

**DATE:**

6/16/2023

**AGENDA ITEM (ACTION ITEM):**

Consider / Approve the proposed Utility Access Agreement with Verizon to install/update existing fiber optic cabling and associated equipment at the Crescent Springs Bus Lot.

**APPLICABLE BOARD POLICY:**

702 KAR 4:160

**HISTORY/BACKGROUND:**

The proposed Utility Access Agreement with Verizon is to provide improved communications services in the building. The Agreement shall be for an initial three (3) year term with the option of two (2) additional three (3) year terms if agreed upon by both parties.

**FISCAL/BUDGETARY IMPACT:**

None

**RECOMMENDATION:**

Approve the proposed Utility Access Agreement with Verizon to install/update existing fiber optic cabling and associated equipment at the Crescent Springs Bus Lot.

**CONTACT PERSON:**

Matt Rigg, Chief Operations Officer

\_\_\_\_\_  
*Principal/Administrator*

  
\_\_\_\_\_  
*District Administrator*

  
\_\_\_\_\_  
*Superintendent*

*Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda  
Principal – Complete, print, sign and send to your Director. Director – if approved, sign and put in the Superintendent's mailbox*

## UTILITY ACCESS AGREEMENT

This Utility Access Agreement (the "**Agreement**") is effective as of the last date of signature below ("Effective Date") and is made, between The Kenton County School District ("**Licensors**"), and MCImetro Access Transmission Services LLC, its successors and assigns, with an office at Verizon Global Real Estate; Attn: Lease Administration; 7701 E. Telecom Parkway; Mail Code: FLTDSB1W; Temple Terrace, FL 33637; ("**Licensee**").

### WITNESSETH:

WHEREAS, **Licensors** recognizes that **Licensee** is authorized to provide communications services in the building located at 2550 American Ct., Ft Michell, KY 41017 ("Building") under the conditions described herein.

NOW, THEREFORE, in consideration of the mutual covenants herein expressed, **Licensee** and **Licensors** hereby covenant and agree as follows:

1. License.

(a) **Licensors** hereby grants to **Licensee** a license ("License") to install, operate, maintain, repair and replace fiber optic cable and associated equipment ("Facilities") for the sole purpose of providing **Licensee's** communications services.

(b) **Licensors** shall provide approximately 9 square feet of floor space ("Equipment Space") in the location designated on the attached Exhibit A. The Equipment Space will be used exclusively by **Licensee** as the Building service site.

(c) **Licensors** shall give **Licensee** reasonable access to vertical and horizontal shafts to enable **Licensee** to provide **Licensee's** communications services to occupants of the Building.

(d) Following notice to and written approval of **Licensors**, as set forth in Section 4 herein, **Licensee** shall have a right of access to the Building and the right to construct, where necessary and at its expense, building entrance and conduit facilities associated with providing communications services.

(e) The **License** granted herein is not exclusive as to any part of the Building other than the Equipment Space. **Licensors** hereby reserves the right to grant, renew or extend similar licenses to others.

(f) Nothing contained herein shall be construed as granting to **Licensee** any property or ownership rights in the Building or to create a partnership or joint venture between **Licensors** and **Licensee**.

2. Use. **Licensee** shall use the Equipment Space and the Facilities installed within the Building to provide communications services to or for the benefit of occupants of the Building.

3. Electric Utilities. **Licensors** shall be responsible for all costs of utilities, including the electrical and any HVAC costs, attributable to such Facilities.

4. Construction. Prior to the commencement of any work, other than work inside existing installed racks, **Licensee** shall, at its cost and expense, prepare and deliver to **Licensors** working drawings, plans and specifications (the "Plans"), detailing the location and size of the

Facilities and/or the Equipment Space and specifically describing the proposed construction and work. No work other than work inside existing installed racks shall commence until **Licens**or has approved the Plans, which approval shall be at **Licens**or's reasonable discretion. **Licensee** shall:

- (a) perform such construction in a safe manner consistent with generally accepted construction standards;
- (b) perform such construction and work in such a way as to reasonably minimize interference with the operation of the Building; and
- (c) obtain, prior to the commencement of any construction and work, necessary permits, licenses and approvals.

5. **Licensee's Covenants.** **Licensee** hereby covenants and agrees:

- (a) to keep the Equipment Space and the Facilities in good order, repair and condition throughout the Term (as hereinafter defined) and promptly and adequately repair all damage to the Building caused by **Licensee**, other than ordinary wear and tear; and
- (b) to comply with federal, state and municipal laws, orders, rules and regulations applicable to the Facilities.

6. **Facilities.** The Facilities, and any other personal property brought into the Building by or on behalf of **Licensee** shall belong to **Licensee** and shall be there at the sole risk of **Licensee**. **Licens**or shall not be liable for damage to, or theft, misappropriation or loss of, **Licensee's** Facilities other than any such loss caused by the gross negligence or willful misconduct of **Licens**or. Within sixty (60) days after termination of this **Agreement**, **Licensee** will, at its sole cost and expense and upon notice to **Licens**or, remove the Facilities and **Licensee's** personal property from the Building, and repair all damage caused by such removal; provided, however, that **Licensee** may cut and cap all conduit and cabling and leave such conduit and cabling safely sealed in place in the Building.

7. **Condition of Equipment Space and Building.** **Licens**or makes no warranty or representation that the Equipment Space or the Building is suitable for the use described in Section 2 of this **Agreement**, it being assumed that **Licensee** has satisfied itself thereof. **Licensee** has inspected the Equipment Space and the Building, accepts the same "as is" and agrees that **Licens**or is under no obligation to perform any work or provide any materials to prepare the Equipment Space or the Building for **Licensee**.

8. **Access.** **Licens**or shall provide **Licensee** ~~immediate~~ access to the Building, including the Equipment Space, ~~upon reasonable request by Licensee twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, so~~ that **Licensee** may perform installation, operation, maintenance, replacement and repair functions all in accordance with **Licens**or's rules and regulations.

**Commented [EL1]:** ...during normal business hours, Monday – Friday, 8am – 6pm, so....

9. **Term.** Commencing on the Effective Date, this **Agreement** shall have an initial term of three (3) years ("Initial Term"). The Initial Term shall end on the last day of the month that is 3 years from the Effective Date. The **License** granted hereby may not be revoked during the Term or any renewal hereof, except as provided in Section 16.

**Commented [EL2]:** In the event of an emergency, **Licens**or shall use reasonable efforts to allow **Licensee** to access the Building with 2 hours' notice. **Licensee** understands that there may be circumstances where **Licens**or will not be able to provide after-hours access.



10. Option to Renew: Provided that Licensee is not in default of the Agreement, the Term of the Agreement ~~shall auto-renew~~ may be renewed by agreement of the parties for up to two (2) three (3) year periods (each a "Renewal Term") on the same terms and conditions, unless terminated by Licensee by written notice a minimum of one hundred twenty (120) days before the end of the Initial Term or any Renewal Term. Upon expiration of both Renewal Terms, the Agreement shall continue on a month-to-month basis on the same terms and conditions. The Initial Term, the Renewal Terms and the month to month tenancy shall be collectively referred to herein as the ("Term").

11. Indemnification. Licensee shall indemnify, exonerate and hold Licensor, its principals, officers, directors, agents, employees and servants harmless from and against any loss, cost, damage and expense of whatever kind arising from the construction, operation, maintenance and repair of Licensee's Facilities or from Licensee's breach of this Agreement, including, but not limited to, reasonable attorneys' fees and court costs. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTIES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES RELATING TO OR ARISING FROM THIS AGREEMENT, OR OTHERWISE RELATING TO THE PERFORMANCE BY EITHER PARTY OF ITS OBLIGATIONS HEREUNDER, INCLUDING, WITHOUT LIMITATION, DAMAGES BASED ON LOSS OF REVENUES, PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF GOODWILL AND/OR LOSS OF DATA, WHETHER OR NOT LICENSOR OR LICENSEE HAD OR SHOULD HAVE HAD ANY KNOWLEDGE, ACTUAL OR CONSTRUCTIVE, THAT SUCH DAMAGES MIGHT BE INCURRED. The provisions of this Section 11 shall survive termination of this Agreement.

12. Insurance.

(a) Licensee shall maintain the following insurance to protect from claims by employees of Licensee under the workers' compensation act or employers' liability laws, and from damage to property or for injury to a third party, (including death), that may arise from operations in connection with the performance of the services in the Building by Licensee:

(i) Commercial General Liability Insurance in the amount of \$2,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate.

(ii) Workers' Compensation in compliance with the statutory requirements of the state(s) of operation and Employer's Liability with a limit of \$1,000,000 each accident/disease/policy limit.

(b) The insurance described in this Section 12 shall be maintained by Licensee throughout the Term of this Agreement.

(c) Licensee shall provide Licensor with certificates of insurance evidencing the required coverage before Licensee begins any construction work in the Building. Licensor will be included as an additional insured as its interest may appear under this Agreement on the general liability policy.

13. Liens. Licensee shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, material or services claiming by, through or under Licensee. Licensee shall also indemnify, hold harmless and defend Licensor against any such liens, including the reasonable fees of Licensor's attorneys. Such liens shall be discharged by Licensee within thirty (30) days after notice of filing thereof is provided by Licensor to Licensee by bonding, payment or otherwise, provided that Licensee may contest, in good faith and by appropriate

proceedings, any such liens.

14. Performance of Work. Licensee may contract or subcontract any portion of work within the Building contemplated by this **Agreement** to any person or entity competent to perform such work. In no event shall such subcontract relieve Licensee of any of its obligations under this **Agreement**.

15. Events of Default. Each of the following occurrences shall constitute an "Event of Default" under this **Agreement**:

(a) Breach by Licensee of any material provision of this **Agreement**.

(b) Breach by Licensors of any material provision of this **Agreement**.

16. Termination; Remedies. Upon occurrence of an Event of Default, the non-defaulting party shall give written notice to the defaulting party, setting forth the nature of the Default. The defaulting party shall have thirty (30) days from the date of receipt of such notice to cure such Default; however, in the event any such default cannot reasonably be cured within such thirty (30) day period, the time for curing such default shall be extended for whatever period of time is required to complete such curing so long as the defaulting party is proceeding with due diligence. If the defaulting party shall have failed to cure the Default within the applicable cure period, the non-defaulting party may pursue any remedies available in equity or at law and/or elect to terminate this **Agreement**, whereupon Licensee shall remove its Facilities from the Equipment Space and elsewhere in the Building within sixty (60) days after such election pursuant to Section 6 of this **Agreement**. As of the date of such removal neither party shall have any claim against the other, except for claims that may have arisen prior to such termination and this **Agreement** shall be deemed terminated and of no force and effect. Notwithstanding the foregoing provisions, Licensors may cancel this agreement at any time for any reason without penalty by providing six (6) months written notice to Licensee

17. Assignment. Licensee shall not assign or transfer this **Agreement** without the written consent of the Licensors, which consent will not be unreasonably withheld or unduly delayed; except that Licensee may, without obtaining Licensors' prior consent, make such assignment to: (a) any firm or corporation which Licensee controls, is controlled by or is under common control with; (b) any partnership in which Licensee has a controlling interest; or (c) to any entity which succeeds to all or substantially all of Licensee's assets whether by merger, sale or otherwise.

18. Notice. Notwithstanding any provision contained in this **Agreement** to the contrary, until further notice is sent in accordance with the terms of this **Agreement**, all statements, notices or communications to be given under the terms of this **Agreement** shall be in writing and delivered by hand or sent by certified mail, postage prepaid and return receipt requested, or by nationally recognized overnight delivery service, and addressed as follows:

**If to Licensors:**

The Kenton County School District  
1055 Eaton Drive  
Ft Wright, KY 41017

**If to Licensee:**

Verizon Global Real Estate  
Attn: Lease Administration  
7701 E. Telecom Parkway  
Mail Code: FLTDSB1W  
Temple Terrace, FL 33637

With a copy (except for invoices) to:

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

or at such other address as from time to time designated by written notice pursuant hereto by the party sending the notice. The date of service of such notices shall be the date such notices are received or refused, as the case may be, as evidenced by addressee's receipt.

19. Governing Law. This **Agreement** shall be governed by and construed under the laws of the State or the Commonwealth in which the Building is located.

**IN WITNESS WHEREOF**, the parties hereto have executed this **Agreement** as of the date and year first above written,

**LICENSOR:**

**The Kenton County School District**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

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

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

**LICENSEE:**

**MCImetro Access Transmission Services LLC**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

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

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



## EXHIBIT A