

## **Agreement**

This Agreement (“Agreement”) is made and effective as of April 4, 2025, between Metro Fibernet, LLC and the City of Colorado Springs, Colorado. Metronet and the City may each be referred to as a “Party” or collectively as “the Parties” to this Agreement.

### **Recitals**

- A. Metro Fibernet, LLC, and any and all of its current or former entities, officials, officers, employers, successors, assigns, attorneys, employees, agents, servants, insurers and reinsurers, if any, are hereinafter collectively referred to as “Metronet.”
- B. The City of Colorado Springs, Colorado and any and all of its current and former entities, enterprises, officials, officers, employers, successors, assigns, attorneys, employees, agents, servants, insurers and reinsurers, if any, are hereinafter collectively referred to as “the City.”
- C. Metronet has filed a Complaint against the City in the United States District Court, District of Colorado, No. 1:25-cv-00191 (the “Action”) seeking relief for claims alleging: (1) the City’s refusal to acknowledge Metronet’s right to construct a fiber optic network in platted public utility easements that cross private property (“PUEs”); (2) the City’s demand that Metronet cease working in PUEs indefinitely; (3) the City’s demand that Metronet enter into a Master Licensing Agreement before it is authorized to work in public rights of way; and (4) other positions and actions taken by the City.
- D. The City has not yet filed responsive pleading to the Action.
- E. The Parties wish to avoid the expense, delay and uncertainty of litigation and to settle the disputes among them.
- F. To settle their disputes and the Action, the Parties hereto have negotiated a settlement which is set forth below.

THEREFORE, the Parties agree as follows:

## **AGREEMENT**

1. **Recitals:** The Recitals to this Agreement are incorporated into and shall constitute part of the Agreement.
  
2. **Metronet Work Within PUEs:**
  - a. The City acknowledges that Metronet is authorized to use PUEs, subject to the City's lawful exercise of the police power.
  
  - b. Metronet will construct its facilities within PUEs consistent with existing City Code requirements in its use of PUEs, including 811-Call Before You Dig and associated damage prevention requirements, Colorado Springs Utilities Line Extension and Service Standards, and, for overhead facilities, Metronet's pole attachment agreement with Colorado Springs Utilities.
  
  - c. Metronet will photograph each property on which Metronet intends to use PUEs both before and after construction to document the condition of the property, and will provide such photographic documentation to the City prior to permit closeout. The City acknowledges that routine inspections will not be required for construction in PUEs. The City shall conduct inspection(s) if it receives a complaint or if there is noncompliance with permit requirements..
  
  - d. The City will not require Metronet to obtain individual homeowner permission to use PUEs.
  
  - e. Metronet will provide notification to individual homeowners on whose property Metronet intends to use PUEs prior to Metronet entering the property.
  
  - f. If City staff is asked about Metronet's right to construct in PUEs, the City will instruct staff to say that Metronet is authorized by state law to use the PUEs; City will instruct staff they are not to say that Metronet is unauthorized to use PUEs.

g. After the Effective Date of this Agreement, the City will require all telecommunications utilities to comply with the foregoing requirements for the use of PUEs.

3. **Metronet Work Within Public Rights of Way:** The City will process and grant permits for Metronet construction in public rights-of-way consistent with the City's existing practices for such permits, and will not reject any application solely because it references construction within PUEs.

4. **Master License Agreement:** The parties have negotiated in good faith a Master License Agreement ("MLA") in the form attached hereto as Exhibit A.

5. **Dismissal of Claims Without Prejudice:** Metronet will dismiss the Action in its entirety without prejudice.

6. **Reservation of Rights:** Metronet will comply with the terms of the MLA the parties have entered into simultaneously with this Agreement as described under Section 4 above, and agrees to comply with all applicable City codes, regulations, policies and requirements. Metronet reserves for itself the ability to challenge as unlawful or improper any and all enforcement or other actions that the City may take in respect to any MLA or such City codes, regulations, policies and requirements. Similarly, the City reserves its full rights to enforce any and all rights it may have under any MLA and applicable City codes, regulations, policies and requirements. By the foregoing agreement, both Parties expressly reserve any and all rights as to objections or enforcement of any MLA and applicable City codes, regulations, policies and requirements, and do not in any manner waive any such rights or abilities. Metronet's violation or alleged violation of the terms of any MLA shall not be construed as a separate violation of this Agreement.

7. **Validity of Agreement:** Subject to ¶ 8 of this Agreement, the Parties may not raise as a defense in any subsequent proceeding or action related to Metronet's claims in the Action, or any other proceeding or action, that this Agreement is invalid or void.
8. **Agreement as Evidence:** This Agreement is not intended to be an admission of any fact or issue alleged by any party related to the Action and, with the exception of a claim related to breach or enforcement of this Agreement, the Parties agree this Agreement will not be evidence in any other proceeding or action.
9. **No Third-Party Beneficiaries:** This Agreement is solely for the benefit of each Party individually and the Parties collectively. There are no intended third-party beneficiaries.
10. **Representations and Warranties:** Each Party represents and warrants that it has full and complete power, capacity, and authority to enter into this Agreement and to consummate all transactions and perform all obligations contemplated hereby. Each Party represents and warrants that it has not assigned or transferred its rights, demands, claims, causes of action, and/or any interest related to this Agreement, either in full or in part, and further, that such Party is not a party to any agreement that could require it to sell, transfer, assign, or otherwise dispose of such rights, demands, claims, causes of action, and/or interest related to this Agreement, either in full or in part.
11. **Assignment:** Either Party may assign its rights, duties, or obligations under this Agreement to any third person by giving notice in advance of any such assignment. Any successor in interest to either Party to this Agreement shall be bound by its terms and conditions to the same extent as the Parties.
12. **Voluntary and Informed Consent:** The Parties warrant and represent that they have read and understand the foregoing provisions of this Agreement, that they have had the opportunity to

discuss this Agreement with an attorney of their choosing, and that they and their respective signatories are fully authorized and competent to execute this Agreement on their behalf.

**13. Common Contribution:** This Agreement is drafted by a common contribution and editing among all the Parties to it; no inference shall arise or be applied against any Party on the theory that fewer than all the Parties drafted this Agreement.

**14. Entire Agreement:** This Agreement is an integrated agreement containing the entire understanding of the Parties with respect to the matters addressed herein and, except as set forth in this Agreement, no representations, warranties or promises have been made or relied on by the Parties. This Agreement shall prevail over any prior communications between the Parties or their representations relative to matters addressed herein. The Parties acknowledge that in signing this Agreement, they have relied only on the promises set forth herein.

**15. Governing Law:** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado.

**16. Attorneys' Fees and Costs:** Each Party shall each bear its own costs and expenses, including attorneys' fees, including those incurred in connection with the Action or the negotiation and execution of this Agreement.

**17. Severability:** If any portion, provision, or part of this Agreement is determined or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions, or parts of this Agreement and shall not affect the validity or enforceability of any remaining portions, provisions, or parts.

**18. Counterparts:** This Agreement may be signed in counterparts which together shall constitute a single document. Facsimile, portable document format ("PDF"), and other electronic signatures shall have the same effect as manually signed originals.

19. **Headings:** The section headings of this Agreement are for the convenience of reference only and shall have no effect on the interpretation of this Agreement.

20. **Effective Date:** "Effective Date" means and refers to the date on which this Agreement is signed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

Dated: April \_\_, 2025

04/04/25

METRO FIBERNET, LLC

By: *Kyle Hamilton*  
Kyle Hamilton (Apr 7, 2025 09:56 CDT)  
Its: EVP Construction

Dated: April 4, 2025

THE CITY OF COLORADO SPRINGS

By: *Wynetta P. Massey*  
Wynetta P. Massey, City Attorney