

## HUT AND POLE LICENSE AGREEMENT

THIS HUT AND POLE LICENSE AGREEMENT (“Agreement”) is executed to be effective as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (the “Effective Date”), by and between the Lexington-Fayette Urban County Government, an urban-county government pursuant to KRS Chapter 67A, located at 200 East Main Street, Lexington, KY 40507 (“Lexington”) and Metro Fibernet, LLC, d/b/a Metronet, 3701 Communications Way, Evansville, IN 47715 (“Metronet”). Metronet and Lexington are sometimes referred to herein individually as a “Party” and collectively, as the “Parties.”

In consideration of the following mutual covenants and conditions, and for good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the Parties agree as follows:

### 1. BACKGROUND.

- A. Lexington is the owner of certain real property at the following locations: (1) 1793 Liberty St./ North Maintenance Facility (“East Quad Site”); (2) 1400 Gainesway Dr./Tates Creek Golf Course (“South Quad Site”); (3) 600 Laramie Drive/South Maintenance Facility (“West Quad Site”); and (4) 1099 St. Martins Ave/Whitney Young Park (“North Quad Site”) in Lexington, KY which properties are legally described on the attached Exhibit A. The East Quad Site, the South Quad Site, the West Quad Site and the North Quad Site are individually referred to herein as a “Hut Site” and collectively as the “Hut Sites.”
- B. Metronet desires to license from Lexington space at each Hut Site for the location of one or more equipment huts and associated equipment (each a “Hut”) and, in the case of the East Quad Site, the location of a monopole and associated equipment (“Pole”).
- C. Lexington wishes to license from Metronet the use of rack space and power within one equipment hut at each Hut Site, space on the Pole, and the use of certain Metronet dark fiber strands.
- D. The Parties now wish to enter into this Agreement wherein Lexington will license the use of the Hut Sites to Metronet, as more particularly set forth herein, in exchange for a license from Metronet for the use of rack space and power in certain Huts, certain space on the Pole, and the right to use certain dark fiber strands as more particularly set forth herein.

### 2. METRONET LICENSE

- A. Hut License. Lexington hereby licenses to Metronet the use of a 50’x50’ portion of each Hut Site, including the space above and below such premises (each a “Licensed Premises”), to construct, operate, maintain, repair and replace one or more Huts and any associated equipment reasonably necessary for Metronet’s intended use of each Hut including, but not limited to, generators, fencing, cabling, conduit, cabinets, communications equipment, antennas and appurtenances thereto. Each Licensed Premises is more particularly described and depicted in Exhibit B.
- B. Pole License. Lexington hereby licenses to Metronet space at the East Quad Site to construct, operate, maintain, repair and replace a 75’ Pole and any associated equipment reasonably necessary for Metronet’s use of the Pole including, but not limited to, generators, cabling, communications equipment, conduit, antennas and appurtenances thereto. The location of the Pole is more particularly described and depicted in Exhibit B. The Metronet Huts and the Pole are sometimes collectively referred to herein as the “Metronet Facilities.”

- C. Authorized Use. Metronet shall use the Metronet Facilities to provide voice, video, data and other communications services to its end users and any other lawful purpose, except that Metronet shall not allow third parties to use the Metronet facilities for commercial purposes. Metronet shall be responsible for obtaining any permits, certifications, licenses or third party approvals required for its intended use of the Metronet Facilities.
- D. Access; Easement. Lexington hereby grants Metronet a non-exclusive easement (the “Easement”) over and across each Hut Site and any necessary property surrounding the Hut Site for purposes of: (1) installing, laying, operating, maintaining, inspecting, removing, repairing, replacing, and relaying facilities that Metronet may desire in order to utilize the Hut Site, consisting of but not limited to aerial cables, underground cables, wires, conduits, manholes, drains, splicing boxes, surface location markers, gas mains, electric lines, water lines, telecommunications systems and other facilities or structures for similar uses, upon, over, through, under and along the public right of way leading into the Hut Site; and (2) ingress/egress from the nearest improved public road to each Hut Site. The Easement will also provide for the right of ingress and egress over and across Lexington’s property adjacent to each Easement for the purpose of exercising the rights granted herein, and the right to clear and keep cleared all trees, roots, brush and other obstructions from the surface and sub-surface of each Easement during construction and maintenance and to use adjacent areas as necessary. Metronet may only remove trees, roots, brush upon three (3) days’ notice and approval from Lexington. Metronet shall promptly restore the surface and sub-surface of each Easement upon completion of any clearing work. Metronet agrees to maintain each Easement in good repair so that no damage will result from its use to the adjacent Lexington property. Lexington shall have full use and enjoyment of the Easement so long as such use does not interfere with the use of the Easement by Metronet. Lexington agrees not to erect any structure, or plant trees or other vegetation within the Easement. Metronet shall have the non-exclusive right of access seven (7) days a week, twenty-four (24) hours a day to each Hut Site, which right of access shall be exercised so as to not unreasonably interfere with the use of a Hut Site by Lexington’s employees, contractors, agents, invitees and representatives. The Parties agree that Metronet may record this License Agreement to reflect this Easement on the public record.
- E. Utilities.
- (1) Metronet shall be responsible for obtaining (unless such utility hook ups already exist) any and all necessary utility services for its use of each Licensed Premises. Metronet shall be responsible for direct payment to the applicable utility provider(s) for any and all utilities charges resulting from Metronet’s use of each Licensed Premises. Any failure to pay for its utility usage at a Licensed Premises shall be deemed a default by Metronet and a breach of this Agreement.
  - (2) Lexington shall grant to any utility company providing electricity, gas, water or similar utility services to Metronet, access to, under, or over each Hut Site in a location and manner reasonably acceptable to Lexington, from an open and improved public road across each Hut Site to each Licensed Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such utility companies may from time-to-time require in order to provide such utility services to each Licensed Premises. Upon the request of Metronet or a utility company, Lexington shall execute a separate recordable legal instrument evidencing such utility grant, at no cost to Lexington.

### 3. LEXINGTON LICENSE.

- A. Hut License. Metronet hereby licenses to Lexington space inside one Hut at each Hut Site for the location of one equipment rack along with the right to install, operate, maintain, repair and replace any equipment within the equipment rack (“Lexington Rack”). Metronet shall determine the location of each Lexington Rack within a Hut.
- B. Pole License. Metronet hereby licenses to Lexington space to install, operate, maintain, repair and replace an antenna on the Pole, including any equipment reasonably necessary to connect the antenna to Lexington’s Rack, which may also include conduit, risers, cabling, and appurtenances (“Lexington Antenna”). Prior to installation, Lexington shall submit to Metronet for approval, which approval shall not be unreasonably withheld, conditioned or delayed, the specifications, dimensions and requested height on the Pole for the proposed Lexington Antenna. Metronet shall oversee all installation work. As a condition of such license, Lexington expressly acknowledges that the Lexington Antenna cannot cause any technical interference with Metronet’s antennas or transmission equipment located on the Pole. The Lexington Racks and Lexington Antenna are sometimes referred to herein as the “Lexington Facilities.”
- C. Fiber License. Metronet hereby licenses to Lexington the right to use four (4) dark fibers along the fiber route connecting the Huts together as more particularly set forth in Exhibit C (“Lexington Fibers”). Lexington may only access the Lexington Fibers at each end point within the Huts and at no other location along the fiber route.
- D. Authorized Use. Lexington may only use the Lexington Facilities and/or the Lexington Fibers for governmental use (which shall include use by inter-governmental and intra-governmental entities or agencies) and for no other purpose including, but not limited to, providing commercial services to third parties or allowing third parties to use the Lexington Facilities and/or Lexington Fibers for commercial purposes. Lexington shall be responsible for obtaining any permits, certifications, licenses or third party approvals required for its intended use of the Lexington Facilities and Lexington Fibers.
- E. Access. Lexington shall have the non-exclusive right of access seven (7) days a week, twenty-four (24) hours a day to the Lexington Facilities and the Lexington Fibers, which right of access shall be granted pursuant to any reasonable rules and regulations set forth by Metronet for access to the Hut. Metronet agrees to issue a maximum of five (5) key card badges to Lexington personnel, including government contractors or subcontractors, for the purpose of accessing any Huts containing a Lexington Rack.
- F. Utilities. Subject to Lexington’s compliance with Section 2.E. above, Metronet shall provide each Lexington Rack with 20 Amps of either AC or DC power (at Lexington’s option) along with the right to use any emergency backup power available at each Hut. Each Hut will be environmentally controlled by Metronet. Lexington shall be responsible for promptly reimbursing Metronet for power usage above 20 Amps upon receipt of an invoice from Metronet specifying such additional power usage and the amount required to be reimbursed. All such invoices shall be due and payable within thirty (30) days of receipt by Lexington. Any failure to pay for its excess utility usage shall be deemed a default by Lexington and a breach of this Agreement.

### 4. CONSTRUCTION AND MAINTENANCE.

- A. Plan Approval.

- (1) Prior to the installation or material modification of the Metronet Facilities, Metronet shall supply Lexington with plans and specifications (“Plans”) to be reviewed and approved by Lexington prior to commencement of any work by Metronet at any Hut Site. Lexington’s approval of such Plans shall not be unreasonably withheld, conditioned, denied, or delayed (and in no event delayed beyond twenty (20) days). Lexington shall signify approval by signing off on the final Plans and shall signify disapproval by sending Metronet written notice of such disapproval. Any notice of such disapproval must state with reasonable specificity the reasons for Lexington’s objections and what Metronet must do to make the drawings approvable by Lexington. In the event Lexington disapproves of any revised Plans, Metronet may either: (i) make further revisions to the Plans and submit them to Lexington for review; or (ii) terminate this Agreement by providing written notice to Lexington. Lexington will not knowingly permit any person to copy or utilize the Plans for any purpose other than as provided in this Agreement and will return the Plans to Metronet promptly upon request.
  - (2) The Parties acknowledge that, as of the Effective Date, Metronet has submitted Plans to Lexington for the initial installation of the Metronet Facilities and that such Plans have been reviewed and approved by Lexington.
  - (3) For avoidance of doubt, the following work by Metronet shall not require the submittal and approval of Plans: (i) any work performed within a Hut; or (ii) any routine maintenance, repair, replacement and upgrade work on any existing Metronet Facilities located on the exterior or outside of a Hut or the Pole; or (iii) minor modifications to the exterior of a Hut or the Pole.
- B. Facilities. Except as expressly set forth in this Agreement, Metronet shall be responsible for paying all costs associated with the installation, operation and maintenance of the Metronet Facilities. Except as expressly set forth in this Agreement, Lexington shall be responsible for all costs associated with the installation, operation and maintenance of the Lexington Facilities with the exception of the Lexington Fibers, which shall be maintained by Metronet as provided in this Agreement.
- C. Installation and Construction Work. Any construction and installation work performed by either Party shall be done in a good, safe and workmanlike manner consistent with all applicable codes, ordinances, laws and regulations. Subject to the approval of the Plans, Metronet shall have the right to clear and keep cleared all trees, roots, brush and other obstructions from the surface and sub-surface of each Licensed Premises during the Term.
- D. Condition of Licensed Premises; Removal and Restoration Upon Expiration or Termination. During the Term and subject to other provisions contained herein, Metronet shall keep the Metronet Facilities in reasonable condition and repair. Upon the expiration or termination of this Agreement, Metronet shall surrender the Hut Sites and any associated easements to Lexington. Thereafter, within one hundred eighty (180) days of receipt of a written request by Lexington, Metronet shall remove the Metronet Facilities and shall restore the Hut Sites as nearly as practicable to the condition in which they existed immediately prior to the execution of this Agreement, except for (i) damage due to causes beyond Metronet’s control or without its fault or negligence and (ii) reasonable wear and tear. If Metronet fails to remove the Metronet Facilities and restore the Hut Sites within such time period, Metronet hereby agrees to reimburse Lexington for any cost reasonably incurred by Lexington to remove the Metronet Facilities from the Hut Sites.
- E. Liens. Metronet will indemnify and hold Lexington harmless from any liens or claims for lien for labor or material on a Hut Site or any of the Lexington Facilities by reason of any work done or material furnished by Metronet (or furnished on behalf of Metronet) in connection with any work performed pursuant to this

Agreement. If any such lien or claim for lien is recorded against a Hut Site for work done for or material furnished to Metronet, Metronet shall immediately cause said lien to be released. To the extent permitted by law, Lexington will ensure that the Metronet Facilities remain free from any liens or claims for labor or material by reason of any work done or material furnished by Lexington (or furnished on behalf of Lexington) in connection with any work performed pursuant to this Agreement.

- F. Maintenance of Lexington Fibers. During the Term of this License, Metronet will maintain the Lexington Fibers in accordance with generally acceptable standards in the communications industry. All routine maintenance will be at Metronet's cost.

## 5. TERM OF LICENSE.

- A. Term. The term of this Agreement shall be conterminous with the term of the franchise agreement dated December 31, 2017, by and between the Parties ("Franchise Agreement") which agreement was approved pursuant to Ordinance No. 169 2017, 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 Lexington to provide video services, upon the delivery of written notice from either Party to the other Party, the Parties shall negotiate in good faith on an appropriate amendment to this Section 5A that shall include a new term which shall not be less than ten (10) years.
- B. Termination. Notwithstanding anything to the contrary in this Agreement, the Agreement may be terminated as follows: (i) the Franchise Agreement or any subsequent franchise agreement or similar agreement that replaces the Franchise Agreement is terminated by Lexington due to a Metronet default which remains uncured after any applicable cure period and is not otherwise the subject of a good faith dispute between the Parties; (ii) pursuant to the terms of Section 6(E) below; (iii) if Metronet attempts to assign this Agreement to a third party in contravention to the terms of Section 6(K) below; or (iv) Metronet terminates this Agreement by delivering notice to Lexington at least one (1) year in advance. Except as expressly set forth in this Agreement, the Agreement shall not terminate for any reason including a default by either Party.

## 6. MISCELLANEOUS.

- A. Value. Metronet and Lexington acknowledge that the licenses granted to Lexington and the licenses granted to Metronet have an equal market value.
- B. Taxes.
  - (1) Metronet shall pay any and all taxes, including, without limitation, sales, use and/or excise taxes, and all similar fees, assessments and any other cost or expense now or hereafter imposed by any government authority directly on and exclusively in connection with Metronet's Facilities or Metronet's use of the Hut Sites. In addition, Metronet shall pay that portion, if any, of the personal property taxes assessed directly upon and arising exclusively from Metronet's installation and use of the Metronet Facilities. Metronet shall remain solely liable for all regulatory fee(s) enacted by the Federal Communications Commission ("FCC") or other governmental authority attributable to Metronet's installation and use of its Metronet Facilities.
  - (2) Except as set forth above, Lexington shall pay any and all taxes, including, without limitation, sales, use and/or excise taxes, and all similar fees, assessments and any other cost or expense now or hereafter imposed by any government authority directly on and exclusively in connection with the Lexington Facilities, Lexington's use of the Lexington Fibers, or the Hut Sites. In addition,

Lexington shall pay that portion, if any, of the personal property taxes assessed directly upon and arising exclusively from Lexington's installation and use of the Lexington Facilities or use of the Lexington Fibers and other improvements on the Sites.

C. Interference. Each Party shall take all reasonable measures and precautions to prevent material technical interference with the other Party's facilities including, but not limited to, erecting any structures that would interfere with the reception and transmission of signals to and from the Pole. Without limiting the foregoing, if the Lexington Antenna causes interference with the Metronet Facilities, the Parties agree to work in good faith to promptly resolve such interference. If required, Lexington agrees to cease using the Lexington Antenna until the interference can be remedied.

D. Hazardous Materials.

- (1) Lexington warrants and represents that: (i) it has not, and has no knowledge of any other person that has, caused any Release, threatened Release, or disposed of any Hazardous Material at or on any Hut Site; (ii) it has used no material quantity of any Hazardous Material at or on any Hut Site and has conducted no Hazardous Material Activity at or on any Hut Site; and (iii) it has no notice or knowledge of any material quantity of any Hazardous Material or any Environmental Claim involving any Hut Site.
- (2) Metronet warrants and represents that: (i) it has obtained all governmental approvals required for its intended operations at the Hut Sites by any applicable Environmental Law; and (ii) it intends to use no material quantity of any Hazardous Material and conduct no Hazardous Material Activity at the Hut Sites.
- (3) Metronet further warrants and represents that it shall: (i) comply in all material respects with any applicable Environmental Law; (ii) expeditiously cure at its expense and to the reasonable satisfaction of Lexington any material violation of Environmental Laws at any affected Hut Site which Metronet causes or which constitutes a breach of Metronet's undertakings hereunder; (iii) not manufacture, use, generate, transport, treat, store, Release, dispose of, or handle any Hazardous Material on the Hut Sites, nor permit others to do any of the foregoing, except in compliance with applicable Environmental Laws; (iv) remove from the Hut Sites at its expense any Hazardous Materials or equipment to manufacture, generate, transmit, treat, store, Release, dispose of, or handle any Hazardous Material used by Metronet including any storage tank.
- (4) For purposes of this Section, the capitalized terms listed below shall have the following meanings: (i) "Environmental Claim" shall mean any investigation, notice, violation, demand, action, judgment, order, consent decree, penalty, fine, or claim (whether administrative or judicial) arising pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law; (ii) "Environmental Law" shall mean any current or future legal requirement pertaining to (a) the protection of health, safety, and the indoor or outdoor environment, (b) the management, possession, use, generation, transportation, treatment, storage, disposal, release, threatened, abatement, removal, remediation or handling of, or exposure to, any Hazardous Material, or (c) pollution, and includes, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, Solid Waste Disposal Act, as amended, Federal Water Pollution Control Act, as amended, Clean Air Act of 1966, as amended, and any amendment, rule, regulation, order, or directive issued thereunder; (iii) "Hazardous Material" shall mean any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant, or material which is hazardous or toxic, and includes, without limitation (a) asbestos, polychlorinated biphenyls, and petroleum (including crude oil or any fraction thereof) and (b) any such material classified or regulated as "hazardous" or "toxic" pursuant to any Environmental Law; (iv) "Hazardous Material Activity" shall mean any activity, event, or occurrence involving a Hazardous Material, including, without limitation, the manufacture, possession, presence, use, generation, transportation, treatment, storage,

disposal, release, threatened release, abatement, removal, remediation, handling of or corrective or response action to any Hazardous Material; and (v) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the indoor or outdoor environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks, and other receptacles containing or previously containing any Hazardous Material.

- E. Destruction of Hut Site(s). If a Hut Site and/or the Metronet Facilities becomes untenable due to damage by fire, wind, or other casualty and the Metronet Facilities and/or Hut Site as a result thereof, becomes inoperable for the authorized use of Metronet, Metronet may elect: (i) to terminate this Agreement with respect to the untenable and inoperable portion of the affected Hut Site(s) upon thirty (30) days written notice to Lexington, or (ii) undertake to repair, restore or rehabilitate the Metronet Facilities within one hundred and twenty (120) days after the date that possession of the damaged Hut Site can be obtained and reconstruction or repairs undertaken. If the election to repair, restore or rehabilitate the Metronet Facilities is made and such work is not substantially completed within the one hundred and twenty (120) day period, either Party can terminate this Agreement with respect only to that portion of the untenable and inoperable Hut Site as of the date of the fire or other casualty by written notice to the other Party given not later than one hundred and thirty (130) days after possession of the Hut Site was obtained and reconstruction or repair was undertaken by Metronet. Notwithstanding the foregoing, except in the event of Lexington's negligence or willful misconduct, Lexington shall not have any liability for the repair or replacement of any of the Metronet Facilities, nor for any incidental or consequential damages to Metronet or any of Metronet's customers as a result of the loss of service and except for Metronet's negligence or willful misconduct, Metronet shall not have any liability for the repair or replacement of any of the Lexington Facilities nor for any incidental or consequential damage to Lexington or Lexington's end users as a result of any loss of use of the Lexington Facilities.
- F. DISCLAIMER OF WARRANTIES. OTHER THAN THE WARRANTIES SET FORTH HEREIN, NEITHER PARTY MAKES ANY WARRANTY TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, ARISING FROM ANY USE OF THE METRONET FACILITIES, HUT SITES, LEXINGTON FIBERS OR ANY OTHER OF THEIR RESPECTIVE OBLIGATIONS WHICH ARE THE SUBJECT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTY WITH RESPECT TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE ARISING FROM THE USE OF THE METRONET FACILITIES, LEXINGTON FIBERS OR ANY OF THEIR RESPECTIVE SERVICE OBLIGATIONS WHICH ARE THE SUBJECT OF THIS AGREEMENT ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED. For purposes of this Section, the term "Party" shall be deemed to include the Party and its affiliates and their owners, directors, officers, agents, representatives, and employees.
- G. LIMITATION OF LIABILITY. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL HAVE ANY RESPONSIBILITY, LIABILITY OR OBLIGATION TO THE OTHER PARTY, SUCH OTHER PARTY'S AFFILIATES, OR THEIR OWNERS, OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES OR CUSTOMERS FOR (1) ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGE OR LOSS OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, COST OF REPLACEMENT SERVICES, LOSS OF CUSTOMERS OR AGENTS OR LOSS OF USE,

REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS BY REASON OF ANY ACT OF OMISSION OR COMMISSION IN CONNECTION WITH OR UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY DEFECT, DELAY IN AVAILABILITY, OR FOR ANY OTHER CAUSE.

- H. Insurance. Metronet shall carry during the Term of this Agreement minimum Commercial General Liability insurance (including bodily injury property damage, and products/completed operations) with the following coverage: One Million Dollars (\$1,000,000) per occurrence for all injuries or property damage sustained by any person in any one occurrence. The Commercial General Liability policy shall include XCU coverage. Metronet shall also provide Commercial Automobile Liability insurance protecting Metronet in an amount not less than One Million Dollars (\$1,000,000) per occurrence. Metronet shall also carry Worker's Compensation insurance at the statutory level required under applicable state law, along with Employer's Liability coverage limits of at least One Hundred Thousand Dollars (\$100,000). Metronet shall also provide Excess/Umbrella Liability insurance coverage of Five Million Dollars (\$5,000,000) per occurrence. All such primary insurance policies shall name the Lexington as an additional insured (with the exception of Worker's Compensation. All coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be cancelled or materially altered to reduce the policy limits during the Term of this Agreement. Upon Lexington's written request, Metronet will provide a copy of all applicable Certificates of Insurance to Lexington showing the required coverage.
- I. Indemnification. Except as expressly set forth herein, it is understood and agreed by the Parties that MetroNet hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Metronet or its employees, agents, servants, owners, principals, licensees, invitees, assigns or subcontractors of any tier under or in connection with this Agreement and/or the or failure to perform any work required thereby. Metronet shall indemnify, save, hold harmless and defend Lexington and its elected and appointed officials, employees, agents, volunteers, and successors in interest from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are directly connected with, or that directly arise or are alleged to have arisen from or by Metronet's performance or breach of the Agreement and/or the provision of goods or services, provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of Metronet; and (b) not caused solely by the active negligence or willful misconduct of Lexington. In any instance where Metronet is required to indemnify Lexington as set forth in this Section, Metronet shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by Lexington, which approval shall not be unreasonably withheld. These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this Agreement.
- J. Default.
- (1) Notice and Cure. Neither Party shall be in default under this Agreement unless and until the non-defaulting Party shall have given the defaulting Party written notice of such default and the defaulting Party shall have failed to cure the default within thirty (30) days after written receipt of such notice; provided, however, that where a default cannot be reasonably cured within the thirty (30) day period, if the defaulting Party shall promptly proceed to cure the default with due diligence,



the time for curing the default shall be extended for a period of up to ninety (90) days from the date of receipt of the default notice or such other time as reasonably agreed by the Parties.

(2) Failure to Cure. Upon the failure by the defaulting Party to timely cure any default after notice thereof from the non-defaulting Party, the non-defaulting Party shall have the right to pursue an appropriate remedy pursuant to the Dispute Resolution Process described in Section L below.

K. Assignment. Except as otherwise provided in this Section, neither Party may assign this Agreement to a third party without the consent of the other Party, which consent will not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing and subject to the transfer of control provisions in the Franchise, Metronet may, without notice or consent, assign this Agreement to: (1) an affiliate or parent company; (2) a successor that purchases all or substantially all of Metronet's assets or equity; and (3) any entity into which Metronet merges or consolidates. Further, Metronet may, without notice or consent, sublease space in the Huts to third party telecommunications providers for the purposes of collocating their facilities. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties hereto.

L. DISPUTE RESOLUTION.

The Parties hereto plan to use due diligence and use their best efforts and work together to implement this Agreement and amicably resolve their differences. However, the Parties understand that issues and conflicts may arise where they reach an impasse. The Parties acknowledge their desire to reach a working solution by using good faith attempts to resolve such issues and conflicts. Any claim or controversy related to or arising out of this Agreement, whether in contract or in tort (excluding any claim for damages attributable to personal physical injury) ("Dispute"), will first be referred to, on a confidential basis, the following process, which either Party may start by delivering to the other party a written notice describing the Dispute and the amount involved ("Demand").

After receipt of a Demand, authorized representatives of the Parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved 30 days after receipt of the Demand, either Party may start nonbinding arbitration in Lexington, Kentucky. The Parties will use their best efforts to conclude the arbitration as expediently as possible but in no event later than sixty (60) days following commencement of any proceeding, provided there is no interim relief or court action sought that would delay the Parties from resolving the Dispute within such sixty (60) day period. If such interim relief or court action is sought, then the Parties will use their best efforts to conclude the arbitration within sixty (60) days following the final decision of the court in such action. The arbitration will be before a three-arbitrator panel. Each Party will select one partial arbitrator, in its sole discretion, to represent its interest at its sole expense. The partial arbitrator may be an employee, director, officer or principal of the Party. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators shall fail to select an impartial arbitrator, either Party may apply to a court of law to have a judge select an impartial arbitrator. The three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication, and the Parties agree that no court shall have the power to interfere with the proceedings and judgments of the arbitrators. No statements by, or communications between, the Parties during negotiation or mediation, or both, will be admissible for any purpose in arbitration. Each Party shall bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator; provided. No interest shall be applied to any arbitration award. It is the intent of the Parties to first allow the arbitrators an opportunity to meet and negotiate a decision. If an agreement cannot be reached through negotiation, then the decision(s) of a majority of the arbitrators shall be rendered.

Notwithstanding the foregoing, either Party hereto may resort to a court of competent jurisdiction by applying for interim relief, without the requirement to post a bond or security, if such Party reasonably determines that such relief is necessary because claims for money are not adequate to prevent irreparable injury to it or to a third party. The venue for any such proceeding shall be in Lexington, Kentucky.

- M. OWNERSHIP OF FACILITIES. It is expressly understood and agreed each Party retains title to all facilities installed by it pursuant to the terms of this Agreement and that it may modify, replace or remove such facilities when necessary in accordance with the terms herein. At no time will Metronet acquire title to or any ownership right or interest in the Hut Sites or the Lexington Facilities nor will Lexington acquire title to or any ownership right or interest in to the Metronet Facilities or the Lexington Fibers. Notwithstanding the foregoing, following termination of this Agreement, if Metronet ceases providing services in the Lexington market or abandons use of the fiber optic cable that encompasses the Lexington Fibers, Lexington shall have the option to purchase the Lexington Fibers for a one dollar (\$1.00). Upon receiving payment, MetroNet shall transfer any and all of its rights, title, and interest to the Lexington Fibers and covenant to Lexington that said facilities are free of any liens and encumbrances.
- N. ADVERTISING AND SIGNAGE PROHIBITED. Metronet shall not use the Hut Sites for any advertising, displays or signage except as required by applicable law.
- O. NOTICES. Any notice or demand required or permitted to be given or made hereunder shall be sufficiently given or made by reliable overnight courier or by Certified Mail, return receipt, in a sealed envelope, postage prepaid, addressed to Lexington or Metronet at the following address:

Lexington: Director of Engineering  
Lexington-Fayette Urban County Government, 4<sup>th</sup> Floor  
Phoenix Building  
100 East Main Street  
Lexington, KY 40507

With  
copies to: Commissioner of Law  
Lexington-Fayette Urban County Government, 11<sup>th</sup> Floor  
200 East Main Street  
Lexington, KY 40507

Metronet: Metro Fibernet, LLC  
3701 Communications Way  
Evansville, IN 47715  
Phone: (812) 407-3224 (emergencies, maintenance and systems issues)  
Phone: (812) 759-7958 (general manager)  
ATTENTION: President

With a  
copy to: Metro Fibernet, LLC  
8837 Bond Street  
Overland Park, KS 66214  
Phone: (812) 213-1095  
ATTENTION: Legal Department

Any such notice or demand shall be deemed to have been given or made three (3) business days following the date it is deposited in the United States Post Office or on the day following delivery to the overnight courier. Metronet or Lexington may from time to time designate any other address for this purpose by written notice to the other Party.

- P. NO WAIVER. Failure or delay on the part of Lexington or Metronet to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.
- Q. ENTIRE AGREEMENT. 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.
- R. AMENDMENTS. No revision of this Agreement shall be valid unless made in writing and signed by an officer of Metronet and an authorized signatory of Lexington.
- S. OWNERSHIP/STANDING/AUTHORITY. Lexington represents to Metronet that it is the owner of the Hut Sites, and that Lexington has taken all necessary corporate, regulatory or other similar action to authorize and empower Lexington to execute, deliver and perform this Agreement. Metronet represents and warrants that it is a limited liability company which is duly organized, validly existing and in good standing under the laws of the State of Nevada with the power and authority to conduct business in the Commonwealth of Kentucky, as currently conducted and as contemplated by this Agreement. All necessary corporate, regulatory or other similar action has been taken to authorize and empower Metronet to execute, deliver and perform under this Agreement.
- T. CONSENTS. In any case where the approval or consent of one Party is required, requested or otherwise to be given under this Agreement, such approval or consent shall not be unreasonably delayed, conditioned or withheld.
- U. COUNTERPARTS; ELECTRONIC SIGNATURES. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original. In the event that any signature is delivered by facsimile or by email of a “.pdf” format data file, such signature shall create a valid and binding obligation of such Party with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.
- V. GOVERNING LAW AND VENUE; REMEDIES; INTERPRETATION. The Laws of the Commonwealth of Kentucky (excluding its conflicts of laws rules) shall govern this Agreement. This License shall be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either Party, regardless of which Party may have drafted any of its provisions.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the Parties by their authorized representative have executed this Agreement as of the Effective Date.

**LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT**

**METRO FIBERNET, LLC**

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

Exhibit A

HUT SITES

# MetroNet Network Shelter No. 1 - 1793 Liberty Road



# MetroNet Network Shelter No. 2 - Tates Creek Golf Course



MetroNet Network Shelter No 3 – 600 Laramie Drive



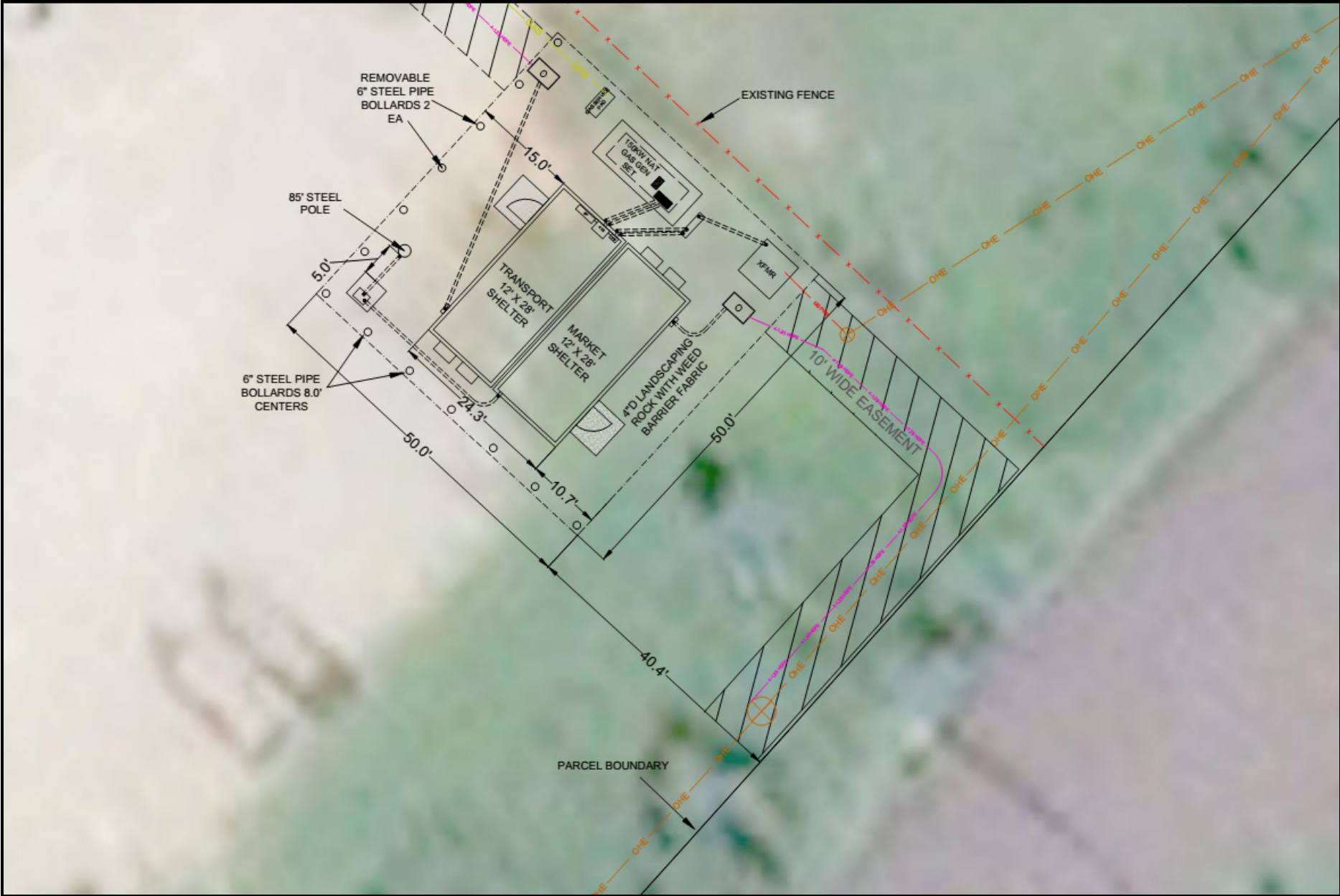


# MetroNet Network Shelter No. 4- Whitney Young Park



Exhibit B  
LICENSED PREMISES

# MetroNet Network Shelter No. 1 - 1793 Liberty Road



# MetroNet Network Shelter No. 2 - Tates Creek Golf Course



# MetroNet Network Shelter No 3 – 600 Laramie Drive



# MetroNet Network Shelter No. 4- Whitney Young Park

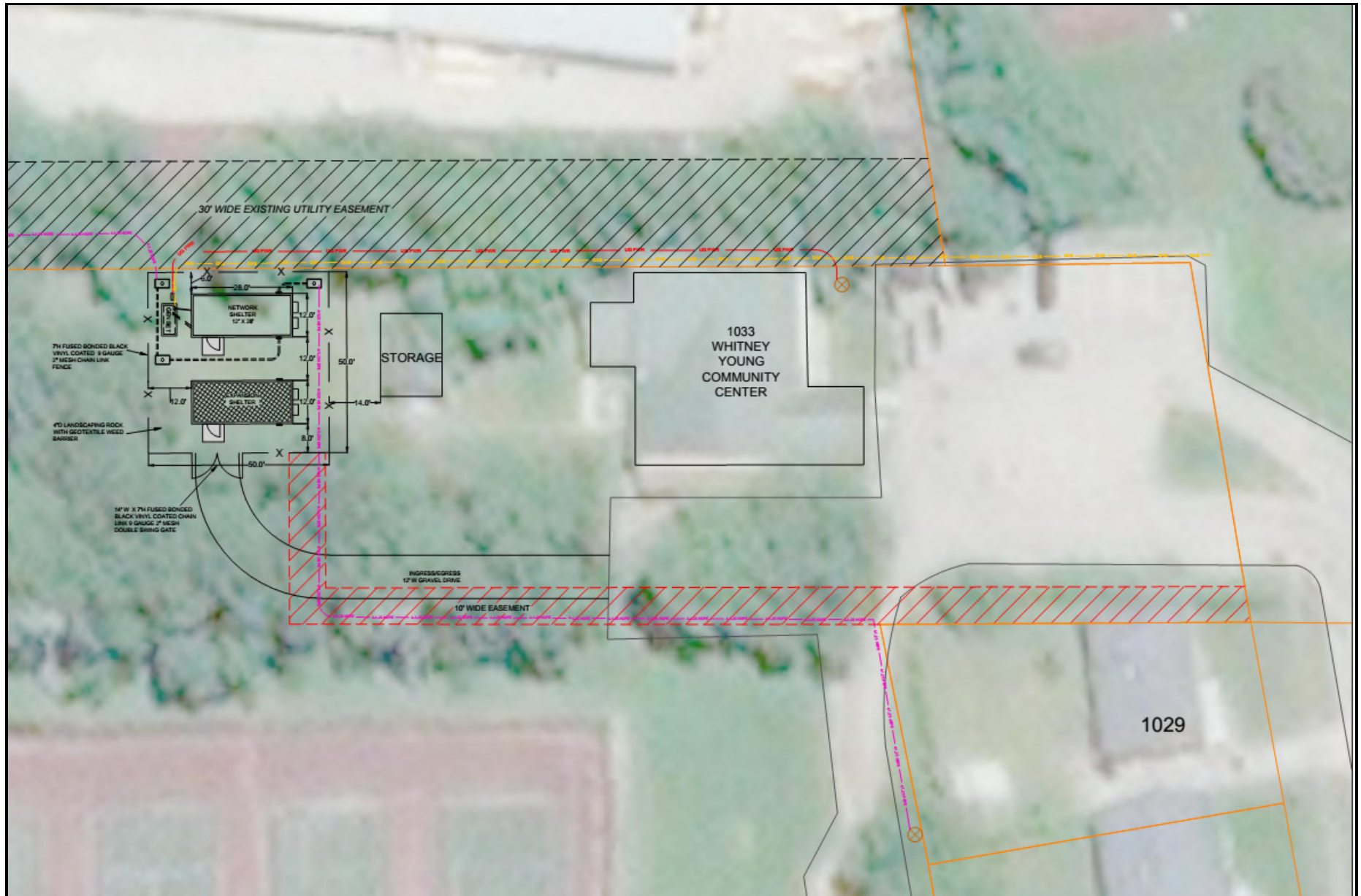



EXHIBIT C  
FIBER ROUTE

 = Approximate Routing of City of Lexington Fibers Between Metronet Huts

