

SPECIAL CITY COUNCIL MEETING

City of Davenport, Iowa

Monday, August 13, 2018; 6:00 PM

Waterfront Convention Center; 2021 State Street, Bettendorf, Iowa

Joint Meeting of Committee of the Whole with the City of Davenport and the City of Bettendorf

I. Moment of Silence

II. Pledge of Allegiance

III. Roll Call

IV. Agenda Items

1. For Discussion: Resolution approving a fiber to the premise development agreement between the City of Davenport and Metro Fibernet for the construction of a community-wide fiber network offering cable, phone, and internet services. [All Wards]
2. For Discussion: Resolution approving a fiber to the premise development agreement between the City of Bettendorf and Metro Fibernet for the construction of a community-wide fiber network offering cable, phone, and internet services. [All Wards]
3. For Discussion: Motion approving a construction letter agreement between the City of Davenport and Metro Fibernet for the construction of a community-wide fiber network offering cable, phone, and internet services. [All Wards]
4. For Discussion: Motion approving a construction letter agreement between the City of Bettendorf and Metro Fibernet for the construction of a community-wide fiber network offering cable, phone, and internet services. [All Wards]
5. Motion for Item #1 and Item #3 recommending discussion or consent agenda for Davenport's City Council Agenda on August 22, 2018.
6. Motion for Item #2 and Item #4 recommending discussion or consent agenda for Bettendorf's City Council Agenda on August 21, 2018.

V. Adjourn

City of Davenport

Agenda Group: Committee of the Whole
Department: Finance
Contact Info: Brandon Wright 326-7750
Wards: ALL

Action / Date
8/13/2018

Subject:

For Discussion: Resolution approving a fiber to the premise development agreement between the City of Davenport and Metro Fibernet for the construction of a community-wide fiber network offering cable, phone, and internet services. [All Wards]

Recommendation:

Approve the resolution

Relationship to Goals:

Vibrant region

Background:

MetroNet is a fiber network company providing triple-play telecommunication services in multiple states including Illinois and Indiana. The company is proposing to construct a private, full community-wide fiber network system in both Davenport and Bettendorf.

Under the terms of this non-exclusive agreement, MetroNet is required to construct and operate a 100% fiber network in Davenport and Bettendorf offering gigabit-level speeds to residents and businesses. The network must be fully built in three years according to specifications outlined in the agreement. In return for full community builds in this short timeline, Davenport and Bettendorf are obligated to rebate the cities' portions of property taxes associated with the fiber infrastructure under Iowa law to MetroNet for a period of 20 years. The rebate amounts for Davenport and for Bettendorf are capped at \$11.675 million and \$3.375 million, respectively.

ATTACHMENTS:

Type	Description
▣ Cover Memo	Resolution
▣ Cover Memo	MFN-Davenport_DA_markup 090918

REVIEWERS:

Department	Reviewer	Action	Date
Finance	Admin, Default	Approved	8/9/2018 - 9:58 AM

Resolution No. _____

Resolution offered by Alderman Tompkins

RESOLVED by the City Council of the City of Davenport.

RESOLUTION approving a fiber to the premise development agreement between the City of Davenport and Metro Fibernet for the construction of a community-wide fiber network offering cable, phone, and internet services.

WHEREAS, the City of Davenport ("the City") believes it is in its best interest to have a fiber-to-the-premise ("FTTP") network to attract and retain businesses and enhance the overall quality of life for its residents; and

WHEREAS, the City is willing to provide certain incentives to any communications provider willing to construct and operate an FTTP network for purposes of delivering fiber services to residential and business customers throughout the City, subject to the terms of a development agreement and approval of the City Council; and

WHEREAS, Metro Fibernet ("MetroNet") has the financial and technical ability to construct and operate an FTTP network for purposes of delivering fiber services to residential and business customers throughout the City; and

WHEREAS, MetroNet will employ employees in the City to support the network as part of the project; and

WHEREAS, MetroNet is willing and able to meet the City's requirements for the project as set forth in the attached Economic Development Agreement.

NOW, THEREFORE, BE IT RESOLVED, for good, valuable and mutual consideration which each Party hereto acknowledges and for the exchange of the terms and conditions set forth below, the fiber to the premise development agreement between the City and MetroNet for the construction of a community-wide fiber network offering cable, phone, and internet services is hereby approved by the City Council.

Approved:

Attest:

Frank Klipsch, Mayor

Jackie E. Holecek, MMC, City Clerk

FTTP DEVELOPMENT AGREEMENT

This FTTP Development Agreement (“Agreement”) is made this ____ day of August, 2018 (“Effective Date”) by and between the City of Davenport, Iowa (“City”) and Metro Fibernet, LLC, a Nevada limited liability company (“Provider”). The City and Provider are sometimes referred to herein collectively as the “Parties”, each individually a “Party”. Capitalized terms not defined herein shall have the meanings ascribed to them in Exhibit A to this Agreement.

Recitals

- A. The City believes it is in its best interest to have an FTTP network to attract and retain businesses and enhance the overall quality of life for its residents; and
- B. The City is willing to provide certain incentives to any communications provider willing to construct and operate an FTTP network for purposes of delivering Fiber Services to residential and business customers throughout the City, subject to the terms of a development agreement and approval of the City Council; and
- C. Provider has the financial and technical ability to construct and operate an FTTP network (“Provider Network”) for purposes of delivering Fiber Services to residential and business customers throughout the City (the “Project”); and
- D. Provider will employ employees in the City to support the Provider Network as part of the Project; and
- E. Provider is willing and able to meet the City’s requirements for the Project as set forth in this Agreement.

NOW, THEREFORE, for good, valuable and mutual consideration which each Party hereto acknowledges and for the exchange of the terms and conditions set forth below, the Parties agree as follows:

1. Provider’s Project Obligations. Subject to the terms and conditions of this Agreement, Provider agrees to fulfill the Project obligations set forth below.

(a) Network. Provider will build the Provider Network that will make Fiber Services available to residential and business consumers in the territory set forth in the map attached hereto as Exhibit B (“Buildout Territory”). Provider shall only be obligated to extend the Provider Network to areas beyond the Buildout Territory that may be annexed by the City at a later date if, within any such areas, there are twenty-five (25) Qualified Households per one-half linear route mile.

(b) Network Extension. Provider's obligation to construct the Provider Network is expressly subject to the following:

- (i) Provider has no obligation to extend the Provider Network to any area within the Buildout Territory where residents have the ability to receive Fiber Services from another provider over an FTTP network. At the request of the City, Provider will work in good faith with the City to determine which residents and businesses have the ability to receive Fiber Services from another provider over an FTTP network and to extend the Provider Network to the areas described in Exhibit B-1.
- (ii) If any area of the Buildout Territory has Unreasonably High Make Ready Costs, Provider may require a minimum of twenty-five (25) Qualified Households per one-half linear route mile within the area of the Buildout Territory subject to Unreasonably High Make Ready Costs prior to making Fiber Services available in the proposed area.
- (iii) Provider has no obligation to extend the Provider Network to any private property where the owner of the property will not allow Provider access to the property on terms reasonably acceptable to Provider.
- (iv) For no more than ten percent (10%) of the homes in the Buildout Territory, Provider reserves the right to require one-time construction fees and/or pre-selection from potential residential customers to offset or reduce the risk of unusually high buildout costs. Provider will use commercially reasonable efforts to pre-sell Fiber Services in areas subject to the service exception set forth in this Section 1(b)(iv). Provider may not require one-time construction fees when there are a minimum of twenty-five (25) Qualified Households per one-half linear route mile.

(c) Business Services. Notwithstanding anything to the contrary in this Agreement, Provider will extend the Provider Network to serve any Qualified Business Customer within the Buildout Territory, as that territory may be expanded pursuant to this Section 1(b), subject to obtaining any private property rights and pole attachment rights necessary to serve such customer on terms reasonably acceptable to Provider.

(d) Construction Schedule. Provider will use commercially reasonable efforts to Substantially Complete construction of the Provider Network in the Buildout Territory no later than three (3) years following the start of physical construction in the City. Provider will use commercially reasonable efforts to meet interim completion dates in designated areas as set forth on Exhibit B-2. Prior to commencing with physical construction of the Provider Network, Provider will share a proposed construction schedule with the City.

(e) Construction Communications Plan. Provider will implement a construction communications plan and will use commercially reasonable efforts to meet the following timelines and standards, as they relate to each released local convergence point (“LCP”) area:

- (i) At least thirty (30) days prior to the commencement of construction in a residential area, Provider will send a detailed letter to the property owners and residents in that area advising them of upcoming construction activities.
- (ii) At least fourteen (14) days prior to the commencement of construction in a residential area, Provider will send a postcard reminder to property owners and residents in that area reminding them of upcoming construction activities.
- (iii) At least three (3) days prior to the commencement of construction in a residential area, Provider will send out street teams to place signs in the yards of those properties where Provider will commence with construction activities.

Each communication to a property owner or resident will include the URL to Provider’s construction website: metronetinc.com/construction. Provider shall maintain this website with additional information that is accessible to property owners and residents regarding the construction plans in their area. Following construction, Provider shall permit property owners to use this website to submit damage claims in the event Provider inadvertently causes damage to their property.

(f) Initial Products and Services. Upon the commencement of providing Fiber Services in the Buildout Territory, Provider will offer and provide an advertised Internet service with download speeds of at least one (1) Gigabit available to business and residential customers. Additionally, Provider will initially offer those Fiber Services set forth in Exhibit C. Provider will maintain the Fiber Services in accordance with industry standards. Subsequent to the initial buildout, Provider will offer market competitive and industry standard download speeds, provided, however, throughout the term of this Agreement, subject to any Force Majeure Event, Provider will offer an Internet service with download speeds of at least one (1) Gigabit to business and residential consumers.

(g) New Products and Services. Subject to demand and prudent business practices, Provider will work in good faith with the City to explore the possibility of offering any new Fiber Services requested by the City.

(h) Retail Store. Provider will establish and maintain a retail store in the Buildout Territory. The retail store will be open to the public at least forty (40) hours a week and will provide customers with the opportunity to pay their bills, test Fiber Services, and receive technical support and other customer service.

(i) Additional Support. Provider will support the City, local developers, economic development groups and small businesses on potential economic development and infrastructure projects that could be enhanced by the Provider Network and/or Provider's Fiber Services. At the City's request, Provider will work with the City to develop "Smart City" initiatives that leverage the Provider Network to improve the quality of life for the City's residents.

(j) Maintenance. Provider will maintain the Provider Network in accordance with generally accepted technical and engineering standards in the communications industry.

(k) Aerial and Underground Construction. In the construction of the Provider Network, if the infrastructure of the electric service utility is underground in any area, the Provider must place the Provider Network infrastructure underground. In any area, including any blockface (being the side of a city block between two (2) intersections), in which the infrastructure of the electric service utility is both aerial and underground, the Provider shall have the discretion to construct the Provider Network infrastructure aerially or underground.

(l) City Communications Services. For the term of this Agreement, Provider shall provide certain communications services to the City ("Communications Services") pursuant to a separate service agreement between Provider and the City.

(m) Employment Obligations. No later than one year following the date Provider's Network is Substantially Complete and for a period of five (5) years thereafter, Provider shall employ a Monthly Average of ten (10) Full-Time Equivalent Employment Units in support of the Provider Network. Provider shall not receive the next available ED Grant if the Monthly Average of Full-Time Equivalent Employment Units employed by Provider does not meet the requirements of this Section. Provider shall provide information as requested by the City to determine compliance with the foregoing employment obligations.

(n) Compliance with Legal Obligations. Provider shall comply with all federal, state, and local laws, ordinances and other legal requirements and obligations associated with the provision of Fiber Services in the City, including but not limited to the Federal Communications Act, Iowa Code chapter 477A and related ordinances. Should any third-party challenge any portion of this Agreement based upon any alleged failure to comply with Provider's obligations under this Section, Provider agrees to defend such action, hold the City harmless, and indemnify City from any costs or expenses associated therewith.

2. The City's Obligations to provide Economic Development Grants.

(a) Subject to Provider being in compliance with the terms of this Agreement at the time of each payment and pursuant to the authority of Iowa Code chapter 15A, the City agrees to make up to forty (40) consecutive economic development grants ("ED Grants") to Provider; each grant in an amount equal to the amount of property tax paid by Provider under Chapter 433 of the Code of Iowa with respect to the Property and received by the City during the previous six (6)

months. The aggregate amount of ED Grants paid under this Agreement by the City shall not exceed Eleven Million Six Hundred Seventy Five Thousand and 00/100s Dollars (\$11,675,000.00) (the “Maximum Aggregate Grant”). The City shall pay each ED Grant on or before December 31st and June 30th of each year with respect to property taxes attributed to the Property and received by the City during the preceding six (6) months. The first ED Grant shall be payable in the year in which the Provider first pays property taxes attributed to the Property pursuant to Chapter 433 and the City first receives said taxes. Unless terminated earlier under the terms of this Agreement, the City’s obligation to provide ED Grants shall terminate upon the earlier of: (i) the payment of forty (40) ED Grants, or (ii) the passage of twenty (20) years after the payment of the first ED Grant, even if the Maximum Aggregate Grant amount has not been reached. After the Effective Date, if the City is unable or unwilling to meet any of the obligations set forth in this Section 2, Provider may terminate this Agreement by delivering written notice to the City. Upon such termination neither Party shall have any further obligation to the other Party under this Agreement.

(b) Nonappropriation and Nonsubstitution. The ED Grants shall be payable from and secured solely and only by property taxes paid by Provider for the Property under Chapter 433 of the Code of Iowa and received by the City. The ED Grants shall not be payable in any manner by general taxation or from any other City funds. The ED Grants do not constitute a general obligation of the City or other financial obligation of the City for any fiscal year and shall not constitute debt within the meaning of any constitutional debt limitation. This Agreement shall not directly or indirectly obligate the City to make payments of the ED Grants during a fiscal year in which funds have not been appropriated by the City Council of the City for such fiscal year. The Provider agrees that the City may terminate this Agreement or suspend payment of the ED Grants in any fiscal year in which funds are not appropriated for that purpose or funds become unavailable for the City to fulfill its obligations under this Agreement, provided however, that the City will not do any of the following during any fiscal year in which the City fails to make payment of the ED Grants pursuant to this Agreement: (i) expend funds for any alternative project that would have the same or similar purpose as the Project during the term of this Agreement; or (ii) provide the same or similar incentives as those set forth in this Agreement to any person to construct or operate an alternative project that would have the effect of providing a level of video, data, and/or telephone service that would be similar to that provided under the Project.

3. General Terms.

(a) Term. The term of this Agreement will commence on the Effective Date and, unless otherwise set forth in this Agreement, will continue for the duration of the time period Provider provides Fiber Services in the Buildout Territory unless sooner terminated pursuant to the terms of this Agreement.

(b) General Indemnification and Insurance. To the extent permitted by law, Provider shall indemnify, defend, and hold harmless City and its officers, directors, council members,

employees, and agents from and against all third party claims, damages, losses, punitive awards, and expenses for property damage, or personal injury directly arising out of or resulting from the performance of work. Provider agrees to require contractors and subcontractors engaged in work for Provider within the public right-of-way or public property to maintain insurance coverage and to provide the City with certificates of insurance satisfactory to the City. Carrying of insurance as required by this Agreement is separate from the defense and indemnification obligations set forth in this Section. The provisions of this Section 3(b) shall survive termination of this Agreement.

(c) Certain Claims and Control of Defense. Should a third party challenge any portion of this Agreement as being illegal, void, voidable or unconstitutional, the City shall promptly notify Provider in writing of such claim. Provider shall have the right, but not the obligation, to defend against the claim by sending written notice to the City not less than ten (10) days after receipt of notice from the City. In such case, Provider shall control the defense, appeal or settlement of the claim through reputable independent counsel of Provider's choosing at Provider's sole cost and expense and Provider shall indemnify the City from any loss, cost or damages directly arising from such claim. If Provider does not assume the defense, the City may choose to defend against the claim at its sole cost and expense. If neither Party chooses to defend against the claim either Party may terminate this Agreement by delivering written notice to the other Party.

(d) Default and Cure. In the event a Party is in breach of any of its material obligations under this Agreement such Party shall be in default (the "Defaulting Party") and the other Party (the "Non-Defaulting Party") may provide written notice of such default to the Defaulting Party. Any such notice will provide the following information: (i) the section of this Agreement believed to be in default; and (ii) a reasonably detailed description of the default. The Defaulting Party will have thirty (30) days to either: (i) cure the default; (ii) provide written or other documentary evidence reasonably acceptable to the Non-Defaulting Party that no default has in fact occurred; or (iii) provide a written detailed plan which describes how and when the default will be corrected within a reasonable time if such default cannot be corrected within the 30 day cure period. If the Defaulting Party is still in default after the expiration of the 30 day cure period including any approved time extension, except as otherwise provided in this Agreement, the Non-Defaulting Party may seek specific performance or any other remedy expressly set forth in this Agreement. Any dispute between the Parties regarding an alleged default under this provision shall be resolved through the dispute resolution process set forth in Section 3(e). For avoidance of doubt, Provider will not be required to go through the dispute resolution process prior to exercising the termination remedy set forth in Section 2(a) of this Agreement.

(e) Dispute Resolution. The Parties shall adhere to the following dispute resolution procedure.

(i) Negotiation. Except where injunctive relief is sought, each Party shall attempt in good faith to resolve any controversy, claim or dispute of whatever nature arising out of or relating to this Agreement or the breach, termination, enforceability or validity thereof (“Dispute”) promptly by negotiation between officers, executives or managers who have authority to settle the Dispute and who are at a higher level of management within each of the Parties’ organizations than the Parties’ appointed account managers (understanding that City Council approval will be required for any negotiated settlement on behalf of the City). Each Party shall provide the other with all information and documentation relied upon by the Party to substantiate its position with respect to the Dispute.

(ii) Mediation. If the Dispute has not been resolved through negotiation within thirty (30) business days of the initiation thereof, the Parties shall make a good faith attempt to settle the Dispute by mediation conducted by a mutually agreeable mediator in a mutually agreed upon location.

(iii) Right to Trial. If the Parties are unable to resolve a Dispute using the mechanisms described in this section, then either Party is entitled to any and all legal and equitable remedies it has including, without limitation, the right to a trial.

(iv) Other Remedies. Each Party agrees and acknowledges that breach of this Agreement may cause the other irreparable harm and hereby agrees that the other Party may seek injunctive relief to prevent or limit any such breach.

(f) Non-Disclosure. “Proprietary Information” is defined as all technical, financial or business data disclosed by one Party or its affiliate or representative (a “Disclosing Party”) to the other Party, or the other Party’s affiliate or representative (a “Recipient Party”) in connection with the Recipient Party’s obligations under this Agreement and that Proprietary Information includes all intellectual property, specifications, designs, drawings, spreadsheets, models, computer programs, reports, plans, forecasts, customer lists, current or historical data and financial information, computer programs, business plans, financial projections, all other material and information provided by a Disclosing Party to a Recipient Party that would commonly be considered by reasonable business people to be confidential or proprietary to the Disclosing Party, and all notes, analyses, compilations, studies, interpretations, or other documents prepared by a Recipient Party to the extent such documents contain, reflect, or are based upon the information furnished to the Recipient Party pursuant hereto; provided, however, nothing contained in this Agreement shall be construed to require City to keep information

confidential, or part of the definition of Proprietary Information, in contravention of applicable open records laws, including, but not limited to, Chapters 21 and 22 of the Iowa Code.

Subject to the provisions of this Section 3(f), Proprietary Information will be used solely for the purpose of performing obligations under this Agreement and a Recipient Party will keep such Proprietary Information strictly confidential for a period of two (2) years from the date of disclosure, using the same degree of care and discretion, that is not less than a reasonable standard of care, to limit disclosure of such Proprietary Information as it uses with similar proprietary information of its own, including taking steps restrict disclosure of Proprietary Information to its employees, advisers and representatives with a need to know and have agreed to comply with the terms hereof, and not disclose such Proprietary Information to any other parties; advise all of a Recipient Party's employees and contractors with access to the Proprietary Information of the obligation to protect Proprietary Information provided hereunder; use the Proprietary Information provided hereunder only for the purposes expressed herein or to enforce the provisions hereof and for no other purposes; and promptly notify the Disclosing Party in writing of any disclosure, whether accidental or intentional, of any Proprietary Information to a third party.

The obligations imposed upon the Parties will not apply to Proprietary Information which: is made generally available to the public by the Disclosing Party or which otherwise is or hereafter becomes part of the public domain through no wrongful act, fault or negligence on the part of the Recipient Party; the Recipient Party can reasonably demonstrate was already in the possession of the Recipient Party without being subject to an agreement of confidentiality is received from a third-party without restriction and without breach of any agreement of confidentiality; is independently developed by the Recipient Party without reference to or incorporation of any Proprietary Information as evidenced by its written records; or the Recipient Party is required to disclose pursuant to a valid order of a court or other governmental body or any political subdivision thereof, provided, however, that, to the extent that it may lawfully do so, a Recipient Party will first have given notice of such prospective disclosure to the Disclosing Party and given the Disclosing Party a reasonable opportunity to interpose an objection or obtain a protective order requiring that the Proprietary Information and/or documents to be disclosed be used only for the purposes for which the order was issued.

Nothing contained in this Agreement will be construed as granting or conferring any rights by license or otherwise in any Proprietary Information disclosed to a Recipient Party. All Proprietary Information will remain the property of the Disclosing Party and will be destroyed or returned by the Recipient Party to the Disclosing Party immediately upon (i) termination of this Agreement, or (ii) written request of the Disclosing Party. Nothing contained in this Agreement shall be construed to require City to keep information confidential in contravention of applicable open records laws, including, but not limited to, Chapters 21 and 22 of the Iowa Code.

(g) Force Majeure. Notwithstanding any other provision of this Agreement, neither the City nor Provider will be liable for any failure or delay in performing their respective obligations, or

for any loss or damage, resulting from any Force Majeure Event. The Party claiming relief under this Section will notify the other in writing of the existence of the event relied on and the cessation or termination of said event.

(h) No Joint Venture. This Agreement is not intended to create, nor will it be construed to create, any partnership, joint venture, or employment relationship between the City and Provider, and neither Party will be liable for the payment or performance of any debt, obligations, or liabilities of the other Party, unless expressly assumed in writing. Each Party covenants that it will not act in a manner that may be construed to be inconsistent with the foregoing nor otherwise act or purport to act on behalf of the other Party except as may be expressly authorized in writing by the other Party. The City and Provider, in performing any of their obligations hereunder, will be independent contractors or independent Parties and will discharge their contractual obligations at their own risk subject, however, to the terms and conditions of this Agreement.

(i) Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all previous understandings, commitments or representations, whether oral or written. Each Party acknowledges that the other Party has not made any representations other than those that are contained herein. This Agreement may not be amended or modified in any way except by a writing signed by the authorized representatives of the Parties.

(j) Agreement Not To Disclose. In order to enable efficient execution of this Agreement and to the extent allowed by law, the Parties agree not to disclose the existence of terms of this Agreement to the public until the Agreement is in final form and both Parties agree upon a time and manner for a formal statement. All sharing of information should be only with those individuals deemed necessary to carry out the terms of this Agreement. Nothing contained in this Section shall be construed to require City to keep information confidential in contravention of applicable open records laws, including, but not limited to, Chapters 21 and 22 of the Code of Iowa.

(k) Headings. Headings and captions of this Agreement's sections and paragraphs are only for convenience and reference. These headings and captions will not affect or modify this Agreement's terms or be used to interpret or assist in the construction of this Agreement.

(l) Waiver. Any right or remedy provided for in this Agreement will not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor will any action taken or failure to take action in the exercise of any right or remedy be deemed a waiver of any other rights or remedies at the time.

(m) Assignment. Neither Party may assign its rights under this Agreement without the prior written consent of the non-assigning Party, which consent will not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, with prior notice to the non-assigning

party, either Party may assign this Agreement to a parent or affiliate entity, or to any third party who acquires all or substantially all the assigning Party's assets or equity whether by merger or sale. In the event of an assignment by either Party, the assigning Party will cause the assignee to assume all of the rights and obligations of the assigning Party.

(n) Notices. Any notices, requests, or consents required to be given pursuant to this Agreement will be given in writing either personally served or sent by overnight delivery service maintaining records of receipt, or by certified mail return receipt requested, directed to the Legal Department of each Party, or other address as may be designated by each Party.

If to the City:

With a Copy to:

If to Provider:
Metro Fibernet, LLC
Attn: President
3701 Communications Way
Evansville, IN 47715
Phone: (812) 456-1215
Email:

With a Copy to:
Metro Fibernet, LLC
Attn: Legal Department
8837 Bond Street
Overland Park, KS 66214
Phone: (812) 213-1085
Email: john.campbell@qservicesco.com

or to any such other persons or addresses as the Parties may from time to time designate in a writing delivered in accordance with this Section.

(o) Applicable Law. This Agreement will be governed by all the laws of the State of Iowa without regard to the choice of law provisions thereof.

(p) Venue. The Parties consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Scott County, Iowa for purposes of adjudicating any matter arising out of or relating to this Agreement.

(q) No Third-Party Beneficiaries. No rights or privileges of either Party hereto shall inure to the benefit of any other person or entity, and no such other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

(r) Level Playing Field. The aide described above is non-exclusive. The City specifically reserves the right to offer this aide to any provider willing and able to construct and operate a FTTP network for the purpose of offering Fiber Services in the City under the same terms and conditions set forth in this Agreement. The City wishes to create a balanced, level playing field. Therefore, in the event the City provides additional aide to another provider of Fiber Services in the City, this Agreement may be amended to provide such more favorable aide. The City shall be reasonable in its determination regarding amendment of this Agreement to provide a balanced, level playing field.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first written above.

THE CITY OF DAVENPORT, IOWA

By: _____

METRO FIBERNET, LLC

By: _____

John P. Cinelli, as President

EXHIBIT A
DEFINITIONS

The following terms will be defined in this Agreement as follows:

- (a) “Agreement” means this Agreement and its Exhibits as may be modified by the Parties from time to time.
- (b) “Buildout Territory” has the meaning set forth in Section of 1(a) of the Agreement.
- (c) “City” has the meaning set forth in the preamble of the Agreement.
- (d) “Defaulting Party” has the meaning set forth in Section 3(d) of the Agreement.
- (e) “Disclosing Party” has the meaning set forth in Section 3(f) of the Agreement.
- (f) “Dispute” has the meaning set forth in Section 3(e)(i) of the Agreement.
- (g) “ED Grants” has the meaning set forth in Section 2 of the Agreement.
- (h) “Effective Date” will have the meaning set forth in the preamble of this Agreement.
- (i) “Fiber Services” means voice, video, Internet and data services delivered over an FTTP Network.
- (j) “Force Majeure Event” means any event or circumstance beyond the reasonable control of the Party claiming the existence of such event, including but not limited to any earthquake, hurricane, tornado or similar weather, fire, flood, lightning, sinkhole or other forces of nature, act of war, terrorism or civil unrest, strikes, lockout or other labor unrest, legal order, government action if taken by a government body other than the City or application of laws, regulations or codes or vendor failure.
- (k) “Full-Time Equivalent Employment Unit” means the employment by Provider of the equivalent of one person for 1,920 hours per year, assuming 8 hours per day for a 5-day, 40-hour work week for 48 weeks per year.
- (l) “FTTP” means fiber-to-the-premises.

(m) “Maximum Aggregate Grant” has the meaning set forth in Section 2 of the Agreement.

(n) “Monthly Average” means the average number of Full-Time Equivalent Employment Units employed as of October 1 of each year and as of the first day of each of the preceding eleven (11) months.

(o) “Non-Defaulting Party” has the meaning set forth in Section 3(d) of the Agreement.

(p) “Project” has the meaning set forth in the preamble of the Agreement.

(q) “Proprietary Information” has the meaning set forth in Section 3(f) of the Agreement.

(r) “Provider” has the meaning set forth in the preamble of the Agreement.

(s) “Provider Network” has the meaning set forth in Section C of the preamble to the Agreement. .

(t) “Qualified Business Customer” means any business customer who has agreed in writing to Provider’s commercial agreement including, if applicable, any non-recurring construction fee.

(u) “Qualified Household” means any single family residential home where a resident has agreed in writing to Provider’s standard terms and conditions of service including, if applicable, any reasonable deposit requirements and standard installation fees, as a condition of requesting Fiber Services from Provider.

(v) “Recipient Party” has the meaning set forth in Section 3(f) of the Agreement.

(w) “Substantially Complete” means that Provider has completed construction of 90% of the Buildout Territory.

(x) “Unreasonably High Make Ready Costs” means make ready costs that exceed \$2.25 per foot.

EXHIBIT B
BUILDOUT TERRITORY

DRAFT

EXHIBIT B-1

Existing FTTP Networks

DRAFT

EXHIBIT B-2
INTERIM COMPLETION DATES

DRAFT

EXHIBIT C

INITIAL FIBER SERVICES

FORMAL LIST TO BE PROVIDED AT A LATER DATE

A. Residential Services. Provider would provide the following voice, video and Internet services to residential consumers in the City utilizing the Provider Network:

- (1) Fiber IPTV. A video service offering with up to 240 channels (128 HD channels), an incredibly clear picture and fast channel changing capability all provided over a cutting edge interactive IPTV platform. The IPTV platform would also support 4K next generation television.
- (2) Fiber Phone. A reliable fiber phone service with up to 17 custom calling features, long distance service and a low price point.
- (3) Fiber Internet. Incredibly fast Internet speeds up to 1Gb.
- (4) Wireless Home Networking. The ability to connect up to five computers wirelessly to Provider's Internet service and the ability to utilize wireless video set top boxes.
- (5) Home Monitoring. A home monitoring/security service.
- (6) New Services. As new residential broadband services like, smart home, distance learning, tele-medicine and 4K video become market ready, Provider's dedicated product development team will work to make those services available.

B. Business Services. Provider would provide the following voice, video and Internet services to business consumers in the City utilizing the Provider Network:

- (1) Hosted PBX. A private business service that allows a customer 4 digit dialing connectivity, numerous customer calling features and the capability to easily upsize or downsize users and integrates cell phone with PBX.
- (2) Fiber Internet. Incredibly fast Internet with multiple Gig options.
- (3) Fiber IPTV. A video service offering with up to 240 channels (128 HD channels), an incredibly clear picture and fast channel changing capability all provided over a cutting edge interactive IPTV platform. The IPTV platform would also support 4K next generation television.
- (4) Enterprise Solutions. Sophisticated enterprise solutions including dark fiber services, local area networks and high capacity circuits for commercial customers.

**A RESOLUTION APPROVING A FIBER TO THE PREMISE DEVELOPMENT
AGREEMENT BETWEEN THE CITY OF BETTENDORF AND METRO FIBERNET
FOR THE CONSTRUCTION OF A COMMUNITY-WIDE FIBER NETWORK OFFERING
CABLE, PHONE, AND INTERNET SERVICES.**

WHEREAS, the City of Bettendorf ("the City") believes it is in its best interest to have a fiber-to-the-premise ("FTTP") network to attract and retain businesses and enhance the overall quality of life for its residents; and

WHEREAS, the City is willing to provide certain incentives to any communications provider willing to construct and operate an FTTP network for purposes of delivering fiber services to residential and business customers throughout the City, subject to the terms of a development agreement and approval of the City Council; and

WHEREAS, Metro Fibernet ("MetroNet") has the financial and technical ability to construct and operate an FTTP network for purposes of delivering fiber services to residential and business customers throughout the City; and

WHEREAS, MetroNet will employ employees in the City to support the network as part of the project; and

WHEREAS, MetroNet is willing and able to meet the City's requirements for the project as set forth in the attached Economic Development Agreement.

NOW, THEREFORE, BE IT RESOLVED, for good, valuable and mutual consideration which each Party hereto acknowledges and for the exchange of the terms and conditions set forth below, the fiber to the premise development agreement between the City and MetroNet for the construction of a community-wide fiber network offering cable, phone, and internet services is hereby approved by the City Council.

Robert S. Gallagher, Mayor

Attest:

Decker P. Ploehn, City Clerk

FTTP DEVELOPMENT AGREEMENT

This FTTP Development Agreement (“Agreement”) is made this ____ day of August, 2018 (“Effective Date”) by and between the City of Bettendorf, Iowa (“City”) and Metro Fibernet, LLC, a Nevada limited liability company (“Provider”). The City and Provider are sometimes referred to herein collectively as the “Parties”, each individually a “Party”. Capitalized terms not defined herein shall have the meanings ascribed to them in Exhibit A to this Agreement.

Recitals

- A. The City believes it is in its best interest to have an FTTP network to attract and retain businesses and enhance the overall quality of life for its residents; and
- B. The City is willing to provide certain incentives to any communications provider willing to construct and operate an FTTP network for purposes of delivering Fiber Services to residential and business customers throughout the City, subject to the terms of a development agreement and approval of the City Council; and
- C. Provider has the financial and technical ability to construct and operate an FTTP network (“Provider Network”) for purposes of delivering Fiber Services to residential and business customers throughout the City (the “Project”); and
- D. Provider will employ employees in the City to support the Provider Network as part of the Project; and
- E. Provider is willing and able to meet the City’s requirements for the Project as set forth in this Agreement.

NOW, THEREFORE, for good, valuable and mutual consideration which each Party hereto acknowledges and for the exchange of the terms and conditions set forth below, the Parties agree as follows:

1. Provider’s Project Obligations. Subject to the terms and conditions of this Agreement, Provider agrees to fulfill the Project obligations set forth below.

(a) Network. Provider will build the Provider Network that will make Fiber Services available to residential and business consumers in the territory set forth in the map attached hereto as Exhibit B (“Buildout Territory”). Provider shall only be obligated to extend the Provider Network to areas beyond the Buildout Territory that may be annexed by the City at a later date if, within any such areas, there are twenty-five (25) Qualified Households per one-half linear route mile.

(b) Network Extension. Provider's obligation to construct the Provider Network is expressly subject to the following:

- (i) Provider has no obligation to extend the Provider Network to any area within the Buildout Territory where residents have the ability to receive Fiber Services from another provider over an FTTP network. At the request of the City, Provider will work in good faith with the City to determine which residents and businesses have the ability to receive Fiber Services from another provider over an FTTP network and to extend the Provider Network to the areas described in Exhibit B-1.
- (ii) If any area of the Buildout Territory has Unreasonably High Make Ready Costs, Provider may require a minimum of twenty-five (25) Qualified Households per one-half linear route mile within the area of the Buildout Territory subject to Unreasonably High Make Ready Costs prior to making Fiber Services available in the proposed area.
- (iii) Provider has no obligation to extend the Provider Network to any private property where the owner of the property will not allow Provider access to the property on terms reasonably acceptable to Provider.
- (iv) For no more than ten percent (10%) of the homes in the Buildout Territory, Provider reserves the right to require one-time construction fees and/or pre-selection from potential residential customers to offset or reduce the risk of unusually high buildout costs. Provider will use commercially reasonable efforts to pre-sell Fiber Services in areas subject to the service exception set forth in this Section 1(b)(iv). Provider may not require one-time construction fees when there are a minimum of twenty-five (25) Qualified Households per one-half linear route mile.

(c) Business Services. Notwithstanding anything to the contrary in this Agreement, Provider will extend the Provider Network to serve any Qualified Business Customer within the Buildout Territory, as that territory may be expanded pursuant to this Section 1(b), subject to obtaining any private property rights and pole attachment rights necessary to serve such customer on terms reasonably acceptable to Provider.

(d) Construction Schedule. Provider will use commercially reasonable efforts to Substantially Complete construction of the Provider Network in the Buildout Territory no later than three (3) years following the start of physical construction in the City. Provider will use commercially reasonable efforts to meet interim completion dates in designated areas as set forth on Exhibit B-2. Prior to commencing with physical construction of the Provider Network, Provider will share a proposed construction schedule with the City.

(e) Construction Communications Plan. Provider will implement a construction communications plan and will use commercially reasonable efforts to meet the following timelines and standards, as they relate to each released local convergence point (“LCP”) area:

- (i) At least thirty (30) days prior to the commencement of construction in a residential area, Provider will send a detailed letter to the property owners and residents in that area advising them of upcoming construction activities.
- (ii) At least fourteen (14) days prior to the commencement of construction in a residential area, Provider will send a postcard reminder to property owners and residents in that area reminding them of upcoming construction activities.
- (iii) At least three (3) days prior to the commencement of construction in a residential area, Provider will send out street teams to place signs in the yards of those properties where Provider will commence with construction activities.

Each communication to a property owner or resident will include the URL to Provider’s construction website: metronetinc.com/construction. Provider shall maintain this website with additional information that is accessible to property owners and residents regarding the construction plans in their area. Following construction, Provider shall permit property owners to use this website to submit damage claims in the event Provider inadvertently causes damage to their property.

(f) Initial Products and Services. Upon the commencement of providing Fiber Services in the Buildout Territory, Provider will offer and provide an advertised Internet service with download speeds of at least one (1) Gigabit available to business and residential customers. Additionally, Provider will initially offer those Fiber Services set forth in Exhibit C. Provider will maintain the Fiber Services in accordance with industry standards. Subsequent to the initial buildout, Provider will offer market competitive and industry standard download speeds, provided, however, throughout the term of this Agreement, subject to any Force Majeure Event, Provider will offer an Internet service with download speeds of at least one (1) Gigabit to business and residential consumers.

(g) New Products and Services. Subject to demand and prudent business practices, Provider will work in good faith with the City to explore the possibility of offering any new Fiber Services requested by the City.

(h) Retail Store. Provider will establish and maintain a retail store in the Buildout Territory. The retail store will be open to the public at least forty (40) hours a week and will provide customers with the opportunity to pay their bills, test Fiber Services, and receive technical support and other customer service.

(i) Additional Support. Provider will support the City, local developers, economic development groups and small businesses on potential economic development and infrastructure projects that could be enhanced by the Provider Network and/or Provider's Fiber Services. At the City's request, Provider will work with the City to develop "Smart City" initiatives that leverage the Provider Network to improve the quality of life for the City's residents.

(j) Maintenance. Provider will maintain the Provider Network in accordance with generally accepted technical and engineering standards in the communications industry.

(k) Aerial and Underground Construction. In the construction of the Provider Network, if the infrastructure of the electric service utility is underground in any area, the Provider must place the Provider Network infrastructure underground. In any area, including any blockface (being the side of a city block between two (2) intersections), in which the infrastructure of the electric service utility is both aerial and underground, the Provider shall have the discretion to construct the Provider Network infrastructure aerially or underground.

(l) City Communications Services. For the term of this Agreement, Provider shall provide certain communications services to the City ("Communications Services") pursuant to a separate service agreement between Provider and the City.

(m) Employment Obligations. No later than one year following the date Provider's Network is Substantially Complete and for a period of five (5) years thereafter, Provider shall employ a Monthly Average of ten (10) Full-Time Equivalent Employment Units in support of the Provider Network. Provider shall not receive the next available ED Grant if the Monthly Average of Full-Time Equivalent Employment Units employed by Provider does not meet the requirements of this Section. Provider shall provide information as requested by the City to determine compliance with the foregoing employment obligations.

(n) Compliance with Legal Obligations. Provider shall comply with all federal, state, and local laws, ordinances and other legal requirements and obligations associated with the provision of Fiber Services in the City, including but not limited to the Federal Communications Act, Iowa Code chapter 477A and related ordinances. Should any third-party challenge any portion of this Agreement based upon any alleged failure to comply with Provider's obligations under this Section, Provider agrees to defend such action, hold the City harmless, and indemnify City from any costs or expenses associated therewith.

2. The City's Obligations to provide Economic Development Grants.

(a) Subject to Provider being in compliance with the terms of this Agreement at the time of each payment and pursuant to the authority of Iowa Code chapter 15A, the City agrees to make up to forty (40) consecutive economic development grants ("ED Grants") to Provider; each grant in an amount equal to the amount of property tax paid by Provider under Chapter 433 of the Code of Iowa with respect to the Property and received by the City during the previous six (6)

months. The aggregate amount of ED Grants paid under this Agreement by the City shall not exceed Three Million Three Hundred Seventy Five and 00/100s Dollars (\$3,375,000.00) (the “Maximum Aggregate Grant”). The City shall pay each ED Grant on or before December 31st and June 30th of each year with respect to property taxes attributed to the Property and received by the City during the preceding six (6) months. The first ED Grant shall be payable in the year in which the Provider first pays property taxes attributed to the Property pursuant to Chapter 433 and the City first receives said taxes. Unless terminated earlier under the terms of this Agreement, the City’s obligation to provide ED Grants shall terminate upon the earlier of: (i) the payment of forty (40) ED Grants, or (ii) the passage of twenty (20) years after the payment of the first ED Grant, even if the Maximum Aggregate Grant amount has not been reached. After the Effective Date, if the City is unable or unwilling to meet any of the obligations set forth in this Section 2, Provider may terminate this Agreement by delivering written notice to the City. Upon such termination neither Party shall have any further obligation to the other Party under this Agreement.

(b) Nonappropriation and Nonsubstitution. The ED Grants shall be payable from and secured solely and only by property taxes paid by Provider for the Property under Chapter 433 of the Code of Iowa and received by the City. The ED Grants shall not be payable in any manner by general taxation or from any other City funds. The ED Grants do not constitute a general obligation of the City or other financial obligation of the City for any fiscal year and shall not constitute debt within the meaning of any constitutional debt limitation. This Agreement shall not directly or indirectly obligate the City to make payments of the ED Grants during a fiscal year in which funds have not been appropriated by the City Council of the City for such fiscal year. The Provider agrees that the City may terminate this Agreement or suspend payment of the ED Grants in any fiscal year in which funds are not appropriated for that purpose or funds become unavailable for the City to fulfill its obligations under this Agreement, provided however, that the City will not do any of the following during any fiscal year in which the City fails to make payment of the ED Grants pursuant to this Agreement: (i) expend funds for any alternative project that would have the same or similar purpose as the Project during the term of this Agreement; or (ii) provide the same or similar incentives as those set forth in this Agreement to any person to construct or operate an alternative project that would have the effect of providing a level of video, data, and/or telephone service that would be similar to that provided under the Project.

3. General Terms.

(a) Term. The term of this Agreement will commence on the Effective Date and, unless otherwise set forth in this Agreement, will continue for the duration of the time period Provider provides Fiber Services in the Buildout Territory unless sooner terminated pursuant to the terms of this Agreement.

(b) General Indemnification and Insurance. To the extent permitted by law, Provider shall indemnify, defend, and hold harmless City and its officers, directors, council members,

employees, and agents from and against all third party claims, damages, losses, punitive awards, and expenses for property damage, or personal injury directly arising out of or resulting from the performance of work. Provider agrees to require contractors and subcontractors engaged in work for Provider within the public right-of-way or public property to maintain insurance coverage and to provide the City with certificates of insurance satisfactory to the City. Carrying of insurance as required by this Agreement is separate from the defense and indemnification obligations set forth in this Section. The provisions of this Section 3(b) shall survive termination of this Agreement.

(c) Certain Claims and Control of Defense. Should a third party challenge any portion of this Agreement as being illegal, void, voidable or unconstitutional, the City shall promptly notify Provider in writing of such claim. Provider shall have the right, but not the obligation, to defend against the claim by sending written notice to the City not less than ten (10) days after receipt of notice from the City. In such case, Provider shall control the defense, appeal or settlement of the claim through reputable independent counsel of Provider's choosing at Provider's sole cost and expense and Provider shall indemnify the City from any loss, cost or damages directly arising from such claim. If Provider does not assume the defense, the City may choose to defend against the claim at its sole cost and expense. If neither Party chooses to defend against the claim either Party may terminate this Agreement by delivering written notice to the other Party.

(d) Default and Cure. In the event a Party is in breach of any of its material obligations under this Agreement such Party shall be in default (the "Defaulting Party") and the other Party (the "Non-Defaulting Party") may provide written notice of such default to the Defaulting Party. Any such notice will provide the following information: (i) the section of this Agreement believed to be in default; and (ii) a reasonably detailed description of the default. The Defaulting Party will have thirty (30) days to either: (i) cure the default; (ii) provide written or other documentary evidence reasonably acceptable to the Non-Defaulting Party that no default has in fact occurred; or (iii) provide a written detailed plan which describes how and when the default will be corrected within a reasonable time if such default cannot be corrected within the 30 day cure period. If the Defaulting Party is still in default after the expiration of the 30 day cure period including any approved time extension, except as otherwise provided in this Agreement, the Non-Defaulting Party may seek specific performance or any other remedy expressly set forth in this Agreement. Any dispute between the Parties regarding an alleged default under this provision shall be resolved through the dispute resolution process set forth in Section 3(e). For avoidance of doubt, Provider will not be required to go through the dispute resolution process prior to exercising the termination remedy set forth in Section 2(a) of this Agreement.

(e) Dispute Resolution. The Parties shall adhere to the following dispute resolution procedure.

(i) Negotiation. Except where injunctive relief is sought, each Party shall attempt in good faith to resolve any controversy, claim or dispute of whatever nature arising out of or relating to this Agreement or the breach, termination, enforceability or validity thereof (“Dispute”) promptly by negotiation between officers, executives or managers who have authority to settle the Dispute and who are at a higher level of management within each of the Parties’ organizations than the Parties’ appointed account managers (understanding that City Council approval will be required for any negotiated settlement on behalf of the City). Each Party shall provide the other with all information and documentation relied upon by the Party to substantiate its position with respect to the Dispute.

(ii) Mediation. If the Dispute has not been resolved through negotiation within thirty (30) business days of the initiation thereof, the Parties shall make a good faith attempt to settle the Dispute by mediation conducted by a mutually agreeable mediator in a mutually agreed upon location.

(iii) Right to Trial. If the Parties are unable to resolve a Dispute using the mechanisms described in this section, then either Party is entitled to any and all legal and equitable remedies it has including, without limitation, the right to a trial.

(iv) Other Remedies. Each Party agrees and acknowledges that breach of this Agreement may cause the other irreparable harm and hereby agrees that the other Party may seek injunctive relief to prevent or limit any such breach.

(f) Non-Disclosure. “Proprietary Information” is defined as all technical, financial or business data disclosed by one Party or its affiliate or representative (a “Disclosing Party”) to the other Party, or the other Party’s affiliate or representative (a “Recipient Party”) in connection with the Recipient Party’s obligations under this Agreement and that Proprietary Information includes all intellectual property, specifications, designs, drawings, spreadsheets, models, computer programs, reports, plans, forecasts, customer lists, current or historical data and financial information, computer programs, business plans, financial projections, all other material and information provided by a Disclosing Party to a Recipient Party that would commonly be considered by reasonable business people to be confidential or proprietary to the Disclosing Party, and all notes, analyses, compilations, studies, interpretations, or other documents prepared by a Recipient Party to the extent such documents contain, reflect, or are based upon the information furnished to the Recipient Party pursuant hereto; provided, however, nothing contained in this Agreement shall be construed to require City to keep information

confidential, or part of the definition of Proprietary Information, in contravention of applicable open records laws, including, but not limited to, Chapters 21 and 22 of the Iowa Code.

Subject to the provisions of this Section 3(f), Proprietary Information will be used solely for the purpose of performing obligations under this Agreement and a Recipient Party will keep such Proprietary Information strictly confidential for a period of two (2) years from the date of disclosure, using the same degree of care and discretion, that is not less than a reasonable standard of care, to limit disclosure of such Proprietary Information as it uses with similar proprietary information of its own, including taking steps restrict disclosure of Proprietary Information to its employees, advisers and representatives with a need to know and have agreed to comply with the terms hereof, and not disclose such Proprietary Information to any other parties; advise all of a Recipient Party's employees and contractors with access to the Proprietary Information of the obligation to protect Proprietary Information provided hereunder; use the Proprietary Information provided hereunder only for the purposes expressed herein or to enforce the provisions hereof and for no other purposes; and promptly notify the Disclosing Party in writing of any disclosure, whether accidental or intentional, of any Proprietary Information to a third party.

The obligations imposed upon the Parties will not apply to Proprietary Information which: is made generally available to the public by the Disclosing Party or which otherwise is or hereafter becomes part of the public domain through no wrongful act, fault or negligence on the part of the Recipient Party; the Recipient Party can reasonably demonstrate was already in the possession of the Recipient Party without being subject to an agreement of confidentiality is received from a third-party without restriction and without breach of any agreement of confidentiality; is independently developed by the Recipient Party without reference to or incorporation of any Proprietary Information as evidenced by its written records; or the Recipient Party is required to disclose pursuant to a valid order of a court or other governmental body or any political subdivision thereof, provided, however, that, to the extent that it may lawfully do so, a Recipient Party will first have given notice of such prospective disclosure to the Disclosing Party and given the Disclosing Party a reasonable opportunity to interpose an objection or obtain a protective order requiring that the Proprietary Information and/or documents to be disclosed be used only for the purposes for which the order was issued.

Nothing contained in this Agreement will be construed as granting or conferring any rights by license or otherwise in any Proprietary Information disclosed to a Recipient Party. All Proprietary Information will remain the property of the Disclosing Party and will be destroyed or returned by the Recipient Party to the Disclosing Party immediately upon (i) termination of this Agreement, or (ii) written request of the Disclosing Party. Nothing contained in this Agreement shall be construed to require City to keep information confidential in contravention of applicable open records laws, including, but not limited to, Chapters 21 and 22 of the Iowa Code.

(g) Force Majeure. Notwithstanding any other provision of this Agreement, neither the City nor Provider will be liable for any failure or delay in performing their respective obligations, or

for any loss or damage, resulting from any Force Majeure Event. The Party claiming relief under this Section will notify the other in writing of the existence of the event relied on and the cessation or termination of said event.

(h) No Joint Venture. This Agreement is not intended to create, nor will it be construed to create, any partnership, joint venture, or employment relationship between the City and Provider, and neither Party will be liable for the payment or performance of any debt, obligations, or liabilities of the other Party, unless expressly assumed in writing. Each Party covenants that it will not act in a manner that may be construed to be inconsistent with the foregoing nor otherwise act or purport to act on behalf of the other Party except as may be expressly authorized in writing by the other Party. The City and Provider, in performing any of their obligations hereunder, will be independent contractors or independent Parties and will discharge their contractual obligations at their own risk subject, however, to the terms and conditions of this Agreement.

(i) Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all previous understandings, commitments or representations, whether oral or written. Each Party acknowledges that the other Party has not made any representations other than those that are contained herein. This Agreement may not be amended or modified in any way except by a writing signed by the authorized representatives of the Parties.

(j) Agreement Not To Disclose. In order to enable efficient execution of this Agreement and to the extent allowed by law, the Parties agree not to disclose the existence of terms of this Agreement to the public until the Agreement is in final form and both Parties agree upon a time and manner for a formal statement. All sharing of information should be only with those individuals deemed necessary to carry out the terms of this Agreement. Nothing contained in this Section shall be construed to require City to keep information confidential in contravention of applicable open records laws, including, but not limited to, Chapters 21 and 22 of the Code of Iowa.

(k) Headings. Headings and captions of this Agreement's sections and paragraphs are only for convenience and reference. These headings and captions will not affect or modify this Agreement's terms or be used to interpret or assist in the construction of this Agreement.

(l) Waiver. Any right or remedy provided for in this Agreement will not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor will any action taken or failure to take action in the exercise of any right or remedy be deemed a waiver of any other rights or remedies at the time.

(m) Assignment. Neither Party may assign its rights under this Agreement without the prior written consent of the non-assigning Party, which consent will not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, with prior notice to the non-assigning

party, either Party may assign this Agreement to a parent or affiliate entity, or to any third party who acquires all or substantially all the assigning Party's assets or equity whether by merger or sale. In the event of an assignment by either Party, the assigning Party will cause the assignee to assume all of the rights and obligations of the assigning Party.

(n) Notices. Any notices, requests, or consents required to be given pursuant to this Agreement will be given in writing either personally served or sent by overnight delivery service maintaining records of receipt, or by certified mail return receipt requested, directed to the Legal Department of each Party, or other address as may be designated by each Party.

If to the City:

With a Copy to:

If to Provider:
Metro Fibernet, LLC
Attn: President
3701 Communications Way
Evansville, IN 47715
Phone: (812) 456-1215
Email:

With a Copy to:
Metro Fibernet, LLC
Attn: Legal Department
8837 Bond Street
Overland Park, KS 66214
Phone: (812) 213-1085
Email: john.campbell@qservicesco.com

or to any such other persons or addresses as the Parties may from time to time designate in a writing delivered in accordance with this Section.

(o) Applicable Law. This Agreement will be governed by all the laws of the State of Iowa without regard to the choice of law provisions thereof.

(p) Venue. The Parties consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Scott County, Iowa for purposes of adjudicating any matter arising out of or relating to this Agreement.

(q) No Third-Party Beneficiaries. No rights or privileges of either Party hereto shall inure to the benefit of any other person or entity, and no such other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

(r) Level Playing Field. The aide described above is non-exclusive. The City specifically reserves the right to offer this aide to any provider willing and able to construct and operate a FTTP network for the purpose of offering Fiber Services in the City under the same terms and conditions set forth in this Agreement. The City wishes to create a balanced, level playing field. Therefore, in the event the City provides additional aide to another provider of Fiber Services in the City, this Agreement may be amended to provide such more favorable aide. The City shall be reasonable in its determination regarding amendment of this Agreement to provide a balanced, level playing field.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first written above.

THE CITY OF BETTENDORF, IOWA

By: _____

METRO FIBERNET, LLC

By: _____

John P. Cinelli, as President

EXHIBIT A
DEFINITIONS

The following terms will be defined in this Agreement as follows:

- (a) “Agreement” means this Agreement and its Exhibits as may be modified by the Parties from time to time.
- (b) “Buildout Territory” has the meaning set forth in Section of 1(a) of the Agreement.
- (c) “City” has the meaning set forth in the preamble of the Agreement.
- (d) “Defaulting Party” has the meaning set forth in Section 3(d) of the Agreement.
- (e) “Disclosing Party” has the meaning set forth in Section 3(f) of the Agreement.
- (f) “Dispute” has the meaning set forth in Section 3(e)(i) of the Agreement.
- (g) “ED Grants” has the meaning set forth in Section 2 of the Agreement.
- (h) “Effective Date” will have the meaning set forth in the preamble of this Agreement.
- (i) “Fiber Services” means voice, video, Internet and data services delivered over an FTTP Network.
- (j) “Force Majeure Event” means any event or circumstance beyond the reasonable control of the Party claiming the existence of such event, including but not limited to any earthquake, hurricane, tornado or similar weather, fire, flood, lightning, sinkhole or other forces of nature, act of war, terrorism or civil unrest, strikes, lockout or other labor unrest, legal order, government action if taken by a government body other than the City or application of laws, regulations or codes or vendor failure.
- (k) “Full-Time Equivalent Employment Unit” means the employment by Provider of the equivalent of one person for 1,920 hours per year, assuming 8 hours per day for a 5-day, 40-hour work week for 48 weeks per year.
- (l) “FTTP” means fiber-to-the-premises.

(m) “Maximum Aggregate Grant” has the meaning set forth in Section 2 of the Agreement.

(n) “Monthly Average” means the average number of Full-Time Equivalent Employment Units employed as of October 1 of each year and as of the first day of each of the preceding eleven (11) months.

(o) “Non-Defaulting Party” has the meaning set forth in Section 3(d) of the Agreement.

(p) “Project” has the meaning set forth in the preamble of the Agreement.

(q) “Proprietary Information” has the meaning set forth in Section 3(f) of the Agreement.

(r) “Provider” has the meaning set forth in the preamble of the Agreement.

(s) “Provider Network” has the meaning set forth in Section C of the preamble to the Agreement. .

(t) “Qualified Business Customer” means any business customer who has agreed in writing to Provider’s commercial agreement including, if applicable, any non-recurring construction fee.

(u) “Qualified Household” means any single family residential home where a resident has agreed in writing to Provider’s standard terms and conditions of service including, if applicable, any reasonable deposit requirements and standard installation fees, as a condition of requesting Fiber Services from Provider.

(v) “Recipient Party” has the meaning set forth in Section 3(f) of the Agreement.

(w) “Substantially Complete” means that Provider has completed construction of 90% of the Buildout Territory.

(x) “Unreasonably High Make Ready Costs” means make ready costs that exceed \$2.25 per foot.

EXHIBIT B
BUILDOUT TERRITORY

DRAFT

EXHIBIT B-1

Existing FTTP Networks

DRAFT

EXHIBIT B-2
INTERIM COMPLETION DATES

DRAFT

EXHIBIT C

INITIAL FIBER SERVICES

FORMAL LIST TO BE PROVIDED AT A LATER DATE

A. Residential Services. Provider would provide the following voice, video and Internet services to residential consumers in the City utilizing the Provider Network:

- (1) Fiber IPTV. A video service offering with up to 240 channels (128 HD channels), an incredibly clear picture and fast channel changing capability all provided over a cutting edge interactive IPTV platform. The IPTV platform would also support 4K next generation television.
- (2) Fiber Phone. A reliable fiber phone service with up to 17 custom calling features, long distance service and a low price point.
- (3) Fiber Internet. Incredibly fast Internet speeds up to 1Gb.
- (4) Wireless Home Networking. The ability to connect up to five computers wirelessly to Provider's Internet service and the ability to utilize wireless video set top boxes.
- (5) Home Monitoring. A home monitoring/security service.
- (6) New Services. As new residential broadband services like, smart home, distance learning, tele-medicine and 4K video become market ready, Provider's dedicated product development team will work to make those services available.

B. Business Services. Provider would provide the following voice, video and Internet services to business consumers in the City utilizing the Provider Network:

- (1) Hosted PBX. A private business service that allows a customer 4 digit dialing connectivity, numerous customer calling features and the capability to easily upsize or downsize users and integrates cell phone with PBX.
- (2) Fiber Internet. Incredibly fast Internet with multiple Gig options.
- (3) Fiber IPTV. A video service offering with up to 240 channels (128 HD channels), an incredibly clear picture and fast channel changing capability all provided over a cutting edge interactive IPTV platform. The IPTV platform would also support 4K next generation television.
- (4) Enterprise Solutions. Sophisticated enterprise solutions including dark fiber services, local area networks and high capacity circuits for commercial customers.

City of Davenport

Agenda Group: Committee of the Whole
Department: Finance
Contact Info: Brandon Wright 326-7750
Wards: ALL

Action / Date
8/13/2018

Subject:

For Discussion: Motion approving a construction letter agreement between the City of Davenport and Metro Fibernet for the construction of a community-wide fiber network offering cable, phone, and internet services. [All Wards]

Recommendation:

Approve the motion.

Relationship to Goals:

Vibrant Region

Background:

MetroNet is a fiber network company providing triple-play telecommunication services in multiple states including Illinois and Indiana. The company is proposing to construct a private, full community-wide fiber network system in both Davenport and Bettendorf.

Under the terms of this non-exclusive agreement, MetroNet will be obligated to adhere to certain construction and notification practices as the dual-community fiber-to-the-premise network is built. The resulting network will be 100% fiber and offer gigabit-level speeds to residents and businesses.

ATTACHMENTS:

Type	Description
▢ Cover Memo	Construction Letter Agreement

REVIEWERS:

Department	Reviewer	Action	Date
Finance	Admin, Default	Approved	8/9/2018 - 9:27 AM

August __, 2018

Corri Spiegel, City Administrator
City of Davenport, Iowa
226 W 4th Street
Davenport, Iowa 52801

Re: Letter Agreement ("Agreement")
Construction of 100% Fiber Optic Network
City of Davenport, Iowa ("City")

Dear Ms. Spiegel:

The City believes it is in its best interest to have a Fiber-to-the Premises ("FTTP") network to attract and retain businesses and enhance the overall quality of life for its residents. To encourage the deployment of FTTP networks, the City wishes to memorialize the manner in which it is willing to aide any communications provider willing and able to construct and operate an FTTP network for purposes of offering fiber based telecommunications, data and video services ("Fiber Services") to residential and business customers throughout the City.

Metro Fibernet, LLC ("MetroNet" or "Provider") builds and operates FTTP networks in more than 30 communities in Illinois, Indiana and Kentucky that collectively offer Fiber Services to more than 250,000 homes and businesses. Metronet has the financial and technical capability to construct and operate an FTTP network in the City. Subject to the understanding set forth in this Agreement, Metronet is willing to construct an FTTP network in the City ("Project").

With the intent to be bound, Provider and the City agree as follows:

(1) Subject to the terms and conditions of this Agreement, Provider agrees to the following terms and conditions:

(a) Restoration. Provider will use commercially reasonable efforts to restore property within three (3) business days of the boring, subject to factors beyond Provider's reasonable control. Consideration will be given to the amount of restoration needed with each boring and Provider will endeavor to conduct borings in a manner which requires the least amount of restoration (e.g. when appropriate using streets and sidewalks for equipment rather than lawns, etc.) After boring under the street / curb and sidewalks, Provider will inspect for any heaving that may have occurred from the boring process. Notwithstanding the foregoing, in no event will

Provider be required to repair, replace or restore any personal property of a property owner that was improperly located in a utility easement.

(b) Safety Plan. Provider will maintain an Underground Construction Safety Plan focusing on the safe excavation practices during underground network construction. A copy of such plan will be provided to the City's written request.

(c) Construction Communications Plan. Provider will implement a construction communications plan and will use commercially reasonable efforts to meet the following timelines and standards, as they relate to each released local convergence point ("LCP") area:

- (i) At least 30 days prior to the commencement of construction in a residential area, Provider will send a detailed letter to the residential addresses in that area advising occupants of upcoming construction activities.
- (ii) At least 14 days prior to the commencement of construction in a residential area, Provider will send a postcard reminder to the residential addresses in that area reminding occupants of upcoming construction activities.
- (iii) At least 3 days prior to the commencement of construction in a residential area, Provider will send out street teams to place signs in the yards of those residential properties where Provider will commence with construction activities.

Each communication sent to a residential address will include the URL to Provider's construction website: metronetinc.com/construction. On this website residents can find additional information regarding the construction plans in their area. Following construction, property owners will also be able to use this website to submit damage claims in the event Provider inadvertently causes damage to their property.

(2) To support the efficient and safe construction of Provider's FTTP Network, the City agrees to the following terms and conditions:

(a) Construction Permitting. The City will provide an efficient low cost construction permitting process for the Project whereby the City will provide cost effective fees for utilization of the City's rights-of-way and utility easements. The City will use its commercially reasonable efforts to process all construction permits and perform all inspections required for the Project in such a manner that Provider may efficiently have under constructing a minimum of four (4) LCPs involving underground construction in the City at any given time. Provider agrees that it will not submit permits for more than four (4) LCPs in the City at any one time if such LCPs involve a material amount of underground construction. For the avoidance of doubt, there will be no such limitation on aerial construction on existing poles. Provider will issue daily "Street Sheets" to the City identifying where Provider's crews will be working and what type of activities will be performed within the City's boundaries the following day(s).

Provider will not be required to communicate to the City its activities with respect to customer service installations. For avoidance of doubt, Provider is required to comply with the City's established permitting process.

(b) Property. The City will use commercially reasonable efforts to help Provider locate appropriate City owned sites for the location of the following: (i) an equipment hut; and (ii) antennas and related equipment for the reception of video signals. For each of the foregoing locations, if the parties identify a mutually acceptable City owned site, the City will sell, lease or license such property for nominal consideration, subject to compliance with all applicable laws including City codes and ordinances.

(c) City Network Assets. The City will use commercially reasonable efforts to work with Provider to identify City owned fiber assets and conduit that Provider may use as part of the Provider Network. Upon the identification of any such City owned fiber and/or conduit, upon mutual consent of the parties, which consent shall not be arbitrarily, discriminatorily, or unreasonably withheld, conditioned or delayed, Provider and the City will enter into an exclusive, irrevocable, indefeasible right to use agreement upon terms reasonably acceptable to the parties, subject to compliance with all applicable laws including City codes and ordinances.

(d) Introductions. The City will notify Provider in writing when the developer of a residential or commercial project that is not served by an FTTP network files documentation to begin the City's planning and zoning process, and said notice shall be provided within a commercially reasonable period of time after the documentation is received by the City. Of course, the City reserves the right to provide similar notice to any communications provider who is constructing or operating an FTTP network in the City. Subject to market demand and prudent business practices, Provider will use commercially reasonable efforts to lay its conduit in any development where new utility trenching is planned or available.

(e) Make Ready Costs and Processes. In the event Provider is subject to Unreasonably High Make Ready Costs or Unreasonably Slow Make Ready Processes within the City, the City will use commercially reasonable efforts to support Provider in obtaining appropriate relief from the utility imposing such Unreasonably High Make Ready Costs or Unreasonably Slow Make Ready Processes on Provider, provided, however, that the City shall not be required to incur any costs in providing such support nor required to initiate or participate in any administrative or legal action related thereto. The City will also allow Provider, where possible and practical, and upon approval by the City (which approval will be subject to all applicable laws including City codes and ordinances, but will not be arbitrarily, discriminatorily, or unreasonably withheld, conditioned, or delayed) to install Provider's own utility poles as a way of avoiding Unreasonably High Make Ready Costs or Unreasonably Slow Make Ready Processes, provided that Provider complies with all applicable laws including City codes and ordinances associated with obtaining approval for such installation and completing said installation. For the purposes of this Agreement, "Unreasonably High Make Ready Costs" means make ready costs that exceed \$2.25 per foot and "Unreasonably Slow Make Ready

Processes” means a pole survey process that takes longer than forty-five (45) days after submission of a completed pole application and make ready work that takes longer than sixty (60) days after payment by Provider of estimated make ready costs.

(f) Micro Trenching. In areas with high construction costs and/or where the deployment of conduit is not cost effective or feasible, upon City’s approval on a case-by-case basis, which approval will be subject to all applicable laws including City codes and ordinances, but will not be arbitrarily, discriminatorily, or unreasonably withheld, conditioned or delayed, Provider may install its fiber utilizing Micro Trenching; provided, however, Micro Trenching will not be allowed over privately-owned hard-paved surfaces without the consent of the property owner and Provider shall comply with all applicable laws including City codes and ordinances associated with obtaining approval for such installation and completing said installation. “Micro Trenching” means a technique of deploying fiber optic cable into a trench with dimensions with widths ranging from less than one (1) inch to five (5) inches, and a maximum depth of 24 inches.

(3) Term. The term of this Agreement will commence immediately upon the City’s acknowledgment and acceptance of the terms and will continue for the duration of the time period Provider provides Fiber Services in the City.

(4) No Joint Venture. This Agreement is not intended to create, nor will it be construed to create, any partnership, joint venture, or employment relationship between the City and Provider, and neither party will be liable for the payment or performance of any debt, obligations, or liabilities of the other party, unless expressly assumed in writing.

(5) Entire Agreement; Amendments. This Agreement constitutes the entire understanding between the City and Provider with respect to the subject matter of this Agreement, and supersedes all previous understandings, commitments or representations, whether oral or written. Each party acknowledges that the other party has not made any representations other than those that are contained herein. This Agreement may not be amended or modified in any way except by a writing signed by the authorized representatives of the parties.

(6) Agreement Not To Disclose. In order to enable efficient execution of this Agreement and to the extent allowed by law, the parties agree not to disclose the existence of terms of this Agreement to the public until the Agreement is in final form and both parties agree upon a time and manner for a formal statement. All sharing of information should be only as required by law and with those individuals deemed necessary to carry out the terms of this Agreement. Nothing contained in this Section shall be construed to require City to keep information confidential in contravention of applicable open records laws, including, but not limited to, Chapters 21 and 22 of the Code of Iowa.

(7) Applicable Law. This Agreement will be governed by all the laws of the State of Iowa without regard to the choice of law provisions thereof.

(8) Venue. The parties consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Scott County, Iowa for purposes of adjudicating any matter arising out of or relating to this Agreement.

(9) No Third Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any other person or entity, and no such other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement. However, for the avoidance of doubt, as provided in (10) below, the aide described above is not exclusive to MetroNet.

(10) Level Playing Field. The aide described above is non-exclusive. The City specifically reserves the right to offer this aide to any provider willing and able to construct and operate a FTTP network for the purpose of offering Fiber Services in the City. The City wishes to create a balanced, level playing field. Therefore, in the event the City provides additional aide to another provider of Fiber Services in the City, this Agreement may be amended to provide such more favorable aide. The City shall be reasonable in its determination regarding amendment of this Agreement to provide a balanced, level playing field.

MetroNet has the financial and technical ability to construct and operate a world class FTTP network. MetroNet is anxious to commence construction of its network and make the City a gigabit city. Please indicate the City's acceptance of and agreement to the above terms by signing below.

We appreciate your time and consideration and look forward to serving your community.

Sincerely,

METRO FIBERNET, LLC
By: John P. Cinelli, as President

ACKNOWLEDGED AND AGREED:

CITY OF DAVENPORT, IOWA

By: _____

August __, 2018

Decker P. Ploehn, City Administrator
City of Bettendorf, Iowa
1609 State Street
Bettendorf, Iowa 52722

Re: Letter Agreement ("Agreement")
Construction of 100% Fiber Optic Network
City of Bettendorf, Iowa ("City")

Dear Mr. Ploehn:

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We appreciate your time and consideration and look forward to serving your community.

Sincerely,

METRO FIBERNET, LLC
By: John P. Cinelli, as President

ACKNOWLEDGED AND AGREED:

CITY OF BETTENDORF, IOWA

By: _____

City of Davenport

Agenda Group: Committee of the Whole
Department: Finance
Contact Info: Brandon Wright 326-7750
Wards: All

Action / Date
8/13/2018

Subject:

Motion for Item #1 and Item #3 recommending discussion or consent agenda for Davenport's City Council Agenda on August 22, 2018.

Recommendation:

Approve the motion.

Relationship to Goals:

Vibrant Region

REVIEWERS:

Department	Reviewer	Action	Date
Finance	Admin, Default	Approved	8/9/2018 - 9:54 AM