



City of Gahanna

200 South Hamilton
Road
Gahanna, Ohio 43230

Signature

Ordinance: ORD-0008-2021

File Number: ORD-0008-2021

ORDINANCE AUTHORIZING THE MAYOR TO SIGN A REVISED OPTICAL FIBER USE AGREEMENT WITH GAHANNA-JEFFERSON PUBLIC SCHOOL DISTRICT FOR INDEFEASIBLE RIGHT OF USE (IRU); WAIVING SECOND READING; AND TO DECLARE AN EMERGENCY.

WHEREAS, the City entered an indefeasible-right-of-use (IRU) agreement with Gahanna-Jefferson Public School District in 2016 to provide schools with access to the City's fiber optic network in order to connect various school resources; and

WHEREAS, with the construction of the new Lincoln Elementary School, the District requires additional fiber optic connections; and

WHEREAS, the City has proposed an updated agreement with a term of ten years with an anticipated end date of May, 2031; and

WHEREAS, it is imperative to move forward with this Ordinance because of the District's construction needs, and all for the preservation of the public peace, property, health, safety and welfare.

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 sign a revised OPTICAL FIBER USE AGREEMENT, with the GAHANNA-JEFFERSON PUBLIC SCHOOL DISTRICT, 160 South Hamilton Road, for fiber strands within the City of Gahanna fiber network; said agreement attached as EXHIBIT A, and made a part herein.

Section 2. That the second reading is hereby waived.

Section 3. That, for the reasons set forth in the preamble herein above, this Ordinance is declared emergency legislation and shall be in full force and effect immediately upon passage by this Council and on date signature approval by the Mayor.

President

Brian D. Larick

Date

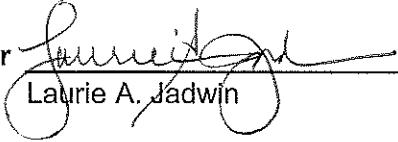
3/2/2021

Attest by

April Beggerow, MPA, CMC
Clerk

Date

3/2/21

Approved by the Mayor 
Laurie A. Jadwin

Date 3-2-2021

Approved as to Form 
Raymond J. Mularski
City Attorney

Date 3-4-2021

EXHIBIT A

CITY OF GAHANNA, OHIO INDEFEASIBLE RIGHT-TO-USE AGREEMENT

This INDEFEASIBLE RIGHT-TO-USE AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into as of the [DATE] day of [MONTH], 20[XX], between the City of Gahanna, an Ohio municipal corporation (hereinafter referred to as "Owner"), having an office at 200 S. Hamilton Road, Gahanna, Ohio 43230, and the Gahanna-Jefferson City School District (hereinafter referred to as "User"), having an office at 160 S. Hamilton Road, Gahanna, Ohio 43230. For the purposes of this Agreement, Owner and User shall be referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Owner has an existing optical fiber system (hereinafter referred to as the "Fiber System") throughout the City of Gahanna, Ohio;

WHEREAS, Owner has excess fibers in the Fiber System and is willing to provide such fibers to User and to grant User an Indefeasible Right-to-Use (hereinafter referred to as "IRU") in and to certain fibers in the Fiber System for the purpose of providing telecommunications, video, data, and/or information services;

WHEREAS, in connection with the grant to User of an IRU in and to such fibers, Owner is willing to allow User to use certain other property in the Fiber System and owned by Owner, including, but not limited to, innerduct, conduit, poles, building entrance facilities, and associated appurtenances, to the limited extent that such use is necessary for User's Purposes;

WHEREAS, User has obtained any and all permits and approvals required to engage in the User's Purposes and for the use and occupancy of space in the Rights of Way and further agrees to adhere to any and all requirements of federal, state, and local laws, rules, or regulations in regard to such use and occupancy (specifically inclusive of, but not limited to, applicable provisions of Chapter 931 of the Codified Ordinances of the City of Gahanna, Ohio);

WHEREAS, the Parties entered into that certain Optical Fiber Use Agreement on January 13, 2011 ("Optical Fiber Use Agreement"), which granted User an IRU in and to sixteen (16) certain fibers in the Fiber System, as identified therein;

WHEREAS, City of Gahanna City Ordinance ORD-01119-2012 rescinded the Optical Fiber Use Agreement on June 4, 2012;

WHEREAS, the Parties entered into that certain Optical Fiber Use Agreement on June 15, 2012 ("Replacement Optical Fiber Use Agreement"), which replaced the Optical Fiber Use Agreement and granted User an IRU in and to the sixteen (16) fibers identified in the Optical Use Agreement and two (2) additional fibers in the Fiber System, as identified therein;

WHEREAS, the Parties amended the Replacement Optical Fiber Use Agreement on May 18, 2016, which was approved by the City of Gahanna City Council on June 4, 2016 in City Ordinance ORD-0060-2016, and which granted User an IRU in and to twelve (12) additional fibers in the Fiber System, as identified therein;

WHEREAS, this agreement clarified the User should have an IRU in and to thirty-eight (38) fibers in the fiber system;

WHEREAS, User now seeks to use two (2) additional fibers in the Fiber System for the purpose of providing telecommunications, video, data, and/or information services;

WHEREAS, the Parties have agreed to enter into this Agreement which embodies the mutual covenants and agreements between the Parties hereto and supersedes all previous agreements between the Parties related to the subject matter herein (specifically inclusive of, but not limited to the Replacement Optical Fiber Use Agreement);

WHEREAS, the Parties may in the future agree to enter into additional separate agreement(s) for additional and/or separate optical fiber uses which shall incorporate the covenants and agreements of this Agreement and which shall also set forth the terms and provisions unique to each additional or different specific project; and

WHEREAS, the Parties confirm and agree that the recitals set forth above in this Agreement are material terms included in this Agreement.

NOW, THEREFORE, in accordance with the terms of any Right of Way occupancy requirement and/or Construction Permit required by Chapter 931 of the Codified Ordinances of the City of Gahanna, Ohio, and in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

1. DEFINITIONS.

1.1 The following terms, whether in the singular or in the plural, when used in this Agreement and initially capitalized, shall have the meaning specified:

- a. Agreement: This Indefeasible Right-to-Use Agreement between Owner and User, which identifies the specific optical fiber strands and facilities to be provided to User by Owner and which sets forth the associated fees/compensation, terms, and conditions for User's use of such optical fiber strands and facilities.
- b. Fiber System: The optical fiber strands, innerduct, conduit, building entrance facilities, associated appurtenances, and capacity owned by Owner and located throughout the City of Gahanna, Ohio.

- c. User System: The portions of the Fiber System granted to User for User's Purposes under the terms of this Agreement, as further described herein and depicted in the map provided in Exhibit A.

2. GRANT.

2.1 Owner hereby grants to User an IRU of the following Fiber System components, totaling 40 fibers. Owner warrants that it has all rights necessary to make such a grant to User.

Start Point	End Point	Route	Pairs
Trunk 1		16 Fibers	
GLHS	CSCC (Clark Hall)	Trunk 1 to Lateral	6
GLHS	GMSE	Trunk 1 to Lateral	1
GLHS	High Point	Trunk 1 to Lateral	1
Trunk 2		10 Fibers	
GLHS	Goshen	Trunk 2 to Lateral	1
GLHS	GMSW	Trunk 2 to Lateral	1
GLHS	Chapelfield	Trunk 2 to Lateral	1
GLHS	Jefferson	Trunk 2 to Lateral	1
GLHS	Royal Manor	Trunk 2 to Lateral	1
Trunk 3		2 Fibers	
*WOW	Trunk 4	Trunk 3 to Trunk 4	1
Trunk 4		4 Fibers	
GLHS	Bus Garage	Trunk 4 to Lateral	1
*Trunk 3	CTSS	Trunk 4 to CTSS	1
Distribution Laterals		8 Fibers	
GLHS	New Lincoln Elm.	Lateral Only	1
GLHS	GMSS	Lateral Only	1
GMSE	High Point	Lateral Only	1
*CTSS	Blacklick	Lateral Only	1

* Denotes Route WOW to Trunk 3 to Trunk 4 to CTSS to Blacklick

3. TERM.

3.1 Unless sooner terminated in accordance with the terms of this Agreement, the term of this Agreement is for Ten (10) years (hereinafter referred to as the "Term"). The Term shall commence immediately upon final execution of this Agreement by the Parties (hereinafter referred to as the "Commencement Date") and shall expire on April 01, 2031

(hereinafter referred to as the “Expiration Date”). Thereafter, this Agreement shall automatically renew for additional one (1) year periods so long as neither Party provides the other with at least ninety (90) days’ advanced written notice of non-renewal prior to the annual anniversary of the Expiration Date whereby the Agreement would renew.

4. CONSIDERATION.

4.1 As consideration for, as inducement to, and as a required condition of Owner granting User the specific rights to use the User System as described herein and depicted in the map provided in Exhibit A, User hereby agrees to pay Owner the fee described in the attached Exhibit B.

5. OWNER OBLIGATIONS.

5.1 Owner shall:

- a. Provide the User System for User’s use in accordance with the terms of this Agreement.
- b. Provide and/or control maintenance and repair functions on the User System and all facilities in the Fiber System through which the User System passes, including, but not limited to, conduit, innerduct, poles, and equipment, which shall be performed under the direction of Owner.
- c. Maintain the User System to User’s specifications.

6. USER OBLIGATIONS.

6.1 User shall:

- a. Provide and pay for any and all costs associated with lateral connectivity from all necessary termination points of User’s proprietary fiber and equipment to all necessary demarcation points of the Fiber System and shall pay for the costs of all splicing, distribution segment, service connections, and any ring or concentrator operations.
- b. Pay for any building or external network service connection and disconnection charges for each building service added or deleted before, during, or after the initial establishment and cutover of a User System fiber segment.
- c. If performing any splicing in the User System, utilize the services of the Owners designated company to perform said splicing.

- d. Pay all necessary costs if the User requires installation of a new distribution ring or concentrator in an already established Fiber System or User System distribution segment, rearrangement of existing service connections, and rearrangement of a ring or concentrator operation.
- c. Agree not to use the User System provided in this Agreement to provide non-educational or primarily commercial services to any unaffiliated party without the prior written consent of Owner. User further agrees not to use the User System provided in this Agreement to provide non-educational or primarily commercial services to unaffiliated parties in conjunction with a third party without the prior written consent of Owner. User also agrees that it shall not provide for or allow any unaffiliated party to use the User System or in any way sublease or subdivide the User System and provide services to unaffiliated or third parties without the prior written consent of Owner.
- e. Pay for any costs associated with disconnecting from the Fiber System, and shall ensure that the User System, including the strands of fiber and any associated appurtenances, are left in the condition that existed prior to the User connecting to the Fiber System. User agrees that should Owner determine, in Owner's sole discretion, that upon disconnection User has not left the User System in the condition that existed prior to the User connecting to the Fiber System, Owner shall restore and repair the User System at the sole cost and expense of User.
- f. Agree to pay any and all maintenance costs as may be required to be paid by User pursuant to the requirements of Section 8.1(a-c) below.

6.2 Failure of User to fulfill its obligations under this Section 6 or to otherwise satisfy the terms and conditions of this Agreement shall be considered an event of default and Owner may terminate this Agreement in accordance with Section 12 herein.

7. JOINT OBLIGATIONS.

7.1 Owner and User jointly:

- a. Agree that within thirty (30) days of final execution of this Agreement, the Parties will agree upon an acceptance plan for User's initial activation and the "go-live" of the User System.
- b. Shall provide each other a coordination telephone number where the other Party can be accessible twenty-four (24) hours a day, three hundred sixty-five (365) days per year.

8. MAINTENANCE.

8.1 All maintenance and repair functions on the User System and all facilities through which the User System passes, including, but not limited to, conduit, innerduct, poles, and equipment, but specifically excluding all User-owned and User-controlled optoelectronics, shall be performed by or at the direction of Owner or Owner's appointed agent with reasonable notice to User. Except as otherwise may be agreed to by the Parties, User is prohibited from performing any maintenance or repair on the Fiber System or User System. User shall have the right to have an employee or representative available to assist Owner in any maintenance or repair of the User System. Owner shall maintain the User System in accordance with the Fiber System Specifications attached hereto as Exhibit C.

- a. Regular Maintenance: Owner may, from time to time, undertake and provide for Regular Maintenance activities in an attempt to keep the Fiber System and/or User System in good working order and repair so that it performs to a standard equal to that which is then commonly believed to be acceptable for systems of similar construction, location, use, and type. Regular maintenance rates in effect will be those identified in Exhibit B, with the understanding that such rates shall be increased by three percent (3%) on each annual anniversary of the Commencement Date beginning in 2026, and are subject to further change at any time.
- b. Scheduled Maintenance: Owner, from time to time, may schedule and perform specific periodic maintenance to protect the integrity of the Fiber System and/or User System and perform changes or modifications to the Fiber System and/or User System (including, but not limited to, fiber splicing, etc.) at User's request. Such User-requested Scheduled Maintenance shall be performed at User's sole cost and expense. User may request such Scheduled Maintenance by delivering to Owner a Statement of Work detailing the service User desires to be performed, including the time schedule for such services. Upon receipt of such a Statement of Work, Owner will provide an estimate of the price and timing of such Scheduled Maintenance. Following User's acceptance of such estimate, Owner will schedule and have such Scheduled Maintenance performed. Owner will have such Scheduled Maintenance performed on a time-and-materials basis at the standard rates then in effect at the time services are performed.
- c. Emergency Maintenance: Owner may undertake and provide for Emergency Maintenance and repair activities for the Fiber System and/or User System. Where necessary, Owner shall attempt to respond to any failure, interruption, or impairment in the operation of the User System within twenty-four (24) hours of receiving a report of any such failure, interruption, or impairment. Owner shall use its best efforts to perform maintenance and repair to correct any failure, interruption, or impairment in the operation of the User System when reported by User in accordance with the procedures set forth in this Agreement. User shall be

responsible for the costs and expenses associated with such Emergency Maintenance as it relates to User's actual use of the User System and/or Fiber System requiring such Emergency Maintenance. Owner will have such Emergency Maintenance performed on a time-and-materials basis at the emergency maintenance rates then in effect at the time services are performed.

8.2 In the event Owner, or others acting on Owner's behalf, at any time during the Term of this Agreement, discontinues maintenance and/ or repair of the User System, User, or others acting on User's behalf, shall have the right, but not the obligation, to thereafter provide for the previously Owner-provided maintenance and repair of the User System, at User's sole cost and expense. Any such discontinuance by Owner shall be upon not less than six (6) months' prior written notice to User. In the event of such discontinuance, Owner shall obtain for User, or others acting on User's behalf, approval for adequate access to the Rights of Way in, on, across, along, or through which the User System is located for the purpose of permitting User, or others acting on User's behalf, to undertake such maintenance and repair of the User System. As an alternate remedy, User may elect to terminate this Agreement should Owner discontinue maintenance and/ or repair of the User System.

8.3 In the event any failure, interruption, or impairment adversely affects both the Fiber System and the User System, restoration of the User System shall at all times be subordinate to restoration of the Fiber System with special priority for Owner's public safety and municipal infrastructure functions carried over the Fiber System, unless otherwise agreed to in writing in advance by the Parties hereto. In such event or in the event Owner is unable to provide timely repair service to the User System, Owner may, following written request, permit User to make repairs to restore the User System as long as such restoration efforts do not interfere with Owner's restoration activities.

8.4 Any User subcontractors or employees who undertake repair or maintenance work on the User System shall first be approved by Owner to work on the Fiber System. Prior to User's undertaking of maintenance work or entering an Owner's facility for repair, in accordance with the provisions herein, User shall notify Owner of the contemplated action and receive Owner's approval or denial, which Owner shall provide to User no later than twelve (12) hours from User's notification to Owner of the contemplated repair or maintenance work. Owner, in its sole discretion, may elect to have an Owner employee or representative available to assist User in any repair or maintenance of the User System.

9. USE OF THE USER SYSTEM.

9.1 User shall have exclusive control over its provision of telecommunications, video, data, and/or information services.

9.2 User hereby certifies that it is authorized or will be authorized, where required, on the Commencement Date of this Agreement to provide telecommunications, video, data, and/or information services within the State of Ohio, the City of Gahanna, Ohio, and in such other jurisdictions in which the User System may exist, and that such services can be provided on fiber optic cable systems such as the Fiber System owned and operated by Owner.

9.3 User understands and acknowledges that its use of the Fiber System and User System are subject to all applicable local, state, and federal laws, rules, and regulations, as enacted, either currently or in the future, in the jurisdictions in which the Fiber System and User System are located. User represents and warrants that it shall operate on the Fiber System and User System subject to, and in accordance with, all laws, rules, and regulations, and shall secure all permits, approvals, and authorizations from all such jurisdictional entities as may be necessary.

10. INDEMNIFICATION.

10.1 To the extent permissible under Ohio law, User undertakes and agrees to protect, indemnify, defend, and hold harmless Owner and all of its elected officials, officers, and employees, agents, and volunteers from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines, penalties, costs, attorneys' fees and costs, expenses or losses of any kind or nature whatsoever, for death, bodily injury, or personal injury to any person, including User's employees and agents, or damage or destruction to any property of either party hereto, or third persons in any manner arising by reason of the negligent acts, errors, omissions, or willful misconduct incident to the performance of this Agreement or use of the Fiber System on the part of User or User's officers, agents, employees, or subcontractors, except for the negligence or willful misconduct of Owner, and its elected officials, officers, employees, agents, and volunteers. User's indemnity requirements herein shall also specifically include all claims of intellectual property, copyright, or trademark infringement made by third parties against Owner.

11. RELEASE.

11.1 To the extent permitted by law, User shall be solely liable for its own actions that result in any obligation, loss, claim (including third party claims asserted against Owner) and damage whatsoever, regardless of cause thereof, and expenses in connection therewith including, without limitation, expenses, penalties and interest (collectively, "Losses") arising out of or resulting from the entering into this Agreement and any payment, transfer or other application of moneys by User in accordance with provisions of this Agreement; provided, however, that User shall not release Owner for Losses arising out of or resulting from Owner's own willful or negligent conduct. The liability arising under this Section shall survive termination of this Agreement.

12. INSURANCE.

12.1 During the Term of this Agreement, unless otherwise agreed to in writing by the authorized representatives, User shall, at its own expense, maintain in effect insurance coverage with limits not less than those set forth herein.

12.2 User shall furnish Owner's authorized representative, within thirty (30) days after the Commencement Date of the Agreement, with insurance endorsements acceptable to Owner's Director of Law. The endorsements shall be evidence that the policies providing coverage and limits of insurance are in full force and effect. Such insurance shall be maintained by User at User's sole cost and expense.

12.3 User endorsements shall name Owner and all of its elected officials, officers, and employees, agents, and volunteers as additional insureds. The endorsements shall also contain a provision that the policy cannot be canceled or reduced in coverage or amount without first giving thirty (30) days' written notice thereof by registered mail to Owner at the following address:

City of Gahanna, Ohio
Law Director
200 S. Hamilton Road
Gahanna, Ohio 43230

12.4 Such insurance shall not limit or qualify the obligations User assumed under the Agreement. Owner shall not, by reason of its inclusion under these policies, incur liability to the insurance carrier for payment of the premium for these policies.

12.5 Any insurance or other liability protection carried or possessed by Owner, which may be applicable, shall be deemed to be excess insurance and User's insurance is primary for all purposes despite any conflicting provision in User's policies to the contrary.

12.6 User shall be responsible for all User contractors' or subcontractors' compliance with the insurance requirements.

12.7 Failure of User to maintain such insurance, or to provide such endorsements to Owner when due, shall be an event of default under the provisions of this Agreement.

12.8 User shall obtain and maintain Commercial General Liability Insurance, including the following coverages: product liability hazard of User's premises/operations (including explosion, collapse, and underground coverages); independent contractors; products and completed operations (extending for one (1) year after the termination of this Agreement); blanket contractual liability (covering the liability assumed in this Agreement); personal injury (including death); and broad form property damage. Such coverage shall provide coverage for total limits actually arranged by User but not less than Two Million Dollars

and No Cents (US\$2,000,000.00) combined single limit. Should the policy have an aggregate limit, such aggregate limits should not be less than double the combined single limit and be specific for this Agreement.

12.9 User shall provide Workers' Compensation insurance covering all of User's employees in accordance with the laws of the State of Ohio.

12.10 User may use an Umbrella or Excess Liability coverage to net coverage limits specified in the Agreement. Evidence of Excess Liability shall be in a form acceptable to Owner's Director of Law.

12.11 The foregoing insurance requirements are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by User under this Agreement.

13. DEFAULT.

13.1 Unless otherwise specified in this Agreement, User shall not be in default under this Agreement, or in breach of any provision hereof, unless and until Owner shall have given User written notice of a breach and User shall have failed to cure the same within thirty (30) days after receipt of a notice; provided, however, that where such breach cannot reasonably be cured within such thirty (30) day period, if User shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such breach shall be extended for a reasonable period of time to complete such curing. Upon the failure by User to timely cure any such breach after notice thereof from Owner, Owner shall have the right to take such action as it may determine, in its sole discretion, to be necessary to cure the breach or terminate this Agreement or pursue such other remedies as may be provided at law or in equity.

13.2 Unless otherwise specified in this Agreement, Owner shall not be in default under this Agreement or in breach of any provision hereof unless and until User shall have given Owner written notice of such breach and Owner shall have failed to cure the same within thirty (30) days after receipt of such notice; provided, however, that where such breach cannot reasonably be cured within such thirty (30) day period, if Owner shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such breach shall be extended for a reasonable period of time to complete such curing. Upon the failure by Owner to timely cure any such breach after notice thereof from User, User shall have the right to take such action as it may determine, in its sole discretion, to be necessary to cure the breach or terminate this Agreement or pursue other remedies as may be provided at law or in equity.

13.3 If User shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law, or shall be adjudicated as bankrupt or insolvent, or shall make a general

assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if any involuntary petition proposing the adjudication of User as bankrupt or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law shall be filed in any court and such petition shall not be discharged or denied within ninety (90) days after the filing thereof, or if a receiver, trustee, or liquidator of all or substantially all of the assets of User shall be appointed, then Owner may, at its sole discretion, immediately terminate this Agreement.

14. FORCE MAJEURE.

14.1 Neither Party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control (except for the fulfillment of payment obligations as set forth herein), including, but not limited to: acts of God, fire, flood, earthquake or other catastrophes; epidemics; adverse weather conditions; material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefor; lack of transportation; national emergencies; insurrections, riots, wars or strikes; or lockouts, work stoppages, or other labor difficulties (collectively, "Force Majeure Events").

15. ASSIGNMENT.

15.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors or assigns; provided, however, that no assignment hereof or sublease, assignment, or licensing (hereinafter collectively referred to as a "Transfer") of any rights or obligations hereunder shall be permitted or valid for any purpose without the prior written consent of each Party hereto. Such consent shall not be unreasonably withheld.

16. WAIVER OF TERMS OR CONSENT TO BREACH.

16.1 No term or provision of this Agreement shall be waived, and no breach excused, unless such waiver or consent shall be in writing and signed by a duly authorized officer of the Party claimed to have waived or consented to such breach. Any consent by either Party to, or waiver of, a breach by the other Party shall not constitute a waiver of or consent to any subsequent or different breach of this Agreement by the other Party, such failure to enforce shall not be considered a consent to, or a waiver of, said breach or any subsequent breach for any purpose whatsoever.

17. RELATIONSHIP NOT A PARTNERSHIP OR AN AGENCY.

17.1 The relationship between Owner and User shall not be that of partners or agents for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture, or agency agreement between the Parties hereto.

18. NO THIRD-PARTY BENEFICIARIES.

18.1 This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and assigns, and shall not be construed as granting rights to any person or entity other than the Parties or imposing on either Party obligations to any person or entity other than a Party.

19. EFFECT OF SECTION HEADINGS.

19.1 Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

20. NOTICES.

20.1 Any written notice under this Agreement shall be deemed properly given if sent by registered or certified mail, postage prepaid, or by nationally recognized overnight delivery service to the address specified below, unless otherwise provided for in this Agreement:

If to User to:

Superintendent
Gahanna-Jefferson
City School District
160 S. Hamilton Road
Gahanna, Ohio 43230

If to Owner to:

Mayor
City of Gahanna, Ohio
200 S. Hamilton Road
Gahanna, Ohio 43230

With a Copy to:

Executive Director
Business and School Improvement
Gahanna-Jefferson
City School District
160 S. Hamilton Road
Gahanna, Ohio 43230

With a Copy to:

Law Director
City of Gahanna, Ohio
200 S. Hamilton Road
Gahanna, Ohio 43230

20.2 Either Party may, by written notice to the other Party, change the name or address of the person to receive notices pursuant to this Agreement.

21. SEVERABILITY.

21.1 In the event any term, covenant, or condition of this Agreement, or the application of such term, covenant, or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants, and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and

effect unless a court holds that the invalid term, covenant, or condition is not separable from all other terms, covenants, and conditions of this Agreement.

22. COMPLIANCE WITH LAW.

22.1 Each Party hereto agrees that it will perform its respective rights and obligations hereunder in accordance with all applicable laws, rules, and regulations.

23. GOVERNING LAW AND VENUE.

23.1 This Agreement shall be interpreted in accordance with the Charter and Codified Ordinances of the City of Gahanna, as amended, the laws of the State of Ohio and all applicable federal laws, rules, and regulations as if this Agreement were executed and performed wholly within the State of Ohio. No conflict of law provisions shall be invoked so as to use the laws of any other jurisdiction. The exclusive venue for all cases or disputes related to, or arising out of, this Agreement shall be the state and federal courts in Franklin County, Ohio.

24. ENTIRE AGREEMENT.

24.1 This Agreement, including any exhibit attached hereto, all constitute the entire agreement between the Parties with respect to the subject matter. This Agreement cannot be modified except in writing signed by both Parties.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement effective the day and year first above written:

USER:

Gahanna-Jefferson City School District

By: _____

Its: _____

OWNER:

City of Gahanna, Ohio

By: _____

Its: _____

Approved As To Form:

Law Director, City of Gahanna, Ohio

FISCAL OFFICER'S CERTIFICATE

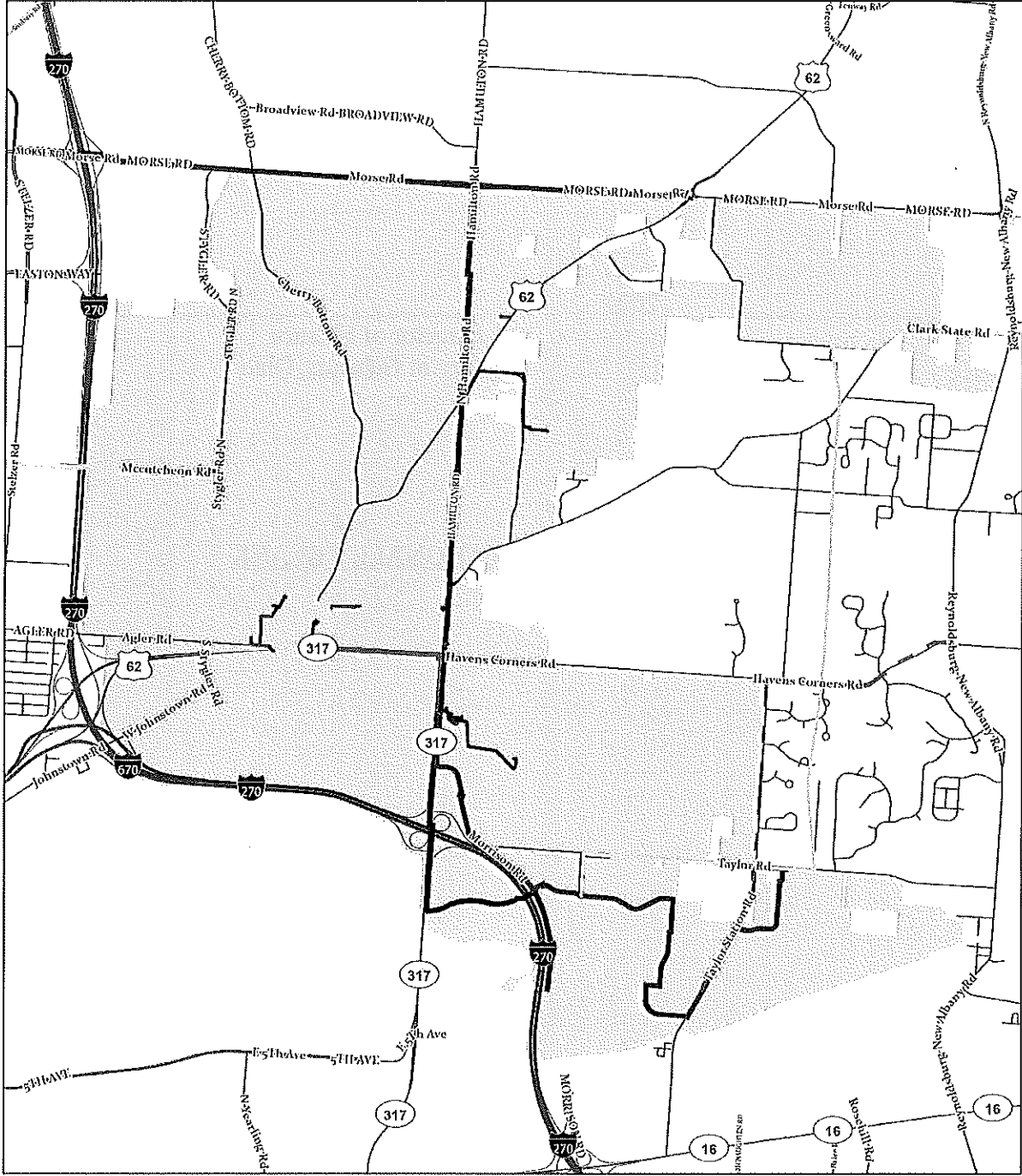
The undersigned, Director of Finance for the City of Gahanna, Ohio under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City under the foregoing Agreement during Fiscal Year 2021 have been appropriated lawfully for that purpose, and are in the Treasury of the City of Gahanna, Ohio or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2021

Director of Finance
City of Gahanna, Ohio

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Exhibit A Fiber System



- | | |
|-----------------------------|-----------------------|
| City Trunks (144 ct) | Fiber Laterals |
| Trunk 1 | City Lateral |
| Trunk 2 | Private Lateral |
| Trunk 3 | AEP/New Albany |
| Trunk 4 | CTSS |
| Trunk 5 | |

Gahanna
 City of Gahanna, Ohio
 200 S Hamilton Rd, Gahanna, Ohio 43230
 (614)342-4000 www.gahanna.gov

Exhibit B

PRICING/ FEES

The following fees will be assessed for fibers defined in this IRU:

Regular Maintenance Fee Schedule			
Cable	Fee Per Strand	Quantity	Total
Trunk 1	\$ 63.20	16 Fibers	\$1,011.20
Trunk 2	\$ 63.20	10 Fibers	\$ 632.00
Trunk 3	\$63.20	2 Fibers	\$126.40
Trunk 4	\$ 63.20	4 Fibers	\$ 252.80
Point to Point	\$ 63.20	8 Fibers	\$ 505.60
Regular Maintenance Annual Fee			\$ 2,528.00

Table 1. The annual Maintenance fees above cover Regular fiber maintenance as defined in section 8.1.a of the agreement. These fees will increase by 3% annually on the renewal date of this agreement starting in 2026

Bond Repayment Fee Schedule			
Cable	Fee Per Strand	Quantity	Total
Trunk 1	\$ 437.35	16 Fibers	\$ 2,624.10
Trunk 2	\$ 437.35	10 Fibers	\$ 4,373.50
Trunk 3	\$ 437.35	2 Fibers	\$ 874.70
Trunk 4	\$ 437.35	4 Fibers	\$ 1,749.40
Total Annual Bond Repayment Fee			\$ 13,995.20

Table 2. The fees in table 2 are required to pay the fiber bond repayment service. This fee will sunset in January 2028.

Exhibit C

FIBER SYSTEM SPECIFICATIONS

Standard Construction & Fiber Specifications As-Built Drawing Specifications

Fiber Specifications

Fiber type varies and is dependent upon route, as generally shown in Exhibit A, but all fiber was manufactured by either Alcoa, Coming or other comparable manufacturer.

Maximum Splice Losses (measured on an individual basis, not averaged).

The maximum splice loss for any individual splice measured "bi-directional" shall not Exceed 0.15 db.

The maximum splice loss for any individual transition splice (standard single mode fiber spliced to a non zero dispersion shifted fiber) measured bi-directional" shall not exceed 0.25 db.

The maximum loss for "through" office loss including connectors and jumpers shall not exceed 1 db.

Average Splice Loss

The average splice loss shall not exceed 0.10 db (used for total Span loss calculation only).

Cable Requirements

1.3 Db/Km attenuation at 1550nm.

1.4 Db/Km attenuation at 1310nm. Drawings:

Detailed As-Built drawings will be supplied within twenty (20) business days after the execution of this contract. As-Built drawings provided to the User by the Owner will contain the following information presented in the format described below.

1. Route Description: The As-Built drawings will contain a geographical depiction of the Fiber System containing the User System, provided in the form of a hard copy map. The depiction will identify each point of presence (“POP”).
2. Fiber Level Details: The As-Built drawings will provide details on fiber assignment numbers within the cable between each POP and the next contiguous POP, fiber distribution bay, individual fiber assignments, and Fiber Owner circuit ID's to aid in identifying the User System within the Fiber System
3. Mileage: Mileage will be the fiber distances via OTDR traces between a POP and the next contiguous POP.
4. Site Names: POPs will be identified using the fiber Owner's name(s) for such sites, whether or not User uses the same names.
5. Owner may require the use of Common Language Location Identifier (CLLI Code).

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Exhibit D

MAINTENANCE AGREEMENT