

After Recording Return To:
MetroDuct Systems VA, LLC.
c/o Team Fishel
8093 Elm Drive
Mechanicsville, VA 23111

MetroDuct Systems
Tract # OR-UM-0068.0000
Tract # OR-UM-0094.0000
Umatilla County, Oregon

**MetroDuct Systems VA LLC
NON-EXCLUSIVE EASEMENT**

THIS EASEMENT AGREEMENT (this “**Agreement**”) is made this ___ day of _____, 20___, for one dollar (\$1.00) and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the undersigned **CITY OF HERMISTON**, a body corporate and politic having a mailing address of 180 NE 2nd Street, Hermiston, OR 97838 (“**Grantor**”), as owner of the real property situated in Umatilla County, Oregon hereby grants and conveys to **METRODUCT SYSTEMS VA LLC**, a Virginia limited liability company having an address of 1366 Dublin Road, Columbus, Ohio 43215 (“**Grantee**”), its affiliates, licensees, successors and assigns (collectively “**Grantees**”) a non-exclusive and perpetual right of way and easement in, under, and across the “**Easement Area**” (described as being the same as shown on Exhibit “A” attached hereto and made a part hereof), for the installation, construction, maintenance, operation, repair and replacement of cables, lines and other facilities at any time and from time to time for the communication, transportation or other transfer of data, information, signals, or other material by means of fiber optics, electronic signaling or any other means including all technological developments evolving therefrom (“**Facilities**”). Permitted uses shall include the installation of below-ground vaults and the like and any utilities required for the operation thereof, together with the right to have underground commercial electrical service extended across the Easement Area to provide service to such Facilities and the reasonable right of ingress and egress across the Burdened Property to the Easement Area for the purpose of access to and use of the easement granted herein including over such drives, lanes, ways or private roads as may now or hereafter exist on the Burdened Property. If there are no drives, lanes, ways or private roads reasonably convenient to the Easement Area, Grantor further grants the right of ingress or egress across any of the Burdened Property for the purposes consistent with this Agreement, including but not limited to, intrusive construction and installation of the Facilities.

The property is legally described as
Tax Map Number 4N2804A000400
Tax Map Number 4N2804A000300
and is recorded in the land records of the Clerk’s Office of Umatilla County Oregon as Reel 44 Page 182.

The Grantor represents and warrants to the Grantee that Grantor is the true and lawful owner of the Burdened Property and has full right and power to grant and convey the rights conveyed herein and will defend the same unto the Grantee against the adverse claims of all persons.

Grantee hereby reserves the right to use said Easement Area for non-exclusive utility line and easement purposes.

Grantee hereby agrees to restore at its expense all property disturbed by its activities in use of the Easement Area to as near as reasonably possible the condition existing prior to the disturbance.

If the Grantor at some later time proposes property improvements on the Burdened Property that would necessarily require the relocation of the Facilities of the Grantee, which have been or may be installed under this Agreement, Grantee will relocate those Facilities at Grantor’s sole cost and expense within 180 days upon receipt of payment from Grantor. Grantee shall have the right, when relocating those Facilities, to place and maintain (and remove) them in a suitable location elsewhere on said land as mutually agreed to by Grantor and Grantee (which agreement shall not be unreasonably withheld by either party) and shall have the same rights hereunder in such new location as it originally possessed hereunder in the old location. If there is not mutual agreement between Grantee and Grantor as to where to relocate the Facilities, Grantee shall not be required to relocate the Facilities. Grantor acknowledges that prior to making such improvements, including the improvements set forth in the paragraph below, that Grantor shall provide Grantee with reasonable prior written notice before commencement of construction of such improvements so that Grantee may make adjustments to its Facilities.

The Grantor shall have the right to use the surface of the land over said Easement Area for any purpose provided the Grantor does not in any way interfere with the Grantees use of the easement granted herein, and provided further that no building or other structure shall be erected upon or tree or other vegetation be planted, across or over the Easement Area granted herein, and Grantor shall not excavate or fill within said Easement Area. Grantee shall have the right to remove any structure, plant or tree that it deems in its sole discretion to interfere with or impairs its use of the Easement Area.

Any work performed on the Facilities or any relocation required hereunder shall be conducted in a good and workmanlike fashion and in accordance with all applicable laws, rules, regulations and ordinances.

Grantee shall maintain insurance coverage insuring Grantee against claims, demands or actions for personal injuries or death resulting from the use or operation of the Facilities with limits of not less than One Million Dollars (\$1,000,000) any one occurrence, in an aggregate amount of Two Million Dollars (\$2,000,000) and for damage to property in an amount of not less than Five Hundred Thousand Dollars (\$500,000).

Each party shall protect, indemnify, defend and hold the other party, their agents, customers, employees and invitees (collectively, the “**Indemnified Parties**”) harmless from and against any and all third party claims for loss, damage, liability, injury to person or property, including reasonable cost and expense incurred by the Indemnified Parties on account of any claim or assertion of liability arising or alleged to have arisen out of the negligence or willful misconduct of the indemnifying party. An Indemnitor’s indemnification obligations hereunder shall not be applicable to any claims to the extent caused by the negligence, intentional acts or omissions or willful misconduct of the Indemnified Persons.

Any notice to be given in connection with this Agreement shall be in writing and shall be sent either by hand delivery (which shall include, without limitation, overnight delivery by a nationally recognized overnight courier service such as Federal Express or United Parcel Service) or by depositing it with the United States Postal Service or any official successor thereto, certified or registered mail, return receipt requested, with adequate postage prepaid, addressed to the party to whom the notice is being sent (and marked to a particular individual's attention if so indicated) as hereafter provided. Rejection or other refusal by the addressee to accept or the inability of any party attempting hand delivery or, in the case of attempted delivery by mail, the United States Postal Service to deliver because of changed address of which no prior written notice was given shall be deemed to be the receipt of the notice sent on the day hand delivery was attempted or, in the case of attempted delivery by mail, on the date which is three (3) days after the notice was deposited with the United States Postal Service or any official successor thereto. In the event that registered or certified mail service is not being provided by the United States Postal Service or any official successor thereto at the time in question, each notice may then be served by regular mail. Any party hereto shall have the right from time to time to change the address or individual's attention to which notices to it shall be sent by giving the other party written notice thereof. For notice purposes the addresses of the parties shall be as follows:

If to Grantor:

City of Hermiston
C/O Byron Smith
180 NE 2nd Street
Hermiston, OR 97838

If to Grantee:

MetroDuct Systems VA LLC
c/o Team Fishel
8093 Elm Drive
Mechanicsville, VA 23111
Attn: Legal Department

The foregoing addresses (or subsequent addresses of which notice is recorded as provided in this sentence) shall continue to be effective for notice purposes under this Agreement notwithstanding a sale of all or portions of the Burdened Property, unless the party acquiring the rights of this Agreement by sale of the Burdened Property files a notice in the County of Umatilla, State of Oregon land records cross referenced to this Agreement which specifies the address (and up to two additional addresses) to which such notices under this Agreement to such party are to be sent.

It is understood and agreed that this is an easement only and in no way grants or conveys any part of the underlying fee simple estate of any lands owned by Grantor. This agreement and all of the terms, provisions and obligations hereof shall be covenants running with the land affected thereby and shall inure to the benefit of and be binding upon Grantor and Grantee and their respective successors and assigns.

Grantee’s acceptance of this agreement and the recordation hereof in the Records of Umatilla County, Oregon shall be deemed to constitute and evidence Grantee’s agreement to all of the terms and provisions hereof.

This Easement and all rights, duties, and obligations hereunder, are binding upon and shall inure to the benefit of the heirs, successors, assigns, and licensees of the parties hereto.

None of the terms or provisions of this Easement will be deemed to create a partnership between or among the parties, nor will it cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended nor will it be construed to create any third-party beneficiary.

This Easement may only be amended by written instrument executed by the then current owners of the Burdened Property and Grantee.

Nothing contained herein will be deemed to be a gift or dedication of any portion of the Easement Area to the general public, for the general public, or for any public use or purpose whatsoever.

(Signature page to follow)

EXECUTED as of the day and year first above written.

GRANTOR:

By: _____
(Grantor Signature)

(Grantor Printed)

ACKNOWLEDGEMENT

STATE OF _____

SS:

COUNTY OF _____

The forgoing instrument was acknowledged before me this _____ day of _____, 2022,
by **The City of Hermiston**, on behalf of the body corporate and politic.

Notary Public (Name)

Notary Public (Signature)

My commission expires: _____

Notary Registration Number: _____

Exhibit "A"
Easement Area

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