

RESOLUTION NO. 28-2023

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDED AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND THE SOUTHWEST OHIO COMPUTER ASSOCIATION FOR THE EXTENSION OF FIBER.

WHEREAS, Council authorized an agreement in 2020 with the SouthWest Ohio Computer Association (SWOCA) to share fiber assets; and

WHEREAS, amending said agreement allows for the extension of the original fiber area and a new rate for the maintenance.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The City Manager is hereby authorized to enter into an amended agreement by and between the City of Monroe and the SouthWest Ohio Computer Association for the extension of fiber pursuant to the terms and conditions set forth on Exhibit "1" attached hereto and made a part hereof.

SECTION 2: This measure shall take effect and be in full force from and after its passage pursuant to Section 7.08 (C) of the Charter.

PASSED: March 28, 2023

ATTEST:

APPROVED:


Clerk of Council


Mayor

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.


Clerk of Council
City of Monroe, Ohio

SOUTHWEST OHIO COMPUTER ASSOCIATION
INDEFEASIBLE RIGHT-TO-USE AMENDMENT

This agreement amends the INDEFEASIBLE RIGHT-TO-USE Agreement dated 24 July, 2020, ("IRU") and is entered on the _____ day of _____, 2023 between the South West Ohio Computer Association also known as "SWOCA" (hereinafter referred to as "**OWNER**") having an office at 3611 Hamilton-Middletown Road Hamilton, Ohio 45011 and the City of Monroe, Ohio, an Ohio municipal corporation (hereinafter referred to as the "**USER**" or "**City**"), having an office at 233 South Main Street Monroe, OH 45050. OWNER and USER are (referred to individually as "**Party**" and collectively as "**Parties**").

WHEREAS, The Parties have an existing INDEFEASIBLE RIGHT-TO-USE AGREEMENT granting the USER the right to use certain fibers on the OWNER's fiber system; and

WHEREAS, The OWNER wishes to offer additional excess fibers in the Fiber System to the USER ("Additional Fiber System"); and

WHEREAS, The USER wishes to secure the use of fibers within the Fiber System; and whereas the parties wish to amend the existing IRU. The Parties hereto do hereby agree to amend the IRU as follows:

1. DEFINITIONS.

1.1 Is amended to add:

c. Additional Fiber System: The optical fiber strands, innerduct, conduit, building entrance facilities, associated appurtenances, and capacity owned by OWNER and located throughout the SWOCA regional footprint and Rights of Way of the City of Monroe, Ohio (a general depiction of which is attached hereto as Exhibit "C")

2. GRANT.

2.1 Is amended to add:

b. Seventy-Two (72) strands of fiber optic cable in the Additional Fiber System along the path designated in Exhibit "C"

3. TERM.

3.1 There are no changes to the term.

4. CONSIDERATION.

4.1 Is amended to add:

d. USER shall pay OWNER a one-time fee of Two Hundred Seventy-Nine Thousand Eight Hundred Forty Dollars and Thirty Cents (US \$279,840.30) Thirty (30) days after the completion of the construction necessary to create the Additional Fiber System described in Exhibit C ("one-time fee"). Upon USER'S acceptance of completion, OWNER shall invoice USER and USER shall pay the one-time fee within Thirty (30) days of the invoice date. Late payments shall be subject to a service charge of one and one half percent (1 1/2%) of any and all unpaid balance per month unless expressly waived by the OWNER in writing.

e. USER will pay OWNER Four Hundred Dollars and No Cents (US \$400.00) monthly for maintenance of the Additional Fiber System.

f. Beginning on July 1, 2025 and continuing once annually on every July 1 thereafter through the term of the agreement, the Monthly Maintenance Fee in section 4.1(e) herein shall be adjusted in the same percentage as the change in the Consumer Price Index, All Urban Consumers, Cincinnati-Hamilton, OH-KY-IN area, All Items, Base Period 1982-84=100, published by the U.S. Department of Labor, Bureau of Labor Statistics for the calendar year ending December 31 immediately preceding the date of such annual adjustment.

5. OWNER'S OBLIGATIONS.

5.1 There are no changes.

6. USER OBLIGATIONS.

6.1 There are no changes.

7. JOINT OBLIGATIONS.

7.1 There are no changes.

8. MAINTENANCE OBLIGATIONS.

8.1 There are no changes.

9. USE OF USER SYSTEM.

9.1 There are no changes.

10. INDEMNIFICATION.

10.1 There are no changes.

11. INSURANCE.

11.1 There are no changes.

12. DEFAULT.

12.1 There are no changes.

13. FORCE MAJEURE.

13.1 There are no changes.

14. ASSIGNMENT.

14.1 There are no changes.

15. WAIVER OF TERMS OR CONSENT TO BREACH.

15.1 There are no changes.

16. RELATIONSHIP NOT A PARTNERSHIP OR AN AGENCY.

16.1 There are no changes.

17. NO THIRD-PARTY BENEFICIARIES.

17.1 There are no changes.

18. EFFECT OF SECTION HEADINGS.

18.1 There are no changes.

19. NOTICES.

19.1 There are no changes.

20. SEVERABILITY.
20.1 There are no changes.
21. COMPLIANCE WITH LAW.
21.1 There are no changes.
22. GOVERNING LAW AND VENUE.
22.1 There are no changes.
23. ENTIRE AGREEMENT.
23.1 There are no changes.

IN WITNESS HEREOF the parties have executed and delivered this Agreement effective the day and year first above written:

OWNER:

By: Todd Yohey
Its: Executive Director
Date: _____

USER:
City of Monroe, Ohio
an Ohio municipal corporation.

By: William J. Brock
Its: City Manager
Date: _____

Approved As To Form:

Law Director, City of Monroe, Ohio

Exhibit C: Network Diagram: US Route 63 at Union Road, Monroe, Ohio

Estimated Fiber path is represented in Green

