



### AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item:	Consider approval of an ordinance adopting a Cable Television Franchise Agreement for a period of ten years with CMN-RUS, Inc.		
Presenter & Title:	Stephanie K. Dawkins, City Administrator		
Date:	September 11, 2017		
<b>Please Check Appropriate Box:</b>			
<input checked="" type="checkbox"/>	Committee of the Whole Meeting		Special Committee of the Whole Meeting
<input checked="" type="checkbox"/>	City Council Meeting		Special City Council Meeting
<input type="checkbox"/>	Public Hearing		Other -
Associated Strategic Plan Goal/Objective: N/A			
Estimated Cost: N/A		Budgeted?    ___ Yes ___ No	Other            ___ Yes Funding?      ___ No
<b>Executive Summary:</b>			
<p>CMN-RUS, Inc. filed an application for a non-exclusive CATV Franchise. CMN is a subsidiary of Metronet Holding, LLC and an affiliate of MetroFibernet, LLC. (CMN, MetroNet Holdings, LLC and Metro Fibernet, LLC are collectively referred to as MetroNet). MetroNet requests this non-exclusive franchise to provide video services in the City of Geneva consistent with the video services MetroNet currently provides in existing markets. In addition, MetroNet will also provide internet service connections and residential phone service.</p> <p>Pursuant to Illinois statutes, prior to granting an additional cable franchise, the City must conduct a public hearing to determine the public need for such additional cable franchise including the capacity of public rights-of-way to be used by such additional community antenna television services, the potential disruption to existing users of public rights-of-way to be used by such additional franchise applicant to complete construction and to provide cable television services within the proposed franchise area, the long term economic impact of such additional cable television system within the community, and such other factors as the franchising authority shall deem appropriate. In addition, notice regarding the public hearing must also be provided to any current franchisee. The City of Geneva has a franchise agreement with Comcast, who was noticed regarding the public hearing. Comcast is planning on attending the public hearing that will be conducted at the Committee of the Whole meeting on September 11, 2017 prior to consideration of this item. In addition, Comcast has provided comment regarding the proposed franchise agreement with is attached to this item for review.</p> <p>State law further requires an equal playing field in terms and conditions provided. Since MetroNet is seeking a local franchise agreement they will need to abide by the similar requirements and features as the franchise agreement the City has with Comcast. MetroNet has agreed to the same franchise fee, customer service standards and other provisions of the existing Comcast franchise. Differences in the agreements are based on build-out requirements and are governed by the Competitive Franchise Order and its interpretation of the Federal Cable Act.</p> <p>Representatives of MetroNet will be present at the Committee of the Whole Meeting to answer any questions.</p>			

**Attachments:** *(please list)*

- Ordinance No. 2017-22
- Comcast Comment on Franchise

**Recommendation / Suggested Action:** *(how item should be listed on agenda)*

Recommend approval of Ordinance 2017-22 adopting a Cable Television Franchise Agreement with CMN-RUS, Inc.

**Ordinance No. 2017-22****CABLE TELEVISION FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT is made and entered into this, 18th day of September, 2017 (the "Effective Date") by and between the City of Geneva ("City"), an Illinois Municipal corporation, and CMN-RUS, Inc. ("Grantee").

## WITNESSETH:

WHEREAS, Grantee has requested a renewal of its cable television Franchise (as defined at Section 2 below) to provide cable television service throughout the City and,

WHEREAS, the City has reviewed Grantee's performance under its current cable television Franchise with the City, has identified the future cable-related needs and interests of the community, has considered the financial, legal and technical qualifications of Grantee to provide cable television service in the City, and has considered Grantee's plans for operating and maintaining its cable system during the term of a Franchise; and,

WHEREAS, after affording the public adequate notice and an opportunity for comment, the City Council of the City of Geneva has determined that it is in the public interest to renew the grant of a non-exclusive cable television Franchise to Grantee in accordance with the terms hereinafter set forth; and,

NOW THEREFORE, in consideration of the foregoing and the mutual terms, conditions, promises, and undertakings contained herein, Grantee and the City hereby agrees as follows:

**Section 1: TITLE**

This Agreement may be cited as the CMN-RUS, Inc. Franchise Agreement of 2017 and is hereinafter referred to as the Agreement ("Agreement").

**Section 2: DEFINITIONS**

For the purpose of this Agreement capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein. The following terms, phrases, words and their derivations shall have the meaning given herein:

"Act" or "Cable Act" means the Cable Communications Policy Act of 1984 [P.L. 98-549], as amended by the Cable Television Consumer Protection and Competition Act of 1992 [P.L. 102-835] and the Telecommunications Act of 1996 [P.L. 104-104], as the same may be amended from time to time.

"Basic Cable Service" means any service tier that includes the retransmission of local television broadcast signals and the public, educational, and governmental access channels.

"Cable Services" means the one-way transmission to subscribers of (i) Video Programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such programming or other service.

"Cable System" or "System" shall be as defined in the Cable Act and means the facilities, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area.

"Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by the Federal Communications Commission by regulation.

"City" means the City of Geneva, Illinois and all the territory within its present and future corporate boundaries.

"City Council" or "Council" means the City Council of the City of Geneva, Illinois.

"Customer" means a Person who lawfully receives and pays for Cable Service with the Grantee's express permission.

"FCC" means the Federal Communications Commission and any legally appointed, designated, or elected agent or successor.

"Franchise" means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

"Franchise Agreement" or "Agreement" means this Agreement and any amendments or modifications hereto.

"Franchise Area" means the present legal boundaries of the City as of the Effective Date, and shall include any additions thereto, by annexation or other legal means as provided in this Agreement.

"Franchise Fee" means any assessment imposed herein by the City on a Grantee solely because of its status as a Grantee. The term "Franchise Fee" does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed upon both utilities and Cable Operators or their services) but not including a tax, fee, or assessment which is unduly discriminatory against the Grantee or cable Subscribers; capital costs which are required by the Franchise to be incurred by Grantee for the establishment of and operation of Governmental Access Facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, liquidated damages; or any fee imposed under Title 17, U.S. Code. Franchise Fees shall not include any taxes of general applicability on services furnished by the Grantee herein imposed directly upon any Subscriber by the State of Illinois, Kane County, the City or other governmental unit and collected by the Grantee on behalf of said governmental unit. A Franchise Fee is not such a tax, and Franchise Fee expenses may not be deducted in determining the amount of the fee due to the City.

"Grantee" means CMN-RUS, Inc.

"Grantor" means the City of Geneva, Illinois.

"Gross Revenue" means the Cable Service revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view fees, advertising, and home shopping revenue, installation fees, franchise fees and equipment rental fees. Gross revenues shall also include such other revenue sources directly related to Cable Service delivered over the Cable System as may hereafter develop, provided that such revenues, fees, receipts, or charges

are deemed lawful and to be included in the gross revenue base for purposes of computing the Franchising Authority's permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, late fees, investment income, programming launch support payments, advertising sales commissions, nor any taxes or assessments imposed or assessed by any governmental authority.

Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to City of Dallas, Texas v. FCC., 118 F.3d. 393 (5th Cir. 1997) and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the "Pasadena" case, City of Pasadena, California, et al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-R, Memorandum Opinion and Order, 16 FCC Red. 18192 (2001), and In re: Texas Coalition of Cities for Utility Issues v. FCC., 324 F.3d 802 (5th Cir. 2003).

"Initial Franchise Service Area" means that portion of the Franchise Area set forth in Exhibit A.

"Municipal Building" means those buildings owned or leased by the City for government administrative purposes, and shall not include buildings owned by the City but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

"PEG Access Channel(s)" means channel capacity designated for Public, Educational, or Governmental use by the City.

"Public, Educational, or Governmental (PEG) Access Facilities" means facilities or equipment for the use of PEG Access Channel(s).

"Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the City.

"Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Franchise Area, which still entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purposes of installing, operating and maintaining the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

"Qualified Household" shall mean any single family residential home where a resident has agreed in writing to Grantee's standard terms and conditions of service including, if applicable, any reasonable deposit requirements and standard installation fees, as a condition of requesting Cable Service from Grantee.

### **Section 3: GRANT OF AUTHORITY AND ACCEPTANCE**

A. The City hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Way within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed. .

B. Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years from the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/ or applicable law.

C. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

D. Reservation of Authority. Nothing in this Franchise Agreement shall (1) abrogate the right of the City to perform any public works or public improvements of any description, (2) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (3) be construed as a waiver or release of the rights of the City in and to the Public Way.

E. Competitive Equity.

1) In the event the City grants an additional Franchise to use and occupy the public right-of-way for the purposes of operating a cable system, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11

2) In the event an application for a new cable television franchise or other similar authorization is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon any existing Grantee or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.

F. Acceptance. The Franchise as well as all rights, privileges, obligations and authority granted therein shall become effective upon the authorization of the City Council for the execution of this Agreement, and the parties execution of said Franchise Agreement. This Franchise Agreement describes the entire Franchise between the parties. Upon passage and approval of this Franchise Agreement, the parties acknowledge that this Franchise Agreement is intended to replace all existing Franchise Agreements, including the prior Franchise, with the Grantee, regardless of whether said Franchise Agreements are in effect.

G. Police Powers. Nothing in this Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power.

### **Section 4: CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM**

A. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all provisions of Title 8, Chapter 3 of the Geneva City Code, entitled "Construction of Utility Facilities on Public Rights Of Way," as may be amended from time to time. Upon approval of this Agreement, Grantee shall

not be obligated to pay the City fees for any construction permits related to the construction of the Cable System.

B. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aerially, or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

C. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way.

D. The Grantee shall not be required to relocate its facilities unless it has been afforded at least 30 days notice of the necessity to relocate its facilities. Upon adequate notice, the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities.

#### **Section 5: FRANCHISE FEES**

A. Franchise Fees. The Grantee shall pay to the City a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided however, that the Grantee shall not be compelled to pay any higher percentage of franchise fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period. Any undisputed franchise fee payment which remains unpaid in whole or in part, after the date specified herein, shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest from the time of the discovery of the delinquent payment at the prime lending rate as quoted by Chase Bank U.S.A or its successor, computed daily from the time due until the date paid. Any undisputed overpayments made by Grantee to the City shall be returned or credited upon discovery of such overpayment and shall be payable within sixty (60) days of the receipt of written notice from Grantee.

B. Change in Amount. The Parties acknowledge that, at present, the Cable Act limits the City/Village to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. If, during the term of this Agreement, the Cable Act is modified so that the City would otherwise be authorized to collect a Franchise fee at a rate greater than five percent (5%) of Gross Revenues, the City may unilaterally amend this Agreement to increase the required percentage to be paid by the Grantee to the City up to the amount permitted by the Cable Act, provided that: (i) such amendment is competitively neutral; (ii) the City conducts a public hearing on the proposed amendment; (iii) the City approves the amendment by ordinance; and (iv) the City notifies Grantee at least ninety (90) days prior to the effective date of such an amendment. In the event a change in state or federal law reduces the maximum permissible franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: (i) the maximum permissible franchise fee percentage; (ii) the lowest franchise fee percentage paid by than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area or any other cable provider granted a cable franchise by the City pursuant to Title 47; or, (iii) such franchise fee percentage as may be approved by the City, provided that: (a) such amendment is competitively neutral; (b) the amendment is in compliance with the change in state or federal law; (c) the City approves the amendment by ordinance; and (d) the City notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

C. Franchise Fees Subject to Audit. Upon reasonable prior written notice, during normal business hours at Grantee's principal business office, the City shall have the right to inspect the Grantee's income records and the right to audit and to re-compute any amounts determined to be payable under this Agreement; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of the Grantee's fiscal years.

Upon the completion of an independent audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the City with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the City by the Grantee, or overpayment to the City by the Grantee as the case may be, as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

Any "Finally Settled Amount(s)" due to the City as a result of such audit shall be paid to the City by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Any overpayment by the Grantee to the City shall be credited against subsequent franchise fee payments by the Grantee to the City until such time as the overpayment is fully credited; or shall be paid by the City to the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount" in the event no subsequent franchise fee payments are due to the City. In the event Grantee does not pay the "Finally Settled Amount" within thirty days (30), Grantee shall be charged and shall pay, in addition to the amount due, interest on the amount due equal to the prevailing prime rate plus two percent (2%) interest compounded daily from the due date for payment of the "Finally Settled Amount."

Once the parties agree upon a "Finally Settled Amount" and such amount is paid by or credited to the Grantee, the City shall have no further rights to audit or challenge the payment for that period. The City shall bear the expense of its audit of the Grantee's books and records.

D. Address Exchange. The City and Grantee agree that within one hundred twenty (120) days of the Effective Date and in accordance with applicable privacy laws, they will exchange in electronic form their respective lists of the addresses located within the boundaries of the City in order to ensure that all addresses in the City are included in the Grantee's database for the City. The parties agree to exchange said address lists upon written request, but not more than once annually, during the term of this Franchise Agreement. The City and Grantee agree to exercise good faith efforts to maintain the accuracy of their respective databases. The parties further agree except that in the case of gross negligence, no penalties or interest shall apply to any errors discovered as result of any exchanges of information hereunder.

E. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the City has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City's opposition to disclosure of any information Grantee designates as proprietary or confidential.

## **Section 6: ACCESS PROGRAMMING**

A. PEG Capacity. Grantee shall provide capacity for the City's noncommercial public, educational and governmental ("PEG") access programming on one (1) Channel on the Grantee's Cable System consistent with the requirements set forth herein. Unless otherwise agreed to by the City and the Grantee to the extent required by law, the PEG channel shall be carried on the most basic service tier offered by the Grantee. The City's PEG programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time.

1. Additional Capacity. At its discretion, the City may request an additional channel; provided, however, the City must demonstrate that the Threshold Use Requirement is satisfied. For the purposes of this Agreement, the term "Threshold Use Requirement" means that the initial channels shall be programmed by the City at least eight (8) hours per day with non-repetitive, video programming, Monday through Saturday, for a minimum of six (6) consecutive weeks. The City shall provide the Grantee with written documentation evidencing that the Threshold Use Requirement is being satisfied. Grantee shall have one hundred twenty (120) days from receipt of the City's request to provide the additional channel. Unless otherwise agreed to by

the City and the Grantee to the extent required by law, the additional channel shall be carried on the most basic service tier offered by the Grantee. Once provided, the additional channel may not be removed or withdrawn by Grantee for the first twelve (12) months following the provision of such additional channel. Any such removal or withdrawal shall not occur until after Grantee has given the City written notice that the Threshold Use Requirement for the initial channels provided as of the Effective Date of this Agreement is not being satisfied. The City shall have one hundred twenty (120) days to cure, or take diligent steps towards curing such condition, in which to establish that the Threshold Use Requirement on the initial channels is satisfied.

B. Allocation and Use of the PEG Channel(s). The PEG channels is (are), and shall be, operated by the City. The City shall adopt rules and procedures under which Grantee may use the PEG channel(s) for the provision of Video Programming if the PEG channel(s) is(are) not being used for its respective purposes pursuant to Section 611(d) of the Cable Act, 47 U.S.C. §531.

1. Grantee Use of Unused Time. Because the City and Grantee agree that a blank or underutilized Access Channel is not in the public interest, in the event the City does not completely program a Channel, Grantee may utilize the Channel for its own purposes in accordance with the terms of 47 U.S.C. §532(b)(4). Grantee may program unused time on the Channel subject to reclamation from the City upon no less than sixty (60) days notice. The programming of the Access Channel with text messaging or playback of previously aired programming shall not constitute unused time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered unused time. A programming schedule that contains playback of previously aired programming that has not been updated for a period of ninety (90) days shall be considered fallow time. Unused time shall be considered to be a period of time, in excess of six (6) hours, where no community produced programming of any kind can be viewed on an access Channel. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

C. Editorial Control. Grantee shall not exercise any editorial control over any use of the PEG channel(s), nor shall Grantee or its Affiliates incur any criminal or civil liability pursuant to the federal, state or local laws of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws for any programs carried on the PEG channel(s).

D. Rules and Procedures for Use of PEG Access Channel. The City shall be responsible for establishing and enforcing rules for the non-commercial use of the public, educational and governmental access channel and to promote the use and viewership of the channel(s).

E. PEG Capital Payments for Equipment and Facilities. At its sole discretion, the City may designate PEG access capital projects to be funded by the City. The City has provided written notice of the City's desire for Grantee to collect and remit a PEG Capital Fee of thirty-five cents (\$0.35) per customer per month pursuant Section 622(g)(2)(C) of the Cable Act (47 U.S.C. §542(g)(2)(C)). That "Plan and Notice for PEG Capital " is attached hereto as Exhibit B. During the term of this Agreement, the Grantee shall collect the external charge and shall make the PEG capital payments from such sums at the same time and in the same manner as Franchise Fee payments. The capital payments shall be expended for capital costs

associated with PEG access, and as shall be described in a plan for the intended utilization of the PEG Capital Fee as provided by the City at the time of its notice (the "Plan and Notice"). Consistent with its description of the intended utilization of the PEG Capital Fee, the City shall be permitted to hold all or a portion of the PEG Capital PEG Fee from year to year as a designated fund to permit the City to make large capital expenditures, if necessary. Consistent with the Plan and Notice the City will expend the monies collected for PEG Access Channel facilities and equipment during the term of this Agreement, but the parties further acknowledge that monies collected near the end of the term of this Agreement may be utilized by the City for PEG Capital purposes during the term of the next agreement. Said Capital PEG Fee shall be imposed within sixty (60) days of the Effective Date of this Agreement.

#### F. PEG Signal Quality

1. Quality. Provided PEG signal feeds are delivered by the City from the signal origination location to the designated signal input point without material degradation, the PEG channel delivery system from the designated signal input point shall meet the same technical standards as the remainder of the Cable System set forth in this Agreement.
2. Future Changes. Should the City determine that it wants to change or upgrade a signal origination location in service as of the Effective Date, or establish another location from which public, educational and/or governmental Video Programming is originated, the City will give the Grantee written notice detailing the change in point of origination. The Grantee agrees to submit a cost estimate to implement the City's plan within a reasonable period of time. After an agreement to reimburse the Grantee for its expenditure, the Grantee will implement any necessary System changes within a reasonable period of time.

### **Section 7: SYSTEM DESCRIPTION**

A. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. §76.

### **Section 8: SERVICE OBLIGATIONS**

A. General Service Obligation. In addition to providing Cable Service in the Initial Franchise Service Area, the Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential homes within the Franchise Area where a minimum of 15 Qualified Households have requested Cable Service within 1200 feet of the Grantee's distribution cable.

1. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation and/or line extension that exceeds the standards set forth above.

B. New Developments. The City shall provide the Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The City agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches.

C. Programming. The Grantee agrees to provide cable-programming services in the following broad categories:

Children	Sports	Family Oriented
Ethnic/Minority	Educational	News & Information
Weather	General Entertainment	Arts, Culture and Performing Arts

D. Emergency Alert System. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an Emergency Alert System ("EAS") consistent with applicable Federal law and regulation including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" — as may be amended from time to time.

E. Complimentary Basic Cable Service. Pursuant to 220ILCS 5/70-501(f), and to the extent requested by any eligible governmental entity, the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to each Illinois accredited K-12 public and private school, not including "home schools," located in the Franchise Area within one hundred twenty-five (125) feet of the Grantee's distribution cable. Also pursuant to 220ILCS5/70-501(f), and to the extent requested by any eligible governmental entity, the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to each Municipal Building located in the Franchise Area within one hundred twenty-five (125) feet of Grantee's distribution cable. "Municipal buildings" are those buildings owned or leased by the City for government administrative purposes, and shall not include buildings owned by City but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

F. Customer Service Standards. Grantee and the City acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 et. seq. and Chapter XX of the Geneva Municipal Code (Cable and Video Customer Protection Law, 220 ILCS 5/22-501 et. seq.

### **Section 9: INSURANCE**

A. Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain such insurance and provide the City certificates of insurance in accordance with Section 8, entitled "Insurance" of Title 8, Chapter 3, of the Geneva City Code, entitled "Construction of Utility Facilities on Public Rights Of Way," as may be amended from time to time.

### **Section 10: INDEMNIFICATION**

A. Indemnification. Throughout the term of this Franchise Agreement, the Grantee shall comply with Section 9, entitled "Indemnification," of Title 8, Chapter 3, of the Geneva City Code, entitled "Construction of Utility Facilities on Public Rights Of Way," as may be amended from time to time.

**Section 11: ENFORCEMENT OF FRANCHISE**

A. Notice of Violation or Default. In the event that the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the nature of the alleged noncompliance or default.

B. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the City's written notice:

1. To respond to the City contesting the assertion of noncompliance or default; or
2. To cure such default; or
3. In the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the City of steps being taken and the projected date that the cure will be completed.

C. Enforcement. Subject to applicable federal and state law, and pursuant to the provisions of paragraph B above, in the event that the City determines that the Grantee is in default of any material provision of the Franchise, the City may:

1. Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or
2. In the case of a substantial default of a material provision of the Franchise, declare the franchise to be revoked in accordance with the following:
  - (a) The City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including two or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reason for such objection. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.
  - (b) At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the City shall be in writing and shall be delivered to the Grantee by certified mail.

## **Section 12: TRANSFER OF CABLE SYSTEM OR FRANCHISE OR CONTROL OF GRANTEE**

A. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined, as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Metronet Holdings, LLC . Within thirty (30) days of receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any; it requires to determine the legal, financial, and technical qualifications of the transferee or new controlling party. If the City has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

## **Section 13: MISCELLANEOUS PROVISIONS**

A. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, a good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

B. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation, and effect, and construed in accordance with, the laws of the State of Illinois and/or federal law as applicable.

C. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and communications, whether oral or written. All ordinances or parts of ordinances that are or may be in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

D. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through adoption of an appropriate resolution or order by the City, as required by applicable law.

I. No Waiver. Nothing in this Franchise Agreement shall be construed as a waiver of rights, substantive or procedural; Grantee may have under Federal or State law unless such waiver is expressly stated herein.

J. Severability. If any word, phrase, clause, sentence, paragraph, section, subsection or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

K. Notices. Any notification that requires a response or action from a party to this franchise, within a specific time-frame or would trigger a timeline that would affect one or both parties' rights under this franchise, shall be made in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City: City of Geneva  
Attn: City Administrator  
22 South First Street  
Geneva, IL 60134

To the Grantee: CMN-RUS, Inc.  
Attn: Legal Department  
8837 Bond Street  
Overland Park, KS 66214

Recognizing the widespread usage and acceptance of electronic forms of communication, emails, and faxes will be acceptable as formal notification related to the conduct of general business (but no modifications to the Agreement or enforcement actions under Section 11) amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above.

H. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any person, individual, corporation, or member of the public to enforce the terms of this Franchise Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Franchise Agreement as set forth below.

Approved and Accepted by:

**For the City of Geneva:**

**For CMN-RUS, Inc.**

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

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

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

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

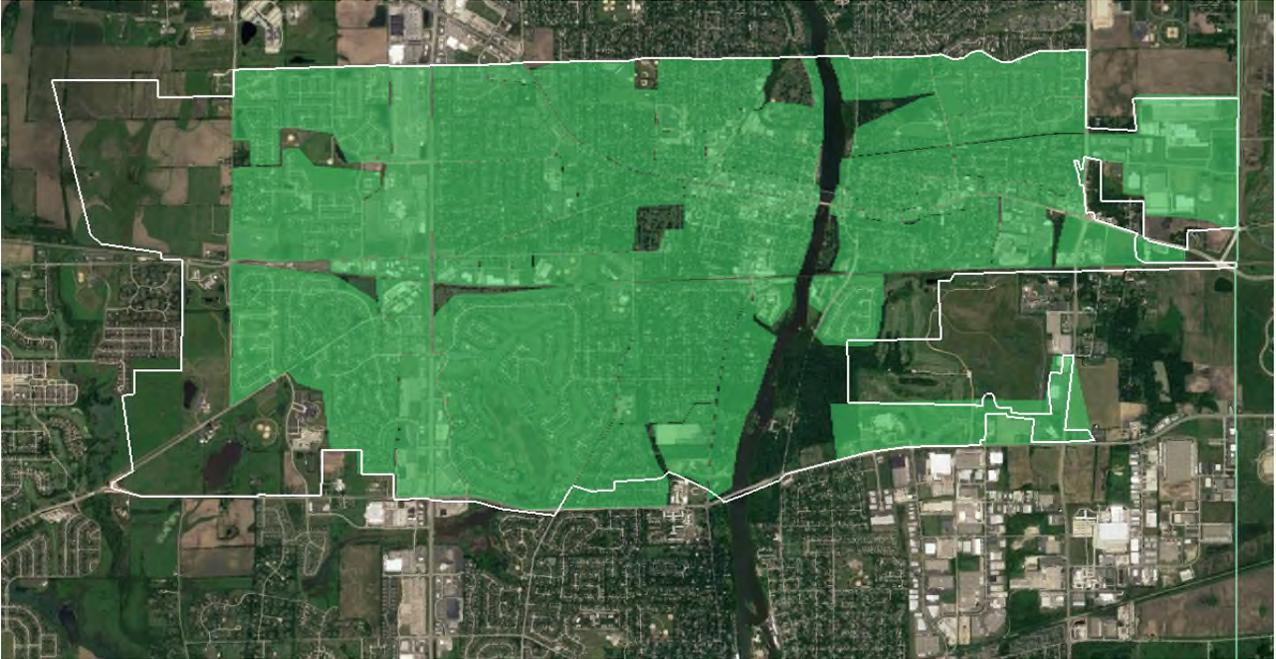
Title: \_\_\_\_\_

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

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

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

## EXHIBIT A

**Legend**

Green – Subject to final network design optimization, areas that Grantee will buildout as part of the Intital Franchise Service Area.

**Notes**

Upon the completion of final network design optimization, Grantee will provide Grantor with a final map to incorporate into this Exhibit A. The final map may be different from the map described above based on actual engineering data, but shall not be substantially different.

For avoidance of doubt, if Grantee is unable to obtain rights to use private property on reasonable terms, Grantee will not be able to buildout those areas.



September 18, 2017

CMN-RUS, Inc.  
Attn: Legal Department  
8837 Bond Street  
Overland Park, KS 66214

Re: Plan and Notice for PEG capital fees

Please accept this letter as notification to activate the \$0.35 customer charge for the PEG capital fees pursuant to Section 6(E) of the Cable Television Franchise Agreement.

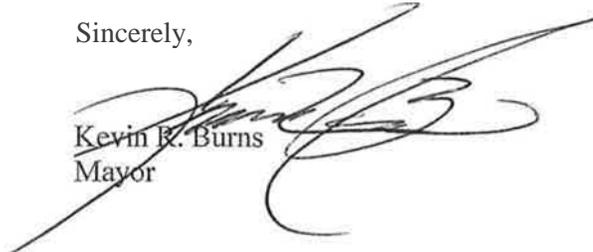
Consistent with this plan and notice, the City will expend the monies collected for PEG Access Channel facilities and equipment. The addition of the pass-through on the customer billing statements is requested for as soon as practical following the approval and execution of the Franchise Agreement. This pass-through fee shall run the term of the Agreement and CMN-RUS, Inc. shall make the PEG capital payments from such sums at the same time and in the same manner as Franchise Fee payments.

The City of Geneva has an established governmental and educational access channel operation. As such, we have regular capital outlays to repair or replace aging and outdated equipment. This list includes, but is not limited to such items as upgraded HD ceiling (robotic) and handheld cameras, as well as corresponding equipment used for video content production; additional amplification, recording, and presentation equipment for our studios; and post-production video editing equipment, all required editing software, and live media streaming encoders.

As we continue to expand and enhance the City's government access programming, this PEG capital may fund equipment including video overlay systems (for adding text to live TV broadcasts) and telephone interfaces to allow direct microphone input to live video production (which could allow residents call into Commission meetings, or allow for a member of the City Council to be in a different location but still able to participate in the meeting).

As part of both the City's Strategic plan and its overall plan for communications with the residents of the City of Geneva, it is our goal to continue to provide the best quality programming for our constituents as possible using leading-edge technology. It is through this PEG capital fee that the City will be able to achieve this goal.

Sincerely,

  
Kevin R. Burns  
Mayor



September 6, 2017

The Honorable Kevin R. Burns  
Mayor  
City of Geneva  
22 S. First Street  
Geneva, Illinois 60134

Re: CMN-RUS, Inc. Franchise Application

Dear Mayor Burns,

In accordance with the Illinois Level Playing Field Statute, ILCS 65 5/11-42-11, the City of Geneva has provided us notice of the upcoming public hearing regarding the Franchise Application for CMN-RUS, Inc. In reviewing their application materials I want to provide some feedback. Comcast is no stranger to competition and our region is the most competitive region in the national Comcast footprint. We welcome the use of our existing franchise as a template, as you know we've spent many years developing our model with the Metropolitan Mayors Caucus and others.

We recognize CMN-RUS, Inc.'s desire to soften the capital-intense build-out requirements; however their suggested methodology leaves no room for the competition they claim to be seeking to provide. Their desire to have 15 Qualified Households per 1,200 feet (or roughly 1/5<sup>th</sup> of a mile) means all must have signed service contracts including applicable service deposits and installation fees. If a typical home has an approximately 75 to 80 foot wide lot, you would basically need all fifteen homes in a row to sign a contract prior to construction. In contrast, our existing build-out requirements are a minimum of 30 dwelling units per linear Cable System network mile regardless of what service provider those 30 or more homes would chose.

That being said, should the City of Geneva grant an additional franchise per ILCS 65 5/11-42-11, Comcast retains our rights under the state statute to pursue modification of our existing franchise agreement to reflect a level and competitive playing field. Comcast looks forward to continuing to offer our superior products and services in the City of Geneva and we're proud of our renewed commitment and investment in our customer service operation. If you have any questions please let me know.

Sincerely,

Michael Paulos  
Government Affairs Manager  
Comcast

CC: Chris Nelson, Director Government Affairs, Comcast  
Stephanie Dawkins, City Administrator, City of Geneva



### AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item:	Consider approval of a Resolution approving a Pole Attachment Agreement with Metro Fibernet, LLC.		
Presenter & Title:	Stephanie K. Dawkins, City Administrator		
Date:	September 11, 2017		
<b><i>Please Check Appropriate Box:</i></b>			
<input checked="" type="checkbox"/>	Committee of the Whole Meeting		Special Committee of the Whole Meeting
<input checked="" type="checkbox"/>	City Council Meeting		Special City Council Meeting
<input type="checkbox"/>	Public Hearing		Other -
Associated Strategic Plan Goal/Objective: N/A			
Estimated Cost: N/A	Budgeted?	___ Yes ___ No	Other Funding? <span style="margin-left: 20px;">___ Yes ___ No</span>
<b>Executive Summary:</b>			
<p>Metro Fibernet, LLC and the City negotiated the proposed pole attachment agreement. Metro Fibernet will have a need to install fiber on City of Geneva utility poles for the services contemplated in the Franchise Agreement (previous agenda item).</p> <p>The pole attachment rate is \$27.99 per pole and will escalate at 3% per year for the duration of the agreement. The agreement is for ten years to coincide with the franchise agreement.</p>			
<b>Attachments:</b> <i>(please list)</i>			
<ul style="list-style-type: none"> <li>• Resolution No. 2017-99</li> </ul>			
<b>Recommendation / Suggested Action:</b> <i>(how item should be listed on agenda)</i>			
Recommend approval of Resolution No. 2017-99 approving a Pole Attachment Agreement with Metro Fibernet, LLC.			

## Resolution No. 2017-99

JOINT USE POLE ATTACHMENT AGREEMENT

This Agreement made this 18th day of September, 2017 (hereinafter the “Effective Date” which is the date the last party executes this Agreement) by and between THE CITY OF GENEVA, a municipal corporation of the State of Illinois, hereinafter referred to as “Owner”, and METRO FIBERNET, LLC, a Nevada limited liability company, hereinafter referred to as “Licensee”.

## WITNESSES:

WHEREAS, the City of Geneva and Licensee desire to establish joint use of poles owned by the City of Geneva under the terms and conditions set forth below:

WHEREAS, among the purposes of this Agreement are to reduce the number of dual pole lines utilized by both parties and to provide better economy of service to customers of both parties; and

WHEREAS, the conditions determining such joint use shall depend upon the service requirements to be met by each party, including considerations of safety and economy.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, their successors and assigns, do hereby agree as follows:

Section 1. Scope of Agreement.

This Agreement covers all jointly-used poles within the electrical service area within corporate limits as now or hereafter existing of the City of Geneva. This Agreement includes all wood poles (“poles”) which are: (a) presently owned by the Owner, or (b) as hereafter erected by the Owner, or (c) as may be purchased from time to time by the Owner from the Licensee in accordance with the procedures hereinafter set forth. The Owner will deny Licensee’s request to attach to its poles only on the grounds of capacity, safety, reliability and engineering. This Agreement shall not exempt the Licensee from the requirements of the Owner’s Subdivision Control Ordinance, or its successor, or such other ordinance(s) that relate to placement of utility systems.

Section 2. Code Specifications.

The joint use, construction and maintenance of poles covered by this Agreement shall be in conformity with the Illinois Commerce Commission’s General Order 160 (1968), the National Electrical Safety Code (2012), and the National Electrical Code (2014). Any modifications, amendments or changes in said Codes shall be reviewed and mutually agreed to by the parties. However, in no event shall the Owner be bound by the jurisdiction of the Illinois Commerce Commission or any successor in interest thereto. Any change in the Illinois Commerce Commission’s General Order 160 affecting this Agreement, shall be tendered to the Owner by Licensee within thirty (30) days of the effective date of such change. Any joint use pole which does not conform to the most stringent standards as set forth above shall (a) be brought to the

attention of Owner by Licensee, or vice versa, as the case may be, and (b) brought into such conformity with the standards of the National Electric Code or the National Electric Safety Code, as the case may be, as soon as practical, but not later than sixty (60) days after notice of discovery of such non-conformity, Acts of God excepted. However, in the event Owner has scheduling conflicts, Owner shall be given such additional time as may be required, and shall set forth a proposed schedule therefor. If Licensee's attachment is the sole cause of the non-conformity with standards, Licensee shall be responsible for the cost to bring the attachment into conformance. Owner will only be responsible for costs related to conformance as if the Licensee was not attached to the pole. Resolutions of any disputes related to the costs of work related to standard conformity shall be resolved by the Licensee removing its attachment from the pole.

### Section 3. Placing, Transferring or Rearranging of Pole Attachments.

- A. Definitions. For the purposes of this Section, the following terms will have the meaning ascribed herein:
- a. The term "Make Ready Costs" as used in this Agreement means the reasonable actual costs incurred performing work necessary to provide adequate space for Licensees proposed attachment per the National Electric Safety Code (NESC), directly and exclusively associated with accommodating Licensee's attachments, and within 45 days following Licensee's written request, Owner shall provide to Licensee detail of such costs sufficient for Licensee to verify the reasonableness of the costs or charges.
  - b. The term "Make Ready Estimate" as used in this Agreement means Owner's estimate of Make Ready Costs prepared for Owner pursuant to Section 3.B. below.
  - c. The term "Make Ready Work" means all work, as determined by Owner, required to accommodate Licensee's attachments and to meet the National Electric Safety Code ("NESC") or other reasonable requirements of Owner, including rearrangements and/or transfer of existing facilities.
- B. Whenever the Licensee desires to reserve space on any pole which Licensee is not already using, Licensee shall make written application to the Owner specifying in such application (1) the location of the pole in question, (2) the number or kind of attachments which it desires to place thereon, (3) any Make Ready Work proposed to complete such attachment in conformance with all NESC safety codes, and (4) the proposed completion date for any Make Ready Work. Licensee shall submit such application upon a form as depicted in Exhibit A. Within twenty (20) business days after receipt of such application, the Owner shall notify the Licensee, in writing, whether or not said pole is excluded from joint use. In the event said pole is not so excluded, Owner shall provide its Make Ready Estimate. If the Make Ready Estimate is approved by Licensee, and after completion by Owner of any transferring or rearranging of Owner's attachments, including any necessary pole replacements as provided in Section 5 below, the Licensee shall have the right to use such space for its attachments and circuits as required in the application and with approval of Owner. In emergency service situations where written application

is not possible, Licensee may make application orally to the Superintendent of Electric Utility or its delegated nominee, which shall be forthwith reduced to writing as provided by this subparagraph.

- C. Upon notice that the Make Ready Estimate has been accepted by Licensee, Owner shall proceed with the Make Ready Work covered by the Make Ready Estimate. The Parties agree that Owner will perform Make Ready work within the power zone on the poles designated by Licensee, and Licensee will manage and perform Make Ready Work and adjustments necessary in the communications zone on such poles. Owner shall undertake commercially reasonable efforts to complete its Make Ready Work by the estimated completion date. Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work, including but not limited to allowing Licensee to complete the Make Ready Work using Owner-approved contractors. Notwithstanding the foregoing, in the event Owner fails to complete the Make Ready Work within 90 days after receiving notice of Licensee's acceptance of the Make Ready Estimate, Licensee may complete such Make Ready work using Owner-approved contractors. Upon completion of all Make Ready Work, Owner shall provide an itemized invoice for the actual cost of the Make Ready Work within forty-five (45) days after completion of the Make Ready Work and Licensee shall pay such actual costs within forty-five (45) days from the date the invoice is received by Licensee, provided however that to the extent Licensee in good faith disputes the costs detailed in the invoice, Licensee will remit payment for the undisputed costs as set forth herein.

Upon completion of the Make Ready Work and payment of the Make Ready Costs, Owner shall advise Licensee that such poles are available for attachment.

- D. In the event that Owner reasonably determines that any pole has inadequate capacity to accommodate Licensee's attachments and must be replaced solely to make capacity for Licensee attachments, Licensee agrees to reimburse Owner for the (1) actual cost of the new pole including installation thereof; (2) the actual cost of transferring Owner's facilities to the new pole; and (3) any other actual costs incurred by Owner in such replacement, such as the expense of removing the old pole.
- E. Except as otherwise provided herein, Owner and Licensee shall each place, rearrange, transfer, remove and maintain its respective attachments, including any necessary tree trimming or cutting, at its own expense and shall at all times perform such work within sixty (60) days of notice by the other party, Acts of God excepted.
- F. For purposes of this Agreement, "attachment" or "attachments" means Licensee's fiber optic and other cable, wires, strands and fixtures used for the support of such fiber, cable wires and strands, that is used by Licensee in providing or allowing others to provide cable and/or telecommunications service and that is placed on Owner poles pursuant to this Agreement.

- G. Subject to resolving any safety, reliability or engineering concerns in advance, and without Owner's prior approval but upon prior notice to Owner, Licensee may overlash facilities on its own attachments.

Section 4. Standard Space.

- A. For the purposes of this Agreement, Licensee's "standard space" shall be defined as that area of the poles reserved for Licensee's attachments as set forth below. In the event that there is inadequate space within Licensee space due to existing attachments, and the pole needs to be replaced with a taller pole, the cost for this work shall be borne by the Licensee.

Pole Size	Setting Depth	Licensee's Standard Space	Point of Beginning of Standard Space from Top of Pole
35'	6'	4'	13-1/3'
40' (1)(5)	6'	4'	20-1/3'
45' (1)	6-1/2'	4'	20-1/3'
40' (2)(3)	6'	4'	13-1/3'
45' (2)(3)	6-1/2'	4'	13-1/3'
40' (4)	6'	2'	13-1/3'

- (1) Equipment pole for Owner.
- (2) Non-equipment pole for Owner.
- (3) Equipment pole for Third Party User
- (4) Street crossing poles.
- (5) For only poles accessible by pedestrian traffic, provided that at alley locations Licensee's standard space shall commence 18-1/3 feet from the top of the pole.

- B. For the purposes of this Agreement, all other space upon any pole, other than Licensee's standard space, shall be deemed Owner's standard space.

- C. Where existing equipment (as of the date of this Agreement) of either Owner or Licensee is located in the other's standard space, it shall so remain until the opportunity arises to relocate it without undue burden or expense. In the interim, any new or additional equipment shall be installed to conform with the location of existing equipment. When either party requires full use of its standard space for installation of new or replacement equipment, the other party will cooperate with the requesting party to relocate its equipment in a commercially reasonable manner. Such relocation in all cases shall be accomplished in a maximum of forty-five (45) days after the request. In emergency service situations, the party whose equipment must be relocated will complete such relocation as soon as practicable.

- D. Owner retains and shall have the unrestricted right to use or license Owner's standard space, provided such use complies with the provisions of Section 2 herein.
- E. In the event of other third party attachments to poles covered by this Agreement, communication attachments shall be required to be made above the standard space of Licensee and such attachments shall maintain a minimum one foot (1') clearance from other licensee's facilities and shall be on the same side of pole as other licensee's facilities, unless specifically authorized by Owner.
- F. From and after the date of this Agreement, any subsequent third party attaching to a joint use pole shall reimburse Owner or Licensee their respective costs for changing the location of their facilities, erecting or replacing poles, or relocating or readjusting their facilities in order to accommodate said third party's facilities. Provided, however, where either Owner or Licensee are then in violation of any Code or Order under Section 2 herein at the time of said third party attachment, Owner or Licensee shall relocate that portion of their non-conforming facility without charge.

#### Section 5. Erecting, Replacing or Relocating Poles.

- A. Whenever it is necessary to change the location of a jointly-used pole, by reason of any State, Municipal, or other governmental requirement, or the requirements of a private property owner, the Owner first shall give written notice thereof to Licensee, specifying when the relocated pole is available for attachment. The Licensee shall, at the time so specified, transfer its attachments to the newly-located pole at Licensee's expense.
- B. Whenever a new pole is erected solely to address Licensee requirements within the territory covered by this Agreement, either as an additional pole line, or as an extension of an existing pole line, or as replacement of existing pole(s), Licensee shall first notify the Owner, in writing (at least forty-five (45) days prior to such need), with written plans showing the proposed location and character of the new poles. Licensee shall be responsible for the costs of the new pole or poles and said shall be payable prior to commencement of the work. Owner is not required to erect additional poles or extending pole lines that do not benefit Owner.
- C. The cost of erecting new or replacement joint use poles related to normal maintenance, relocation, or end of life, shall be borne by the Owner. However, each party shall place, at its sole expense, its own attachments on the new joint use poles and place any necessary supports to sustain any unbalanced loads caused by their respective attachments. In cases of replacement of existing joint use poles Licensee shall, within sixty (60) days after receipt of written notice from Owner, transfer its facilities. In case of emergency or immediate need, Licensee may be required to transfer on shorter notice. Should the Licensee fail to relocate to a replaced pole within the 60 days, Owner may relocate Licensee attachments with

either verbal or written prior notice to Licensee, and Licensee agrees to reimburse Owner for its reasonable costs incurred in such relocate.

- D. Whenever the Licensee requires a change in location of a jointly-used pole, the Licensee shall first give written notice to Owner specifying the time requirements of such proposed relocation, and the Owner shall, if it does not wish to discontinue the existing pole from joint use as herein provided, relocate such pole by the date specified or within sixty (60) days thereafter in the application for relocation. The cost of relocating such pole by the Owner and the transfer of Owner's attachments thereon shall be at the sole expense of Licensee, which shall be paid to Owner within 30 days of invoice. In the event of emergency situations, the provisions calling for written notification may be waived, by the Superintendent of Electric Utility or his delegated nominee, provided prior verbal notice is given to the Superintendent of Electric Utility.
- E. Whenever it is necessary to replace a defective pole, the procedures set forth in paragraph A of this Section 5 shall be employed.
- F. A replacement pole shall be set by the Owner, in the original position or within a reasonable distance of the original pole position or in the position agreed upon between the Owner and the Licensee.
- G. Whenever it is necessary to change a location of a jointly-used pole, or to erect a new pole, or to relocate or readjust Owner's or Licensee's facilities upon these poles due to the requirements of a subsequent Licensee's needs or third party need, Owner and Licensee shall bill their respective costs therefore (rearrangement costs, plant loss, net removal costs, transfer cost, etc.) to said new Licensee or third party. Owner shall give Licensee sixty (60) days' notice of such relocation. Licensee transfer to any new pole set due to relocation for subsequent licensee or third party will be subject to paragraph C of this Section 5.

#### Section 6. Right of Way for Licensee's Attachments.

Licensee hereby acknowledges and agrees that Owner has tendered no assurance, guarantee or warranty as to Licensee's legal right, title or interest to be located within any easement or right of way area upon which joint use poles are located; and, in the event, objections are made to Licensee's use of said poles, and Licensee is unable to resolve said objections within a reasonable time, the Owner may, upon thirty (30) days' written notice to Licensee, or in the event of emergency, on shorter written or verbal notice followed by written notice, require Licensees to remove its attachments from the subject poles at Licensee's sole expense. However, on any new additions or extensions of pole lines, the Owner shall: (1) attempt to secure right-of-way permits applicable to both parties, or (2) notify the Licensee that the Owner is unable to obtain joint right-of-way, but Owner shall not be required to utilize power of eminent domain.

#### Section 7. Maintenance of Poles and Attachments.

Licensee shall, at its own expense, maintain its attachments upon joint use poles in a safe and serviceable condition. Licensee further agrees that it shall maintain and repair its attachments so as not to interfere with Owner's use or maintenance of said poles. Moreover, in the event that Owner determines that any of Licensee's facilities are in an unsafe condition, Licensee, at its own expense, shall relocate or replace said facilities, or transfer them to substituted poles, or perform such other work in connection with said facilities that may be required to place them in a safe condition. However, in the case of emergencies, Owner may temporarily relocate Licensee's facilities to substituted poles, and the cost of such relocation, shall be reimbursed by the Licensee to Owner.

#### Section 8. Abandonment of Jointly-Used Poles.

- A. Licensee may abandon the use of a jointly-used pole at any time by first giving written notice thereof to the Owner and thereafter removing Licensee's attachments within ninety (90) days of said written notice. Written notice shall be in the form shown in Exhibit B.
- B. In the event that Owner intends to remove all of its attachments and to terminate joint use of any pole, Owner shall first give Licensee written notice thereof and shall thereafter remove such attachments within ninety (90) days of said written notice.

#### Section 9. Rentals and Other Payments.

- A. There shall be a rental fee for each pole attached to or reserved by the Licensee. The rental period for joint use poles shall be one (1) year. The Owner shall, before January 10<sup>th</sup> each calendar year, issue a report showing the number of poles to which Licensee has made attachments or reserved therefore as of December 1 of the previous year. Unless Licensee establishes a different number within twenty (20) calendar days after receiving such report, payment for such number shall be due forty-five (45) days following the issuance of the statement by the Owner. In the event of a dispute regarding the number of rented poles, Licensee shall specifically designate, in writing, the pole locations under dispute and until resolved, such disputed pole quantities will be exempt from rental payment until resolved and then payment shall be processed immediately, but not later than seventy-five (75) days after the issuance of the report. However, failure to give the report prior to the date mentioned shall not deprive Owner of rental fees. All poles not under dispute shall be paid for at the annual fee.
- B. The amount of the annual rental fee for pole attachments shall be \$27.99 per pole for the first year in which Licensee is attached to Owner's poles for an entire year. If Licensee is permitted to attach to a pole in the first six months of the year, the annual rental fee for the remainder of that year will be \$20.99 for that pole. If Licensee is permitted to attach to a pole in the last six months of the year, the annual rental fee for the remainder of that year will be \$7.00 for that pole. Subsequent

years pole attachment fees will escalate from the \$27.99 per pole per year fee at a rate of 3% per year.

- C. Payments for other amounts due under this Agreement shall be invoiced upon completion of the work and payable by the Licensee within forty-five (45) days' receipt thereof and shall accrue a late payment penalty of 1-1/2% per month on the unpaid balance from the billing date for any late payment.

#### Section 10. Defaults.

If Licensee shall default in any of its obligations under this contract, Licensee will have thirty (30) days after receipt of written notice of default from Owner to cure such default, subject to matters of Force Majeure, e.g. Acts of God, fire, terrorism, riot or war, work stoppages, governmental orders, or any other cause beyond the reasonable control of Licensee. If such default continues thirty (30) days after notice with no cure or if Licensee has not started to cure, all rights of Licensee hereunder shall be suspended, including its right to occupy jointly-used poles. If such default shall continue for a period of thirty (30) days after such suspension, the Owner hereunder may: (1) terminate this Agreement if such default affects all Attachments; or (2) terminate Licensee's right to occupy the pole(s) as to which such default occurred. Such termination shall not extinguish Licensee's obligation to pay for liability already incurred.

#### Section 11. Indemnification.

The Licensee shall indemnify, defend and hold harmless the Owner, its elected and appointed officers, employees and agents, from any and all third party claims, damages, judgments, losses, costs and expenses (including attorneys' fees), for physical injury or damage to tangible property that arises directly out of Licensee's use, construction of, reconstruction of, or modification of poles pursuant to this Agreement; provided, that notice in writing shall be immediately given to the Licensee of any claim or suit against the Owner which, by the terms hereof, the Licensee shall be obligated to defend, or against which the Licensee has hereby agreed to save and keep harmless the Owner and provided further that the Owner shall furnish to the Licensee all information in its possession relating to said claim or suit, and cooperate with the Licensee in the defense of said claim or suit. The governing body of the Owner may, if it so desires, assist in defending any such claim or suit, but solely under the direction of the Licensee or its attorneys and the Licensee shall not be required to reimburse the Owner for expenses incurred by it in case of the election so to assist. Nothing in this section requires Licensee to defend, indemnify or save harmless Owner to the extent a suit or claim, or any actual or alleged damage, loss or expense is caused by Owner or any third party.

Contractors performing work on behalf of Licensee shall provide the Owner with a Certificate of Insurance to cover all locations of the work being done on behalf of the Licensee, and shall name the City of Geneva as additional insured. Certificates of Insurance shall be filed no later than 10 days prior to commencement of work. Policies shall contain a non-cancellation clause provision preventing cancellation without 30 days written prior notice to City (ten (10) days in the event of nonpayment of premiums by Licensee). Certificates of Insurance shall be completed on the ACCORD 25-S form.

Section 12. Service of Notices.

All written notices required under this Agreement shall be given by posting the same in first class mail to Owner as follows:

Superintendent of Electrical Services  
City of Geneva  
1800 South Street  
Geneva, Illinois 60134

and to Licensee as follows:

Metro Fibernet, LLC  
Attn: Kevin Stelmach  
3701 Communications Way  
Evansville, Indiana 47715

With a copy to:

Metro Fibernet, LLC  
Attn: John Campbell, General Counsel  
8837 Bond St.  
Overland Park, Kansas 66214

or to such address as the parties hereto may from time to time specify.

Section 13. Term of Agreement.

Subject to the provisions of Section 10 herein, this Agreement shall continue in force and effect for a period of ten (10) years from and after the Effective Date of this Agreement (the “Initial Term”), and thereafter from year to year (each year a “Renewal Term”) unless terminated by either party by giving written notice not less than one (1) year prior to the end of the Initial Term or any Renewal Term. Notwithstanding any such termination, this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

Section 14. Assignment of Rights.

Except as otherwise provided in this Agreement, Licensee shall not assign any of its rights or interests hereunder, or in any of the jointly used poles or attachments covered by this Agreement, to any firm, corporation, or individual, without the written consent of Owner, which shall not be unreasonably withheld, conditioned or denied. However, nothing herein contained shall prevent or limit the right of Licensee to lease or transfer its property, rights, privileges and/or franchises to another corporation organized for the purpose of conducting a business of the same general character as that of Licensee, or enter any merger, reorganization, consolidation or sale or all or substantially all of its ownership or assets, and, in the case of such lease, transfer, merger,

reorganization, consolidation or sale, its rights and obligations hereunder shall pass to, and be acquired and assumed by the purchaser on foreclosure, the transferee, lessee, assignee, merging, reorganized, consolidating or purchasing company, as the case may be. Subject to all of the terms and conditions of this Agreement, Licensee may permit any corporation or company conducting a business of the same general character as that of Licensee and owned, operated, leased, and controlled by it, associated or affiliated with it in interest, or connected with it, to all or any part of the space allotted hereunder on any pole covered by this Agreement for the attachments used by Licensee, in the conduct of its said business. All such attachments maintained on any such pole shall be considered as the attachments of Licensee, and the rights, obligations and liabilities of such assignee under this Agreement, with respect to such attachments, shall be the same if it were the actual owner thereof. Notwithstanding any of the provisions in this section, Licensee shall not be released from any of its obligations hereunder.

#### Section 15. Scope of Right of Licensee.

No use by Licensee of Owner's poles under the terms of this Agreement, however extended, shall create or vest in Licensee any ownership or property rights in said poles, but Licensee's rights herein shall be and remain a mere license. For poles upon which Licensee has reserved space, nothing herein contained shall be construed to compel Owner to maintain any of such poles for any period longer than demanded by Owner's own service requirements.

#### Section 16. Waiver of Terms or Conditions.

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, and the same shall be and remain at all times in full force and effect.

#### Section 17. Existing Contracts or Agreements.

All existing agreements between the parties to this Agreement, whether verbal or written, covering the joint use or joint ownership of poles are by mutual consent, hereby abrogated and annulled.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed effective as of the effective date shown on the first page of this Agreement.

**THE CITY OF GENEVA**

**METRO FIBERNET, LLC**

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

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

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

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

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

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

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

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

Witness:

Witness:

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

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

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

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

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

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

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

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

**EXHIBIT A**  
**POLE ATTACHMENT APPLICATION AND PERMIT**

Permit No. \_\_\_\_\_

Date \_\_\_\_\_

Mr./Ms. \_\_\_\_\_

CITY OF GENEVA MUNICIPAL ELECTRIC UTILITY

In accordance with the terms and conditions of the agreement between our respective companies dated \_\_\_\_\_, application is hereby requested for permission to make attachments to \_\_\_\_\_ City poles as indicated on the sketch attached hereto.

By \_\_\_\_\_  
\_\_\_\_\_

PERMIT

Permission is hereby granted to make the attachments described in the above application subject to all terms and conditions referred to above and in said agreement, and further subject to acceptance by the applicant of the obligation to pay the amount shown below for changes or rearrangements of poles or equipment as indicated below or on a statement attached hereto, and the applicable rental charges for the present year in progress:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Estimated amount to paid for above changes \$ \_\_\_\_\_ W.O. No. \_\_\_\_\_

Rental charge for year in progress: \_\_\_\_\_ by \_\_\_\_\_ = \$ \_\_\_\_\_

No. City Poles	Rate	Rental Charge
----------------	------	---------------

The cost of rearrangements provided is an estimate based on preliminary engineering. Such cost shall be reconciled upon completion of the job to establish the actual cost of the work performed

by the City. Applicant is responsible for the actual cost and will be issues a refund within 60 days of reconciliation of the job, if the estimated costs exceeds the actual cost. Should the actual cost exceed the estimated cost, Application shall be issued a bill with explanation of the actual costs and the reason or reasons that the actual cost was greater than the estimate. Such bill shall be payable, in accordance with Section 9, Paragraph C.

Above charges accepted:

CITY OF GENEVA MUNICIPAL ELECTRIC UTILITY

By \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_, APPLICANT

By \_\_\_\_\_

Date \_\_\_\_\_

PERPETUAL INVENTORY RECORD

City poles in use to date \_\_\_\_\_

City poles added by this permit \_\_\_\_\_

Total City poles in use \_\_\_\_\_

**EXHIBIT B**  
**NOTIFICATION OF POLE ATTACHMENT REMOVAL**

Removal Notice No. \_\_\_\_\_

Date \_\_\_\_\_

Mr./Ms. \_\_\_\_\_

**CITY OF GENEVA MUNICIPAL ELECTRIC UTILITY**

In accordance with the terms and conditions of the agreement between our respective companies dated \_\_\_\_\_, application notification of removal of attachments to \_\_\_\_\_ City poles on the City of Geneva as indicated on the sketch hereto is hereby given:

By \_\_\_\_\_

Date \_\_\_\_\_

Notice Acknowledged

Date \_\_\_\_\_

**CITY OF GENEVA**

By \_\_\_\_\_

**INVENTORY**

City poles in use to date \_\_\_\_\_

City poles discontinued by this notice \_\_\_\_\_

Total City poles in use \_\_\_\_\_

## Resolution No. 2017-99

JOINT USE POLE ATTACHMENT AGREEMENT

This Agreement made this 18th day of September, 2017 (hereinafter the "Effective Date" which is the date the last party executes this Agreement) by and between THE CITY OF GENEVA, a municipal corporation of the State of Illinois, hereinafter referred to as "Owner", and METRO FIBERNET, LLC, a Nevada limited liability company, hereinafter referred to as "Licensee".

## WITNESSES:

WHEREAS, the City of Geneva and Licensee desire to establish joint use of poles owned by the City of Geneva under the terms and conditions set forth below:

WHEREAS, among the purposes of this Agreement are to reduce the number of dual pole lines utilized by both parties and to provide better economy of service to customers of both parties; and

WHEREAS, the conditions determining such joint use shall depend upon the service requirements to be met by each party, including considerations of safety and economy.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, their successors and assigns, do hereby agree as follows:

Section 1. Scope of Agreement.

This Agreement covers all jointly-used poles within the electrical service area within corporate limits as now or hereafter existing of the City of Geneva. This Agreement includes all wood poles ("poles") which are: (a) presently owned by the Owner, or (b) as hereafter erected by the Owner, or (c) as may be purchased from time to time by the Owner from the Licensee in accordance with the procedures hereinafter set forth. The Owner will deny Licensee's request to attach to its poles only on the grounds of capacity, safety, reliability and engineering. This Agreement shall not exempt the Licensee from the requirements of the Owner's Subdivision Control Ordinance, or its successor, or such other ordinance(s) that relate to placement of utility systems.

Section 2. Code Specifications.

The joint use, construction and maintenance of poles covered by this Agreement shall be in conformity with the Illinois Commerce Commission's General Order 160 (1968), the National Electrical Safety Code (2012), and the National Electrical Code (2014). Any modifications, amendments or changes in said Codes shall be reviewed and mutually agreed to by the parties. However, in no event shall the Owner be bound by the jurisdiction of the Illinois Commerce Commission or any successor in interest thereto. Any change in the Illinois Commerce Commission's General Order 160 affecting this Agreement, shall be tendered to the Owner by Licensee within thirty (30) days of the effective date of such change. Any joint use pole which does not conform to the most stringent standards as set forth above shall (a) be brought to the

attention of Owner by Licensee, or vice versa, as the case may be, and (b) brought into such conformity with the standards of the National Electric Code or the National Electric Safety Code, as the case may be, as soon as practical, but not later than sixty (60) days after notice of discovery of such non-conformity, Acts of God excepted. However, in the event Owner has scheduling conflicts, Owner shall be given such additional time as may be required, and shall set forth a proposed schedule therefor. If Licensee's attachment is the sole cause of the non-conformity with standards, Licensee shall be responsible for the cost to bring the attachment into conformance. Owner will only be responsible for costs related to conformance as if the Licensee was not attached to the pole. Resolutions of any disputes related to the costs of work related to standard conformity shall be resolved by the Licensee removing its attachment from the pole.

### Section 3. Placing, Transferring or Rearranging of Pole Attachments.

- A. Definitions. For the purposes of this Section, the following terms will have the meaning ascribed herein:
- a. The term "Make Ready Costs" as used in this Agreement means the reasonable actual costs incurred performing work necessary to provide adequate space for Licensees proposed attachment per the National Electric Safety Code (NESC), directly and exclusively associated with accommodating Licensee's attachments, and within 45 days following Licensee's written request, Owner shall provide to Licensee detail of such costs sufficient for Licensee to verify the reasonableness of the costs or charges.
  - b. The term "Make Ready Estimate" as used in this Agreement means Owner's estimate of Make Ready Costs prepared for Owner pursuant to Section 3.B. below.
  - c. The term "Make Ready Work" means all work, as determined by Owner, required to accommodate Licensee's attachments and to meet the National Electric Safety Code ("NESC") or other reasonable requirements of Owner, including rearrangements and/or transfer of existing facilities.
- B. Whenever the Licensee desires to reserve space on any pole which Licensee is not already using, Licensee shall make written application to the Owner specifying in such application (1) the location of the pole in question, (2) the number or kind of attachments which it desires to place thereon, (3) any Make Ready Work proposed to complete such attachment in conformance with all NESC safety codes, and (4) the proposed completion date for any Make Ready Work. Licensee shall submit such application upon a form as depicted in Exhibit A. Within twenty (20) business days after receipt of such application, the Owner shall notify the Licensee, in writing, whether or not said pole is excluded from joint use. In the event said pole is not so excluded, Owner shall provide its Make Ready Estimate. If the Make Ready Estimate is approved by Licensee, and after completion by Owner of any transferring or rearranging of Owner's attachments, including any necessary pole replacements as provided in Section 5 below, the Licensee shall have the right to use such space for its attachments and circuits as required in the application and with approval of Owner. In emergency service situations where written application

is not possible, Licensee may make application orally to the Superintendent of Electric Utility or its delegated nominee, which shall be forthwith reduced to writing as provided by this subparagraph.

- C. Upon notice that the Make Ready Estimate has been accepted by Licensee, Owner shall proceed with the Make Ready Work covered by the Make Ready Estimate. The Parties agree that Owner will perform Make Ready work within the power zone on the poles designated by Licensee, and Licensee will manage and perform Make Ready Work and adjustments necessary in the communications zone on such poles. Owner shall undertake commercially reasonable efforts to complete its Make Ready Work by the estimated completion date. Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work, including but not limited to allowing Licensee to complete the Make Ready Work using Owner-approved contractors. Notwithstanding the foregoing, in the event Owner fails to complete the Make Ready Work within 90 days after receiving notice of Licensee's acceptance of the Make Ready Estimate, Licensee may complete such Make Ready work using Owner-approved contractors. Upon completion of all Make Ready Work, Owner shall provide an itemized invoice for the actual cost of the Make Ready Work within forty-five (45) days after completion of the Make Ready Work and Licensee shall pay such actual costs within forty-five (45) days from the date the invoice is received by Licensee, provided however that to the extent Licensee in good faith disputes the costs detailed in the invoice, Licensee will remit payment for the undisputed costs as set forth herein.

Upon completion of the Make Ready Work and payment of the Make Ready Costs, Owner shall advise Licensee that such poles are available for attachment.

- D. In the event that Owner reasonably determines that any pole has inadequate capacity to accommodate Licensee's attachments and must be replaced solely to make capacity for Licensee attachments, Licensee agrees to reimburse Owner for the (1) actual cost of the new pole including installation thereof; (2) the actual cost of transferring Owner's facilities to the new pole; and (3) any other actual costs incurred by Owner in such replacement, such as the expense of removing the old pole.
- E. Except as otherwise provided herein, Owner and Licensee shall each place, rearrange, transfer, remove and maintain its respective attachments, including any necessary tree trimming or cutting, at its own expense and shall at all times perform such work within sixty (60) days of notice by the other party, Acts of God excepted.
- F. For purposes of this Agreement, "attachment" or "attachments" means Licensee's fiber optic and other cable, wires, strands and fixtures used for the support of such fiber, cable wires and strands, that is used by Licensee in providing or allowing others to provide cable and/or telecommunications service and that is placed on Owner poles pursuant to this Agreement.

- G. Subject to resolving any safety, reliability or engineering concerns in advance, and without Owner's prior approval but upon prior notice to Owner, Licensee may overlash facilities on its own attachments.

Section 4. Standard Space.

- A. For the purposes of this Agreement, Licensee's "standard space" shall be defined as that area of the poles reserved for Licensee's attachments as set forth below. In the event that there is inadequate space within Licensee space due to existing attachments, and the pole needs to be replaced with a taller pole, the cost for this work shall be borne by the Licensee.

Pole Size	Setting Depth	Licensee's Standard Space	Point of Beginning of Standard Space from Top of Pole
35'	6'	4'	13-1/3'
40' (1)(5)	6'	4'	20-1/3'
45' (1)	6-1/2'	4'	20-1/3'
40' (2)(3)	6'	4'	13-1/3'
45' (2)(3)	6-1/2'	4'	13-1/3'
40' (4)	6'	2'	13-1/3'

- (1) Equipment pole for Owner.
- (2) Non-equipment pole for Owner.
- (3) Equipment pole for Third Party User
- (4) Street crossing poles.
- (5) For only poles accessible by pedestrian traffic, provided that at alley locations Licensee's standard space shall commence 18-1/3 feet from the top of the pole.

- B. For the purposes of this Agreement, all other space upon any pole, other than Licensee's standard space, shall be deemed Owner's standard space.

- C. Where existing equipment (as of the date of this Agreement) of either Owner or Licensee is located in the other's standard space, it shall so remain until the opportunity arises to relocate it without undue burden or expense. In the interim, any new or additional equipment shall be installed to conform with the location of existing equipment. When either party requires full use of its standard space for installation of new or replacement equipment, the other party will cooperate with the requesting party to relocate its equipment in a commercially reasonable manner. Such relocation in all cases shall be accomplished in a maximum of forty-five (45) days after the request. In emergency service situations, the party whose equipment must be relocated will complete such relocation as soon as practicable.

- D. Owner retains and shall have the unrestricted right to use or license Owner's standard space, provided such use complies with the provisions of Section 2 herein.
- E. In the event of other third party attachments to poles covered by this Agreement, communication attachments shall be required to be made above the standard space of Licensee and such attachments shall maintain a minimum one foot (1') clearance from other licensee's facilities and shall be on the same side of pole as other licensee's facilities, unless specifically authorized by Owner.
- F. From and after the date of this Agreement, any subsequent third party attaching to a joint use pole shall reimburse Owner or Licensee their respective costs for changing the location of their facilities, erecting or replacing poles, or relocating or readjusting their facilities in order to accommodate said third party's facilities. Provided, however, where either Owner or Licensee are then in violation of any Code or Order under Section 2 herein at the time of said third party attachment, Owner or Licensee shall relocate that portion of their non-conforming facility without charge.

Section 5. Erecting, Replacing or Relocating Poles.

- A. Whenever it is necessary to change the location of a jointly-used pole, by reason of any State, Municipal, or other governmental requirement, or the requirements of a private property owner, the Owner first shall give written notice thereof to Licensee, specifying when the relocated pole is available for attachment. The Licensee shall, at the time so specified, transfer its attachments to the newly-located pole at Licensee's expense.
- B. Whenever a new pole is erected solely to address Licensee requirements within the territory covered by this Agreement, either as an additional pole line, or as an extension of an existing pole line, or as replacement of existing pole(s), Licensee shall first notify the Owner, in writing (at least forty-five (45) days prior to such need), with written plans showing the proposed location and character of the new poles. Licensee shall be responsible for the costs of the new pole or poles and said shall be payable prior to commencement of the work. Owner is not required to erect additional poles or extending pole lines that do not benefit Owner.
- C. The cost of erecting new or replacement joint use poles related to normal maintenance, relocation, or end of life, shall be borne by the Owner. However, each party shall place, at its sole expense, its own attachments on the new joint use poles and place any necessary supports to sustain any unbalanced loads caused by their respective attachments. In cases of replacement of existing joint use poles Licensee shall, within sixty (60) days after receipt of written notice from Owner, transfer its facilities. In case of emergency or immediate need, Licensee may be required to transfer on shorter notice. Should the Licensee fail to relocate to a replaced pole within the 60 days, Owner may relocate Licensee attachments with

either verbal or written prior notice to Licensee, and Licensee agrees to reimburse Owner for its reasonable costs incurred in such relocate.

- D. Whenever the Licensee requires a change in location of a jointly-used pole, the Licensee shall first give written notice to Owner specifying the time requirements of such proposed relocation, and the Owner shall, if it does not wish to discontinue the existing pole from joint use as herein provided, relocate such pole by the date specified or within sixty (60) days thereafter in the application for relocation. The cost of relocating such pole by the Owner and the transfer of Owner's attachments thereon shall be at the sole expense of Licensee, which shall be paid to Owner within 30 days of invoice. In the event of emergency situations, the provisions calling for written notification may be waived, by the Superintendent of Electric Utility or his delegated nominee, provided prior verbal notice is given to the Superintendent of Electric Utility.
- E. Whenever it is necessary to replace a defective pole, the procedures set forth in paragraph A of this Section 5 shall be employed.
- F. A replacement pole shall be set by the Owner, in the original position or within a reasonable distance of the original pole position or in the position agreed upon between the Owner and the Licensee.
- G. Whenever it is necessary to change a location of a jointly-used pole, or to erect a new pole, or to relocate or readjust Owner's or Licensee's facilities upon these poles due to the requirements of a subsequent Licensee's needs or third party need, Owner and Licensee shall bill their respective costs therefore (rearrangement costs, plant loss, net removal costs, transfer cost, etc.) to said new Licensee or third party. Owner shall give Licensee sixty (60) days' notice of such relocation. Licensee transfer to any new pole set due to relocation for subsequent licensee or third party will be subject to paragraph C of this Section 5.

#### Section 6. Right of Way for Licensee's Attachments.

Licensee hereby acknowledges and agrees that Owner has tendered no assurance, guarantee or warranty as to Licensee's legal right, title or interest to be located within any easement or right of way area upon which joint use poles are located; and, in the event, objections are made to Licensee's use of said poles, and Licensee is unable to resolve said objections within a reasonable time, the Owner may, upon thirty (30) days' written notice to Licensee, or in the event of emergency, on shorter written or verbal notice followed by written notice, require Licensees to remove its attachments from the subject poles at Licensee's sole expense. However, on any new additions or extensions of pole lines, the Owner shall: (1) attempt to secure right-of-way permits applicable to both parties, or (2) notify the Licensee that the Owner is unable to obtain joint right-of-way, but Owner shall not be required to utilize power of eminent domain.

#### Section 7. Maintenance of Poles and Attachments.

Licensee shall, at its own expense, maintain its attachments upon joint use poles in a safe and serviceable condition. Licensee further agrees that it shall maintain and repair its attachments so as not to interfere with Owner's use or maintenance of said poles. Moreover, in the event that Owner determines that any of Licensee's facilities are in an unsafe condition, Licensee, at its own expense, shall relocate or replace said facilities, or transfer them to substituted poles, or perform such other work in connection with said facilities that may be required to place them in a safe condition. However, in the case of emergencies, Owner may temporarily relocate Licensee's facilities to substituted poles, and the cost of such relocation, shall be reimbursed by the Licensee to Owner.

#### Section 8. Abandonment of Jointly-Used Poles.

- A. Licensee may abandon the use of a jointly-used pole at any time by first giving written notice thereof to the Owner and thereafter removing Licensee's attachments within ninety (90) days of said written notice. Written notice shall be in the form shown in Exhibit B.
- B. In the event that Owner intends to remove all of its attachments and to terminate joint use of any pole, Owner shall first give Licensee written notice thereof and shall thereafter remove such attachments within ninety (90) days of said written notice.

#### Section 9. Rentals and Other Payments.

- A. There shall be a rental fee for each pole attached to or reserved by the Licensee. The rental period for joint use poles shall be one (1) year. The Owner shall, before January 10<sup>th</sup> each calendar year, issue a report showing the number of poles to which Licensee has made attachments or reserved therefore as of December 1 of the previous year. Unless Licensee establishes a different number within twenty (20) calendar days after receiving such report, payment for such number shall be due forty-five (45) days following the issuance of the statement by the Owner. In the event of a dispute regarding the number of rented poles, Licensee shall specifically designate, in writing, the pole locations under dispute and until resolved, such disputed pole quantities will be exempt from rental payment until resolved and then payment shall be processed immediately, but not later than seventy-five (75) days after the issuance of the report. However, failure to give the report prior to the date mentioned shall not deprive Owner of rental fees. All poles not under dispute shall be paid for at the annual fee.
- B. The amount of the annual rental fee for pole attachments shall be \$27.99 per pole for the first year in which Licensee is attached to Owner's poles for an entire year. If Licensee is permitted to attach to a pole in the first six months of the year, the annual rental fee for the remainder of that year will be \$20.99 for that pole. If Licensee is permitted to attach to a pole in the last six months of the year, the annual rental fee for the remainder of that year will be \$7.00 for that pole. Subsequent

years pole attachment fees will escalate from the \$27.99 per pole per year fee at a rate of 3% per year.

- C. Payments for other amounts due under this Agreement shall be invoiced upon completion of the work and payable by the Licensee within forty-five (45) days' receipt thereof and shall accrue a late payment penalty of 1-1/2% per month on the unpaid balance from the billing date for any late payment.

#### Section 10. Defaults.

If Licensee shall default in any of its obligations under this contract, Licensee will have thirty (30) days after receipt of written notice of default from Owner to cure such default, subject to matters of Force Majeure, e.g. Acts of God, fire, terrorism, riot or war, work stoppages, governmental orders, or any other cause beyond the reasonable control of Licensee. If such default continues thirty (30) days after notice with no cure or if Licensee has not started to cure, all rights of Licensee hereunder shall be suspended, including its right to occupy jointly-used poles. If such default shall continue for a period of thirty (30) days after such suspension, the Owner hereunder may: (1) terminate this Agreement if such default affects all Attachments; or (2) terminate Licensee's right to occupy the pole(s) as to which such default occurred. Such termination shall not extinguish Licensee's obligation to pay for liability already incurred.

#### Section 11. Indemnification.

The Licensee shall indemnify, defend and hold harmless the Owner, its elected and appointed officers, employees and agents, from any and all third party claims, damages, judgments, losses, costs and expenses (including attorneys' fees), for physical injury or damage to tangible property that arises directly out of Licensee's use, construction of, reconstruction of, or modification of poles pursuant to this Agreement; provided, that notice in writing shall be immediately given to the Licensee of any claim or suit against the Owner which, by the terms hereof, the Licensee shall be obligated to defend, or against which the Licensee has hereby agreed to save and keep harmless the Owner and provided further that the Owner shall furnish to the Licensee all information in its possession relating to said claim or suit, and cooperate with the Licensee in the defense of said claim or suit. The governing body of the Owner may, if it so desires, assist in defending any such claim or suit, but solely under the direction of the Licensee or its attorneys and the Licensee shall not be required to reimburse the Owner for expenses incurred by it in case of the election so to assist. Nothing in this section requires Licensee to defend, indemnify or save harmless Owner to the extent a suit or claim, or any actual or alleged damage, loss or expense is caused by Owner or any third party.

Contractors performing work on behalf of Licensee shall provide the Owner with a Certificate of Insurance to cover all locations of the work being done on behalf of the Licensee, and shall name the City of Geneva as additional insured. Certificates of Insurance shall be filed no later than 10 days prior to commencement of work. Policies shall contain a non-cancellation clause provision preventing cancellation without 30 days written prior notice to City (ten (10) days in the event of nonpayment of premiums by Licensee). Certificates of Insurance shall be completed on the ACCORD 25-S form.

Section 12. Service of Notices.

All written notices required under this Agreement shall be given by posting the same in first class mail to Owner as follows:

Superintendent of Electrical Services  
City of Geneva  
1800 South Street  
Geneva, Illinois 60134

and to Licensee as follows:

Metro Fibernet, LLC  
Attn: Kevin Stelmach  
3701 Communications Way  
Evansville, Indiana 47715

With a copy to:

Metro Fibernet, LLC  
Attn: John Campbell, General Counsel  
8837 Bond St.  
Overland Park, Kansas 66214

or to such address as the parties hereto may from time to time specify.

Section 13. Term of Agreement.

Subject to the provisions of Section 10 herein, this Agreement shall continue in force and effect for a period of ten (10) years from and after the Effective Date of this Agreement (the "Initial Term"), and thereafter from year to year (each year a "Renewal Term") unless terminated by either party by giving written notice not less than one (1) year prior to the end of the Initial Term or any Renewal Term. Notwithstanding any such termination, this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

Section 14. Assignment of Rights.

Except as otherwise provided in this Agreement, Licensee shall not assign any of its rights or interests hereunder, or in any of the jointly used poles or attachments covered by this Agreement, to any firm, corporation, or individual, without the written consent of Owner, which shall not be unreasonably withheld, conditioned or denied. However, nothing herein contained shall prevent or limit the right of Licensee to lease or transfer its property, rights, privileges and/or franchises to another corporation organized for the purpose of conducting a business of the same general character as that of Licensee, or enter any merger, reorganization, consolidation or sale or all or substantially all of its ownership or assets, and, in the case of such lease, transfer, merger,

reorganization, consolidation or sale, its rights and obligations hereunder shall pass to, and be acquired and assumed by the purchaser on foreclosure, the transferee, lessee, assignee, merging, reorganized, consolidating or purchasing company, as the case may be. Subject to all of the terms and conditions of this Agreement, Licensee may permit any corporation or company conducting a business of the same general character as that of Licensee and owned, operated, leased, and controlled by it, associated or affiliated with it in interest, or connected with it, to all or any part of the space allotted hereunder on any pole covered by this Agreement for the attachments used by Licensee, in the conduct of its said business. All such attachments maintained on any such pole shall be considered as the attachments of Licensee, and the rights, obligations and liabilities of such assignee under this Agreement, with respect to such attachments, shall be the same if it were the actual owner thereof. Notwithstanding any of the provisions in this section, Licensee shall not be released from any of its obligations hereunder.

Section 15. Scope of Right of Licensee.

No use by Licensee of Owner's poles under the terms of this Agreement, however extended, shall create or vest in Licensee any ownership or property rights in said poles, but Licensee's rights herein shall be and remain a mere license. For poles upon which Licensee has reserved space, nothing herein contained shall be construed to compel Owner to maintain any of such poles for any period longer than demanded by Owner's own service requirements.

Section 16. Waiver of Terms or Conditions.

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, and the same shall be and remain at all times in full force and effect.

Section 17. Existing Contracts or Agreements.

All existing agreements between the parties to this Agreement, whether verbal or written, covering the joint use or joint ownership of poles are by mutual consent, hereby abrogated and annulled.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed effective as of the effective date shown on the first page of this Agreement.

**THE CITY OF GENEVA**

By: [Signature]  
Name: Kevin R. Burns  
Title: Mayor  
Date: 9-18-17

Witness:  
By: [Signature]  
Name: Roger Gods Kesen  
Title: Clerk  
Date: 9-18-17

**METRO FIBERNET, LLC**

By: [Signature]  
Name: Lohn H. Weber  
Title: CFO  
Date: 10/12/17

Witness:  
By: [Signature]  
Name: Michael G. Smith  
Title: Corporate Counsel  
Date: 10/12/17

**EXHIBIT A**  
**POLE ATTACHMENT APPLICATION AND PERMIT**

Permit No. \_\_\_\_\_

Date \_\_\_\_\_

Mr./Ms. \_\_\_\_\_

CITY OF GENEVA MUNICIPAL ELECTRIC UTILITY

In accordance with the terms and conditions of the agreement between our respective companies dated \_\_\_\_\_, application is hereby requested for permission to make attachments to \_\_\_\_\_ City poles as indicated on the sketch attached hereto.

By \_\_\_\_\_

\_\_\_\_\_

PERMIT

Permission is hereby granted to make the attachments described in the above application subject to all terms and conditions referred to above and in said agreement, and further subject to acceptance by the applicant of the obligation to pay the amount shown below for changes or rearrangements of poles or equipment as indicated below or on a statement attached hereto, and the applicable rental charges for the present year in progress:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Estimated amount to paid for above changes \$ \_\_\_\_\_ W.O. No. \_\_\_\_\_

Rental charge for year in progress: \_\_\_\_\_ by \_\_\_\_\_ = \$ \_\_\_\_\_

No. City Poles	Rate	Rental Charge
----------------	------	---------------

The cost of rearrangements provided is an estimate based on preliminary engineering. Such cost shall be reconciled upon completion of the job to establish the actual cost of the work performed

by the City. Applicant is responsible for the actual cost and will be issues a refund within 60 days of reconciliation of the job, if the estimated costs exceeds the actual cost. Should the actual cost exceed the estimated cost, Application shall be issued a bill with explanation of the actual costs and the reason or reasons that the actual cost was greater than the estimate. Such bill shall be payable, in accordance with Section 9, Paragraph C.

Above charges accepted:

CITY OF GENEVA MUNICIPAL ELECTRIC UTILITY

By \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_, APPLICANT

By \_\_\_\_\_

Date \_\_\_\_\_

PERPETUAL INVENTORY RECORD

City poles in use to date \_\_\_\_\_

City poles added by this permit \_\_\_\_\_

Total City poles in use \_\_\_\_\_

**EXHIBIT B**  
**NOTIFICATION OF POLE ATTACHMENT REMOVAL**

Removal Notice No. \_\_\_\_\_

Date \_\_\_\_\_

Mr./Ms. \_\_\_\_\_

CITY OF GENEVA MUNICIPAL ELECTRIC UTILITY

In accordance with the terms and conditions of the agreement between our respective companies dated \_\_\_\_\_, application notification of removal of attachments to \_\_\_\_\_ City poles on the City of Geneva as indicated on the sketch hereto is hereby given:

By \_\_\_\_\_

Date \_\_\_\_\_

Notice Acknowledged

Date \_\_\_\_\_

CITY OF GENEVA

By \_\_\_\_\_

INVENTORY

City poles in use to date \_\_\_\_\_

City poles discontinued by this notice \_\_\_\_\_

Total City poles in use \_\_\_\_\_

## Resolution No. 2017-99

JOINT USE POLE ATTACHMENT AGREEMENT

This Agreement made this 18th day of September, 2017 (hereinafter the “Effective Date” which is the date the last party executes this Agreement) by and between THE CITY OF GENEVA, a municipal corporation of the State of Illinois, hereinafter referred to as “Owner”, and METRO FIBERNET, LLC, a Nevada limited liability company, hereinafter referred to as “Licensee”.

## WITNESSES:

WHEREAS, the City of Geneva and Licensee desire to establish joint use of poles owned by the City of Geneva under the terms and conditions set forth below:

WHEREAS, among the purposes of this Agreement are to reduce the number of dual pole lines utilized by both parties and to provide better economy of service to customers of both parties; and

WHEREAS, the conditions determining such joint use shall depend upon the service requirements to be met by each party, including considerations of safety and economy.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, their successors and assigns, do hereby agree as follows:

Section 1. Scope of Agreement.

This Agreement covers all jointly-used poles within the electrical service area within corporate limits as now or hereafter existing of the City of Geneva. This Agreement includes all wood poles (“poles”) which are: (a) presently owned by the Owner, or (b) as hereafter erected by the Owner, or (c) as may be purchased from time to time by the Owner from the Licensee in accordance with the procedures hereinafter set forth. The Owner will deny Licensee’s request to attach to its poles only on the grounds of capacity, safety, reliability and engineering. This Agreement shall not exempt the Licensee from the requirements of the Owner’s Subdivision Control Ordinance, or its successor, or such other ordinance(s) that relate to placement of utility systems.

Section 2. Code Specifications.

The joint use, construction and maintenance of poles covered by this Agreement shall be in conformity with the Illinois Commerce Commission’s General Order 160 (1968), the National Electrical Safety Code (2012), and the National Electrical Code (2014). Any modifications, amendments or changes in said Codes shall be reviewed and mutually agreed to by the parties. However, in no event shall the Owner be bound by the jurisdiction of the Illinois Commerce Commission or any successor in interest thereto. Any change in the Illinois Commerce Commission’s General Order 160 affecting this Agreement, shall be tendered to the Owner by Licensee within thirty (30) days of the effective date of such change. Any joint use pole which does not conform to the most stringent standards as set forth above shall (a) be brought to the

attention of Owner by Licensee, or vice versa, as the case may be, and (b) brought into such conformity with the standards of the National Electric Code or the National Electric Safety Code, as the case may be, as soon as practical, but not later than sixty (60) days after notice of discovery of such non-conformity, Acts of God excepted. However, in the event Owner has scheduling conflicts, Owner shall be given such additional time as may be required, and shall set forth a proposed schedule therefor. If Licensee's attachment is the sole cause of the non-conformity with standards, Licensee shall be responsible for the cost to bring the attachment into conformance. Owner will only be responsible for costs related to conformance as if the Licensee was not attached to the pole. Resolutions of any disputes related to the costs of work related to standard conformity shall be resolved by the Licensee removing its attachment from the pole.

### Section 3. Placing, Transferring or Rearranging of Pole Attachments.

- A. Definitions. For the purposes of this Section, the following terms will have the meaning ascribed herein:
- a. The term "Make Ready Costs" as used in this Agreement means the reasonable actual costs incurred performing work necessary to provide adequate space for Licensees proposed attachment per the National Electric Safety Code (NESC), directly and exclusively associated with accommodating Licensee's attachments, and within 45 days following Licensee's written request, Owner shall provide to Licensee detail of such costs sufficient for Licensee to verify the reasonableness of the costs or charges.
  - b. The term "Make Ready Estimate" as used in this Agreement means Owner's estimate of Make Ready Costs prepared for Owner pursuant to Section 3.B. below.
  - c. The term "Make Ready Work" means all work, as determined by Owner, required to accommodate Licensee's attachments and to meet the National Electric Safety Code ("NESC") or other reasonable requirements of Owner, including rearrangements and/or transfer of existing facilities.
- B. Whenever the Licensee desires to reserve space on any pole which Licensee is not already using, Licensee shall make written application to the Owner specifying in such application (1) the location of the pole in question, (2) the number or kind of attachments which it desires to place thereon, (3) any Make Ready Work proposed to complete such attachment in conformance with all NESC safety codes, and (4) the proposed completion date for any Make Ready Work. Licensee shall submit such application upon a form as depicted in Exhibit A. Within twenty (20) business days after receipt of such application, the Owner shall notify the Licensee, in writing, whether or not said pole is excluded from joint use. In the event said pole is not so excluded, Owner shall provide its Make Ready Estimate. If the Make Ready Estimate is approved by Licensee, and after completion by Owner of any transferring or rearranging of Owner's attachments, including any necessary pole replacements as provided in Section 5 below, the Licensee shall have the right to use such space for its attachments and circuits as required in the application and with approval of Owner. In emergency service situations where written application

is not possible, Licensee may make application orally to the Superintendent of Electric Utility or its delegated nominee, which shall be forthwith reduced to writing as provided by this subparagraph.

- C. Upon notice that the Make Ready Estimate has been accepted by Licensee, Owner shall proceed with the Make Ready Work covered by the Make Ready Estimate. The Parties agree that Owner will perform Make Ready work within the power zone on the poles designated by Licensee, and Licensee will manage and perform Make Ready Work and adjustments necessary in the communications zone on such poles. Owner shall undertake commercially reasonable efforts to complete its Make Ready Work by the estimated completion date. Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work, including but not limited to allowing Licensee to complete the Make Ready Work using Owner-approved contractors. Notwithstanding the foregoing, in the event Owner fails to complete the Make Ready Work within 90 days after receiving notice of Licensee's acceptance of the Make Ready Estimate, Licensee may complete such Make Ready work using Owner-approved contractors. Upon completion of all Make Ready Work, Owner shall provide an itemized invoice for the actual cost of the Make Ready Work within forty-five (45) days after completion of the Make Ready Work and Licensee shall pay such actual costs within forty-five (45) days from the date the invoice is received by Licensee, provided however that to the extent Licensee in good faith disputes the costs detailed in the invoice, Licensee will remit payment for the undisputed costs as set forth herein.

Upon completion of the Make Ready Work and payment of the Make Ready Costs, Owner shall advise Licensee that such poles are available for attachment.

- D. In the event that Owner reasonably determines that any pole has inadequate capacity to accommodate Licensee's attachments and must be replaced solely to make capacity for Licensee attachments, Licensee agrees to reimburse Owner for the (1) actual cost of the new pole including installation thereof; (2) the actual cost of transferring Owner's facilities to the new pole; and (3) any other actual costs incurred by Owner in such replacement, such as the expense of removing the old pole.
- E. Except as otherwise provided herein, Owner and Licensee shall each place, rearrange, transfer, remove and maintain its respective attachments, including any necessary tree trimming or cutting, at its own expense and shall at all times perform such work within sixty (60) days of notice by the other party, Acts of God excepted.
- F. For purposes of this Agreement, "attachment" or "attachments" means Licensee's fiber optic and other cable, wires, strands and fixtures used for the support of such fiber, cable wires and strands, that is used by Licensee in providing or allowing others to provide cable and/or telecommunications service and that is placed on Owner poles pursuant to this Agreement.

- G. Subject to resolving any safety, reliability or engineering concerns in advance, and without Owner's prior approval but upon prior notice to Owner, Licensee may overlash facilities on its own attachments.

Section 4. Standard Space.

- A. For the purposes of this Agreement, Licensee's "standard space" shall be defined as that area of the poles reserved for Licensee's attachments as set forth below. In the event that there is inadequate space within Licensee space due to existing attachments, and the pole needs to be replaced with a taller pole, the cost for this work shall be borne by the Licensee.

Pole Size	Setting Depth	Licensee's Standard Space	Point of Beginning of Standard Space from Top of Pole
35'	6'	4'	13-1/3'
40' (1)(5)	6'	4'	20-1/3'
45' (1)	6-1/2'	4'	20-1/3'
40' (2)(3)	6'	4'	13-1/3'
45' (2)(3)	6-1/2'	4'	13-1/3'
40' (4)	6'	2'	13-1/3'

- (1) Equipment pole for Owner.
- (2) Non-equipment pole for Owner.
- (3) Equipment pole for Third Party User
- (4) Street crossing poles.
- (5) For only poles accessible by pedestrian traffic, provided that at alley locations Licensee's standard space shall commence 18-1/3 feet from the top of the pole.

- B. For the purposes of this Agreement, all other space upon any pole, other than Licensee's standard space, shall be deemed Owner's standard space.

- C. Where existing equipment (as of the date of this Agreement) of either Owner or Licensee is located in the other's standard space, it shall so remain until the opportunity arises to relocate it without undue burden or expense. In the interim, any new or additional equipment shall be installed to conform with the location of existing equipment. When either party requires full use of its standard space for installation of new or replacement equipment, the other party will cooperate with the requesting party to relocate its equipment in a commercially reasonable manner. Such relocation in all cases shall be accomplished in a maximum of forty-five (45) days after the request. In emergency service situations, the party whose equipment must be relocated will complete such relocation as soon as practicable.

- D. Owner retains and shall have the unrestricted right to use or license Owner's standard space, provided such use complies with the provisions of Section 2 herein.
- E. In the event of other third party attachments to poles covered by this Agreement, communication attachments shall be required to be made above the standard space of Licensee and such attachments shall maintain a minimum one foot (1') clearance from other licensee's facilities and shall be on the same side of pole as other licensee's facilities, unless specifically authorized by Owner.
- F. From and after the date of this Agreement, any subsequent third party attaching to a joint use pole shall reimburse Owner or Licensee their respective costs for changing the location of their facilities, erecting or replacing poles, or relocating or readjusting their facilities in order to accommodate said third party's facilities. Provided, however, where either Owner or Licensee are then in violation of any Code or Order under Section 2 herein at the time of said third party attachment, Owner or Licensee shall relocate that portion of their non-conforming facility without charge.

Section 5. Erecting, Replacing or Relocating Poles.

- A. Whenever it is necessary to change the location of a jointly-used pole, by reason of any State, Municipal, or other governmental requirement, or the requirements of a private property owner, the Owner first shall give written notice thereof to Licensee, specifying when the relocated pole is available for attachment. The Licensee shall, at the time so specified, transfer its attachments to the newly-located pole at Licensee's expense.
- B. Whenever a new pole is erected solely to address Licensee requirements within the territory covered by this Agreement, either as an additional pole line, or as an extension of an existing pole line, or as replacement of existing pole(s), Licensee shall first notify the Owner, in writing (at least forty-five (45) days prior to such need), with written plans showing the proposed location and character of the new poles. Licensee shall be responsible for the costs of the new pole or poles and said shall be payable prior to commencement of the work. Owner is not required to erect additional poles or extending pole lines that do not benefit Owner.
- C. The cost of erecting new or replacement joint use poles related to normal maintenance, relocation, or end of life, shall be borne by the Owner. However, each party shall place, at its sole expense, its own attachments on the new joint use poles and place any necessary supports to sustain any unbalanced loads caused by their respective attachments. In cases of replacement of existing joint use poles Licensee shall, within sixty (60) days after receipt of written notice from Owner, transfer its facilities. In case of emergency or immediate need, Licensee may be required to transfer on shorter notice. Should the Licensee fail to relocate to a replaced pole within the 60 days, Owner may relocate Licensee attachments with

either verbal or written prior notice to Licensee, and Licensee agrees to reimburse Owner for its reasonable costs incurred in such relocate.

- D. Whenever the Licensee requires a change in location of a jointly-used pole, the Licensee shall first give written notice to Owner specifying the time requirements of such proposed relocation, and the Owner shall, if it does not wish to discontinue the existing pole from joint use as herein provided, relocate such pole by the date specified or within sixty (60) days thereafter in the application for relocation. The cost of relocating such pole by the Owner and the transfer of Owner's attachments thereon shall be at the sole expense of Licensee, which shall be paid to Owner within 30 days of invoice. In the event of emergency situations, the provisions calling for written notification may be waived, by the Superintendent of Electric Utility or his delegated nominee, provided prior verbal notice is given to the Superintendent of Electric Utility.
- E. Whenever it is necessary to replace a defective pole, the procedures set forth in paragraph A of this Section 5 shall be employed.
- F. A replacement pole shall be set by the Owner, in the original position or within a reasonable distance of the original pole position or in the position agreed upon between the Owner and the Licensee.
- G. Whenever it is necessary to change a location of a jointly-used pole, or to erect a new pole, or to relocate or readjust Owner's or Licensee's facilities upon these poles due to the requirements of a subsequent Licensee's needs or third party need, Owner and Licensee shall bill their respective costs therefore (rearrangement costs, plant loss, net removal costs, transfer cost, etc.) to said new Licensee or third party. Owner shall give Licensee sixty (60) days' notice of such relocation. Licensee transfer to any new pole set due to relocation for subsequent licensee or third party will be subject to paragraph C of this Section 5.

#### Section 6. Right of Way for Licensee's Attachments.

Licensee hereby acknowledges and agrees that Owner has tendered no assurance, guarantee or warranty as to Licensee's legal right, title or interest to be located within any easement or right of way area upon which joint use poles are located; and, in the event, objections are made to Licensee's use of said poles, and Licensee is unable to resolve said objections within a reasonable time, the Owner may, upon thirty (30) days' written notice to Licensee, or in the event of emergency, on shorter written or verbal notice followed by written notice, require Licensees to remove its attachments from the subject poles at Licensee's sole expense. However, on any new additions or extensions of pole lines, the Owner shall: (1) attempt to secure right-of-way permits applicable to both parties, or (2) notify the Licensee that the Owner is unable to obtain joint right-of-way, but Owner shall not be required to utilize power of eminent domain.

#### Section 7. Maintenance of Poles and Attachments.

Licensee shall, at its own expense, maintain its attachments upon joint use poles in a safe and serviceable condition. Licensee further agrees that it shall maintain and repair its attachments so as not to interfere with Owner's use or maintenance of said poles. Moreover, in the event that Owner determines that any of Licensee's facilities are in an unsafe condition, Licensee, at its own expense, shall relocate or replace said facilities, or transfer them to substituted poles, or perform such other work in connection with said facilities that may be required to place them in a safe condition. However, in the case of emergencies, Owner may temporarily relocate Licensee's facilities to substituted poles, and the cost of such relocation, shall be reimbursed by the Licensee to Owner.

#### Section 8. Abandonment of Jointly-Used Poles.

- A. Licensee may abandon the use of a jointly-used pole at any time by first giving written notice thereof to the Owner and thereafter removing Licensee's attachments within ninety (90) days of said written notice. Written notice shall be in the form shown in Exhibit B.
- B. In the event that Owner intends to remove all of its attachments and to terminate joint use of any pole, Owner shall first give Licensee written notice thereof and shall thereafter remove such attachments within ninety (90) days of said written notice.

#### Section 9. Rentals and Other Payments.

- A. There shall be a rental fee for each pole attached to or reserved by the Licensee. The rental period for joint use poles shall be one (1) year. The Owner shall, before January 10<sup>th</sup> each calendar year, issue a report showing the number of poles to which Licensee has made attachments or reserved therefore as of December 1 of the previous year. Unless Licensee establishes a different number within twenty (20) calendar days after receiving such report, payment for such number shall be due forty-five (45) days following the issuance of the statement by the Owner. In the event of a dispute regarding the number of rented poles, Licensee shall specifically designate, in writing, the pole locations under dispute and until resolved, such disputed pole quantities will be exempt from rental payment until resolved and then payment shall be processed immediately, but not later than seventy-five (75) days after the issuance of the report. However, failure to give the report prior to the date mentioned shall not deprive Owner of rental fees. All poles not under dispute shall be paid for at the annual fee.
- B. The amount of the annual rental fee for pole attachments shall be \$27.99 per pole for the first year in which Licensee is attached to Owner's poles for an entire year. If Licensee is permitted to attach to a pole in the first six months of the year, the annual rental fee for the remainder of that year will be \$20.99 for that pole. If Licensee is permitted to attach to a pole in the last six months of the year, the annual rental fee for the remainder of that year will be \$7.00 for that pole. Subsequent

years pole attachment fees will escalate from the \$27.99 per pole per year fee at a rate of 3% per year.

- C. Payments for other amounts due under this Agreement shall be invoiced upon completion of the work and payable by the Licensee within forty-five (45) days' receipt thereof and shall accrue a late payment penalty of 1-1/2% per month on the unpaid balance from the billing date for any late payment.

#### Section 10. Defaults.

If Licensee shall default in any of its obligations under this contract, Licensee will have thirty (30) days after receipt of written notice of default from Owner to cure such default, subject to matters of Force Majeure, e.g. Acts of God, fire, terrorism, riot or war, work stoppages, governmental orders, or any other cause beyond the reasonable control of Licensee. If such default continues thirty (30) days after notice with no cure or if Licensee has not started to cure, all rights of Licensee hereunder shall be suspended, including its right to occupy jointly-used poles. If such default shall continue for a period of thirty (30) days after such suspension, the Owner hereunder may: (1) terminate this Agreement if such default affects all Attachments; or (2) terminate Licensee's right to occupy the pole(s) as to which such default occurred. Such termination shall not extinguish Licensee's obligation to pay for liability already incurred.

#### Section 11. Indemnification.

The Licensee shall indemnify, defend and hold harmless the Owner, its elected and appointed officers, employees and agents, from any and all third party claims, damages, judgments, losses, costs and expenses (including attorneys' fees), for physical injury or damage to tangible property that arises directly out of Licensee's use, construction of, reconstruction of, or modification of poles pursuant to this Agreement; provided, that notice in writing shall be immediately given to the Licensee of any claim or suit against the Owner which, by the terms hereof, the Licensee shall be obligated to defend, or against which the Licensee has hereby agreed to save and keep harmless the Owner and provided further that the Owner shall furnish to the Licensee all information in its possession relating to said claim or suit, and cooperate with the Licensee in the defense of said claim or suit. The governing body of the Owner may, if it so desires, assist in defending any such claim or suit, but solely under the direction of the Licensee or its attorneys and the Licensee shall not be required to reimburse the Owner for expenses incurred by it in case of the election so to assist. Nothing in this section requires Licensee to defend, indemnify or save harmless Owner to the extent a suit or claim, or any actual or alleged damage, loss or expense is caused by Owner or any third party.

Contractors performing work on behalf of Licensee shall provide the Owner with a Certificate of Insurance to cover all locations of the work being done on behalf of the Licensee, and shall name the City of Geneva as additional insured. Certificates of Insurance shall be filed no later than 10 days prior to commencement of work. Policies shall contain a non-cancellation clause provision preventing cancellation without 30 days written prior notice to City (ten (10) days in the event of nonpayment of premiums by Licensee). Certificates of Insurance shall be completed on the ACCORD 25-S form.

Section 12. Service of Notices.

All written notices required under this Agreement shall be given by posting the same in first class mail to Owner as follows:

Superintendent of Electrical Services  
City of Geneva  
1800 South Street  
Geneva, Illinois 60134

and to Licensee as follows:

Metro Fibernet, LLC  
Attn: Kevin Stelmach  
3701 Communications Way  
Evansville, Indiana 47715

With a copy to:

Metro Fibernet, LLC  
Attn: John Campbell, General Counsel  
8837 Bond St.  
Overland Park, Kansas 66214

or to such address as the parties hereto may from time to time specify.

Section 13. Term of Agreement.

Subject to the provisions of Section 10 herein, this Agreement shall continue in force and effect for a period of ten (10) years from and after the Effective Date of this Agreement (the "Initial Term"), and thereafter from year to year (each year a "Renewal Term") unless terminated by either party by giving written notice not less than one (1) year prior to the end of the Initial Term or any Renewal Term. Notwithstanding any such termination, this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

Section 14. Assignment of Rights.

Except as otherwise provided in this Agreement, Licensee shall not assign any of its rights or interests hereunder, or in any of the jointly used poles or attachments covered by this Agreement, to any firm, corporation, or individual, without the written consent of Owner, which shall not be unreasonably withheld, conditioned or denied. However, nothing herein contained shall prevent or limit the right of Licensee to lease or transfer its property, rights, privileges and/or franchises to another corporation organized for the purpose of conducting a business of the same general character as that of Licensee, or enter any merger, reorganization, consolidation or sale or all or substantially all of its ownership or assets, and, in the case of such lease, transfer, merger,

reorganization, consolidation or sale, its rights and obligations hereunder shall pass to, and be acquired and assumed by the purchaser on foreclosure, the transferee, lessee, assignee, merging, reorganized, consolidating or purchasing company, as the case may be. Subject to all of the terms and conditions of this Agreement, Licensee may permit any corporation or company conducting a business of the same general character as that of Licensee and owned, operated, leased, and controlled by it, associated or affiliated with it in interest, or connected with it, to all or any part of the space allotted hereunder on any pole covered by this Agreement for the attachments used by Licensee, in the conduct of its said business. All such attachments maintained on any such pole shall be considered as the attachments of Licensee, and the rights, obligations and liabilities of such assignee under this Agreement, with respect to such attachments, shall be the same if it were the actual owner thereof. Notwithstanding any of the provisions in this section, Licensee shall not be released from any of its obligations hereunder.

Section 15. Scope of Right of Licensee.

No use by Licensee of Owner's poles under the terms of this Agreement, however extended, shall create or vest in Licensee any ownership or property rights in said poles, but Licensee's rights herein shall be and remain a mere license. For poles upon which Licensee has reserved space, nothing herein contained shall be construed to compel Owner to maintain any of such poles for any period longer than demanded by Owner's own service requirements.

Section 16. Waiver of Terms or Conditions.

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, and the same shall be and remain at all times in full force and effect.

Section 17. Existing Contracts or Agreements.

All existing agreements between the parties to this Agreement, whether verbal or written, covering the joint use or joint ownership of poles are by mutual consent, hereby abrogated and annulled.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed effective as of the effective date shown on the first page of this Agreement.

**THE CITY OF GENEVA**

By: [Signature]  
Name: Kevin R. Burns  
Title: Mayor  
Date: 9-18-17

Witness:  
By: [Signature]  
Name: Roger Gods Kesen  
Title: Clerk  
Date: 9-18-17

**METRO FIBERNET, LLC**

By: [Signature]  
Name: Lohn H. Weber  
Title: CFO  
Date: 10/12/17

Witness:  
By: [Signature]  
Name: Michael G. Smith  
Title: Corporate Counsel  
Date: 10/12/17

**EXHIBIT A**  
**POLE ATTACHMENT APPLICATION AND PERMIT**

Permit No. \_\_\_\_\_

Date \_\_\_\_\_

Mr./Ms. \_\_\_\_\_

CITY OF GENEVA MUNICIPAL ELECTRIC UTILITY

In accordance with the terms and conditions of the agreement between our respective companies dated \_\_\_\_\_, application is hereby requested for permission to make attachments to \_\_\_\_\_ City poles as indicated on the sketch attached hereto.

By \_\_\_\_\_

\_\_\_\_\_

PERMIT

Permission is hereby granted to make the attachments described in the above application subject to all terms and conditions referred to above and in said agreement, and further subject to acceptance by the applicant of the obligation to pay the amount shown below for changes or rearrangements of poles or equipment as indicated below or on a statement attached hereto, and the applicable rental charges for the present year in progress:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Estimated amount to paid for above changes \$ \_\_\_\_\_ W.O. No. \_\_\_\_\_

Rental charge for year in progress: \_\_\_\_\_ by \_\_\_\_\_ = \$ \_\_\_\_\_

No. City Poles	Rate	Rental Charge
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The cost of rearrangements provided is an estimate based on preliminary engineering. Such cost shall be reconciled upon completion of the job to establish the actual cost of the work performed

by the City. Applicant is responsible for the actual cost and will be issues a refund within 60 days of reconciliation of the job, if the estimated costs exceeds the actual cost. Should the actual cost exceed the estimated cost, Application shall be issued a bill with explanation of the actual costs and the reason or reasons that the actual cost was greater than the estimate. Such bill shall be payable, in accordance with Section 9, Paragraph C.

Above charges accepted:

CITY OF GENEVA MUNICIPAL ELECTRIC UTILITY

By \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_, APPLICANT

By \_\_\_\_\_

Date \_\_\_\_\_

PERPETUAL INVENTORY RECORD

City poles in use to date \_\_\_\_\_

City poles added by this permit \_\_\_\_\_

Total City poles in use \_\_\_\_\_

**EXHIBIT B**  
**NOTIFICATION OF POLE ATTACHMENT REMOVAL**

Removal Notice No. \_\_\_\_\_

Date \_\_\_\_\_

Mr./Ms. \_\_\_\_\_

CITY OF GENEVA MUNICIPAL ELECTRIC UTILITY

In accordance with the terms and conditions of the agreement between our respective companies dated \_\_\_\_\_, application notification of removal of attachments to \_\_\_\_\_ City poles on the City of Geneva as indicated on the sketch hereto is hereby given:

By \_\_\_\_\_

Date \_\_\_\_\_

Notice Acknowledged

Date \_\_\_\_\_

CITY OF GENEVA

By \_\_\_\_\_

INVENTORY

City poles in use to date \_\_\_\_\_

City poles discontinued by this notice \_\_\_\_\_

Total City poles in use \_\_\_\_\_