

**RIGHT OF WAY USE AGREEMENT
FOR FIBER OPTIC NETWORK
BY AND BETWEEN
THE
CITY OF CREST HILL
AND
METRO FIBERNET, LLC**

This Right of Way Use Agreement (hereinafter, the “Agreement”) is made between the City of Crest Hill, an Illinois municipal corporation (including the lawful successor, transferee, designee, or assignee thereof, hereinafter, the “City”) and Metro Fibernet, LLC, a Nevada limited liability company (including its operational affiliates, hereinafter, “Grantee”), this ____ day of _____ 20__ (the “Effective Date”). City and Grantee are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

STATEMENT OF INTENT

WHEREAS, the City intends, by adoption of this agreement, to bring about further development and operation of a City-wide Fiber Optic Network to provide telecommunications and Broadband Internet Access Service (“BIAS”). Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public in general. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a City-wide Fiber Optic Network.

WHEREAS, the Parties desire to enter into this Agreement to provide for such rights and obligations, all upon the terms and conditions as are more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

SECTION 1: Definition of Terms.

For purposes of this Agreement, all capitalized terms, phrases, words, and abbreviations used herein shall have the meanings as are ascribed to them in this Section 1. All other capitalized terms, phrases, words and abbreviations not defined in this Section 1 shall have their meanings in common usage.

“Access Area” means the corporation boundaries of the City as depicted on the attached Exhibit A and as amended, from time to time, pursuant to Section 4 of this Agreement to reflect annexations and new/planned developments within the City.

“BIAS” means broadband internet access service, which is a service by wire or radio, whether offered on a mass-market retail, enterprise, or wholesale basis, that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but

excluding dial-up internet access service and any service that the FCC determines, from time to time, to be functionally equivalent. Notwithstanding in this Agreement to the contrary, nothing will preclude Grantee from providing fiber-based services to the City of Crest Hill or any businesses located within the Access Area.

“FCC” means the Federal Communications Commission of the United States of America.

“Fiber Optic Network” means Grantee’s facilities and equipment that comprise the network, consisting of a set of signal generation, reception and control equipment and fiber routes that are collectively designed to provide BIAS and telecommunications service to multiple Subscribers within the Access Area, but such term does not include (i) a facility that serves Subscribers without using any Public Ways, (ii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, as amended, except that such a facility shall be considered a Fiber Optic Network to the extent such facility is also used in the transmission of BIAS or telecommunications service directly to Subscribers; or (iii) any facilities of any electric utility used solely for operating its electric utility systems.

“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, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Access Area, to the extent that the City has the legal right and authority to authorize, regulate, or permit the location of facilities other than those of the City along such surface or space.

“Subscriber” means a Person who lawfully receives with the Grantee’s express permission, and pays Grantee for, the provision of BIAS over the Fiber Optic Network.

SECTION 2: Grant of Authority.

2.1. Grant. The City hereby authorizes the Grantee to construct and operate a Fiber Optic Network in the Public Ways within the Access Area and, for that purpose, to erect, install, construct, micro-trench, repair, replace, reconstruct, maintain, or retain in any Public Way such wires, lines, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to, or useful in the operation of, the Fiber Optic Network, and to provide such services over the Fiber Optic Network as may be lawfully allowed. Grantee shall not be required to pay franchise fees to the City under this Agreement.

2.2. Fees. So long as Grantee is and remains a “Telecommunications Retailer”, as that term is defined and used under the Telecommunications Municipal Infrastructure Maintenance Fee Act (“TIMFA”) (35 ILCS 635/10), Grantee shall not be required to pay any additional fees to the City

under this Agreement, including any site specific permits for the installation of facilities. Grantee shall be required, however, to timely pay all taxes imposed under the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5) to the State of Illinois and failure to do so shall constitute a material breach of this Agreement.

2.2.1. Annual Certification. Within thirty (30) days of the Effective Date and on or before each anniversary of the Effective Date, Grantee shall certify to the City in writing that it is and remains a Telecommunications Retailer and provide all documents reasonably requested by the City to support said certification.

2.2.2 License and Permit Fees. In the event that Grantee ceases to be a Telecommunications Retailer during the Term of this Agreement, Grantee shall immediately notify the City, and the parties shall promptly meet and confer in good faith to negotiate an appropriate amendment to this Agreement to establish reasonable compensation to the City taking into account the scope of Grantee's facilities, applicable law, and industry standards.

2.2.3 Non-Telecommunications Facilities. Anything else in this Agreement notwithstanding, if Grantee installs any facilities that do not provide "Telecommunications" as defined under TIMFA, they shall be subject to the City's standard permit and license fees for such installation

2.3. Application and Permit. That as part of this Grant of Authority, Grantee and its contractors and/or installers must complete the City's Application or process for High-Speed Fiber Optic Cable Utility Installations and receive approval of a permit to locate, construct, operate, and maintain on the location indicated in the Application. The City agrees to expedite any such application requests and shall not unreasonably withhold, condition or delay approval. Upon issuance of the Permit, Grantee agrees to abide by all the conditions and restrictions listed on the Permit and said conditions and restrictions are incorporated herein and made a part hereof, and Grantee will ensure any and all contractors and/or installers abide by the conditions and restrictions of the permit. Notwithstanding anything in this Agreement to the contrary, any conditions or restrictions imposed shall be reasonable, nondiscriminatory, and consistent with applicable law. Grantee shall at all times fully comply with all applicable ordinances, standards, and policies of the City, including without limitation all requirements of Title 12 (Streets and Sidewalks), as amended from time to time.

2.3.1. Initial Build Location Plan. Before applying for any permits under this Agreement, Grantee shall first prepare and submit a preliminary plan of the entire planned network for the City to evaluate and make any reasonable changes the City deems necessary.

2.3.2. Costs. For the avoidance of doubt, all costs and expenses associated in any way with the Grantee's exercise of its rights and licenses under this Agreement are and shall be undertaken solely at Grantee's sole cost and expense. If the City undertakes any action or incurs any cost directly and reasonably related to supporting Grantee's construction, installation, maintenance, and operation of the Fiber Optic Network

contemplated hereby, including reasonable legal, engineering, and other professional fees, Grantee agrees to reimburse the City for actual, reasonable and documented costs for the same.

2.4. Term and Renewal. The initial term of this Agreement shall be for a period of ten (10) years from the Effective Date, unless earlier terminated in accordance with the terms herein and/or applicable law (the “Initial Term”). This Agreement shall automatically renew for up to four (4) additional five (5) year periods thereafter (each, a “Renewal Term”), unless Grantee notifies the City of its intent not to renew at least one hundred and twenty (120) days prior to the end of the Initial Term or the then current Renewal Term.

2.5. 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. City’s obligations to police the use of the Public Way shall be limited solely to those areas located within the territorial limits of the City, or otherwise under the City’s jurisdiction.

2.6. Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the City to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (iii) be construed as a waiver or release of the rights of the City in and to the Public Ways.

2.7. Parking. Notwithstanding anything to the contrary herein, and provided that appropriate vehicle safety markings have been deployed, Grantee’s vehicles shall be exempt from parking restrictions of the City while used in the course of installation, repair, and maintenance work on the Fiber Optic Network. Grantee shall use all reasonable efforts, including the phasing of work activities, so that there is a minimum interference with pedestrian and vehicular traffic. Grantee shall, at all times, fully comply with all requirements of the City’s code of ordinances, as amended from time to time.

2.8. Safety. Grantee is and shall be solely and exclusively responsible for the safety of its employees, agents, contractors, and the general public during any and all construction, installation, excavation, maintenance, and operation of the contemplated Fiber Optic Network, and all associated facilities and systems, within the Public Ways as authorized by this Agreement. Grantee shall comply with applicable safety laws and standards and shall not be held responsible for hazards or conditions caused by the City or third parties outside of Grantee’s control. Grantee or other persons acting on its behalf, at its own expense, shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle, or property by reason of any work in or affecting the Public Ways or other property.

2.9. Compliance. Grantee agrees to abide by all federal, state, and local laws, rules, and regulations applicable to BIAS providers and to the construction, installation, operation, maintenance, repair, and removal of a Fiber Optic Network.

2.10. Title and Condition of the Public Ways. It is understood and agreed that the City makes no representations, warranties or assurances with respect to the following: the condition of the title or boundaries of the Public Ways; the condition of any underground duct or conduit; other existing utilities, facilities, or installations in the Public Ways; any other improvements or soils located in the Public Ways; or the suitability of the Public Ways for Grantee's intended use. ALL IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY AND HABITABILITY ARE HEREBY EXPRESSLY DISCLAIMED. Grantee assumes all risks associated with the placement, operation, maintenance, and removal of its facilities within the Public Ways. Grantee accepts and utilizes the Public Ways, if at all, on an "AS IS, WHERE IS, AND WITH ALL FAULTS" basis, including any existing environmental conditions, and accordingly, the City shall not be held liable for any damages or liabilities resulting from any actions that arise because of any claims concerning the title, boundaries, or condition of the Public Ways.

2.11. Emergency Removal or Relocation. As soon as practicable following written notice from the City, the Grantee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any part of its Fiber Optic Network within the Public Ways whenever the City has determined in the exercise of its governmental proprietary rights and powers, that such temporary or permanent removal, relocation, change or alteration, is reasonably necessary (a) to protect against an imminent threat to the health and safety of the Public or (b) to facilitate any City project necessary to protect against an imminent threat to the health and safety of the Public. In the event the Grantee is required to disconnect, relocate, remove, change, or alter the position of part or all of Fiber Optic Network under this Section and fails to do so within the time reasonably required by the City, the City may make or cause to be made such disconnection, relocation, removal, change, or alteration, and the Grantee shall be liable to the City for all actual, reasonable and documented costs incurred in connection with the same, which costs shall be paid upon written demand.

SECTION 3: Construction and Maintenance of the Fiber Optic Network.

3.1. Public Way Regulation. Except as may be otherwise provided in this Agreement, Grantee shall comply with all generally applicable ordinances to all occupants of the Public Way pursuant to of the City Code of Crest Hill, as may be amended from time to time. The Public Way will continue to be public property held in trust for the general public and this Agreement does not give rise to any right of ownership in the Public Way to Grantee.

3.2. Aerial and Underground Construction. Grantee shall place its Fiber Optic Networks' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's fiber and other equipment without technical degradation of the Fiber Optic Network's signal quality or as otherwise agreed between Grantee and the City. If any underground location(s) are not capable of accommodating the Grantee's fiber and other equipment without technical degradation of the Fiber Optic Network's signal quality, Grantee shall coordinate with the City's Public Works Director to find a mutually acceptable alternative solution. For the avoidance of doubt, no permanent above-ground facilities or installations will be permitted without the prior written approval of the City.

3.3. Construction. All plans and specifications for construction and installation of the Fiber Optic Network shall be submitted and approved by the Public Works Director or his designee at least forty (40) days prior to the commencement of any construction or installation. Grantee understands and agrees all work done hereunder will be performed in a good and workman-like manner and all of the cost and expenses of the installation and construction will be paid for by Grantee. If any damage or harm is done to the Public Way, any municipal facilities in the Public Way, any other public or private utility or other improvements located in or adjacent to the Public Way, or any other public or private property located in or adjacent to the Public Way during the construction and installation of the network (including without limitation private landscaping, hardscaping, sprinkler systems, mailboxes, and other similar improvements), the Grantee will be responsible for the costs and expenses to return the Public Way and any such improvements or property to the condition it was in prior to the commencement of the construction. Restoration obligations shall not include pre-existing conditions or unrelated defects.

3.3.1. Construction Completion Security. Prior to commencing any construction project(s) within the corporate boundaries of the City, Grantee shall provide the City with financial surety to secure the completion of each such project(s) and all associated restoration work in full compliance with Section 12.04.020 of the City's code of ordinances, as amended from time to time.

3.4. Interference. The Fiber Optic Network will be constructed, installed, maintained, and removed by Grantee as not to interfere with the City's rights to the Public Way, the City's use of the Public Way, the City's public utilities in the Public Way, or the rights of any public or private person with property, facilities, or improvements in or abutting and adjoining the Public Way. The City shall notify Grantee before attempting to resolve any conflict or interference.

3.5. No Representations. Grantee understands no representations as to the condition and repair of the Public Way have been made by the City.

3.6. Existing Rights of Third Parties. Grantee understands and agrees that the City, public utilities, cable television companies, and other public and private persons, as well as their successors and assigns, may also have certain rights in, over, under, upon, or across the Public Way and this Agreement is subject to any previously granted rights.

3.7. Relocation. Grantee acknowledges that the City may require, from time to time, that Grantee's facilities placed in the Public Way pursuant to this Agreement be relocated if deemed reasonably necessary for the public health, safety and welfare by the City, in its sole discretion, for any public projects or improvement.

3.7.1. Grantee shall, and shall be provided an opportunity to, participate in the planning for relocation of its facilities, if any, and shall be reimbursed its relocation costs from public or private funds allocated for such relocation to the same extent as such funds are made available to other users of the Public Way, if any.

3.7.2. Upon receipt of such notification by City to Grantee that the facilities will need to be relocated, the Parties will, within thirty (30) days, mutually agree upon the length of time it will take for Grantee to accommodate such request, which will not exceed 180

days except upon good cause shown in writing, and upon and in accordance with the terms of such agreement, Grantee shall proceed with such relocation. City agrees that it shall use reasonable efforts to assist Grantee with any relocation required under this Section 3.7.

3.8. Non-Interference. The City shall not physically interfere with or cause harmful interference to the Fiber Optics Network installed by Grantee pursuant to this Agreement, except to the extent necessary to preserve life, safety, health and welfare, or otherwise to protect and preserve any property, facilities, or improvements of the City. The Parties shall coordinate with each other on any maintenance of the Public Way and the Fiber Optic Network so as not to obstruct or impede each other's performance of such maintenance. Grantee shall provide the City with a telephone number and email address for a primary point of contact that the City can contact to request Grantee's coordination pursuant to this Section. The primary point of contact must be available 24/7 to respond to emergency situations that may arise.

3.9. Maintenance. Grantee will be solely responsible for the cost and expenses of any and all repairs or maintenance to the Fiber Optic Network. All maintenance and repairs must be done in a good and workman-like manner. If during the repairs or maintenance any harm or damage is done to the Public Way, any municipal facilities in the Public Way, any other public or private utility or other improvements located in or adjacent to the Public Way, or any other public or private property located in or adjacent to the Public Way as a result of the repair of maintenance being performed, Grantee will be responsible for the costs and expenses to return the Public Way and/or any other such property, facilities, and improvements to the condition they were in prior to the commencement of the maintenance or repairs.

3.10 Restoration. Subject to appropriate weather conditions, within thirty (30) calendar days after completing placement or repairs to Grantee's fiber optic cable, facilities and equipment, Grantee, at its sole cost and expense, shall restore the Public Way and any other affected property, improvements, or facilities to a condition reasonably equivalent to that which existed prior to commencing the placement or repairs.

3.10.1. Restoration Bond. Grantee or its contractor shall, prior to beginning any construction, provide a restoration bond in the form of surety bond, in a form and on conditions acceptable to the City; a certified or cashier's check made payable to the City of Crest Hill; or Cash in an amount reasonably determined by the Public Works Director, or his or her designee, as necessary to complete full and adequate restoration of the City Public Way, but not to exceed 10% of the amount of the work. Such surety or fund shall be released or refunded without interest upon the one year anniversary of the satisfactory restoration or repair of all affected areas as accepted by the Public Works Director.

3.11. Subordination. Anything in this Agreement to the contrary notwithstanding, Grantee's rights under this Agreement shall be at all times subordinate to the City's right to ingress and egress and use the Public Ways. This Agreement is not intended and shall not be deemed to convey any right, title, or interest (including leasehold interest) in the Public Ways, but shall be deemed to be a license only to use and occupy the Public Ways for the limited purposes stated herein. In the event of default by Grantee, the City shall not be obligated to bring a forcible entry and detainer action to terminate the Grantee's rights hereunder.

3.12. Environmental. Grantee shall not trim or cut any trees or shrubs, alter or impede water flowage, apply chemicals or disturb the topography of the Public Way in any manner without prior written approval of the City. Grantee shall take all reasonable steps to ensure that Grantee will not release any regulated material in violation of any Federal or State environmental law on, in, around, or under the Public Ways or any other public or private property. In the event that Grantee causes or contributes to any such release, Grantee, at its sole cost and expense, shall remediate, remove, clean up or abate the release in accordance with all applicable Federal and State laws and any applicable directives of the appropriate oversight agency. In the event of a release of a regulated material in violation of a Federal or State law on, in, around, or under the Public Ways or any other public or private property by the Grantee or any person acting on behalf of Grantee, or any claim or cause of action brought against the City regarding such release, the indemnification provided for in Section 7.2 shall apply.

3.13. As-Built Drawings. Upon completion of each and every installation, modification, or relocation of any part of Grantee's Fiber Optic Network or related improvements, Grantee shall provide the City with as-built drawings showing the actual locations its infrastructure in the Public Way and to reconcile any perceived discrepancy in lineal footage for fee calculation purposes.

SECTION 4: Service Obligations.

4.1. Service Obligations. Grantee shall design the Fiber Optic Network to provide BIAS to Subscribers upon their request throughout the Access Area, subject to commercially reasonable and technical feasible conditions. Nothing herein shall require Grantee to serve any location where such service would be economically or technically impracticable, provided Grantee uses good faith efforts to evaluate and accommodate requests. The Grantee shall continue to make BIAS available in the Access Area throughout the term of this Agreement, and Grantee may extend its Fiber Optic Network and provide service consistent with the provisions of this Agreement.

4.2. General Service Obligation. The Grantee may, but shall not be obligated to, make BIAS available beyond the initial Access Area to every residential dwelling unit within the Access Area where the minimum density is at least fifty (50) dwelling units per linear mile of the Fiber Optic Network as measured from the Fiber Optic System's closest commercially reasonable and technically feasible connection point ("Access Point"). Subject to this density requirement, Grantee may offer BIAS to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the nearest Access Point along the Fiber Optic Network (hereinafter, a "Standard Installation").

4.2.1. Long Drops. The Grantee may elect to provide BIAS 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 a Standard Installation. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Technical Standards. The Grantee shall comply with all applicable industry technical standards mutually agreed by the Parties from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City.

4.4. Annexations and New/Planned Developments. In cases of annexation to the Access Area, the City shall provide the Grantee written notice of such annexation meeting the density standards of Section 4.2. In cases of new construction, planned developments or property development where undergrounding or extension of the Fiber Optic Network is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Agreement.

4.5. Subscriber Service Obligations. The City and Grantee acknowledge that Section 8.1(a) of the FCC's rules, 47 C.F.R. § 8.1(a), requires BIAS providers to publicly disclose accurate information to their Subscribers regarding the providers' network management practices, performance characteristics, and commercial terms of its BIAS. Grantee shall comply with this disclosure obligation and all other consumer disclosure and information protection requirements under applicable law.

4.6 Interruptions. The City will follow all State of Illinois One Call Notice System (aka JULIE) related to safe digging around facilities within the Public Way and will physically identify Grantee's facilities when digging within two feet of its marked facility.

SECTION 5: Oversight and Regulation by City.

5.1. **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. In the event that Grantee voluntarily discloses any proprietary and confidential materials, it shall explicitly designate them as such. Failure by Grantee to explicitly designate materials as proprietary and confidential relieves the City of any obligations under this Section as to those materials. The City agrees to treat any proprietary and confidential information disclosed by the Grantee as confidential and, to the extent permitted by law, only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms "proprietary or confidential" may include, but are not limited to, information relating to the Fiber Optic Network design, Subscriber lists, marketing plans, financial information, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may elect to make proprietary or confidential information available for inspection, but not copying or removal.

5.2. FOIA Processes. In executing this Agreement, Grantee acknowledges and understands that the City is a municipal corporation that is a “Public Body” subject to the requirements of the Illinois Freedom of Information Act (5 ILCS 140/1, *et seq.*). The Grantee further acknowledges, understands, and agrees that FOIA may operate to require the City to disclose designated confidential and proprietary information to a third party making a request under FOIA. In the event that the City receives any FOIA request for designated confidential and proprietary information, the City shall notify the Grantee of said request, in writing, as soon as practicable. Upon receipt of such notice, the Grantee shall have forty-eight (48) hours to either (i) agree to the City’s disclosure of the requested information or (ii) demand in writing that the City redact or withhold said information pursuant to this Agreement, provided that any such demand must have a reasonable basis in existing law (including but not limited to the exemptions set forth in FOIA). In the event that the Grantee agrees to the City’s disclosure of records containing any designated confidential and proprietary information, or if the Grantee fails to respond to the City within the forty-eight (48) hour period set out above, the Grantee hereby releases, waives, and holds harmless the City from any and all injuries, claims of damage, or other liabilities as may be incurred by the Grantee as a result of such disclosure. In the event that the Grantee demands, in writing, that the City redact or withhold any designated confidential and proprietary information, the Grantee hereby agrees to defend and indemnify the City from and against any and all claims, damages, liabilities, injunctions, fees, fines, penalties, or any other costs, however described, as may be incurred by or assessed against said City because of the redactions to or withholding of records demanded by the Grantee. The City shall cooperate with Grantee in asserting applicable FOIA exemptions and shall not disclose such information until Grantee has had a reasonable opportunity to seek protective treatment under law. Further, in the event that the City redacts or withholds any designated confidential and proprietary information after a written demand made by the Grantee pursuant to this Section and such redaction or withholding results in any appeal, review, claim, or other litigation before any judicial or administrative body of competent jurisdiction (specifically including, but not limited to, the Public Access Counsellor in the Office of the Illinois Attorney General), the Grantee agrees to reimburse the City for all actual, reasonable and documented costs and expenses, including but not limited to any and all reasonable attorneys’ fees, incurred by City in defense of such appeal, review, claim, or other litigation. Production of any document, record, or information under FOIA pursuant to a court order or as directed by the Illinois Attorney General does not constitute a violation of the City’s obligations under this Section 5.

5.3 Mandatory Legal Process. In the event that the City receives any subpoena, order, or other mandatory legal process that directs or requests the disclosure of any designated confidential and proprietary information, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request if requested by Grantee, but at no cost or expense to the City. 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. The City shall not disclose such information until the Grantee has had a reasonable opportunity to seek protective treatment under applicable law, unless otherwise required by an immediate court order. Compliance by the City with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Assignment of Agreement.

6.1. The Grantee may not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2. The Grantee, and any proposed assignee for which City consent is required under this Section 6, shall submit a written application to the City containing or accompanied by such information as is reasonably required by the City. If the City should fail to reply to Grantee's notice of assignment and request for consent within sixty (60) days, the City's consent shall be deemed granted. No consent shall be required for (1) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in this Agreement in order to secure indebtedness, (2) a transfer to an affiliate of Grantee that controls Grantee, is directly or indirectly owned or controlled by Grantee, or is commonly controlled with Grantee, or (3) a transfer of control to any person or entity which acquires, directly or indirectly, substantially all of the assets of, or a controlling ownership interest in, Grantee as a going concern.

SECTION 7: Insurance, Indemnity, and Limitation of Liability

7.1. Insurance. Throughout the term of this Agreement, the Grantee shall, at its own cost and expense, maintain all insurance coverages required by Chapter 12.04 (Excavations) of the City's code of ordinances, as amended from time to time. All required insurance policies shall name the City and its officers, boards, commissions, councils, elected officials, agents, and employees as additional insureds; shall provide the City and its officers, boards, commissions, councils, elected officials, agents, and employees with primary and non-contributory coverage with no requirement of exhaustion; and shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall also provide workers' compensation coverage in accordance with applicable law and shall defend, indemnify, and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Agreement. Grantee shall provide the City with certificates of insurance demonstrating full compliance with this Section prior to commencing any construction activities within the City, and shall provide new or updated certificates upon demand .

7.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "Indemnitees") from and against any third party injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "Indemnification Events"), arising in the course of the Grantee constructing, operating or maintaining its Fiber Optic Network within the City, except to the extent caused by the gross negligence or willful misconduct of the Indemnitees. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events, which may occur during or after the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. Unless otherwise agreed to between the Parties in writing, the City shall have the right to be defended by its own counsel, selected by the City, but Grantee shall directly pay all associated attorney's fees and costs. The indemnification provided for herein shall survive the expiration or

earlier termination of this Agreement so long as the Grantee continues to operate a Fiber Optic Network within the corporate boundaries of the City.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from gross negligence or willful misconduct or any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

7.3. Limitation of Liability. In connection with the subject matter of this Agreement, neither Party shall be liable to the other Party for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise. This limitation shall survive the expiration or earlier termination of this Agreement.

SECTION 8: Breach of Agreement; Default.

8.1. Notice of Violation or Default. Upon a failure by Grantee to comply with any material term of this Agreement, the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default and demand that Grantee promptly remedy or cure such default.

8.2. Right to Cure; Termination. If such default is not cured within sixty (60) days after the receipt of such notice, the City shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, in addition to any other remedies available to it by law or in equity, to terminate this Agreement by giving written notice of the same. In the event that it is impractical to cure the default in such timeframe, Grantee shall request an extension of the cure period in a writing that sets out the reason for the request, Grantee's plan to cure the default, and any other aggravating or mitigating circumstances. Upon receipt of such a written request by the City, the Parties will work in good faith to establish a reasonable cure period, but in the absence of an agreement, the City's determination shall be final. This Agreement will immediately terminate if Grantee's approval, authorization, certification or license to provide BIAS or a Fiber Optic Network has been terminated or revoked by a final order that is no longer subject to appeal.

8.3. Specific Performance. Nothing in this Agreement shall preclude the Parties from seeking immediate equitable and/or injunctive relief from a court of proper jurisdiction with regard to any breach of this Agreement, including, but not limited to, specific performance, a temporary restraining order, or an injunction related to the purposes of this Agreement.

SECTION 9: Miscellaneous Provisions.

9.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to

noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Fiber Optic Network, 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 fiber or equipment is attached, delays caused by governmental permitting authorities, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

9.2. Notice. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by (i) depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return receipt requested, (ii) by overnight courier, or (iii) by delivering the same in person to such Party, addressed as follows:

To the City:

City of Crest Hill
20600 City Center Boulevard
Crest Hill, Illinois 60403
Attn: City Administrator

With copy to:

Spesia & Taylor
1415 Black Road
Joliet, Illinois 60435
Attn: Michael R. Stiff
Email: mstiff@spesia-taylor.com

To the Grantee:

Metro Fibernet, LLC
3701 Communications Way
Evansville, IN 47715
Attn: Sr. Vice President Construction

With copy to:

Metro Fibernet, LLC
11880 College Boulevard, Ste. 100
Overland Park, KS 66210
Attn: Legal

Any notice sent in conformance with this Section shall be deemed delivered: (i) if mailed on the fifth (5th) business day following deposit in the United States mail, (ii) if sent by overnight courier on the next business day following transmission, or (iii) if by personal delivery then on the date physically delivered in person.

9.3. Entire Agreement. This Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral.

9.4. Severability. If any section, subsection, sentence, clause, phrase, 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. If

any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either Party may notify the other in writing that the Agreement has been materially altered by the change and of the election to begin negotiations to amend the Agreement in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the Parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

9.5 Governing Law; Exclusive Jurisdiction and Venue. The Parties agree that this Agreement shall be construed under the laws of the State of Illinois without the application of any conflicts of laws principals. Further, the Parties, to the fullest extent permitted by law, hereby knowingly, intentionally, and voluntarily submit to the exclusive personal and subject-matter jurisdiction of the Circuit Court for the Twelfth Judicial Circuit, Will County, Illinois, over any suit, action or proceeding in any way related to or arising from this Agreement. Therefore, the Parties hereby knowingly, intentionally, and voluntarily waive and forfeit any and all rights that they have, or which they may later accrue, to file any motion challenging jurisdiction or venue in said circuit court, including but not limited to any motion styled as a motion forum *non conveniens*, as well as their right to remove any such action to any federal court. Notwithstanding the foregoing, Grantee may initiate or remove an action to federal court if the action involves a substantial federal question, including but not limited to claims arising under federal telecommunications law or regulations. In the event of any litigation related to this Agreement, other than a lawsuit by the City to enforce Grantee's indemnity obligations hereunder, the Parties shall each be responsible for its own attorneys' fees and costs of suit.

9.6. Modification. Except as otherwise specifically provided herein, no provision of this 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 the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

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

9.8. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under State or Federal law unless such waiver is expressly stated herein. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later. No waiver of any single breach or default shall be deemed a waiver of any other breach or default occurring before or after that waiver.

9.9. Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

9.10. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Agreement in the name of the Grantee.

9.11. Counterparts. This Agreement may be executed in two or more original or electronic counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile transmission (or other form of electronic communication, such as .pdf) of a counterpart hereto shall constitute an original hereof.

9.12. No Joint Venture or Partnership. This Agreement shall not be construed so as to create a joint venture, partnership, employment or other agency relationship between the Parties.

(signatures of the Parties appear on the following page)

Metro Fibernet, LLC
a Nevada limited liability company

By: _____

Its: _____

DRAFT

Exhibit A

Access Area

Exhibit B

City Locations