

MEMORANDUM

CONFIDENTIAL CORRESPONDENCE ATTORNEY-CLIENT PRIVILEGE

TO: Mayor Gatt
Novi City Council Members

FROM: Thomas R. Schultz, Esq.

RE: METRO Act – General Background Information

DATE: August 10, 2023

Our office was asked to put together a brief summary of the METRO Act, which governs certain telecommunication facilities in the City's rights-of-way, in light of some of the issues that have been raised recently by residents complaining about telecommunication companies working in the rights-of-way in front of their homes.

The METRO Act is a state law that preempts the City's ability to regulate the use of its rights-of-way. It was adopted in 2002 (PA48). It did away with local government's ability to require franchise agreements from telecommunication companies seeking to put in high-speed internet access lines—traditional copper, but more importantly now fiber optic cable. Telecommunication companies complained to the state legislature, which ultimately took away the right to regulate the use of local roads for placement of wire lines below or above ground through franchise agreements at the local level (including franchise fees). The state substituted for that local authority a state level regulatory entity. Local governments were left with the authority to charge a one-time \$500 application fee and to receive a 5¢ per lineal foot annual fee. The METRO Act also created “form” right-of-way agreements/permits that set forth the terms and conditions for use of a municipality's rights-of-way by telecommunication companies. Importantly, the METRO Act did not relate to wireless facilities.

Novi has been living with the METRO Act for essentially 20 years. Over the years, the City has given METRO Act permits to any number of companies—AT&T, Extel Communications, 123.NET, Level 3, Fiber Tech, Comcast, and others. Attached as a sample is one recently approved for 123.NET.

Relevant to the concerns that the City is now hearing—in particular the failure or refusal of companies to restore the rights-of-ways once the wire/fiber has been placed and the placement of above-ground/pedestal equipment in front of homes in the right-of-way—the language of the permit and the METRO Act itself are important. The Act and the permit do specifically require restoration of the right-of-way. The City is authorized to take a bond to use for restoration if the company fails to properly restore the right-of-way. The City certainly does spend a fair amount

of time hounding all of these companies (particularly AT&T) with regard to restoration, which typically is eventually completed. While having a surety bond sounds useful, an actual surety bond is issued by an insurance companies and they are notorious for refusing to pay on a surety bond without substantial fight. The City typically seeks to get cash or a letter of credit instead. (A letter of credit still relies on a bank issuing the letter of credit to honor it.) Ultimately, the Act and the permit authorized under it are a poor substitute for what cities had before the METRO Act, which was a local franchise and local control that gave communities much greater leverage to require and assure proper performance within local rights-of-way. Obviously, the state legislature concluded back in 2002 that providing for faster internet service was worth that loss of local control.

The issue of above-ground equipment and boxes appearing within the City's rights-of-way is a little more complicated. The METRO Act itself specifically says that it does not provide for or authorize any telecommunication facilities with regard to wireless services. Council will recall that those are regulated under different state authority, and the City recently adopted a DAS/Small Cell Telecommunications Ordinance to deal with those kinds of facilities. But the METRO Act itself clearly states that the telecommunication facilities regulated means "the permittee's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify or provide telecommunication services or signals," and it specifically says that such facilities "do **not** include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial **mobile** service. . . ."

It has been a source of recent discussion among municipal attorneys whether some of the above-ground facilities that we are now seeing being placed in the right-of-way under a METRO Act permit are in fact related to wireless communications as opposed to traditional wire line facilities that are actually contemplated under the METRO Act permits.

We understand that City administration has been having discussions with some of the telecommunication companies whose above-ground equipment is causing concern among residents. It sounds as though some of those telecommunication companies are agreeing to provide at-grade equipment instead. We are continuing to evaluate exactly what scope of authority under the METRO Act for some of this equipment really is, and will likely report to the Council or administration on that shortly.

TRS:jah

Attachment

**METRO Act Permit
Bilateral Form
Revised 12/06/02**

**RIGHT-OF-WAY
TELECOMMUNICATIONS PERMIT**

This Permit is issued this 6 day of October, 2021, by the City of Novi, Michigan. This Permit supersedes and replaces the Permit that was issued on April 7, 2016.

Definitions

- 1.1 Date of Issuance shall mean the date set forth above.
- 1.2 Manager shall mean Municipality's [Mayor/Manager/Supervisor/Village President] or his or her designee.
- 1.3 METRO Act shall mean the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Act No. 48 of the Public Acts of 2002, as amended.
- 1.4 Municipality shall mean the City of Novi, a Michigan municipal corporation.
- 1.5 Permit shall mean this document.
- 1.6 Permitee shall mean 123.Net, Inc., a corporation organized under the laws of the State of Michigan whose address is 24700 Northwestern Highway, Suite 700, Southfield, MI 48075.
- 1.7 Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public right-of-way does not include a federal, state, or private right-of-way.
- 1.8 Telecommunication Facilities or Facilities shall mean the Permitee's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, 2-way communications device.
- 1.9 Term shall have the meaning set forth in Part 7.

2 Grant

2.1 Municipality hereby grants a permit under the METRO Act to Permittee for access to and ongoing use of the Public Right-of-Way to construct, install and maintain Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A on the terms set forth herein.

2.1.1 Exhibit A may be modified by written request by Permittee and approval by Manager.

2.1.2 . Any decision of Manager on a request for a modification may be appealed by Permittee to Municipality's legislative body.

2.2 Overlapping. Permittee shall not allow the wires or any other facilities of a third party to be overlapped to the Telecommunication Facilities without Municipality's prior written consent. Municipality's right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.

2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

2.4 Conditions. This Permit and Permittee's access to and usage of the Public Right-of-Way is conditioned on, subject to, and requires compliance with, the Conditions identified in Exhibit C.

3 Contacts, Maps and Plans

3.1 Permittee Contacts. The names, addresses and the like for engineering and construction related information for Permittee and its Telecommunication Facilities are as follows:

3.1.1 The address, e-mail address, phone number and contact person (title or name) at Permittee's local office (in or near Municipality) is:

123.Net, Inc.
24700 Northwestern Highway, Suite 700
Southfield, MI 48075
Attention: Permitting Department
permits@123.net

General: (888) 440-0123
Direct: (248) 228-8286

- 3.1.2 If Permittee's engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them is:

123.Net, Inc.
24700 Northwestern Highway, Suite 700
Southfield, MI 48075
Attention: Permitting Department
permits@123.net
General: (888) 440-0123
Direct: (248) 228-8286

- 3.1.3 The name, title, address, e-mail address and telephone numbers of Permittee's engineering contact person(s) with responsibility for the design, plans and construction of the Telecommunication Facilities is:

Amanda Griffith – Fiber Permits Manager
24700 Northwestern Highway, Suite 700
Southfield, MI 48075
agriffith@123.net
permits@123.net
General: (888) 440-0123
Direct: (248) 228-8286

- 3.1.4 The address, phone number and contact person (title or department) at Permittee's home office/regional office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is:

Amanda Griffith – Fiber Permits Manager
24700 Northwestern Highway, Suite 700
Southfield, MI 48075
agriffith@123.net
permits@123.net
General: (888) 440-0123
Direct: (248) 228-8286

- 3.1.5 Permittee shall at all times provide Manager with the phone number at which a live representative of Permittee (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency.
- 3.1.6 The preceding information is accurate as of the Effective Date. Permittee shall notify Municipality in writing as set forth in Part 12 of any changes in the preceding information.
- 3.2 Route Maps. Within ninety (90) days after the substantial completion of construction of new Facilities in a Municipality, a provider shall submit route maps showing the location of the Telecommunication Facilities to both the Michigan Public Service Commission and to the Municipality, as required under Section 6(7) of the METRO Act, MCLA 484.3106(7).
- 3.3 As-Built Records. Permittee, without expense to Municipality, shall, upon forty-eight (48) hours notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Telecommunication Facilities or portions thereof in the Public Right-of-Way. Upon request by Municipality, Permittee shall inform Municipality as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by Municipality so as to show the location of the Telecommunication Facilities.

4 Use of Public Right-of-Way

- 4.1 No Burden on Public Right-of-Way. Permittee, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Permittee's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an undue burden or interference, due to changed circumstances, Permittee, at its sole expense, shall modify the Telecommunication Facilities or take such other actions as Municipality may determine is in the public interest to remove or alleviate the burden, and Permittee shall do so within a reasonable time period. Municipality shall attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.
- 4.2 No Priority. This Permit does not establish any priority of use of the Public Right-of-Way by Permittee over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders,

as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.

- 4.3 Restoration of Property. Permittee, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Permittee's sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities to a reasonably equivalent (or, at Permittee's option, better) condition as that which existed prior to the disturbance. In the event that Permittee, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Permittee shall pay the costs Municipality incurred for such repair.
- 4.4 Marking. Permittee shall mark the Telecommunication Facilities as follows: Aerial portions of the Telecommunication Facilities shall be marked with a marker on Permittee's lines on alternate poles which shall state Permittee's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Telecommunication Facilities shall have (1) a conducting wire placed in the ground at least several inches above Permittee's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Permittee's name and a toll-free number indicating that there is buried telephone cable below. Bored underground portions of the Telecommunication Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Telecommunication Facilities located in conduit, including conduit of others used by Permittee, shall be marked at its entrance into and exit from each manhole and handhole with Permittee's name and a toll-free telephone number.
- 4.5 Tree Trimming. Permittee may trim trees upon and overhanging the Public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Telecommunication Facilities, consistent with any standards adopted by Municipality. Permittee shall dispose of all trimmed materials. Permittee shall minimize the trimming of trees to that essential to maintain the integrity of the Telecommunication Facilities. Except in emergencies, all trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.
- 4.6 Installation and Maintenance. The construction and installation of the Telecommunication Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or his designee. Permittee shall install and maintain the Telecommunication Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Permittee's use, or

the facilities of all users of the poles are required to go underground then Permittee shall, at its expense, place such portion of its Telecommunication Facilities underground, unless Municipality approves an alternate location. Permittee may perform maintenance on the Telecommunication Facilities without prior approval of Municipality, provided that Permittee shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.

- 4.7 Pavement Cut Coordination. Permittee shall coordinate its construction and all other work in the Public Right-of-Way with Municipality's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").

4.7.1 The goals of such coordination shall be to encourage Permittee to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.

- 4.8 Compliance with Laws. Permittee shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Telecommunication Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Permittee shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Municipality shall not unreasonably delay or deny issuance of any such permits, licenses or approvals. Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (latest edition). Permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended. This section does not constitute a waiver of Permittee's right to challenge laws, statutes, ordinances, rules or regulations now in force or established in the future.

- 4.9 Street Vacation. If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Permittee's Facilities in the vacated Public Right-of-Way, Permittee shall, as a condition of this Permit, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Permittee shall relocate its Facilities to such alternate route as Municipality and Permittee mutually agree, applying reasonable engineering standards.

- 4.10 Relocation. If Municipality requests Permittee to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Permittee shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality and Permittee mutually agree, applying reasonable engineering standards. The work shall be completed within a reasonable time period.
- 4.11 Public Emergency. Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Permittee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality shall attempt to provide notice to Permittee. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Permittee shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.
- 4.12 Miss Dig. If eligible to join, Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 174 of the Public Acts of 2013, as amended, MCL § 460.721 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- 4.13 Underground Relocation. If Permittee has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Permittee shall relocate its Facilities underground in the same location at Permittee's sole cost and expense.
- 4.14 Identification. All personnel of Permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Permittee's name, their name and photograph. Permittee shall account for all identification cards at all times. Every service vehicle of Permittee and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Permittee's name and telephone number.

5 Indemnification

- 5.1 Indemnity. Permittee shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively "claim" for this Part 5) (including, without limitation,

attorneys' fees) arising out of or resulting from the acts or omissions of Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Permittee's use of or installation of facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Permittee, its officers, agents, employees, contractors, successors and assigns.

- 5.2 Notice, Cooperation. Municipality shall notify Permittee promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality shall cooperate with Permittee in every reasonable way to facilitate the defense of any such claim. Municipality shall consult with Permittee respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.
- 5.3 Settlement. Municipality shall not settle any claim subject to indemnification under this Part 5 without the advance written consent of Permittee, which consent shall not be unreasonably withheld. Permittee shall have the right to defend or settle, at its own expense, any claim against Municipality for which Permittee is responsible hereunder.

6 Insurance

- 6.1 Coverage Required. Prior to beginning any construction in or installation of the Telecommunication Facilities in the Public Right-of-Way, Permittee shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Permittee may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality's acceptance of such self-insurance shall not be unreasonably withheld.
- 6.1.1 Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000).
- 6.1.2 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars (\$500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.

- 6.1.3 Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000).
- 6.1.4 Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.
- 6.1.5 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.
- 6.2 Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Permittee shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.
- 6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Permittee.
- 6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of \$50,000, they shall be approved by Manager in advance in writing. Permittee shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.
- 6.5 Contractors. Permittee's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Permittee, at its expense, may provide such coverages

for any or all its contractors or subcontractors (such as by adding them to Permittee's policies).

- 6.6 Insurance Primary. Permittee's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Permittee's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7 Term

- 7.1 Term. The term ("Term") of this Permit shall be until the earlier of:

- 7.1.1 Fifteen years (15) from the Effective Date; provided, however, that following such initial term there shall be three subsequent renewal terms of five (5) years. Each renewal term shall be automatic unless Municipality notifies Permittee in writing, at least twelve (12) months prior to the end of any term then in effect, that due to changed circumstances a need exists to negotiate the subsequent renewal with Permittee. Municipality shall not unreasonably deny a renewal term; or
- 7.1.2 When the Telecommunication Facilities have not been used to provide telecommunications services for a period of one hundred and eighty (180) days by the Permittee or a successor or an assign of the Permittee; or
- 7.1.3 When Permittee, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or
- 7.1.4 Upon either Permittee or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or
- 7.1.5 Unless Manager grants a written extension, one year from the Effective Date if prior thereto Permittee has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-

Way and two years from the Effective Date if by such time construction and installation of the Telecommunication Facilities is not complete.

8 Performance Bond or Letter of Credit

- 8.1 Municipal Requirement. Municipality may require Permittee to post a bond (or letter of credit) as provided in Section 15(3) of the METRO Act, as amended [MCL § 484.3115(3)] as specified in the attached Exhibit B.

9 Fees

- 9.1 Establishment; Reservation. The METRO Act shall control the establishment of right-of-way fees. The parties reserve their respective rights regarding the nature and amount of any fees which may be charged by Municipality in connection with the Public Right-of-Way.

10 Removal

- 10.1 Removal; Underground. As soon as practicable after the Term, Permittee or its successors and assigns shall remove any underground cable or other portions of the Telecommunication Facilities from the Public Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Permittee shall not remove any underground cable or other portions of the Telecommunication Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Permittee's sole cost and expense.

10.1.1 For purposes of this Part 10, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

- 10.2 Removal; Above Ground. As soon as practicable after the Term, Permittee, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of its Telecommunication Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

- 10.3 Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the Term. Portions of the Telecommunication Facilities in the Public Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Permittee as set forth in Part 12, title to the portions described in such notice shall vest in Municipality.

11 Assignment. Permittee may assign or transfer its rights under this Permit, or the persons or entities controlling Permittee may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Permittee's business, or by other means, subject to the following:

11.1 No such transfer or assignment or change in the control of Permittee shall be effective under this Permit, without Municipality's prior approval (not to be unreasonably withheld), during the time period from the Effective Date until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.

11.2 After the completion of such construction, Permittee must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,

11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and

11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Permittee's ability to perform under the terms and conditions of this Permit and comply with applicable law; and Permittee shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.

11.3 Permittee may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

12 Notices

12.1 Notices. All notices under this Permit shall be given as follows:

12.1.1 If to Municipality, to City of Novi, Attn: Manager
45175 Ten Mile Road, Novi, MI 48375-3024.

With a copy to: City of Novi, Attn: Clerk
45175 Ten Mile Road, Novi, MI 48375-3024.

12.1.2 If to Permittee, to 123.NET, Inc., Attn: Fiber Project Manager, 24700 Northwestern Highway, Suite 700, Southfield, MI 48075, with a copy to @123.net.

12.2 Change of Address. Permittee and Municipality may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

13 Other items

13.1 No Cable, OVS. This Permit does not authorize Permittee to provide commercial cable type services to the public, such as "cable service" or the services of an "open video system operator" (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573 and 47 CFR § 76.1500).

13.2 Duties. Permittee shall faithfully perform all duties required by this Permit.

13.3 Effective Date. This Permit shall become effective when issued by Municipality and Permittee has provided any insurance certificates and bonds required in Parts 6 and 8 and signed the acceptance of the Permit.

13.4 Authority. This Permit satisfies the requirement for a permit under Section 5 of the METRO Act [MCL 484.3105].

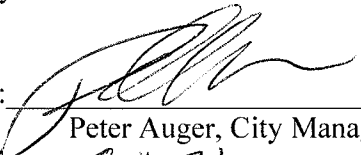
13.5 Amendment. Except as set forth in Section 2.1 this Permit may be amended by the written agreement of Municipality and Permittee.

13.6 Interpretation and Severability. The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overbroad, unenforceable, or invalid, Permittee and Municipality may nevertheless enforce such provision to the extent permitted under applicable law.

13.7 Governing Law. This Permit shall be governed by the laws of the State of Michigan.

City of Novi

Attest:
By: Cortney Hanson
Cortney Hanson Clerk

By: 
Peter Auger, City Manager
Date: 8 11 21

Acknowledgement of Receipt: Permittee acknowledges receipt of this Permit granted by Municipality.

123.Net, Inc.

By: 
Its: Fiber Permits Manager
Date: 10/06/2021

Exhibit A
Public Right-of-Way to be Used by Telecommunication Facilities

The Public Right-of-Way that Permittee is granted access to and the use of for approximately 315,000 linear feet, consisting of the current 39,489 aerial cable installation and the current 117,380 underground fiber optic cable in conduit as well as the prospective linear feet in the expansion area shown in the Route Map dated 5/06/2021 below, which may be aerial or underground subject to the approval of more specific drawings.

Route Map

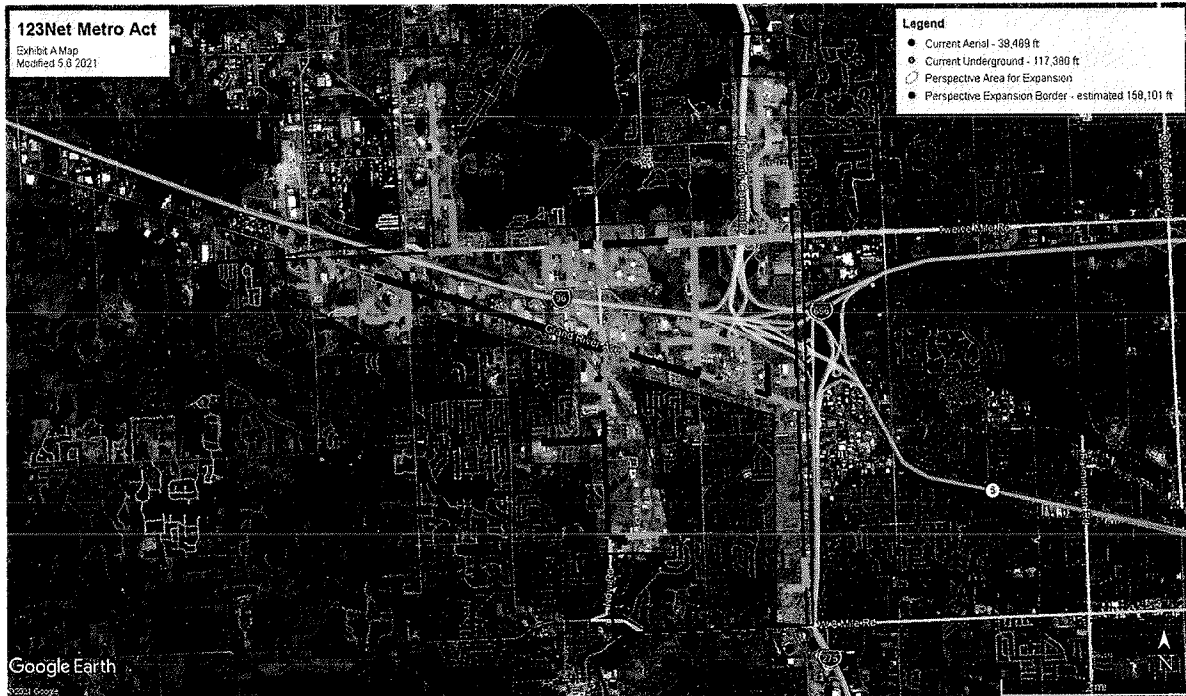


Exhibit B

Bond

As authorized under Section 8 of the Permit that this Exhibit is attached to and part of, a Bond conforming to these specifications and requirements is required in an amount that does not exceed the reasonable cost to ensure that the Public Right-of-Way is returned to its original condition during and after Permittee's access and use.

The Bond shall be in the form of cash, or an irrevocable bank letter of credit form approved by Municipality, and shall be posted with Municipality before any construction or engineering permit may be issued and as a requirement for effectiveness of this Permit under Section 13.2.

The initial amount of the Bond required by this Permit shall be determined and communicated to Permittee by Municipality based on the construction plans approved by Municipality, with any construction or engineering permit bond for that amount, allowed to serve as the Bond required by this Permit.

During the term of this Permit, Municipality reserves the right to require an increase of the Bond amount before issuing construction or engineering permits for installation of additional Facilities in the Public Right-of-Way, or if the Bond is no longer sufficient to cover the reasonable cost to ensure that the Public Right-of-Way is returned to its original condition during and after Permittee's access and use, by at least 60 days written notice to Permittee of the increased amount and date it is to be provided.

Exhibit C Conditions

As provided in Section 2.4, this Permit and Permittee's access to and usage of the Public Right-of-Way is conditioned on, subject to, and requires compliance with the following Conditions:

1. In anticipation of the Municipality's future widening of 12 Mile Rd and Beck Road, all Facilities shall be positioned as close to the edge of the Public Right-of-Way as possible, with the required location to be determined by Municipality at the time of construction permit review and approval. Should construction along 12 Mile Rd or Beck Road occur, Permittee may be required to relocate its Facilities, which will be done at Permittee's expense, as provided in Section 4.10.
2. Any permanent above ground Facilities associated with buried Facilities, such as pull boxes, shall not extend above existing grade more than necessary to the purpose of the Facility and shall be approved by Municipality at the time of construction permit review, and thereafter installed and maintained by Permittee at its expense.
3. Permittee shall be required to provide photo or video of the conditions of the Right-of-Way prior to installation of any facilities.
4. Permittee shall have 6 months from time of work completion to restore any disturbance or damage to any portion of the Right-of-Way. In the event that Right-of-Way is not restored Municipality may make the repair and Permittee shall pay the costs as stated in Section 4.3.

RECEIVED AUG 27 2021