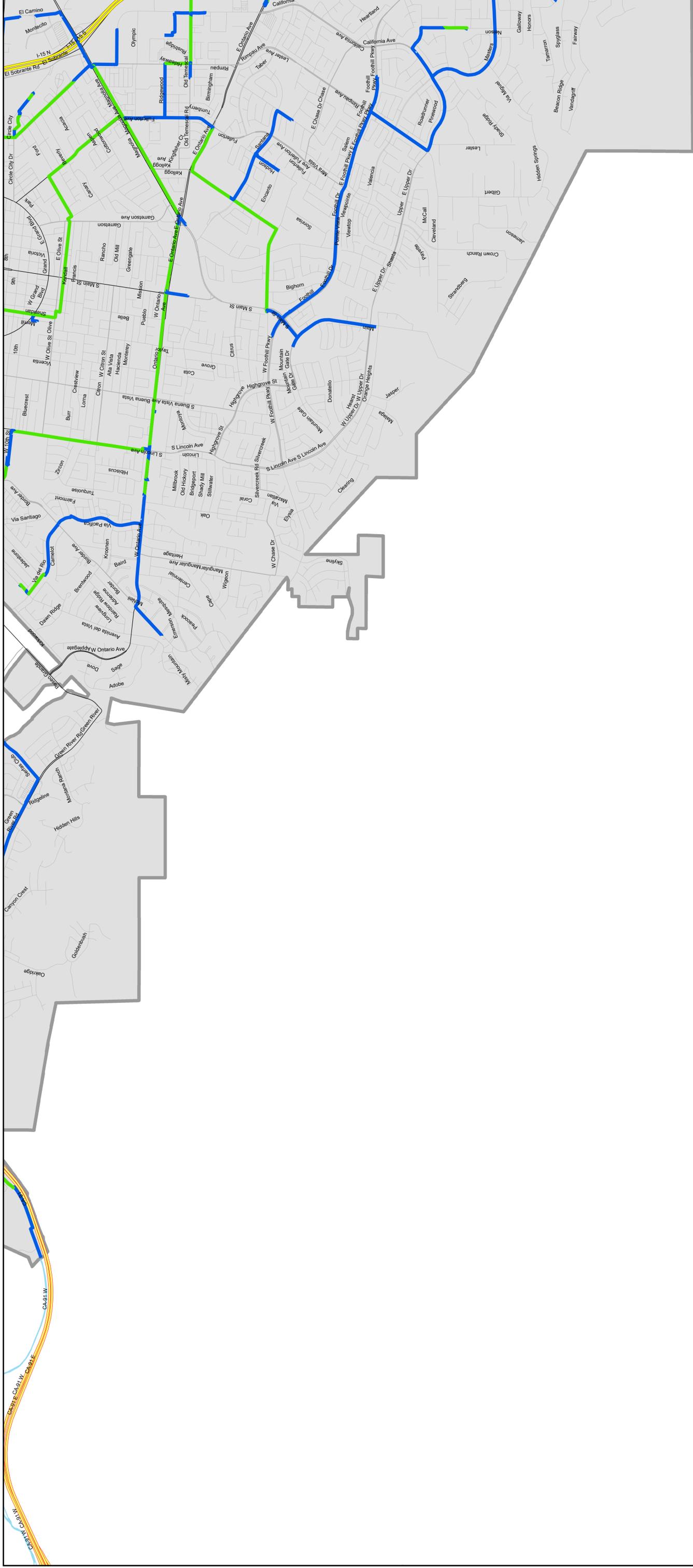
By:


Robert J. Hayes
Senior Manager, Network Engineering & Ops

Attest:


Paula Gabriel
Right-of-Way Specialist

Exhibit A-2 MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services Corp. City of Corona, CA



— Planned Aerial - 106,503 Linear Ft.
— Planned Buried - 134,171 Linear Ft.
 Corona

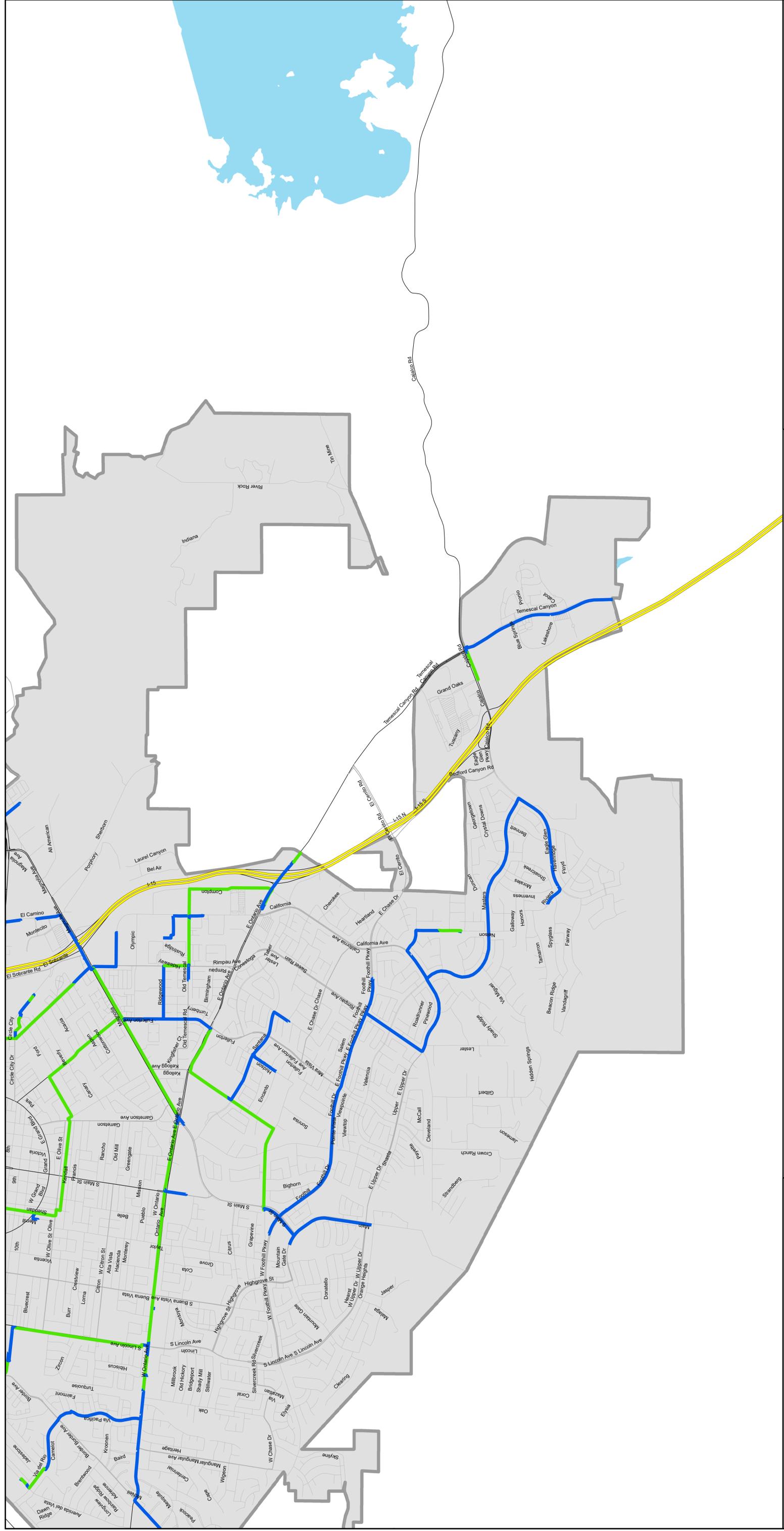
Note: This is a PRELIMINARY VIEW only
 Final design not yet completed, thus routes subject to change.
 Cables shown in green and blue represent backbone fiber to existing or new cell sites. Not shown above are additional laterals off backbone cables to be determined to serve business customers along the routes.

Verizon/MCImetro Confidential and Proprietary. May Contain Trade Secrets, or Sensitive Commercial or Financial Information. Any Unauthorized Review, Use, Disclosure, Distribution, or Copying is Prohibited.
 Data Source: VZB
 Projection: GCS_WGS_1984
 Map Created: 12/11/2018
 Map Created By: Brett Parker



NTS

Exhibit A-3 MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services Corp. City of Corona, CA



- Planned Aerial - 106,503 Linear Ft.
- Planned Buried - 134,171 Linear Ft.
- Corona

Note: This is a PRELIMINARY VIEW only

Final design not yet completed, thus routes subject to change.
Cables shown in green and blue represent backbone fiber to existing or new cell sites. Not shown above are additional laterals off backbone cables to be determined to serve business customers along the routes.

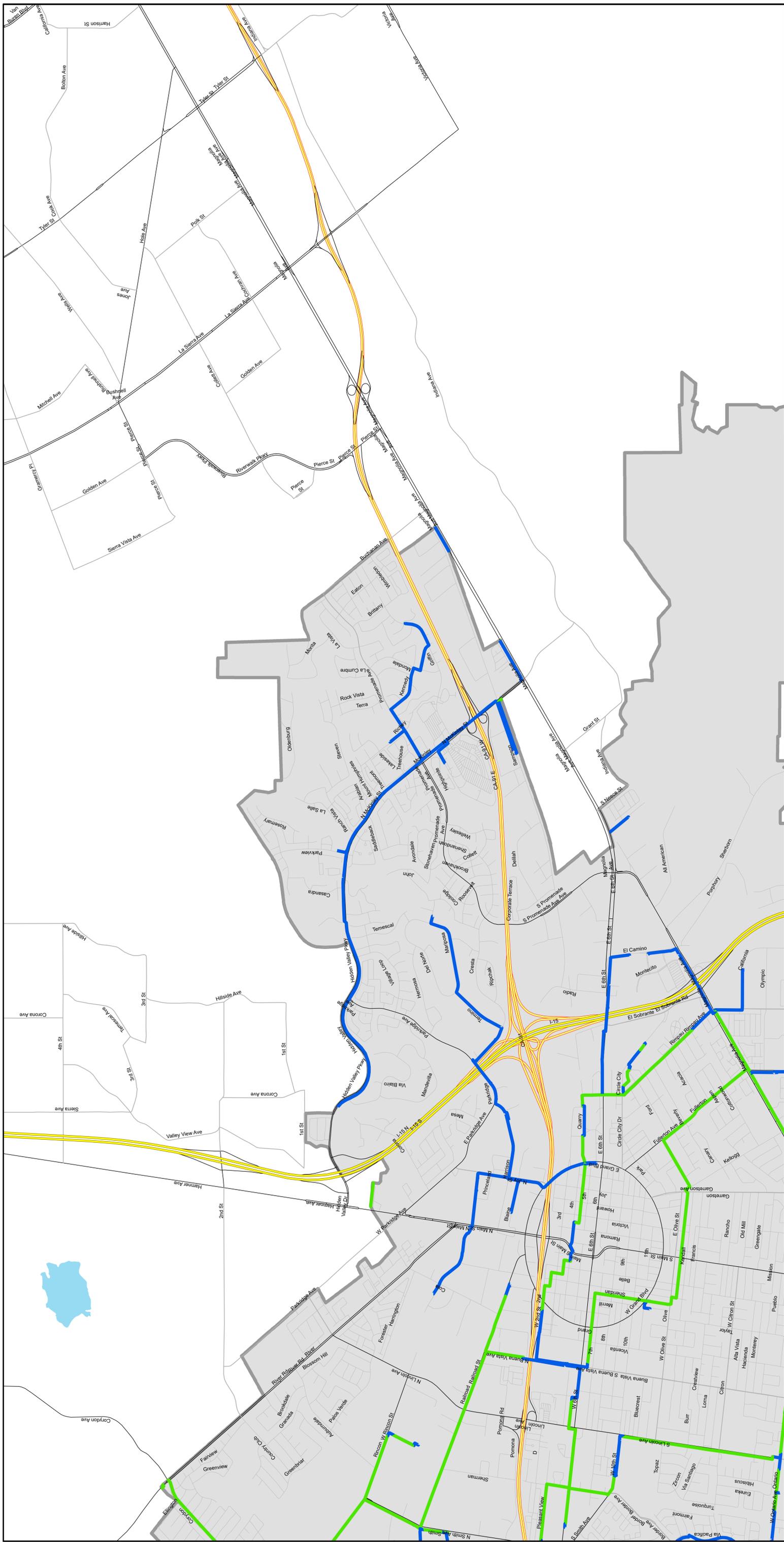
Verizon/MCImetro Confidential and Proprietary. May Contain Trade Secrets, or Sensitive Commercial or Financial Information. Any Unauthorized Review, Use, Disclosure, Distribution, or Copying is Prohibited.

Data Source: VZB
Projection: GCS_WGS_1984
Map Created: 12/11/2018
Map Created By: Brett Parker



NTS

Exhibit A-4 MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services Corp. City of Corona, CA



— Planned Aerial - 106,503 Linear Ft.
— Planned Buried - 134,171 Linear Ft.
 Corona

Note: This is a PRELIMINARY VIEW only
 Final design not yet completed, thus routes subject to change.
 Cables shown in green and blue represent backbone fiber to existing or new cell sites. Not shown above are additional laterals off backbone cables to be determined to serve business customers along the routes.

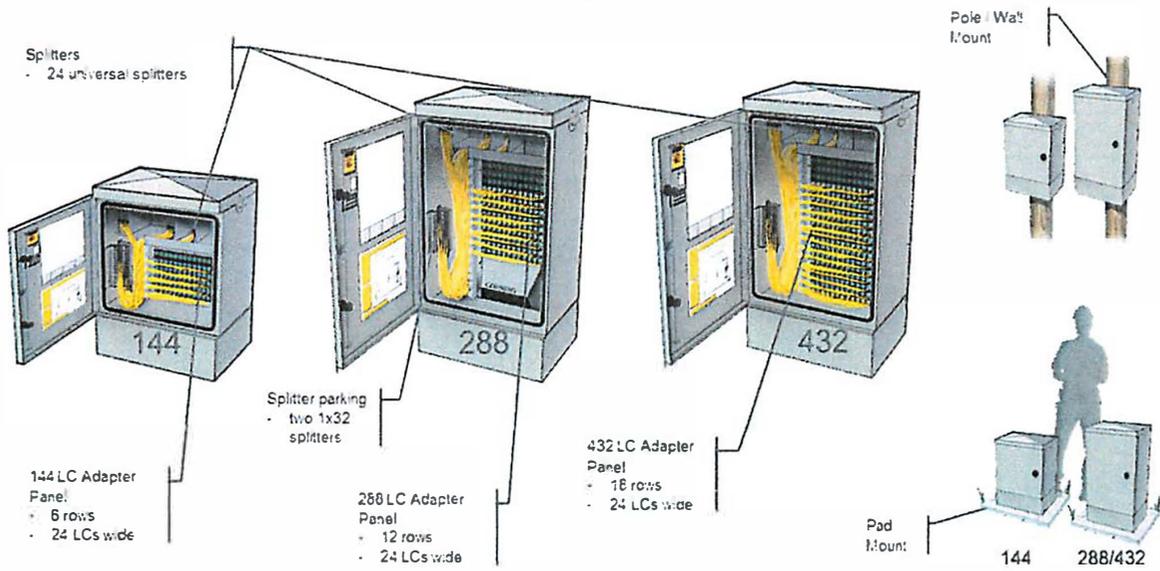
Verizon/MCImetro Confidential and Proprietary. May Contain Trade Secrets, or Sensitive Commercial or Financial Information. Any Unauthorized Review, Use, Disclosure, Distribution, or Copying is Prohibited.

Data Source: VZB
 Projection: GCS_WGS_1984
 Map Created: 12/11/2018
 Map Created By: Brett Parker



NTS

EXHIBIT "B"
DESCRIPTION AND DEPICTION
OF TELECOMMUNICATIONS FACILITIES



It is anticipated that Fiber Distribution Hubs (FDH) may be required resembling the boxes above. The sizes of the boxes should be no larger than the following:

- 144: 18 x 18.5 x 13.6 in**
- 288: 27 x 18.5 x 13.6 in**
- 432: 33.3 x 18.5 x 13.6 in**