

**RESOLUTION NO. 2022 - 2148**

**A RESOLUTION AUTHORIZING THE SAFETY SERVICE DIRECTOR TO ENTER INTO A LICENSE AGREEMENT WITH OHIO TELECOM FOR A LICENSE USING DARK FIBER, AND DECLARING AN EMERGENCY**

**WHEREAS**, Ohio Telecom intends on expanding its dark fiber and will own or control approximately three (3) fiber route miles utilizing poles owned and maintained by AEP and AT&T in and around the City, as reflected on the map attached hereto as Exhibit A, and

**WHEREAS**, the Safety Service Director desires to obtain a license to use certain strands of dark fiber in order to enhance the information technology services within specific buildings in the City, and

**WHEREAS**, the City has received a license agreement for the use of dark fiber from Ohio Telecom with the costs covered under the American Rescue Plan Recovery Funding, as reflected in the attached Exhibit B.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FREMONT, STATE OF OHIO:**

**SECTION 1.** The City agrees to enter into an agreement with Ohio Telecom for the installation and placement of fiber and related communication equipment.

**SECTION 2.** This resolution shall be copied to the Ohio Telecom.

**SECTION 3.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Revised Code of Ohio.

**SECTION 4.** The immediate operation of the provisions of this resolution is necessary for the immediate preservation of the public peace, health, safety, and welfare of the citizens of the City of Fremont. Said emergency being the need to enter into an agreement with Ohio Telecom by April 15, 2022.


This resolution, provided it receives a two-thirds ye or nay vote of all the members elected to the Fremont City Council, is hereby declared to be an emergency measure and this resolution shall be in full force and effect and after its passage by Council of the City of Fremont, approval by the Mayor, and publication and posting as required by law.

  
\_\_\_\_\_  
Jamie Hafford  
President of Council

PASSED: 4-7-2022


Effective date: 4-7-2022

YEAS: 7                      NAYS: 0

  
\_\_\_\_\_  
Stephanie L. Martin, City Council Clerk

  
\_\_\_\_\_  
Daniel R. Sanchez, Mayor

RES648

Approved as to form:  
  
\_\_\_\_\_  
James F. Melle, Director of Law  
City of Fremont, Ohio

# Exhibit A Facilities Map



**LICENSE AGREEMENT FOR THE INSTALLATION AND PLACEMENT OF FIBER AND RELATED COMMUNICATION EQUIPMENT BETWEEN THE CITY OF FREMONT, OHIO AND OHIO TELECOM**

**THIS LICENSE AGREEMENT** (the "Agreement") is made and entered into and effective on this \_\_\_\_\_ day of \_\_\_\_\_, 2022 ("Effective Date") by and between the City of Fremont, Ohio, ("City") with offices located at 323 South Front Street, Fremont, Ohio 43420 and Ohio Telecom (hereinafter "Provider") with its principal place of business located at 115 W. 2<sup>nd</sup> Street, Port Clinton, Ohio 43452. The City and Provider are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WHEREAS, the Provider is expanding its dark fiber installation in the general vicinity of City property and will own or control approximately 3 fiber route miles utilizing poles owned and maintained AEP and AT&T in and around Fremont, Ohio, as reflected on the map attached hereto as Exhibit A; and,

WHEREAS, the City desires to obtain from Provider and Provider desires to provide the City a license to use certain strands of dark fiber to enhance its information technology services through and between specific City buildings; and,

NOW THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is acknowledged by both Parties, it is agreed as follows:

**1. License of Provider's Fiber and Related Facilities**

1.a. Pursuant to the terms and conditions herein, Provider hereby grants to the City the exclusive right, privilege and license (the "Fiber License") to use thirty-six (36) strands of dark fiber (4 strands per connected building) within Provider's dark fiber system (the "Licensed Facilities"), as reflected on Exhibit A, together with access to all related support appurtenances (collectively, the "Associated Facilities"). The License Facilities route is as generally depicted in Exhibit A and identified as a red route while existing City owned fiber facilities are identified as a green route.

1.b. The City shall have no direct access or rights under this License to the dark fiber located on the poles. Provider hereby grants the City full and unrestricted access to the terminated fiber at each location.

1.c. Nothing in this Agreement shall prevent the City from performing or having performed such maintenance, repairs, or other work it deems necessary in its sole discretion, on its existing fiber system or other facilities, whether Licensed or otherwise. In the event the City performs such maintenance, repairs, or other work that may interfere with Provider's ability to maintain service through the Licensed Facilities, the City agrees that it shall first notify Provider that such work will be performed, when the work will be performed, and the nature and extent of the work.

1.d. The City may connect other facilities along the fiber path at its own expense. All New connections must be completed by Provider or by another contractor approved by Provider in advance. Provider acceptance and authorization for New Connections shall be in writing executed by both the City and Provider.

**2. Services to be provided by Provider to the City**

As set forth below, this License is premised upon the assumption that Provider will install 3 fiber route miles utilizing poles owned by AT&T and AEP (the "Project"). The Project is more fully explained in the Proposal submitted by Provider attached hereto as Exhibit B. Upon completion of the Project, Provider

agrees to maintain and provide general maintenance on the fiber, including the physical fiber between the patch panels located in each building identified by The City located along the route identified in Exhibit A. The City agrees to compensate provider an annual maintenance fee of One Thousand Two Hundred Dollars and no cents (\$1,200.00) payable in one annual payment for each contract year with the initial payment being made upon completion of the project and handoff of fiber to the City.

3.a. The Project shall require Provider to install dark fiber throughout the 7 fiber route miles sufficient to provide the City with thirty-six (36) dark fiber strands. The City agrees to pay Provider a one-time installation fee of Three Hundred Forty-two Thousand Two Hundred Sixty-Eight Dollars and Fifty cents (\$342,268.50) payable as follows: one initial payment of One Hundred Two Thousand Six Hundred and Eighty Dollars and Fifty-Five cents (\$102,680.55) prior to the start of the project which represents Thirty (30) percent of the entire project. The remaining Seventy (70) percent of each location shown in Table 1 of Exhibit B will be due as each location is completed.

3.b. Subject to the terms and provisions of this Agreement, Provider agrees that it has and will maintain during the Term all Underlying Rights necessary for the construction, installation, maintenance and repair of the Licensed Facilities and for Provider's grant to the City of the use of and access to the Licensed Facilities in the manner contemplated by this Agreement. "Underlying Rights" shall mean all deeds, leases, easements, rights-of-way agreements, licenses, franchises, grants, contracts and other rights, titles and interests to use real property of any third person, which are necessary for the construction, placement, location, installation, operation, use, license, maintenance, repair or replacement by Provider of the Licensed Facilities. Specifically, completion of the Project shall require Provider to maintain in good faith leases and or ownership of all poles utilized in the route identified in Exhibit A. In the event Provider is unable to, for any reason, maintain the fiber route utilized by the City pursuant to this License, Provider shall provide written notice to the City no later than sixty (60) days prior to the disruption of service to the City.

3.c. Any and all additional benefits as may be determined and agreed to by the Parties in writing and serving as an addendum to this Agreement.

#### **4. Term**

4.a. This Agreement shall commence on the Effective Date, and it shall remain in full force and in effect for a period of five (5) years from the Effective Date (the "Initial Term"), unless terminated earlier in accordance with this Agreement.

4.b. Upon expiration of the Initial Term, the Agreement may be renewed upon mutual agreement of the parties, for four (4) consecutive periods of five (5) years (each a "Renewal Term"), upon notice by Provider to the City not later than six (6) months preceding the expiration of the Initial Term or the Renewal Term. The Initial Term and the Renewal Term(s), if any, shall collectively be referred to as the "Term."

#### **5. Use of Licensed Facilities: Transfer of Ownership Rights: Assignability**

5.a. Provider shall not use, or permit any other entity or person to use, the Licensed Facilities in violation of this Agreement or any applicable law, rule, regulation or order of any governmental authority having jurisdiction over the Licensed Facilities.

5.b. Provider shall not assign, sell, lease, sublease, transfer, grant a license or sub-license, or otherwise assign ownership rights to the City Licensed fiber in any way that would interfere with this Agreement within the Licensed Facilities. Except as otherwise set forth herein, Provider shall not assign this

Agreement, without the express written consent of the City, which consent shall not be unreasonably withheld.

**6. Title**

Except for the licensing rights and obligations specifically provided for in this Agreement, all right, title, and interest in the Licensed Facilities and any other equipment or facility of Provider shall, at all times, remain exclusively with Provider. All right, title, and interest in the fiber and cable placed within the Licensed Facilities at the termination points by Provider for use by the City shall, at all times, remain exclusively with the City.

**7. Indemnifications; Limitations of Liabilities; Warranties**

7.a. To the fullest extent possible under the law, Provider agrees that it will indemnify and hold the City harmless against any and all loss, liability, damage and expense (including reasonable attorneys' fees) arising out of any demand, claim, suit or judgment for damages to any property or bodily injury to any persons, including, without limitation, the agents and employees of Provider, which may arise out of or be caused by Provider's willful misconduct or gross negligent acts or omissions. The foregoing indemnity shall not apply in the case of claims that arise from the negligence, misconduct, or other fault of the City. It shall apply, however, if a claim is the result of the joint negligence, joint misconduct, or joint fault of Provider and the City, but in such case the amount of the claim for which the City is entitled to indemnification shall be limited to that portion of such claim attributable to the negligence, misconduct or other fault of Provider.

7.b. **NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, THOSE BASED ON LOSS OF REVENUES, PROFITS, OR BUSINESS OPPORTUNITIES, FRUSTRATION OF ECONOMIC OR BUSINESS EXPECTATIONS, LOSS OF CAPITAL, COST OF SUBSTITUTE PRODUCT(S), FACILITIES, OR SERVICES, OR DOWN TIME COST, WHETHER OR NOT SUCH PARTY HAD OR SHOULD HAVE HAD ANY KNOWLEDGE, ACTUAL OR CONSTRUCTIVE, THAT SUCH DAMAGES MIGHT BE INCURRED, AND EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**8. Required Approvals**

Provider shall obtain any government authorizations and approvals required for Provider's completion of the Project.

**9. Notices**

All notices, demands, requests or other communications given under this Agreement shall be (i) in writing, (ii) effective on the first business day following the date of receipt, and (iii) be given by personal delivery, certified mail, return receipt requested, or nationally recognized overnight courier service or by computer email (followed by confirmation on the same or following day by overnight delivery or by mail as aforesaid) to the address set forth below or as may subsequently in writing be requested.

If to Provider:

Michael Christiansen  
115 W. 2<sup>nd</sup> Street  
Port Clinton, Ohio 43452  
Phone: 419-734-2369  
Email: mikec@ohiotel.net

If to the City:

Kenneth P. Frost  
Safety Service Director, City of Fremont  
323 South Front Street  
Fremont, Ohio 43420  
Phone: 419-334-2687  
Email: kfrost@fremontohio.org

**10. Default and Termination**

10a. A default shall be deemed to have occurred under this Agreement if:

- i. In the case of a failure to pay any amount when due under this Agreement, the Party fails to pay such amount within thirty (30) days after receipt of notice from the other Party that such payment is due. For purposes of this Section, a failure to provide one or more of the covenanted services by one party to the other shall constitute a default; or
- ii. Provider knowingly uses or attempts to use the conduit for any purpose other than the purposes specifically authorized in this Agreement and does not abandon such use immediately upon notice by the City; or
- iii. A Party defaults in any other material obligation hereunder and fails to cure such default within thirty (30) days after receiving written notice from the non-breaching Party specifying such breach, provided that if the breach is of a nature that is curable but that cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching Party in good faith has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

10.b. In the event of a default hereunder, the non-defaulting Party may avail itself of one or more of the following remedies:

- i. In the event the default consists of a failure of Provider to maintain and repair the Licensed Facilities in accordance with this Agreement, the City may repair same and invoice Provider the reasonable cost of such repairs, which shall be due within thirty (30) days of receipt of invoice;
- ii. In the event of any other default hereunder, the non-defaulting Party may avail itself of one or more of the following remedies: (i) pursue any remedies it may have under applicable law or principles of equity, including specific performance and (ii) terminate this Agreement, by giving the defaulting Party written notice of termination.
- iii. The City may terminate this Agreement without notice if immediate termination is required by law, regulation or a governmental authority.

- iv. Upon termination of this Agreement pursuant to Sections 4, 7, or 15 herein, all rights of Provider to the Licensed Facilities shall cease and all obligations of the Parties hereunder shall terminate without liability of any Party to the other party, except with respect to any breach occurring before such termination. Upon notice of termination by the City to Provider, Provider shall disconnect and remove any and all fiber and cable and other installations at the termination points within the Licensed Facilities at the City's expense. Similarly, upon notice of termination by Provider to the City, Provider shall disconnect and remove any and all fiber and cable and other installations at the termination points within the Licensed Facilities at Provider's expense. The rights and obligations of either Party that by their nature would continue beyond the expiration or termination of this Agreement, including without limitation representations and warranties, indemnifications, and limitations of liability, shall survive termination or expiration of this Agreement.

**11. Representations and Warranties** By execution of this Agreement, each Party represents and warrants to the other:

11.a. That the representing Party has full right and authority to enter into and perform this Agreement in accordance with the terms hereof and thereof, and that by entering into or performing under this Agreement, the representing Party is not in violation of its charter or bylaws, or any law, regulation or agreement by which it is bound or to which it is subject;

11.b. This Agreement constitutes a legal, valid and binding obligation enforceable against either Party in accordance with its terms;

11.c. That the execution, delivery and performance of this Agreement by such Party has been duly authorized by all requisite corporate action, that the signatories for such Party hereto are authorized to sign this Agreement, and that the joinder or consent of any other Party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement by such Party.

**12. Waiver**

The failure of either Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall nevertheless be and remain in full force and effect.

**13. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without reference to its choice of law principles.

**14. Rules of Construction**

The captions and headings in this Agreement are strictly for convenience and shall not be considered as interpreting it or as amplifying or limiting any of its content.



**15. Entire Agreement**

This Agreement, including the Exhibits, which are hereby incorporated herein as an integral part of this Agreement, constitutes the entire agreement between the Parties hereto with respect to the subject matter and geographical locations referred to and supersedes any and all prior or contemporaneous agreements whether written or oral with respect to the subject matter hereof. This Agreement cannot be modified except in writing signed by the Party against whom enforcement of the modification is sought.

**16. Relationship of the Parties**

The relationship between Provider and the City shall not be that of partners, agents or joint ventures for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, agency, or joint venture agreement between them. Neither Party may use the name, logo, emblem, trademark, or other mark of the other without first obtaining prior written consent of the other Party in each instance. The Parties acknowledge that immediate, extensive, and irreparable damage will result if this provision is not specifically enforced. Therefore, in addition to, and not in limitation of, any other remedy available, the Parties may enforce the foregoing provision in judicial proceedings by a decree of specific performance and appropriate injunctive relief as may be applied for and granted in connection with such enforcement.

**17. Force Majeure**

Neither Party shall be deemed to be in breach of this Agreement during any period of time in which it is unable to perform its obligations as a result of the occurrence of an event of force majeure, which shall include, but not be limited to, acts of God, act or order of government, denial or access to or loss of utility service or facilities or any other circumstance beyond the reasonable control and not caused by the fault or negligence of the Party claiming force majeure. The required time for performance hereunder by the Party claiming force majeure shall be extended to account for any such force majeure event and the Party claiming force majeure shall use diligence to resume or remedy, as the case may be, the performance of its obligations hereunder as soon as practicable.

**18. Severability**

If any provision of this Agreement is found contrary to law or unenforceable by any court, the remaining provisions shall be severable and enforceable in accordance with their terms.

[Signatures on Following Page]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**FOR THE CITY** as authorized by Resolution Number \_\_\_\_\_ passed \_\_\_\_\_, 2022

\_\_\_\_\_  
**Kenneth P. Frost – Safety Service Director**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**James F. Melle – Law Director**

**FOR TELECOM**

**By:** \_\_\_\_\_  
**Michael Christiansen**

\_\_\_\_\_  
**Date**

**Exhibit A  
Facilities Map**



**Exhibit B  
Proposal**

August 3, 2021

**Services:**

Ohio Telecom will install and maintain four dark fibers between the City Municipal Building and each of the additional buildings listed on Table 1 below. The full cost to install the fiber is listed next to each location. Some locations require other locations to be completed before those locations can be built.

The City Municipal building must be completed first and then additional buildings can be added. Each build will be handled as a separate project and billed as each project completes.

	Location	Address	Dist	Total Cost	Notes
1	City Muni Bldg	323 S Front St	1.17	\$53,235.00	Install 48ct Fiber
2	Fire Station/PD	1041 W State St	0.2	\$14,100.00	Install 4ct Fiber
3		711 S Front St	0.327	\$22,878.50	Install 4ct Fiber
4		1111 Tiffin St	0.93	\$42,315.00	Install 4ct Fiber. Reqs 711 S Front St
5		1113 Tiffin St		\$2,500.00	Install 4ct Fiber.
6	Water Tower	700 Cedar St	1.47	\$71,885.00	Install 4ct Fiber.
7	Sewer Plant	1019 Sand Rd	0.35	\$20,925.00	Install 4ct Fiber. Reqs 700 Cedar St
8	Fire Station 2	505 Pine St		\$2,500.00	Install 4ct Fiber. Reqs County Fiber Run
9	Rec Complex	600 St Joseph St	1.26	\$57,330.00	Install 4ct Fiber. Reqs County Fiber Run
10	Water & Sewer Maintenance	1111 Oak Harbor Rd.	1.2	\$54,600.00	Install 4ct Fiber. Reqs 700 Cedar St
			6.907	\$342,268.50	

**Table 1**

I agree to the terms of this agreement and authorize Ohio Telecom to order and provision the circuits and services described above.

\_\_\_\_\_  
Customer

\_\_\_\_\_  
Date