

## INDEFEASIBLE RIGHT OF USE AGREEMENT

THIS INDEFEASIBLE RIGHT OF USE AGREEMENT (“Agreement”) is made this 8th day of June 2021, by and between the City of Northfield, Minnesota (“City”) and CMN-RUS, Inc. and its affiliates (collectively “MetroNet”). City and MetroNet are referred to herein, individually, as a “Party” and, collectively, as the “Parties”.

WHEREAS, the Parties are party to a Letter Agreement dated April 29, 2021 expressing (i) MetroNet’s desire to construct a fiber-to-the-premises network (“Network”) within the corporate boundaries of the City, and (ii) the City’s desire to obtain dark fiber connections, and (iii) that MetroNet would provide such connections in exchange for the City’s waiver of all permit fees required for the construction of the Network. The Parties agreed to memorialize the terms of the exchange in a separate agreement, which is this Agreement.

NOW, THEREFORE, in consideration of the following mutual covenants and conditions and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Waiver of Permit Fees.** The City shall waive all permit fees required for the construction of the Network.

2. **The Dark Fiber Indefeasible Right of Use.**

a. MetroNet will install and provide to the City an Indefeasible Right of Use (“IRU”) in dark fibers, the number and end point(s) of which are more specifically described in Exhibit A (“City Fibers”).

b. The City may access the City Fibers at the end points expressly authorized in Exhibit A and at no other location.

c. MetroNet will terminate the City Fiber at each location identified in Exhibit A (each a “Location”) at a point agreed to by the Parties.

d. In exchange for the maintenance fee set forth in Exhibit A, MetroNet will perform maintenance of the City Fibers, provided, MetroNet is given the access to do so. Maintenance includes relocations, replacements, and non-routine maintenance (e.g. repairing any failure, interruption or impairment to the fiber); provided however, if the City causes the need for the relocation, replacement, maintenance or repair of the City Fibers, the City will reimburse MetroNet for the cost related solely to the City Fibers. Maintenance may be performed by a third-party on behalf of MetroNet.

e. MetroNet will not “light” or monitor the City Fibers. Trouble can be reported to MetroNet by phone at 833.266.5812 or by email at [mfn-noc@metronetinc.com](mailto:mfn-noc@metronetinc.com).

f. The City will be responsible for any applicable taxes or other governmental assessments that may be imposed on and in connection with the City Fibers. MetroNet will be responsible for any taxes that may apply to the Network.

3. **Term.** This Agreement is coterminous with the term of the franchise agreement by and between the Parties dated June 7, 2021 (the “Franchise Agreement”), any renewal of the Franchise Agreement, or any subsequent franchise or similar agreement entered into between the Parties that replaces the Franchise Agreement. In the event there is a change in applicable law, and MetroNet no longer is required to enter into a franchise or similar agreement with the City to provide video services, upon the delivery of written notice from either Party to the other Party, the Parties will negotiate in good faith on an appropriate amendment to this Agreement that shall include a new term which shall not be less than ten (10) years.

4. **Use of City Fiber.** The City will use the City Fiber exclusively for its own internal telecommunications and data transmission needs and for no other purposes, including, but not limited to providing commercial services to third parties or allowing third parties to use the City Fibers for commercial purposes. The City Fibers may not be assigned, leased, sublicensed or otherwise transferred by the City, nor may the City grant any rights to use the fibers to any third party.

5. **Termination of City Fiber by City.** At any time during the term of this Agreement as set forth in paragraph 3 herein, the City shall have the unilateral right, upon thirty (30) days' notice to MetroNet, to terminate the IRU to one (1) or more of the six (6) locations listed in Exhibit A and thereby eliminate the requirement to pay the applicable monthly maintenance fee of \$88.89 per pair, per month for such terminated location(s).

6. **Right to Inspect and Test; Acceptance; Limitation of Liability.** THE CITY SHALL HAVE THE RIGHT TO INSPECT AND TEST THE FIBER AT CITY'S OWN EXPENSE. USE OF THE CITY FIBER SHALL BE DEEMED ACCEPTANCE OF THE CITY FIBER. THE CITY FIBER IS PROVIDED BY METRONET ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. USE OF THE CITY FIBER IS AT CITY'S SOLE RISK. IN NO EVENT WILL METRONET, ITS AFFILIATES OR PARENT COMPANY, BE LIABLE FOR DAMAGES OF ANY KIND, INCLUDING LOST DATA, BUSINESS INTERRUPTION, LOSS OF GOODWILL, COSTS OF COVER OR REPLACEMENT OR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT THERE IS NEGLIGENCE ON THE PART OF METRONET AND WHETHER OR NOT METRONET HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

7. **Entire Agreement; Amendments; Signatures.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter contained herein and supersedes all prior offers, negotiations and other agreements concerning the subject matter contained herein. No revision of this Agreement shall be valid unless made in writing and signed by an officer of MetroNet and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original. An electronically delivered signature shall create a valid and binding obligation of a Party with the same force and effect as if it were an original thereof.

8. **Governing Law; Remedies; Interpretation.** The laws of Minnesota shall govern this Agreement. In the event of a default by either Party, the other Party shall have the rights and remedies available to it at law or in equity. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and not construed against the drafter.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

City of Northfield, Minnesota

CMN-RUS, Inc.

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

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

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

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

## **EXHIBIT A**

MetroNet will provide an IRU in **two (2)** dark fibers between (i) each address listed below (each a “Location A”) and (ii) as MetroNet’s Option, either 1615 Riverview Drive or 8091 Washington Street (each a “Location Z”). The City shall only have access to the fibers at the Location A and Location Z end points.

1. Old Memorial Pool - 801 7th Street East
2. Riverside Mobile Home Park – City Emergency Shelter – 700 Hwy 3 North
3. Well #5 - 1701 Archibald Street
4. Well #6 - 510 Jefferson Parkway
5. Elevated Storage (Hall Avenue Water Tower) - 10353 Hall Avenue
6. Compost Site - 1801 Armstrong Road

Monthly Maintenance Fee - \$88.89 per pair per month; total of \$533.34 for all six (6) pairs per month