



*Caring People ♦ Quality Programs ♦ Exceptional Service*

# MEMO

## Item No. 17

**To:** Mayor and Council Members  
**From:** Brian Phillips, Assistant City Manager  
**Date:** January 28, 2020  
**Subject:** MetroNet Pole Attachment Agreement and Locate Letter

At the January 14, 2020, City Council meeting, the City Council considered approval of a pole attachment agreement and a utility locate letter agreement with Metro Fibernet, LLC (MetroNet). The Council requested that the pole attachment agreement be amended to incorporate a clause that if the contract terminated and the fiber infrastructure remained on the poles, the City could have the option to take possession of the fiber. The original contract only provided that the City could take the fiber down and bill MetroNet for the cost at the conclusion of the contract.

MetroNet has agreed to a modification of the contract (see third paragraph of Section 13 “Term.” in the attached agreement). At the termination of the agreement by either party, the City may choose to take down any fiber remaining after 180 days and bill MetroNet the cost. If MetroNet terminates the agreement or if the City terminates the agreement because of a breach and failure to cure by MetroNet, the City may elect to retain the fiber remaining upon termination.

With this modification, the City can evaluate whether the fiber has any value or if it is a liability it wishes MetroNet to be responsible for. The provision also protects MetroNet against losing its fiber if the City chose not to renew the agreement at one of the early renewal periods.

### ATTACHMENTS:

1. Original Council Action Form dated January 14, 2020
2. Revised pole attachment agreement
3. Original locate letter agreement

ITEM # 22  
DATE 01-14-20

### **COUNCIL ACTION FORM**

**SUBJECT: POLE ATTACHMENT AND LOCATE AGREEMENTS WITH METRO FIBERNET, LLC**

#### **BACKGROUND:**

Metro Fibernet, LLC (MetroNet) is an internet provider that plans to construct its fiber-optic network throughout Ames in 2020. As part of its buildout, MetroNet intends to place its infrastructure overhead on City utility poles where poles exist and underground in rights-of-way and easements. Approximately 1.2 million feet of cable will be installed during this process. To accommodate this, two agreements are necessary: a pole attachment agreement and an underground utility locate agreement. MetroNet has signed and returned both agreements to the City.

#### **POLE ATTACHMENT AGREEMENT:**

The City's Electric utility maintains several thousand distribution and transmission poles. Other utilities and telecommunications providers routinely attach their cabling to these poles to deploy their infrastructure throughout the City. No new providers have made attachments to these poles for several decades. In a typical year, the existing attachees submit only a handful of requests to attach to poles. Applications are evaluated by the Electric Services Engineering Division, and poles are inspected before and after the attachment is made. City staff recently obtained new pole loading standards from a contractor, which will assist in evaluating proposed attachments.

**MetroNet has indicated it will attach to approximately 4,000 electric poles in the span of approximately 10 months. Additionally, because of vacancies within the Electric Engineering Division, it will be difficult or impossible for City staff to scrutinize proposed attachments at the pace they will be submitted. Therefore, City staff and MetroNet have worked to negotiate a new pole attachment agreement that will accommodate MetroNet's planned pace of construction.**

The pole attachment agreement provides that during the initial network buildout, MetroNet will have professional engineers licensed in the state of Iowa submit the attachment applications. The applications will be reviewed by a contract engineering firm (hired by MetroNet and approved by the City) to ensure they meet the City's adopted standards. The contracted firm will also verify pole integrity through field inspections and spot check the completed attachments to ensure they were made in accordance with the submitted plans.

The initial buildout period provides longer timeframes for the evaluation and approval of proposed attachments. Once the initial buildout is complete, any proposed pole attachments will be reviewed by City staff rather than the outside firm, and the expected timeframes for approval will shorten.

Provisions exist for the Utility to require MetroNet to remove its attachments in the event that the City re-routes poles, or converts overhead infrastructure to underground. If the City receives complaints from the public regarding the condition of MetroNet's fiber on the poles, MetroNet must make repairs within ten days or provide information to the City regarding when the repairs are to be made.

In exchange for attaching to the City's Electric poles, MetroNet will pay the utility attachment fees as provided in the Municipal Code. This fee is currently \$13.05 per pole, per year.

### **UNDERGROUND UTILITY LOCATING AGREEMENT:**

In Ames subdivisions constructed after the mid-1970s, electric service is provided underground. In these areas, MetroNet will put also its infrastructure underground. MetroNet has indicated that at the peak of its initial buildout, it may have as many as ten crews installing underground conduit. Underground installation will require underground utility locates to be performed through the Iowa One Call System.

The City has utility locating staff in Electric Services and in Public Works. However, these locators generally stay busy with the typical summer construction demand. **City staff has expressed doubts to MetroNet about the City's ability to locate infrastructure for MetroNet in a timely manner, in addition to keeping up with the typical locating work that will be requested by other customers. Therefore, to keep up with MetroNet's initial buildout pace, MetroNet has agreed to an underground locating agreement.**

Through this agreement, the City will hire an outside utility locating firm, which will complete utility locates requested solely for MetroNet and its subcontractors. MetroNet would reimburse the City for the cost of the contractor. Therefore, the City's locating staff can remain focused on responding to other customers' locating requests. City staff would retain complete control over the locating contractor's performance and address any concerns that may arise with the quality of the work.

City staff has initiated the process to obtain cost proposals from outside locating contractors and expects to have a contractor selected in February. A separate contract will be awarded through that selection process.

**ALTERNATIVES:**

1. Approve the Pole Attachment Agreement and Underground Locating Letter of Agreement with Metro Fibernet, LLC.
2. Do not approve the agreements.

**CITY MANAGER'S RECOMMENDED ACTION:**

A pole attachment agreement is an important component of accommodating MetroNet's proposed deployment in the community. Such agreements exist with other telecommunications utilities in the City. The proposed agreement includes provisions that will allow MetroNet's proposed buildout pace to be accommodated without compromising the quality of the review process or causing increased cost to the utility.

The proposed underground locate letter of agreement allows the City to hire an outside utility locates firm during MetroNet's construction process. MetroNet will reimburse the City for the cost of these services. This proposal allows the City's existing locate employees to continue providing locate services for other contractors and residents doing work in the community.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1 as described above.

## **AGREEMENT**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_ 2020, by and between **METRO FIBERNET, LLC** (“LICENSEE”), a limited liability company organized under the laws of the State of Nevada, and operating under a valid certificate of authority within the State of Iowa, and **CITY OF AMES, IOWA** (“LICENSOR”), a municipal corporation organized and existing pursuant to the laws of the State of Iowa.

### **W I T N E S S E T H:**

**WHEREAS**, LICENSEE intends to expand its fiber optic network by developing, constructing, installing and operating one or more fiber optic routes in LICENSOR’S service area; and LICENSEE desires to use certain of LICENSOR’s structures in furtherance of same;

**WHEREAS**, LICENSOR desires to permit LICENSEE to use its structures in consideration of the covenants and agreements of LICENSEE set forth in this Agreement and upon and subject to the terms and conditions provided herein;

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

### **I. DEFINITIONS**

“Agreement” means this Agreement and all extensions and modifications hereof, together with all attachments, exhibits, appendices and schedules.

“Applicable Law” means any applicable law, rule, regulation, ordinance, order, code, decree, injunction, decision, or interpretation of any federal, state, or local governmental authority, agency, court, or other governmental body having jurisdiction over the matter in question.

“Fiber” means fiber cable and related fiber strands, splices, terminations and associated apparatus to be installed on and between Structures along the Route pursuant to this Agreement.

“Initial Network Buildout” means the initial phase of construction during the one year period of time following the date of this Agreement in which Fiber is being newly installed along the Route. The Initial Network Buildout does not include subsequent alterations to Fiber after it has been installed on Structures.

“NEC” means National Electrical Code, as amended.

“NESC” means National Electrical Safety Code, as amended.

“Overlashing” means the practice whereby an entity, whether the LICENSEE or a third party, physically ties or otherwise connects or attaches new wiring or facilities to wiring or to support strands or hardware that already has been affixed to a Structure.

“Plans” means general design and construction plans for the Fiber to be installed along the Route.

“Route” means the specific route(s) described in an Exhibit A hereto upon which the Fiber will be located.

“Service Drop” means cables (including fiber optic), strands, wires, facilities, and associated apparatus installed to extend service from a Structure to an individual customer(s).

“Structure” means wood or metal pole or any combination thereof and steel lattice transmission towers and any other related facilities owned and/or controlled by LICENSOR.

## **II. GRANT OF SPECIFIC RIGHTS**

1. **Grant of License to LICENSEE.** In consideration of the pole attachment fee described in paragraph 2 below and the other covenants, terms and conditions contained in this Agreement, LICENSOR, throughout the Term, hereby grants to LICENSEE a royalty-free, non-exclusive license to install, construct, monitor, repair, maintain and operate Fiber on the Structures located along the Route. LICENSOR shall have the right to grant, by contract or otherwise, to others not parties to this Agreement, rights or privileges to use any of the Structures covered by this Agreement provided such rights and privileges granted do not interfere with the rights and privileges granted by LICENSOR to LICENSEE, and LICENSOR shall have the right to continue and extend any such rights or privileges heretofore granted.
  - a. This Agreement shall not affect any existing rights or privileges previously conferred by LICENSOR, by contract or otherwise, to others, not parties to this Agreement, to use any poles covered by this Agreement; and LICENSOR shall have the right to continue and extend such rights or privileges. The attachment privileges herein granted shall at all times be subject to such existing contracts or arrangements.
2. **Pole Attachment Fee.** In consideration of the license described in paragraph 1 above and the other covenants, terms and conditions contained in this Agreement, LICENSEE agrees to pay an annual pole attachment fee to LICENSOR for each Structure utilized by LICENSEE along the Route as identified in an Exhibit A. LICENSEE may, at any time, remove its attachments from any Structure of LICENSOR, but no refund of any current year rental will be due LICENSEE on account of such removal. The annual per pole fee will be as established in Ames Municipal Code and shall be paid by LICENSEE within

thirty (30) days of receipt of an invoice from LICENSOR. Failure to pay the annual per pole fee timely shall be cause for termination as set forth herein.

3. (a) **Ownership of LICENSEE Facilities.** LICENSEE will retain ownership of the Fiber to be installed along the Route, and LICENSOR shall acquire no right, title or interest in or to the Fiber except as set forth in Section III(13).  
  
(b) **Ownership of the Structures.** All Structures covered by this Agreement shall be and remain the property of LICENSOR, and LICENSEE shall, except for the rights provided in this Agreement, acquire no right, title or interest in or to the Structures.

### III. GENERAL TERMS AND CONDITIONS

4. **Construction and Installation During Initial Network Buildout.** For Fiber installation during the Initial Network Buildout:

(a) LICENSEE shall submit pole attachment applications to LICENSOR prior to construction and installation of the attachments along the Route. Each application shall include Plans for each proposed pole attachment, which shall be signed and stamped by a professional engineer licensed in the state of Iowa. Each application shall be accompanied by the application fee set by LICENSOR. The actual application fee charged per pole will be based on the actual costs to perform such review and inspections.

(b) LICENSOR shall review the Plans within thirty (30) calendar days of LICENSEE's submission and will inform LICENSEE within the thirty (30) calendar days of LICENSEE's submission if the Plans are approved, rejected or LICENSOR needs additional time to conduct its review. In the event LICENSOR needs additional time to conduct its review, LICENSEE and LICENSOR will work together to determine an extension of time reasonably acceptable to both parties. LICENSOR may reject the Plans only if the said Plans (i) fail to comply with reasonable and customary design and construction practices or (ii) fail to comply with the minimum requirements of applicable governmental regulations and codes including the NEC and NESC. Unless otherwise agreed by the parties, LICENSEE will conduct make ready of Structures for use by LICENSEE using contractors that are approved by LICENSOR, which approval shall not be unreasonably withheld, conditioned or delayed. LICENSEE shall pay for all such make ready work. If LICENSOR and LICENSEE agree that make ready work will be performed by LICENSOR, LICENSOR shall complete the make-ready work within thirty (30) days of approval of the Plans or as the parties may mutually agree. In the event LICENSOR has failed to perform the make-ready work within the thirty (30) day period, LICENSEE may perform such work at LICENSEE's expense using contractors that are approved by LICENSOR; provided however, if LICENSEE has paid LICENSOR make ready fees for such work, LICENSOR shall provide a refund of such make ready fees to LICENSEE within thirty (30) days of LICENSEE notifying LICENSOR that LICENSEE has performed the work. On completion of make ready work, the construction and installation of the Fiber upon the Structures along the Route may begin.

(c) The Parties agree that LICENSEE, at its sole cost and expense, will engage a contractor approved by LICENSOR to perform the following tasks of LICENSOR: (i) review of LICENSEE's pole attachment applications, (ii) evaluation of LICENSEE's applications through on site reviews, and (iii) visual inspection of LICENSEE's facilities post attachment. To the extent that work is performed by the approved contractor, LICENSEE shall not be required to pay LICENSOR fees or costs for the such type of work.

5. **Construction and Installation After Initial Network Buildout.** For Fiber installation after the completion of the Initial Network Buildout:

(a) LICENSEE shall submit pole attachment applications to LICENSOR prior to construction and installation of the Structures along the Route. Each application shall include Plans for each proposed pole attachment, which shall be signed and stamped by a professional engineer licensed in the state of Iowa. Each application shall be accompanied by an application fee, which shall not exceed the amount charged to other utilities requesting to attach to LICENSOR's poles.

(b) LICENSOR shall review the Plans within ten (10) business days of LICENSEE's submission and will inform LICENSEE within the ten (10) business days if the Plans are approved, rejected or LICENSOR needs additional time to conduct its review. In the event LICENSOR needs additional time to conduct its review, LICENSEE and LICENSOR will work together to determine an extension of time reasonably acceptable to both parties. LICENSOR may reject the Plans only if the said Plans (i) fail to comply with reasonable and customary design and construction practices or (ii) fail to comply with the minimum requirements of applicable governmental regulations and codes including the NEC and NESC. Unless otherwise agreed by the parties, LICENSEE will conduct make ready of Structures for use by LICENSEE using qualified contractors that are approved by LICENSOR, which approval shall not be unreasonably withheld, conditioned or delayed. LICENSEE shall pay for all such make ready work. If LICENSOR and LICENSEE agree that make ready work will be performed by LICENSOR, within thirty (30) days of approval of the Plans, LICENSOR shall complete the make-ready work. In the event LICENSOR has failed to perform the make-ready work within the thirty (30) day period, LICENSEE may perform such work at LICENSEE's expense using contractors that are approved by LICENSOR; provided however, if LICENSEE has paid LICENSOR make ready fees for such work, LICENSOR shall provide a refund of such make ready fees to LICENSEE within thirty (30) days of LICENSEE notifying LICENSOR that LICENSEE has performed the work. On completion of make ready work, the construction and installation of the Fiber upon the Structures along the Route may begin.

6. **Construction Standards.** All Fiber shall be constructed in accordance with the approved Plans and installed in a manner, which is reasonable and customary in the industry. All such Fiber shall be constructed, installed and at all times maintained by



LICENSEE so as to comply at least with the minimum requirements of all applicable governmental regulations and codes including, without limitation, the NEC and NESC.

7. **Overlashing and Service Drops.** Notwithstanding any other provision of this Agreement, LICENSEE may Overlash and attach Service Drops to Structures without prior submission of Plans or approval of LICENSOR (1) provided that within sixty (60) calendar days from the date of Overlashing or affixing such Service Drops, LICENSEE submits a written notification of such Overlash or Service Drop; and (2) provided that, any such overlashing was modeled for pole loading and clearances in the original attachment application submittal.
8. **Removal of Structures.** Nothing in this Agreement shall prevent LICENSOR from removing Structures from service from time to time for reasons such as maintenance, reconfiguration of LICENSOR's transmission and distribution routes, or conversion of overhead infrastructure to underground. In the event LICENSOR desires to remove a Structure from service, LICENSEE will remove its Fiber within thirty (30) calendar days of receipt of notice to do so (or such shorter period reasonable under the circumstances in the case of emergency or such longer period reasonable under the circumstances approved by LICENSOR, which approval shall not be unreasonably withheld, conditioned or delayed). Any Fiber remaining after thirty (30) calendar days (or other period if applicable) may be removed by LICENSOR, and LICENSEE shall be responsible for payment of LICENSOR's costs in removing said Fiber, upon receipt of an invoice from LICENSOR. No refund of any current year rental will be due LICENSEE upon the removal of Structures from service.
9. **Audit.** An audit of attachments to LICENSORS poles shall be made once every three years, and LICENSEE shall have a representative present and participating for the duration of the audit. Any unauthorized attachments found during an audit will be billed at a the rate set by LICENSOR for each year for the three years prior to the date of the most recent audit. Unauthorized attachments shall constitute a default of this Agreement, and shall be subject to removal in a reasonable time frame, unless permission for such attachments is granted by LICENSOR and the unauthorized attachments are brought into compliance with the most recent edition of the National Electric Safety Code to the extent consistent with the current regulations of the Utilities Division of the Iowa Department of Commerce, at LICENSEE's sole expense.
10. **Qualified personnel.** LICENSEE shall not permit any person to work on LICENSOR's facilities, or in the area of LICENSOR's facilities, who are not aware of the dangerous nature of electricity or who are not qualified to work in the vicinity of electric facilities. LICENSEE shall provide workers with adequate equipment and training for working in the vicinity of electric facilities and shall provide adequate supervision of such workers so as to avoid accidental contact with hazardous electric facilities.
11. **Forbearance Not Waiver.** Failure of LICENSOR to enforce or insist upon compliance with any of the terms or conditions of this Agreement, or to give notice or declare this

Agreement or the attachment rights hereunder terminated shall not constitute a general waiver or relinquishment of any of the terms or conditions herein contained, but the same shall be and remain at all times in full force and effect.

12. **Maintenance of Facilities.** LICENSEE shall, at its own expense, at all times maintain all of the Fiber in a safe condition in thorough repair and in accordance with NESC requirements and any other applicable standards or requirements. LICENSOR shall notify in writing LICENSEE of any Fiber that fails to meet acceptable standards, including reports of complaints LICENSOR receives from the public regarding the condition of the Fiber. LICENSEE shall, within ten (10) business days of receipt of such notification, make or commence repairs to the Fiber or provide LICENSOR a statement indicating when repairs are anticipated to be commenced or completed. If LICENSEE fails to respond to the notification to the reasonable satisfaction of the LICENSOR or fails to make or commence repairs within the ten (10) business day time frame, LICENSOR may make repairs or remove Fiber at its expense and invoice LICENSEE for costs incurred.
13. **Term.** This Agreement shall become effective upon its execution and shall continue in effect for a term of five (5) years. Thereafter, the Agreement shall automatically renew from year to year. The Agreement may be terminated by either party at the end of the initial term or then current renewal term by providing eighteen (18) months' notice of termination to the other party. Notwithstanding the foregoing, LICENSOR may terminate this Agreement upon LICENSEE'S failure to pay pole fees due within 30 calendar days of receiving an invoice from LICENSOR, following LICENSOR'S written notice to LICENSEE of such failure and LICENSEE'S failure to cure within ten (10) business days of receipt of such notice.

Upon termination of this Agreement by either party, LICENSEE shall remove all Fiber, as defined by this Agreement, at LICENSEE'S sole expense. No refund of any current year rental will be due LICENSEE upon termination. Any Fiber installed by LICENSEE during the term of this Agreement shall be removed by LICENSEE within 180 calendar days of termination, at LICENSEE'S sole expense. Notwithstanding the provisions of Section II(3)(a) herein, any Fiber remaining on LICENSOR'S Structures more than 180 calendar days after termination due to a failure of LICENSEE to remove said Fiber may, at LICENSOR'S sole option, be removed by LICENSOR and LICENSOR may bill the cost of removal to LICENSEE. LICENSEE shall have an obligation to pay the cost of removal to LICENSOR, which shall survive the termination of this Agreement.

Notwithstanding the foregoing, after this Agreement is terminated by LICENSEE for any reason or by LICENSOR due to a material breach of this Agreement by LICENSEE and LICENSEE'S failure to cure such breach in the allotted time frame, if LICENSEE fails to remove its Fiber within such one hundred eighty (180) days, LICENSOR may elect to retain LICENSEE'S Fiber upon termination, and all right, title and interest in and to LICENSEE'S Fiber attached to LICENSOR'S Structures will automatically transfer to LICENSOR without further action of and at no cost to LICENSOR and will become the property of LICENSOR "as is/where is" and LICENSEE hereby irrevocably waives all

right to any further notice from LICENSOR prior to the disposition of LICENSEE'S Fiber. LICENSEE shall have no responsibility or liability to LICENSOR with respect to the transferred Fibers arising after the date of the transfer.

14. **Insurance.** LICENSEE shall, at its sole expense, cause to be issued and maintained during the Term of this Agreement insurance coverages of the types and in the amounts set forth below, as applicable:

<b><u>Type of Insurance</u></b>	<b><u>Limit</u></b>	
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2,000,000
	Prod./Comp. Op. Agg.	\$1,000,000
	Personal & Adv. Injury	\$1,000,000
	Each Occurrence	\$1,000,000
Automobile Liability, including any auto, hired auto and non-owned autos	Combined Single Limit	\$1,000,000
Excess Liability, Umbrella Form	Each Occurrence	\$2,000,000
	Aggregate	\$2,000,000
Workers' Compensation	Each Accident	\$ 500,000

15. **Liens.** In the event any construction lien or other encumbrance shall be placed on the Structures because of the actions of LICENSEE, LICENSEE shall promptly discharge the lien or release the encumbrance without cost or expense to LICENSOR, and hereby agrees to indemnify and hold harmless LICENSOR for any and all damages that may be suffered or incurred by LICENSOR as a result of the lien, discharging the lien or releasing the encumbrance. In the event any construction lien or other encumbrance shall be placed on the Fiber because of the actions of LICENSOR, LICENSOR shall promptly discharge the lien or release the encumbrance without cost or expense to LICENSEE and hereby agrees to indemnify LICENSEE to the extent allowable by Iowa law for any and all damages that may be suffered or incurred by LICENSEE as a result of the lien, discharging the lien, or releasing the encumbrance.
16. **Relationship of Parties and Independent Contractor Status.** Neither LICENSOR nor LICENSEE shall be deemed to be a partner, agent or joint venturer with or of the other by reason of this Agreement or the consummation of the transaction contemplated hereby. All parties shall perform their duties under this Agreement as independent contractors, and at their own risk. Neither LICENSOR nor LICENSEE shall at any time hold itself out as being a partner, co-venturer or agent of the other.
17. **Successors and Assigns.**

(a) *Generally.* This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the parties hereto and their respective successors and permitted assigns. Unless otherwise set forth herein, neither of the parties may assign this Agreement to any other person or entity without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) *Exceptions.* Notwithstanding the foregoing,

- (i) and provided that the proposed Assignee may lawfully transact business in the State of Iowa, the parties may assign this Agreement without the consent of the other party to any affiliate of such party, to the surviving entity into which such party may merge or consolidate, or to any entity to which the party transfers all, or substantially all, of its business and assets; and
- (ii) LICENSEE shall also have the right, without the consent of LICENSOR, to assign or otherwise transfer this Agreement as collateral to any lender to LICENSEE (or lender to any successor or assign of LICENSEE); provided that the assignee or transferee in any such circumstance shall continue to be subject to all of the provisions of this Agreement, except that any lender shall not incur any obligations under this Agreement, nor shall it be restricted from exercising any right of enforcement or foreclosure with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement.
- (iii) LICENSEE agrees that it will not grant, sell, rent, loan or lease to others the use of all or any part of its assigned space on LICENSOR's poles.

18. **Notices.** Except as otherwise expressly provided herein, all notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, and shall be deemed to have been duly given (a) on the date of personal delivery, (b) on the date of delivery to a nationally recognized overnight delivery service, or (c) on the date of deposit in the U. S. mails, postage prepaid, by certified mail, return receipt requested, in each case addressed as follows, or to such other addresses as shall be designated from time-to-time by the parties:

If to LICENSEE to:

Metro Fibernet, LLC  
3701 Communications Way  
Evansville, IN 47715  
Attention: President

With copy to:

Metro Fibernet, LLC

If to LICENSOR to:

City of Ames, Iowa  
515 Clark Avenue  
Ames, IA 50010  
Attention: Electric Services Director

With a copy to:

City of Ames, Iowa

8837 Bond Street  
Overland Park, KS 66214  
Attention: Legal Department

515 Clark Avenue  
Ames, IA 50010  
Attention: Legal Department

19. **Force Majeure.** In the event LICENSEE or LICENSOR is delayed in or prevented from performing any of its respective obligations under this Agreement due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, acts of insurrection, acts of civil or military authority, fires, floods or earthquakes beyond the reasonable control of the party delayed, then such delay or nonperformance shall be excused. If any such delay or nonperformance due to the foregoing causes or events occurs or is anticipated, the party affected shall promptly notify the other party in writing of such event or expected event and the cause and estimated duration of such event. The party affected by such event shall, at no cost to the other party, exercise due diligence to shorten or avoid the delay or nonperformance and shall keep the other party advised as to the continuance of the delay and steps taken to shorten or terminate the delay or nonperformance.
20. **Concurrent Obligation.** “Concurrent Obligation” means the obligation of LICENSEE to pay for the cost of a Locate Contractor as may be necessary in the judgment of the City during the Initial Network Buildout. This Concurrent Obligation is evidenced by a letter dated December 20, 2019, from John Greenbank, Executive Vice President of Metro Fibernet LLC, agreed to and accepted by the City, and attached to this Agreement as Exhibit ‘B’. Because of the relationship of this Agreement to the Concurrent Obligation, Licensor and Licensee agree that a breach of any terms or conditions of the Concurrent Obligation shall constitute a breach of this Agreement.
21. **Limitation of Liability.** NEITHER PARTY SHALL HAVE ANY RESPONSIBILITY, LIABILITY OR OBLIGATION TO THE OTHER OR THE OTHER’S AFFILIATES, DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS OR PERMITTED ASSIGNS FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, COST OF REPLACEMENT SERVICES, LOSS OF CUSTOMERS OR AGENTS, LOSS OF USE, OR PENALTIES IMPOSED BY OTHERS, REGARDLESS OF ANY ACT OF OMISSION OR COMMISSION IN CONNECTION WITH OR UNDER THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THIS PARAGRAPH IS NOT INTENDED TO CONSTITUTE A WAIVER OF DIRECT DAMAGES CAUSED BY THE NEGLIGENCE OF A PARTY.
22. **Disclaimer.** THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.
23. **Counterparts; Electronic Signatures.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which together shall

constitute one and the same document. In the event that any signature is delivered by facsimile or by email of a “.pdf” format data file, such signature shall create a valid and binding obligation of such party with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

24. **Expenses.** Except as otherwise expressly provided herein or therein, each party shall bear the costs and expenses incurred by it in negotiating, entering into and performing any of its obligations under this Agreement.
25. **Headings.** The headings of this Agreement are inserted for convenience only and shall not be deemed to be a part hereof.
26. **Governing Law & Venue.** In the event of any matter or dispute arising out of or related to this Agreement, it is agreed between the parties that the law of the State of Iowa will be given the interpretation, validity and effect of this Agreement without regard to the place of execution or place of performance thereof, or any conflicts of law provisions. Venue for any disputes between the parties shall be in Story County, Iowa, or the federal district court for the Southern District of Iowa.
27. **Severability.** If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby. If any provision or portion of this Agreement is deemed illegal or unenforceable for any reason by an arbitrator, court or other authority of competent jurisdiction, there shall be deemed to be made such minimum change in such provision or portion as is necessary to make it valid and enforceable as so modified. If this Agreement shall be held to be unenforceable against either party, the enforceability of such agreement against the other party hereto shall not in any way be affected or impaired thereby.
28. **Binding Agreement.** This Agreement, including the attachments, embodies the entire agreement between the parties hereto and supersedes any prior or contemporaneous oral or written agreements between the parties, and once this Agreement has been executed, any amendments hereto must be made in writing and signed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and to become effective as of the date first written above.

**LICENSEE:**  
**METRO FIBERNET, LLC**

**LICENSOR:**  
**CITY OF AMES, IOWA**

By: \_\_\_\_\_  
Name: John Greenbank

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

Title: Executive Vice President

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

## EXHIBIT A

### EXHIBIT A – PROJECT DESCRIPTIONS LICENSEE PROJECT DESCRIPTION # \_\_\_\_\_

#### 1. **Project Defined.**

Fiber: LICENSEE, at its cost, to install one (1) fiber optic cable and related fiber strands, splices, terminations and associated apparatus.

Route: \_\_\_\_\_  
\_\_\_\_\_. (\_\_\_\_ Structures).

Upon completion of any necessary make-ready work, LICENSEE may install its Fiber along the above Route.

2. **Basic Agreement.** This Project Description is hereby incorporated in its entirety into the Agreement between Metro Fibernet, LLC (“LICENSEE”) and \_\_\_\_\_ (“LICENSOR”), and is hereby executed by the respective parties hereto as of the \_\_\_\_ day of \_\_\_\_\_ 201\_

**LICENSEE:**  
METRO FIBERNET, LLC

**LICENSOR:**  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



EXHIBIT B

LETTER AGREEMENT

December 20, 2019

VIA E-MAIL to [bphillips@city.ames.ia.us](mailto:bphillips@city.ames.ia.us)

Mr. Brian Phillips  
Assistant City Manager  
515 Clark Avenue  
Ames, Iowa 50010

Re: Locates of City's Underground Facilities

Dear Mr. Phillips:

This is to memorialize the understanding between the City and Metro Fibernet, LLC regarding payment of certain locating costs.

Metronet is pursuing the installation of fiber optic cables in the City in order to provide cable, internet and phone services to the City's residents and businesses. Metronet has proposed a schedule for installation that may require the City to engage an independent contractor to perform some of the City's Iowa One Call locates (the "Locate Contractor"). If, during the Initial Network Buildout (as defined in the pole attachment agreement between the parties), the City reasonably determines it is necessary to engage a Locate Contractor in order to perform locates in connection with the installation of Metronet's facilities, Metronet will reimburse the City for any fees paid by the City to the Locate Contractor for such work. The parties will agree to the fee to be paid to the Locate Contractor in advance of any work being performed.

The City will issue invoices to Metronet for the Locate Contractor's fees at reasonable intervals and Metronet shall pay such invoices within thirty (30) days of receipt. The City will provide appropriate documentation supporting its invoices. All invoices unpaid as of the due date and not disputed in good faith shall accrue interest at the rate of nine percent (9%) per annum.

Please indicate the City's agreement to this arrangement by signing below. Of course, if you have any questions or concerns, please let me know.

Sincerely,

John Greenbank,  
Executive Vice President  
Metro Fibernet, LLC

AGREED AND ACCEPTED  
BY THE CITY OF AMES:

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