



August 14, 2020

Mr. Jim Sanders
City Administrator
City of Johnston
6221 Merle Hay Road
Johnston, IA 50131

Re: Letter Agreement

Dear Mr. Sanders:

Metro Fibernet, LLC ("MetroNet") constructs and operates fiber-to-the-premises networks (each an "FTTP Network") for purposes of providing state-of-the-art all fiber voice, video and Internet services. MetroNet has successfully deployed FTTP Networks in 80 communities in 8 states. The City of Johnston, Iowa ("City") wishes for MetroNet to deploy an FTTP Network throughout the City for purposes of providing fiber based communications services to residents and businesses ("Project"). MetroNet is willing to invest its capital to complete the Project subject to receiving certain assurances from the City regarding the procedures that will govern the Project. The City is willing to provide MetroNet with such assurances as more particularly set forth in this letter agreement ("Agreement"). MetroNet and the City are sometime referred to herein collectively as the "Parties", each individually a "Party".

I. MetroNet Project Commitments

- A. FTTP Network. MetroNet will construct an FTTP Network capable of providing voice, video and Internet fiber services to residents and businesses in the City. The FTTP Network will be solely funded by MetroNet.
- B. Residential Services. MetroNet will initially provide the following voice, video and Internet services to residential consumers in the City:
 - (1) Fiber IPTV. A video service offering with up to 240 channels (128 HD channels), an incredibly clear picture and fast channel changing capability all provided over a cutting edge interactive IPTV platform. The IPTV platform also supports 4K (4,000 pixels per second) next generation television.

- (2) Fiber Phone. A reliable fiber phone service with up to 17 custom calling features, long distance service and a low price point.
 - (3) Fiber Internet. Incredibly fast symmetrical Internet speeds up to 1/1 Gbps.
 - (4) Wireless Home Networking. The ability to connect to multiple devices wirelessly to MetroNet's Internet service and the ability to utilize wireless video set top boxes.
- C. Business Services. MetroNet will provide the following voice, video and Internet services to businesses in the City:
- (1) Hosted PBX. A service that allows a customer 4 digit dialing connectivity, numerous customer calling features and the capability to easily upsize or downsize users.
 - (2) Fiber Internet. Incredibly fast symmetrical Internet speeds of 1/1 Gbps and beyond.
 - (3) Fiber IPTV. A video service offering with up to 240 channels (128 HD channels), an incredibly clear picture and fast channel changing capability all provided over a cutting edge interactive IPTV platform. The IPTV platform supports 4K (4,000 pixels per second) next generation television.
- D. Project Timeline. MetroNet will use commercially reasonable efforts to complete the Project within 2 years of the commencement of physical construction in the City.
- E. Franchise. MetroNet acknowledges that it has a Certificate of Franchise Authority from the Iowa Utilities Board, which MetroNet will amend to include service within the City, and MetroNet agrees to comply with the requirements set forth therein.
- F. Initial Coverage Area. MetroNet will initially construct an FTTP network capable of serving no less than ninety percent (90%) of those portions of the City that are not privately owned or have existing FTTP services from another provider.
- G. Restoration. MetroNet will use commercially reasonable efforts to restore property within three (3) business days of the boring, subject to factors beyond MetroNet's reasonable control. Consideration will be given to the amount of restoration needed with each boring and MetroNet will endeavor to conduct borings in a manner which requires the least amount of restoration (e.g. when appropriate using streets and sidewalks for equipment rather than lawns, etc.). After boring under the street / curb and sidewalks, MetroNet will inspect for any heaving that may have occurred from the boring process. Notwithstanding the foregoing, in no event will MetroNet be required to repair, replace or restore any personal property of a property owner that was improperly located in a utility easement.

H. Construction Communications Plan. MetroNet will implement a construction communications plan and will use commercially reasonable efforts to meet the following timelines and standards, as they relate to each approved permit application area:

- (1) At least 30 days, but no more than 45 days, prior to the commencement of construction in a residential area, MetroNet will send a detailed letter to the residential addresses in that area advising occupants of upcoming construction activities.
- (2) At least 14 days, but no more than 30 days, prior to the commencement of construction in a residential area, MetroNet will send postcard reminder to the residential addresses in that area reminding occupants of upcoming construction activities.
- (3) At least 3 days, but no more than 7 days, prior to the commencement of construction in a residential area, MetroNet will send out street teams to place signs in the yards of those residential properties where MetroNet will commence with construction activities.
- (4) Each communication sent to a residential address will include the URL to MetroNet's construction website: metronetinc.com/construction. On this website residents can find additional information regarding the construction plans in their area. Following construction, property owners will also be able to use this website to submit damage claims in the event MetroNet inadvertently causes damage to their property. For avoidance of doubt, if MetroNet impacts any property improperly located by a property owner in the right-of-way, MetroNet will work in good faith with the property owner to resolve any damage to that property in a way that is satisfactory to both Parties.

II. City Project Commitments.

- A. Construction Permits. Within thirty (30) days of the submittal of a request for a right-of-way permit, provided such submittal contains all the information reasonably required by the City, the City will issue MetroNet a blanket right-of-way permit to install aerial and underground facilities. Each blanket right of way permit shall cost \$50 and will cover a large geographic area of the City consisting of approximately 500 perspective customers. Submission of right of way permits shall be staggered to allow the City adequate time for review within thirty (30) days. Other than as set forth in this paragraph, MetroNet will not be required to pay any additional fees or obtain any additional permits from the City to install aerial and underground facilities in the City during the MetroNet initial buildout of the FTTP Network. Applicable permits and fees for future MetroNet FTTP Network expansions will follow applicable permitting procedures and fee structures in accordance to City policies at the time of expansion.
- B. Utility Poles. Subject to the following requirements, MetroNet will have the ability to place utility poles in the City rights-of-way and utility easements on a limited basis:

- (1) MetroNet will not seek to install a utility pole in any areas of the City where the utilities are located underground;
 - (2) MetroNet must be unable to use an existing utility pole in the general area where it wishes to place a utility pole due to high make ready costs or excessive delays gaining access to the existing utility poles;
 - (3) any requested utility pole will be added to an existing utility pole line;
 - (4) any requested utility pole will be located on the same side of the road as an existing utility pole line;
 - (5) MetroNet will make reasonable accommodations requested by the City to improve the aesthetics of a requested utility pole by agreeing to locate the proposed utility pole anywhere reasonably requested by the City within the utility pole line;
 - (6) the location of a requested utility pole will not adversely affect the health, safety or welfare of any person;
 - (7) MetroNet will make the requested utility pole available to any other communications provider on just and reasonable terms subject to loading requirements and space availability;
 - (8) If a utility company installs a new utility pole that will accommodate MetroNet's fiber facilities in any area where MetroNet has installed a utility pole, provided MetroNet has prompt access to the new utility pole without being subject to high make ready costs, within a reasonable time period after being notified by the City, MetroNet will move its fiber facilities to the new utility pole and will remove the MetroNet utility pole from the right-of-way.
 - (9) No later than sixty (60) days after receipt of appropriate notice from the City, as part of a City construction project, MetroNet will relocate any affected MetroNet utility pole.
 - (10) If either Party has concerns over the proposed location of a MetroNet utility pole, the Parties agree to promptly enter into good faith discussions on identifying a different mutually agreeable location for the utility pole prior to either Party invoking any of its rights under this Section B.
- C. Assignment. Neither Party shall assign, transfer or sublet the privileges hereby granted under this Agreement, without prior consent in writing of the other Party which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, with prior notice to the City, MetroNet may assign this Agreement to: (i) any wholly owned affiliate or parent company; or (ii) to any party who acquires all or substantially all of MetroNet's assets or equity whether by sale, reorganization, merger or otherwise.

- D. No Joint Venture. This Agreement is not intended to create, nor will it be construed to create, any partnership, joint venture, or employment relationship between the City and MetroNet, and neither party will be liable for the payment or performance of any debt, obligations, or liabilities of the other party, unless expressly assumed in writing.
- E. Entire Agreement Amendments. This Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior understandings or agreements, whether oral or in writing. This Agreement may not be amended or modified in any way except by a writing signed by the authorized representatives of the Parties.
- F. Applicable Law. This Agreement will be governed by all the laws of the State of Iowa without regard to the choice of law provisions thereof.
- G. Venue. The Parties consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located Polk County, Iowa for purposes of adjudicating any matter arising out of or relating to this Agreement.
- H. No Third Party Beneficiaries. No rights or privileges of either Party hereto shall inure to the benefit of any other person or entity, and no such other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

Accepted and agreed to as of the date first written above

Metro Fibernet, LLC

By: 

Name: John Campbell

Title: EVP and General Counsel

City of Johnston

By: _____