



City of Gahanna

200 South Hamilton Road
Gahanna, Ohio 43230

Signature

Ordinance: ORD-0061-2016

File ID: ORD-0061-2016

Type: Ordinance

Status: Passed

In Control: City Council

Version: 1

Final Action: 6/20/2016

At a meeting of the City Council on 6/20/2016, a motion was made by Jamie Leeseberg, seconded by Brian Metzbower, that this Ordinance be Adopted. The motion passed.

Yes: 6 Angelou, Leeseberg, Renner, Schnetzer, Larick and Metzbower

Absent: 1 McGregor

TO AUTHORIZE THE MAYOR TO ENTER INTO CONTRACT WITH COLUMBUS FIBERNET, LLC FOR THE EXPANSION OF GAHANNA'S FIBER OPTIC NETWORK INFRASTRUCTURE ALONG MORSE ROAD FROM STELZER ROAD TO JOHNSTOWN ROAD.

WHEREAS, in late 2015, a holistic fiber integrity analysis was performed by Columbus Fibernet (CFN) outlining four suggestions with high level budgetary costs included; and

WHEREAS, one important recommendation was to build a new underground pathway from the current northern terminus of trunk 1 on North Hamilton Road, north of Morse Road, then west on Morse Road to Stelzer Road to tie into CFN; and

WHEREAS, the Director of Information Technology became aware that a third party had contracted CFN to lay conduit and fiber assets across Morse Road spanning the distance of our municipal borders; and

WHEREAS, by leveraging an existing construction project, cost savings can be recognized by both the City of Gahanna and CFN while expanding our GNET footprint across the City; and

WHEREAS, payment can be made over a three (3) year period at no additional costs with immediate access to these assets.

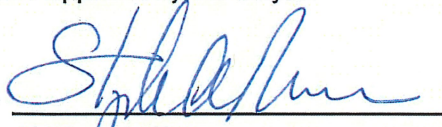
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GAHANNA, COUNTY OF FRANKLIN, STATE OF OHIO:

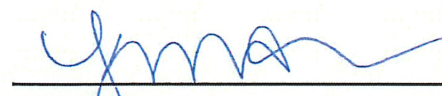
Section 1. That the Mayor is hereby authorized to enter into contract with COLUMBUS FIBERNET, LLC, 1366 Dublin Road, Columbus, Ohio 43215, for the expansion of Gahanna's fiber optic network infrastructure along Morse Road from Stelzer Road to Johnstown Road; said contract attached hereto as EXHIBIT A, and made a part herein.

Section 2. That funding in the amount of THREE HUNDRED FORTY THREE THOUSAND

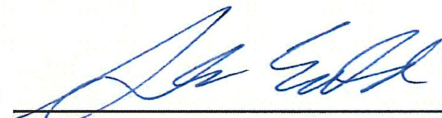
FIVE HUNDRED NINETY THREE DOLLARS (\$343,593) was set aside in 2016 appropriations to Account No. 325.122.5596, Capital Projects Fund to cover the herein costs.

Section 3. That this Ordinance shall be in full force and effect after passage by this Council and 30 days after date of signature approval by the Mayor.

President  Date 06/29/16
Stephen A. Renner

Attest by  Date 6/20/16
Kayla Holbrook
Deputy Clerk of Council

Approved by the Mayor  Date 6/21/16
Thomas R. Kneeland

Approved as to Form  Date 6/21/16
Shane W. Ewald
City Attorney

CONTRACT OF SALE

This Contract of Sale ("Contract") is entered into this 27th day of September, 2016 by and between Columbus Fibernet LLC, 1366 Dublin Rd, Columbus, Ohio 43215, an Ohio limited liability company ("Seller") and The City of Garanna ("Buyer") (sometimes Buyer or Seller referred to as Party, Each Party, or Other Party)

RECITALS

WHEREAS, Seller has constructed and owns an organized system of multi-duct underground conduit and related facilities in and around the city of Columbus, Ohio and certain municipalities contiguous thereto (the "Conduit System"); and

WHEREAS, Seller wishes to sell ducts within the Conduit System to providers of telecommunications services for use by such providers in supplying such services to their end-user customers and/or leasing duct space to other providers of telecommunications services; and

WHEREAS, Buyer is a provider of telecommunications services and wishes to acquire a segment of duct within the Conduit System for the purpose of installing fiber to provide telecommunications services to its end-user customers and/or leasing duct space to other providers of telecommunications services;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, Seller agrees to sell, and Buyer agrees to buy, the segment of duct identified herein, subject to the promises, covenants, and warranties set forth in this Contract.

ARTICLE I PROPERTY CONVEYED

1.1 Conduit System. The Conduit System consists of approximately four (4) miles of 1.25" HDPE ducts located along Morse Rd. in the city of Columbus, Ohio and certain municipalities contiguous thereto as shown on the map attached hereto as Exhibit A. The Conduit System includes all handholes and other appurtenances constructed by Seller to facilitate access to the ducts.

1.2 Property To Be Conveyed. Seller agrees to sell, and Buyer agrees to buy the portion of the Conduit System consisting of Nineteen Thousand (19,000) linear feet of one (1) 1.25 inch conduit as shown on the drawings attached hereto as Exhibit B (the "Property").

1.3 Additional Construction and Fiber Installation. Seller agrees to construct, and Buyer agrees to buy an additional Seven Hundred Thirty (730) linear feet of 2 inch conduit connecting the Property to Buyer's existing conduit on Hamilton Road as shown on the drawings attached hereto as Exhibit C ("Additional Construction"). Seller also agrees to furnish and install a 144 strand fiber optic cable within the 19,000 feet of Property referenced in Section 1.2

and the 730 feet of Additional Construction referenced in Section 1.3.

ARTICLE II PURCHASE PRICE

2.1 Purchase Price. Buyer will pay to Seller a purchase price of Three Hundred Forty Three Thousand Five Hundred Ninety Three Dollars and 61/100 (\$343,593.60) for the Property as described in Section 1.2 and Additional Construction as described in Section 1.3 of this Contract and as depicted on Exhibit B and Exhibit C hereto. Payment for the Purchase Price will be due in (3) equal installments of One Hundred Fourteen Thousand Five Hundred Thirty One Dollars and 20/100 (\$114,531.20). Payment 1 will be due at contract execution. Payment 2 will be due on January 1, 2017, with the final payment due January 1, 2018.

ARTICLE III EVIDENCE OF OWNERSHIP

3.1 Ownership Documents. On the effective date of this Contract, Seller shall furnish to Buyer a true and correct copy of a complete set of plans and specifications for the portion of the Conduit System in which the Property is located. In addition, upon the request of Buyer, Seller shall make available for inspection:

- a. All existing approvals and authorizations secured by Seller from governmental authorities in connection with the routing and construction of the Conduit System;
- b. Any existing private right-of-way agreements or private easements secured by Seller in connection with the routing of the Conduit System;
and

ARTICLE IV SELLER'S REPRESENTATIONS AND WARRANTIES

4.1 Condition of Property. Seller warrants that as of the date of closing the Property will materially and substantially comply with the plans and specifications provided pursuant to Sections 3.1 of this Contract and that the Property is free from material defects, deviations, errors, or omissions in construction as a fiber conduit system. If, within twelve (12) months from the date of closing, Buyer discovers any material defect in the construction of the Property, Seller will, within fifteen (15) days after receipt of written notice of such defect from Buyer, inspect the portion of the Property in question and, within thirty (30) days thereafter, correct such defect at no cost to Buyer or notify Buyer that it disputes that the defect identified in the

notice exists, in which case the parties will proceed as provided in Section XVI.

4.2 Ownership. Seller is the owner of the entire right, title, and interest in and to the Property.

4.3 Seller's Power and Authority. Seller and its representatives have all power and authority legally necessary to enter into this Contract, execute and deliver the Closing documents, and sell the Property in accordance with the terms of this Contract.

4.4 No Actions Against Seller. Seller knows of no action, suit, proceeding, or assessment pending or threatened against Seller, which would, if determined against Seller, adversely and materially affect Seller's ability to perform its obligations under this Contract.

4.5 No Additional Approvals Required. Neither Seller's execution of this Contract nor Seller's performance of any of its obligations hereunder:

- a. Violates any written or oral contract, agreement or instrument to which Seller is bound or which affects the Property or any part of it;
- b. Constitutes or will result in the violation or breach by Seller of any judgment, order, writ, injunction or decree issued or imposed upon Seller, or result in violation of any federal, state, local and other laws, statutes, regulations, codes, orders, ordinances and rules; or
- c. Requires that Seller obtain any approval, consent, order, authorization, designation, filing (other than recording), registration, notification of, by, or with any judicial or governmental authority except as expressly provided in this Contract.

ARTICLE V BUYER'S REPRESENTATIONS AND WARRANTIES

5.1 Buyer's Power and Authority. Buyer and its representatives have all power and authority legally necessary to enter into this Contract, execute and deliver the Closing documents, and purchase the Property in accordance with the terms of this Contract.

5.2 No Actions Against Buyer. Buyer knows of no action, suit, or proceeding, pending or threatened against Buyer, which would, if determined against Buyer, adversely and materially affect Buyer's ability to perform its obligations under this Contract.

5.3 Submission to All Applicable Local Right-of-Way Controls. Buyer understands and acknowledges that the Property is subject to all applicable local right of way controls as enacted, either currently or in the future, by those municipalities in which the Property is located.

Buyer represents and warrants that it shall own and operate the Property subject to, and in accordance with, the requirements of those municipalities and will secure all necessary permits, approvals, and authorizations from such municipalities. On the effective date of this Contract, or on such later date as Seller and Buyer may agree, Buyer represents to Seller that it has secured all such necessary permits, approvals, and authorizations.

ARTICLE VI UNDERLYING RIGHTS

6.1 Underlying Rights. The Conduit System is subject to the terms of certain right-of-way agreements that Seller has obtained for the construction and operation of the Conduit System, to such terms as the grantors of such right of way may be subject as owners of the underlying real property, to the rights of tenants and licensees in possession of such real property, and to the prior rights of the grantors to use the right of way for their own business or other purposes (collectively, the "Underlying Rights"). The Property conveyed and other rights granted herein are subject to the Underlying Rights applicable to that portion of the Conduit System in which the Property is located as well as to the rights of Seller granted under the Underlying Rights

ARTICLE VII ACCESS

7.1 Access to Duct. Seller hereby grants Buyer a non-exclusive license to use all hand holes that provide access to the Property.

7.2 Notice. Buyer understands that other providers of telecommunications services have acquired, or may acquire, ducts within the same subset as the Property. In order that Seller may coordinate access to the hand holes by all such providers, Buyer shall notify Seller, in writing, no fewer than three (3) days in advance of its desire to access the Property. In case of emergency, Buyer shall notify Seller of its need for immediate access to the Property. Seller shall respond within two (2) hours of the receipt of such emergency notice. If Seller does not respond within this two (2) hour period, Seller shall be deemed to have approved the requested emergency access. Seller shall have a representative present during any Buyer access to hand holes and Buyer shall pay to Seller all reasonable costs related to the services provided by such Seller's representative.

7.3 Use of Handholes. Because other providers of telecommunications services have acquired, or may acquire ducts within the same subset as the Property, space within each handhole will be allocated based on the ratio of the number of ducts purchased to the number of ducts in the subset. Buyer's license to use the handhole includes the right to use one-half (1/2) of the space therein.

ARTICLE VIII
Additional Construction

8.1 Additional Construction. Seller agrees to provide for Buyer all necessary services to deliver additional construction services for purposes of additional access points to the Conduit System. Seller services will include design, engineering, material procurement, construction, splicing, and project management. Seller and Buyer shall mutually agree on the price, scope and terms of such services to be provided under this Section 8.1. If Seller and Buyer cannot agree on such price, scope and terms, then Seller is not obligated to perform any services under this Section 8.1.

ARTICLE IX
CONDUIT SYSTEM MAINTENANCE, REPAIR, AND RELOCATION

9.1 Scheduled Maintenance. Seller shall use commercially reasonable methods to maintain the Property in a secure and good condition. Such routine maintenance (“Scheduled Maintenance”) shall include, but is not limited to, locating and marking the Property and pumping, venting, and air quality testing, the Property when necessary. Buyer shall pay to Seller for Seller’s services under this Section 9.1, an amount equal to Five Thousand Dollars (\$5,000) a year for the period commencing with the Closing date and continuing on the anniversary date of the Closing for 5 years (“Initial Term”). After the Initial Term expires, Buyer shall pay to Seller an amount of Five Thousand Two Hundred and Fifty Dollars (\$5,250) per year for year 6 and each year thereafter such amount shall increase by 4%. This fee shall continue for so long as Seller is providing Scheduled Maintenance services to Buyer hereunder. Such payments are due up front on the first day of each anniversary of the Closing date.

9.2 Unscheduled Maintenance. Non-routine maintenance and repairs (“Unscheduled Maintenance”) of the Property shall be performed by Seller or, in Seller’s sole discretion, by its agent, affiliate, or a subcontractor. Unscheduled Maintenance shall include, but is not limited to, relocation of a portion of the Conduit System in which the Property is located, emergency repairs, or any other maintenance necessary to prevent any failure, interruption, or impairment in the operation of the Conduit System; provided, however, that in no event shall Seller be responsible for repairing, moving, or relocating Buyer’s cable. The cost of any Unscheduled Maintenance performed solely for the benefit of Buyer will be charged directly to the Buyer. With respect to all other Unscheduled Maintenance, Buyer shall be charged a share of the cost of the services provided. Buyer’s cost share is calculated as a pro-rata share based on the number of owned conduits within affected pathway. Seller will provide Buyer with a statement of the applicable charges within thirty (30) days of the date the costs are incurred. This invoice will be due and payable by Buyer thirty (30) days after receipt. Unscheduled Maintenance charges not paid within five (5) days of the due date will interest at a rate of one and one half percent (1.5%) per month until paid in full. Seller will promptly notify Buyer of any required relocation of the

Property.

ARTICLE X TAXES

10.1 Responsibility for Taxes. Each party shall be responsible for and pay all taxes associated with their respective interests in the Conduit System. To the extent that such taxes have not been separately assessed or imposed upon or against the interest of Buyer, seller shall timely file and pay all such taxes. Seller shall then bill Buyer for its proportionate share of such taxes based, to the extent possible, on the methodology used by the authority imposing the tax. If the methodology cannot be determined or applied, Seller shall bill Buyer for its share of such taxes based on a pro-rata share of the total taxes imposed on the portion of the Conduit System in which the Property is located. Seller shall provide Buyer with documentation supporting the invoice. Buyer shall pay the invoice within thirty (30) days of receipt.

ARTICLE XI INSURANCE

11.1 Insurance Coverage. Seller and Buyer shall maintain insurance coverage with respect to their respective interest in the Conduit System consistent with commercially reasonable business practice. Upon request by one party, the other party shall provide evidence that such insurance coverage is in place within (10) days after receipt of such request.

ARTICLE XII INDEMNIFICATION

12.1 Seller's Indemnity. Seller agrees to indemnify, protect, and defend Buyer against, and hold Buyer harmless from, any and all claims, demands, liabilities, losses, damages, costs and expenses including, without limitation, reasonable attorney's fees, asserted against, incurred, or suffered by Buyer resulting from any personal injury or property damage occurring in, on, or about the Property or relating thereto on or before the date of closing from any cause whatsoever other than as a consequence of the acts or omissions of Buyer, its agents, employees, or contractors. Neither the foregoing nor any other provision of this Contract shall limit the rights and remedies available to Buyer at law or in equity.

12.2 Buyer's Indemnity. Buyer agrees to indemnify, protect, and defend Seller against, and hold Seller harmless from, any claims, losses, damages, costs or expenses including, without limitation, reasonable attorneys' fees, asserted against, incurred, or suffered by Seller resulting from any personal injury or property damage occurring in, on, or about the Property or relating thereto after the date of closing from any cause whatsoever other than as a consequence of the acts or omissions of Seller, its agents, employees, or contractors.

Neither the foregoing nor any other provision of this Contract shall limit the rights and remedies available to Seller at law or equity.

ARTICLE XIII LIMITATION OF LIABILITY

13.1 Liability. Notwithstanding any other provision of this Contract, it is the intent of the parties that each shall be liable to the other for any actual and direct damages incurred as a result of a party's failure to perform its obligations as required by this Contract; provided, however, that, in no event, will either party, nor any of their contractors, subcontractors, agents, or employees be liable for any loss of revenue, lost profit, or other indirect, special, or consequential damages suffered as a result of either party's breach of its obligations under this Contract.

ARTICLE XIV CLOSING

14.1 Place and Date of Closing. The closing for the purchase and sale shall take place at Seller's office at 1366 Dublin Road, Columbus, Ohio 43215 on _____, 20__, or at such other place and time as Seller and Buyer may agree.

14.2 Seller's Closing Obligations. At closing, Seller shall deliver to Buyer each of the following items:

- a. A bill of sale;
- b. Any private right-of-way agreements or private easements executed by Seller in favor of Buyer as may be necessary to transfer the Property or portions thereof; and
- c. A certificate of Seller dated as of the date closing confirming, without exception or qualification, that all of the representations of Seller contained in this Contract are true and correct as of the date of closing as if made on and as of the date of closing.

14.3 Adjustments at Closing. All expenses associated with the Property, including, but not limited to, fees imposed by municipalities, taxes, and maintenance charges shall be prorated as of the date of closing. To the extent that information for any such proration is not available at closing, the parties shall effect such proration within ninety (90) days after closing. The covenants set forth in this section shall survive the closing.

14.4 Buyer's Closing Obligations. At closing, Buyer shall deliver to Seller each of the following items:

- a. The purchase price as set forth in Section 2.1 in immediately available funds, plus any other sums required to be paid by Buyer pursuant to Section 14.3 of this Contract; and
- b. A certificate of Buyer dated as of the date of closing confirming, without exception or qualification, that all of the representations of Buyer contained in this Contract are true and correct as of the date of closing as if made on and as of the date of closing.

14.5 Possession at Closing. Possession of the Property shall be delivered to Buyer by Seller at closing.

14.6 Closing Costs. Each party will be responsible for its own legal fees.,

ARTICLE XV TERMINATION OR DEFAULT

15.1 Buyer's Termination. If Seller is unable to convey title to the Property or any portion thereof, Buyer may, at Buyer's option, terminate this Contract in its entirety or with respect to that portion of the Property which Seller is unable to convey. Buyer shall provide written notice to Seller of its intention in this regard not later than the closing date.

15.2 Default. If either Seller or Buyer fails or refuses to perform their respective obligations hereunder, including the failure to pay any amount when due, for any reason other than the other party's default or a duly-noticed termination expressly permitted under this Contract, Seller or Buyer, as applicable, may pursue any remedies available to such party at law or equity or may terminate this Contract.

ARTICLE XVI REMEDIES

16.1 Binding Arbitration. Any claim, controversy, or dispute between Buyer and Seller that is related directly to this Contract, whether sounding in contract, tort, statute, fraud, misrepresentation or other legal theory, shall be resolved by binding arbitration as provided in this section. Either party may pursue binding arbitration in Columbus, Ohio in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted by a panel of three arbitrators. Each party shall select one arbitrator. The two chosen arbitrators shall then select the third arbitrator. After the conclusion of the proceeding, the arbitrators shall render the award with a written statement of the reasons for the award citing findings of fact and conclusions of law. The arbitrators shall render the award within sixty (60) days of appointment unless mutually otherwise agreed by the parties. The award will be final

when rendered; provided that either party may appeal a final arbitration award based on mistake of law to any court of competent jurisdiction.

ARTICLE XVII
DAMAGE OR DESTRUCTION PRIOR TO CLOSING

17.1 Damage or Destruction. If the Property is destroyed or partially damaged by any casualty prior to the closing date, the Buyer (i) may request Seller to repair such damage at Seller's sole cost or (ii) terminate this Agreement.

ARTICLE XVIII
CONDEMNATION PRIOR TO CLOSING

18.1 Eminent Domain. If, prior to closing, any portion of the Property is taken by any governmental authority under the power of eminent domain or by any private entity possessing the power of eminent domain, Buyer may, at Buyer's option, terminate the Contract with respect to that portion of the Property subject to such taking and the parties shall thereafter be released of any obligation or liability by reason of the execution of this Contract as it relates to the purchase and sale of such portion of the Property.

ARTICLE XIX
MISCELLANEOUS

19.1 Assignment. Buyer may not assign or transfer this Contract, or any rights and obligations arising hereunder, without the prior written consent of the Seller; which such consent shall not be unreasonably withheld. Buyer may assign or transfer this Contract, or any rights and obligations arising hereunder, without the prior written Consent of the Seller, to any affiliate controlling or controlled by Buyer or under common control of a parent company or companies, or in connection with the sale of all or substantially all of Buyer's assets or in connection with a merger involving Buyer; provided, however, that Buyer shall provide Seller with prior written notice of the assignment or transfer and provided that the assignee or transferee agrees in writing to assume all of the obligations of Buyer hereunder.

19.2 Notices. All notices, approvals, waivers, objections or other communications under this Agreement shall, unless otherwise specified, be in writing and deemed to be duly delivered if delivered in person, by overnight courier with evidence of delivery, by facsimile transmission with confirmation of receipt, or by certified or registered mail:

- a. If to Buyer, to:

Copy to:

b. If to Seller, to: Columbus Fibernet LLC
Attention: General Manager
1366 Dublin Road
Columbus, Ohio 43215
Fax: (614) 274-6794

19.3 Entire Agreement. This Contract and the exhibits attached hereto constitute the entire agreement between the Seller and Buyer and supersedes all prior agreements and understandings between them as to the subject matter of the Contract. There are no restrictions, arrangements, or undertakings, oral or written, between the parties relating to the transaction contemplated hereby which are not expressed or expressly referred to herein.

19.4 Binding Effect. This Contract shall be binding upon, and inure to the benefit of, the Buyer and Seller and their respective successors and permitted assigns.

19.5 Amendments and Waivers. This contract may not be amended except by a written instrument executed by each of the parties. No waiver, change, modification, consent or discharge shall be effected except by a written instrument executed by the party from which such waiver, change, modification, consent, or discharge is sought.

19.6 Severability. If any term or provision of this Contract is invalid, illegal, or incapable of being enforced by any rule, law, or public policy, all other terms and provisions of the Contract shall remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner adverse to either party. Upon a determination that any term or provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Contract so as to effect the original intent of the parties as closely as possible to the end that the transactions contemplated hereby are fulfilled to greatest extent possible. If any term or provision is capable of two constructions, one of which would render the term or provision invalid and the other of which would render the provision valid, then the provision shall have the meaning which renders the term of provision valid.

19.7 Counterparts. This Contract may be executed in counterparts, each of which will, for all purposes, be deemed to be an original and all of which, together, will constitute one and

the same instrument. In pleading or proving any provision of this Contract, it shall not be necessary to produce more than one complete set of such counterparts.

19.8 Governing Law. This Contract shall be construed, governed, and enforced in accordance with the laws of the state of Ohio, without reference to its conflict of laws principles.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their respective duly authorized officers as of the date first written above.

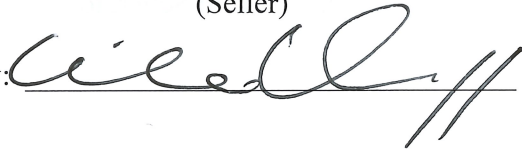
(Buyer)

By: 

Its: Mayor

COLUMBUS FIBERNET LLC

(Seller)

By: 

Its: General Manager

Exhibit A
Pathway as shown in red

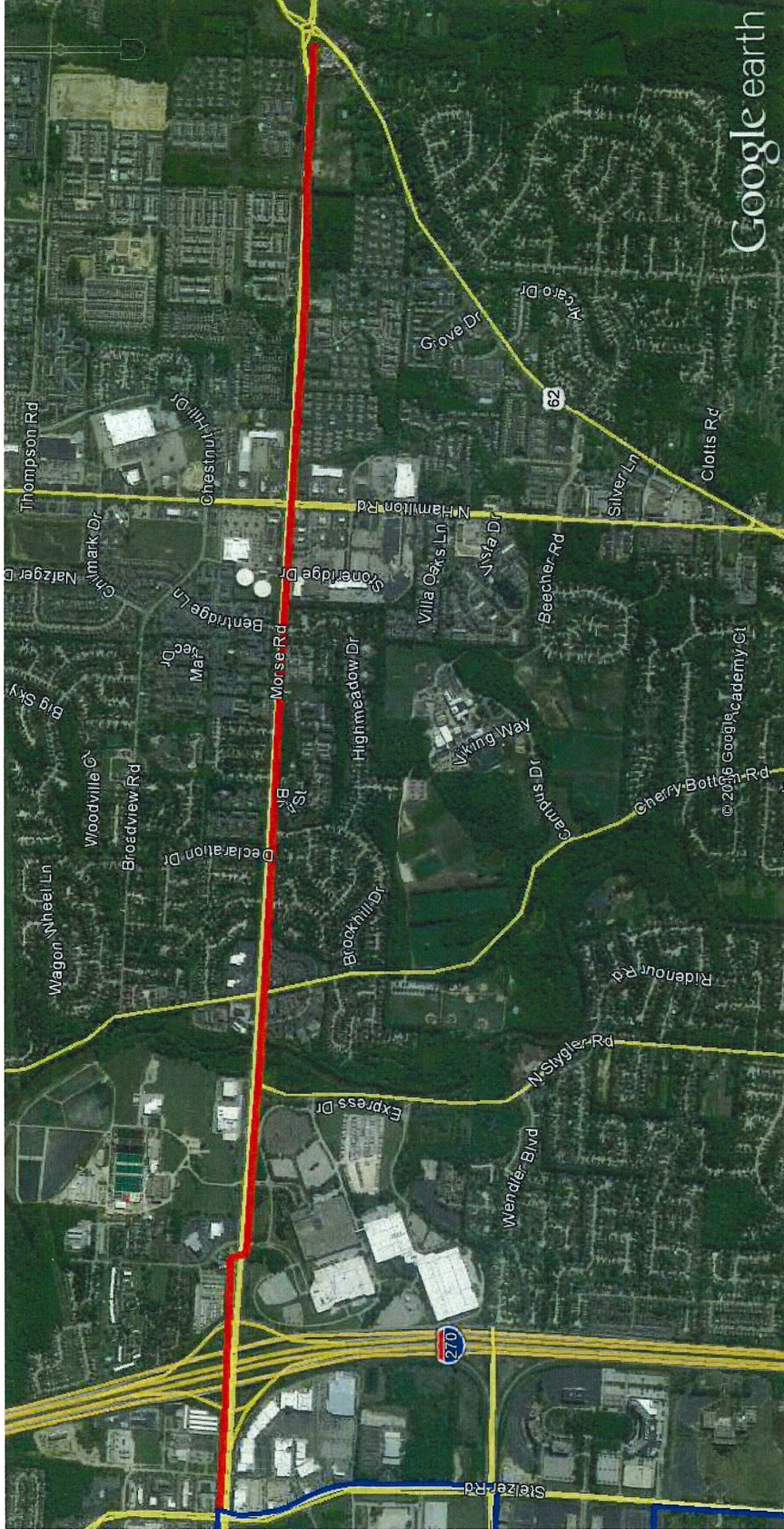


Exhibit B
Pathway as shown in red

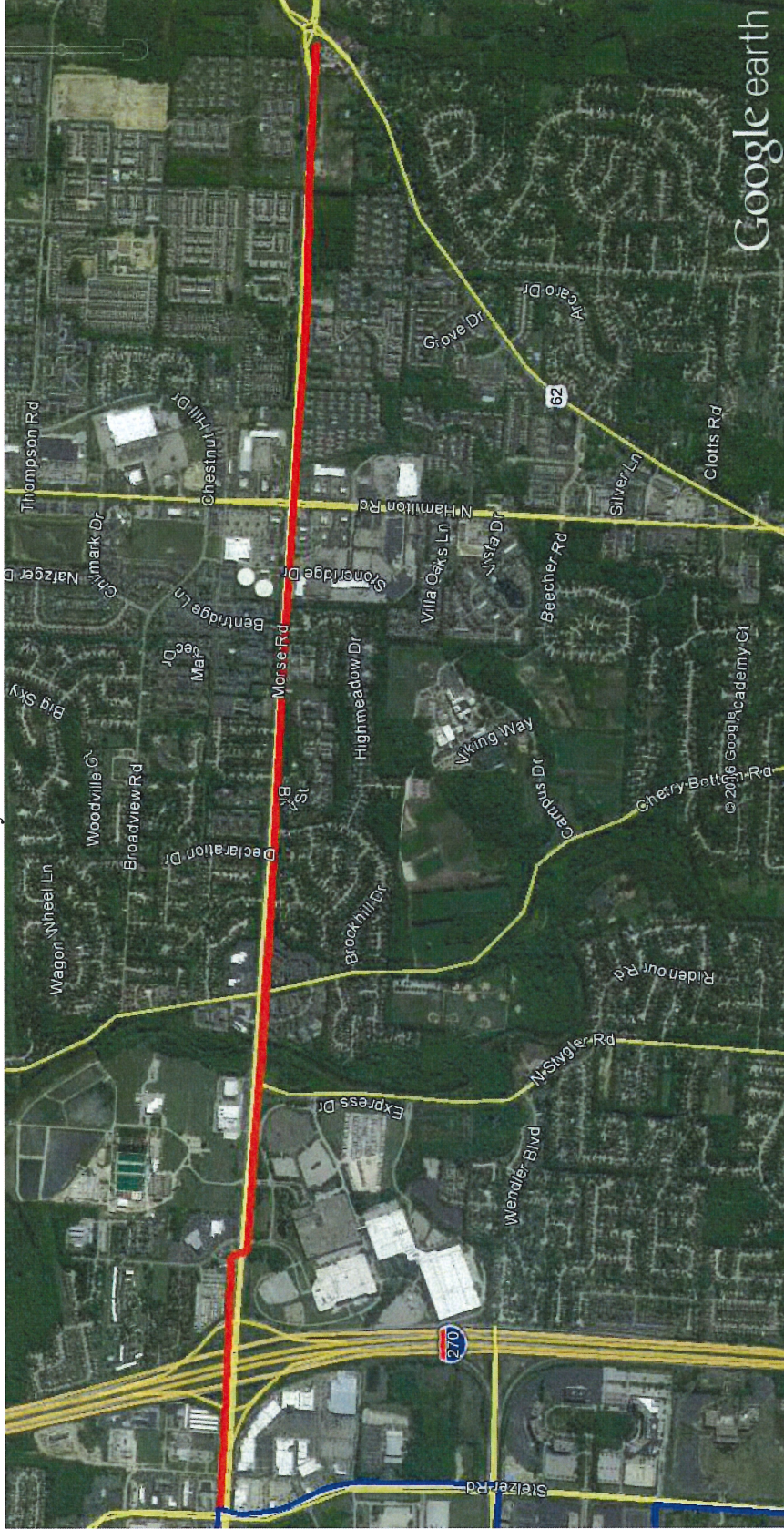


Exhibit C
Pathway as shown in Yellow

