

## **FIBER TO THE PREMISES PROJECT AGREEMENT**

This Fiber to the Premises Project Agreement (the “Agreement”) is executed as of the \_\_\_ day of \_\_\_\_\_, 2008, between VERIZON MARYLAND INC. (“Verizon”) and THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND (the “City”), a municipal corporation.

### **WITNESSETH**

WHEREAS, Verizon, as the incumbent local exchange carrier in Maryland (the “ILEC”), provides telecommunications services to customers located in Rockville, Maryland; and

WHEREAS, Verizon, pursuant to its statewide telephone and telegraph franchise, owns and maintains telecommunications facilities underground (direct buried or within conduits, ducts, mains and/or pipes) and overhead (on poles), which telecommunications facilities are located in, under and over City rights-of-way and subject to the City’s charter powers as to public ways; and

WHEREAS, as part of Verizon’s fiber to the premises (“FTTP”) initiative, Verizon desires to undertake a material upgrade of certain of its facilities located in, under and over City rights-of-way (“FTTP Project”); and

WHEREAS, to provide fiber optic service (“FiOS”) to customers, Verizon desires to install individual FiOS connections from the FTTP facilities in the City’s rights-of-way to private properties within the City (“FiOS Connections”); and

WHEREAS, unless specifically provided otherwise “FTTP Project” as used in this Agreement shall include FTTP infrastructure facilities and FiOS Connections located in, under, and over City rights-of-way.

WHEREAS, the City wishes to assure that the construction associated with that material upgrade of facilities located in, under and over City rights-of-way will proceed without unreasonable damage to or disruption of such rights-of-way, and, pursuant to its police powers, will require Verizon to perform all construction work associated with that material upgrade upon the terms set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

1. Before performing construction work in the City’s rights-of-way where such construction is associated with Verizon’s FTTP Project, Verizon shall obtain permits from the City. Verizon will obtain blanket permits from the City to install FiOS Connections. All other FTTP infrastructure construction will be conducted under Utility Permits.

2. To obtain a Utility Permit, Verizon shall complete the City's application form. Before it applies for the first Utility Permit for the FTTP Project, Verizon will submit a project overview to the City. This overview will consist of a city map showing the design routes and the neighborhoods associated. The map will show the general order of construction. When applying for its first Utility Permit in each feeder route, Verizon shall provide to the City a detailed route map depicting where the material upgrade to Verizon's network will be conducted. In support of the route map, Verizon shall submit a detailed project schedule, once Utility plans have been approved. There shall be formal updates to the detailed project schedule as necessary but not less than once a month. Verizon shall also provide detailed daily location logs of contractors' work locations and contact information. Verizon will notify the City at least 48 hours in advance of FTTP infrastructure buried path creation work by contractors with the understanding that the accuracy of this report can be affected by unforeseen circumstances. The 48 hour advance notification and daily location logs will be sent by email to the City's designee(s). Verizon will keep the City informed of overall buried pathway creation projections and any foreseen gap in work. Verizon will be available to meet on a monthly basis to discuss projections, specifications of network upgrade and overall FTTP infrastructure activities.
3. The City will endeavor to approve or deny Verizon's applications for Utility Permits within thirty (30) calendar days after receipt and to approve or deny resubmittals of previously denied applications within twenty (20) calendar days after receipt.
4. Verizon shall pay the City a permit fee of \$185 for each Utility Permit and \$1,500 for each six-month blanket permit. The fee for the Utility Permits shall remain in effect until December 31, 2009. The fee for blanket permits shall remain in effect until December 31, 2012. Verizon will also pay the City a flat fee of \$60,000 to compensate it for the additional oversight required by the FTTP Project, payable one-half at the time Verizon makes its first Utility Permit application and one-half five months thereafter. The City will retain an outside engineering firm to conduct the constructability plan review and construction inspection for the portion of the FTTP Project performed pursuant to Utility Permits. Verizon shall pay the City's costs for those services. Verizon shall deposit \$50,000 into a drawdown account for the payment of fees and costs, which will be set up by the City. This deposit will be made prior to Verizon's first Utility Permit submission. Verizon shall replenish the account monthly to meet the expected monthly costs. Verizon shall submit to the City and its contractor any invoice disputes within 15 days of receipt of the invoice. All disputes must be submitted in writing with sufficient supporting documentation to demonstrate the existence of a dispute. Verizon may submit additional supporting documentation within a reasonable time thereafter. The City Manager's decision shall be final and binding, unless the dispute involves a claim that the City is responsible for payment of the cost at issue. Verizon shall also comply with all applicable City ordinances with respect to the posting of the surety bond described in paragraph 20 hereof.

5. Verizon or its representatives shall schedule a field walk-through with the City and/or its representatives for the purposes of determining and resolving any conflicts with the proposed design consisting of, but not limited to, streets, sidewalks, drive aprons, utility poles, traffic signals, street trees, street signs, street lights, sanitary sewer, storm drain, water lines, non-City utilities, and other infrastructure. The meeting will take place approximately 10 to 14 days in advance of buried path creation (pre-survey process). This paragraph does not apply to FiOS Connections.
6. Verizon shall utilize the services of a Certified Arborist and a Maryland Licensed Tree Expert as necessary throughout the project, who shall be made available to confer with the City as needed. The Arborist shall physically review any area of the project that requires excavation within fifteen (15) feet of the nearest edge, at ground level, of any street tree (defined as a tree physically located within the City's right-of-way) to determine whether any mitigation measures are necessary. If the Arborist recommends that a street tree be replaced due to the FTTP Project buried pathway creation then the City Forester will be contacted for final determination. A Maryland Licensed Tree Expert shall complete any work related to street trees. Verizon is responsible for all costs associated with street tree impacts and mitigation related to or surrounding FTTP Project construction except for tree removal where the City Forester has determined that the tree is in distress and/or deceased before the build commences, which will be completed at City expense.
7. Verizon, already being a member of "Miss Utility," will comply with the "Miss Utility" notice requirements, and will provide to the City evidence of having joined "Miss Utility." The City will retain an outside firm to perform locates and mark (and, if necessary, remark) City facilities in connection with Verizon's FTTP Project. Verizon shall pay the City's costs for those services through the drawdown account established pursuant to paragraph 4 of this Agreement. The parties will utilize the invoice dispute resolution process set forth in paragraph 4 of this Agreement for disputes over marking invoices. Verizon or its agents will notify the City at least 48 hours in advance whenever work is proposed which will damage or disturb any portion of a the public right-of-way or easement (Utility Locate Request). Verizon or its agent shall call the dedicated telephone number of the City's Department of Public Works Utility Division to complete this Utility Locate Request. The City or its agent shall send an email to the originator of the Utility Locate Request when it is completed.
8. Verizon will comply with applicable federal, state, county and City laws.
9. Verizon will maintain all facilities constructed or installed pursuant to the permits issued under this Agreement in safe condition and in good repair.
10. Verizon has submitted to the City a copy of its FTTP Damage Prevention and Complaint Resolution Initiatives ("FTTP Initiatives"), which outline the procedures with which Verizon and its contractors shall comply during the construction phase to

- minimize and resolve customer complaints regarding FTTP Project construction. Verizon also has submitted a summary of the Rockville FTTP Communications Outreach with which it will comply during FTTP infrastructure construction. These procedures are subject to modification. Verizon shall submit any material modifications for City approval, which approval shall not unreasonably be withheld.
11. Verizon's contractors will distribute notification literature to affected residents in the community in advance (generally 72 hours) of the start of any underground build. Real estate type signs will be placed at the entry of the work areas by Verizon's contractors with contractor 24 hour, 7 day contact information. The notices shall include a local or toll-free telephone number for residents to call with questions or complaints regarding the construction work. They also shall include a statement to the effect that the work is being done by, or on behalf of, Verizon. This paragraph does not apply to FiOS Connections.
  12. Verizon's contractors' vehicles will be clearly identified as such and shall clearly display the telephone number for residents to call with questions and complaints. Verizon shall maintain a log of any complaints arising from its FTTP Project construction and its action to resolve such complaints. Verizon will provide the City with information about the resolution of complaints upon request. During construction, Verizon shall take all reasonable precautions to protect persons and property against injury. After construction, Verizon shall restore the rights-of-way to substantially the same condition as existed prior to construction.
  13. Verizon shall provide advance information about the FTTP Project and the FTTP Initiatives to the community at large, to neighborhood and other interested organizations, and to individuals via meetings, the City's newsletter, the City's Web site, the City's television channel, the City's Citizen Service Coordinator, the City's Neighborhood Resource Coordinators, and other means that the City deems appropriate to ensure community awareness of the project, its ramifications, and the Verizon contact information for people who have questions or complaints. Also, Verizon shall comply with City laws and regulations for advance notice of work in the City's rights-of-way.
  14. It is expressly understood by the parties hereto that this Agreement and any permit issued hereunder do not independently create or vest in Verizon any easement or other ownership of real property and do not affect Verizon's rights under any franchise granted by the State of Maryland or, if applicable, Montgomery County, Maryland.
  15. If Verizon shall be in material breach of any provision of this Agreement, the City will provide Verizon with a written notice of default specifying the alleged breach and providing a reasonable period for Verizon to cure. If Verizon fails to so cure the breach, the City may declare Verizon in default and suspend the relevant permit(s).

16. Unless a loss, claim, suit or demand for damages is caused by the negligence, gross negligence, recklessness or willful misconduct of the City, its employees, agents or contractors, if damage occurs to the City's streets and roads, traffic management structures, water and sewer, or storm sewer utilities arising from work under a permit issued pursuant to this Agreement relating to Verizon's FTTP Project, the City, having been provided by Verizon with contact information for a single point of contact for each of Verizon's prime contractors, will remit invoices for any such damage to the City's facilities to the prime contractor responsible for working in the affected area. If after a period of thirty (30) days, the contractor has not remitted payment to the City, upon notice from the City, Verizon will ensure that payment to the City is made within 30 days of receipt of the notice.
17. Verizon, at its expense, will carry commercial general liability insurance that will protect the parties against losses, claims, suits, or demands for damages to property or persons arising out of Verizon's FTTP Project in the City's rights-of-way, with a combined single coverage limit of not less than Two Million Dollars (\$2,000,000.00).
18. Verizon shall indemnify and hold harmless the City from and against any and all losses, claims, suits or demands for damages to property or persons arising out of Verizon's construction or placement of facilities in the City's rights-of-way during the FTTP Project, unless such loss, claim, suit or demand for damages is caused by the negligence, gross negligence, recklessness or willful misconduct of the City, its employees, agents or contractors.
19. Verizon shall not assign or transfer this Agreement without the written consent of the City, such consent not to be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, Verizon may assign this Agreement without the consent of the City to an entity that controls, is controlled by, or is under common control with Verizon, or has become a successor to Verizon by merger, acquisition or similar means. Further, notwithstanding the foregoing, Verizon, as the ILEC, may assign rights and obligations hereunder to the extent necessary to comply with its obligations to competitive local exchange carriers pursuant to federal or state law, regulations or orders. Nothing in this provision shall be construed as prohibiting Verizon from entering into secured financing arrangements involving the communications systems or facilities.
20. The permits provided for herein shall satisfy the requirement for permits required by Chapter 21 of the Rockville City Code entitled "Streets and Public Improvements" (the "Road Code"). In installing its facilities, Verizon shall satisfy all other applicable provisions of the Road Code. Prior to the issuance of the first permit by the City, Verizon shall furnish a master performance bond for the entire FTTP Project in form satisfactory to the City, as security for the commitment of Verizon to satisfy the Road Code and to otherwise perform the installation in compliance with this Agreement. The bond shall be for the amount of \$250,000. The bond shall be released upon the expiration of ten (10) years after completion of FTTP infrastructure

construction (except FiOS Connections construction), final inspection and acceptance of same by the City.

21. The City acknowledges that Verizon has provided information to the City as part of the negotiation of this agreement that may be considered trade secrets, confidential commercial information or confidential financial information (“Confidential Information”). Verizon also may be required to provide Confidential Information to the City in the course of the FTTP Project. The parties agree that the following will be presumed to contain Confidential Information: engineering plans and drawings; detailed construction schedules; Verizon’s internal plans, processes and procedures; and customer information. Verizon acknowledges that the City is subject to the Maryland Public Information Act (the “MDPIA”), which limits the City’s ability to restrict public access to documents in the City’s possession. Verizon will mark each document that it believes qualifies for non-disclosure under section 10-617(d) of the MDPIA. The City will not disclose information that is shielded from disclosure under section 10-617(d). If the City wishes to disclose information marked for non-disclosure by Verizon, the parties will confer in an attempt to determine whether there is a means by which the information can be disclosed with Verizon’s consent. The parties recognize that some documents may contain both disclosable and non-disclosable information. In the event there is a disagreement between the City and Verizon whether information can be disclosed, the City will provide notice to Verizon, and Verizon will have 10 days to obtain a court order preventing disclosure or a formal determination (such as an opinion from the Maryland Attorney General) that the information must not be disclosed.
22. Failure of either party to enforce or insist upon compliance with any provision of this Agreement shall not constitute a waiver of such provision by such party.
23. Should a conflict arise between a Verizon facility and an existing or proposed City facility, then Verizon shall at its sole expense, except as otherwise provided below, relocate or adjust said conflicting facility upon written notice from the City to do so. Said relocation or adjustment shall be completed as soon as practicable after receipt of said notice, which will be within 90 days, unless an extension of that limit is specifically granted in writing by the City. Notwithstanding the foregoing, the City, or a third party, shall bear the entire cost of relocation where Verizon occupies the right-of-way pursuant to prior rights granted by or obtained from an entity other than the City, or where the City’s request for relocation is for the benefit of a third party. The City shall use good faith efforts to designate locations for any relocated facilities that will permit Verizon to continue to serve its existing customers. Verizon shall not be required to pay to the City any permit fees in connection with a relocation required by the City under this section.
24. Subject to paragraph 19, this Agreement shall extend to and bind the successors and assigns of the parties hereto.

25. Verizon shall provide to the City's Department of Public Works 24 hour, 7 day per week contact information. This information shall include the emergency contact's name, title, phone number, cellular/mobile phone number, e-mail address, and mailing address. Updated information shall be provided whenever it changes.
26. This agreement shall be governed by the laws of the State of Maryland and applicable federal laws and regulations. The parties agree that any litigation arising from the Agreement shall be brought in the Circuit Court of Montgomery County, Maryland to the extent such court has jurisdiction, except that litigation may be brought in the United States District Court for the District of Maryland where such litigation involves a question arising under the laws or regulations of the United States, and the parties hereby waive any objection to venue in either such court.
27. Notice required under this Agreement will be addressed as follows:

If to the City:

City Manager  
Rockville City Hall  
111 Maryland Avenue  
Rockville, Maryland 20850

With copies to:

Television and Telecommunications Manager  
Rockville City Hall  
111 Maryland Avenue  
Rockville, Maryland 20850

Director of Public Works  
Rockville City Hall  
111 Maryland Avenue  
Rockville, Maryland 20850

If to Verizon:

E. Colton O'Donoghue, Jr.  
Director, OSP Engineering & Planning MD/DC  
One East Pratt Street  
8<sup>th</sup> Floor  
Baltimore, Maryland 21202

With a copy to:

Leigh A. Hyer, Esq.  
General Counsel, Verizon Maryland Inc.  
One East Pratt Street  
8<sup>th</sup> Floor  
Baltimore, Maryland 21202

Notices shall be mailed to the addressee by registered or certified mail, return receipt requested, with postage prepaid, or delivered by reputable courier service, with signed evidence of receipt, and shall be deemed delivered when received or refused by the addressee.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ATTEST: \_\_\_\_\_

\_\_\_\_\_

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

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

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

ATTEST: THE MAYOR AND COUNCIL OF ROCKVILLE

\_\_\_\_\_  
Claire F. Funkhouser, City Clerk

By: \_\_\_\_\_  
Scott Ullery, City Manager