

RESOLUTION NO. 2010-79

AUTHORIZING AN INTERAGENCY AGREEMENT TO SHARE FIBER OPTIC RESOURCES BY CITY OF CLEVELAND, CUYAHOGA COUNTY, AND GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

WHEREAS, the Greater Cleveland Regional Transit Authority, the City of Cleveland, and Cuyahoga County have negotiated an agreement to Share Fiber Optic Resources by and Among City of Cleveland and Cuyahoga County and Greater Cleveland Regional Transit Authority which is attached hereto; and

WHEREAS, it is in the best interest of the Board of Trustees of the Greater Cleveland Regional Transit Authority to authorize the General Manager/Secretary-Treasurer to execute an agreement essentially in the form of this attachment.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority:

Section 1. That the Board of Trustees of the Greater Cleveland Regional Transit Authority hereby authorizes the General Manager/Secretary Treasurer to executive an Inter-Agency Agreement with the City of Cleveland and Cuyahoga County to share fiber optic resources for a period of one year with five (5) one-year options with no cost to GCRTA.

Section 2. That the General Manager/Secretary-Treasurer is authorized to exercise the options in the agreement without any further action by the Board of Trustees of the Greater Cleveland Regional Transit Authority.

Section 3. That this resolution shall become effective immediately upon its adoption.

Attachment: Proposed Agreement to Share Fiber Optic Resources.

Adopted: October 19, 2010

  
\_\_\_\_\_  
President

Attest:   
\_\_\_\_\_  
CEO, General Manager/Secretary-Treasurer

AGREEMENT TO SHARE  
FIBER OPTIC RESOURCES

BY AND AMONG

CITY OF CLEVELAND

AND

CUYAHOGA COUNTY

AND

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

This Agreement to share fiber optic resources ("Agreement") is made and entered into as of \_\_\_\_\_, 2010 ("effective date") by and among the CITY OF CLEVELAND ("City"), a municipal corporation and political subdivision of the State of Ohio; CUYAHOGA COUNTY ("County"), a political subdivision of the State of Ohio; and GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY ("RTA"), a political subdivision of the State of Ohio, under the circumstances described in the recitals below.

A. The parties have determined to share fiber optic resources in order to provide additional backbone infrastructure to the parties at no additional cost to the parties.

B. The Council of the City authorized an agreement to share fiber optic resources by and among the City, County and RTA in Ordinance No. 286-07, passed April 16, 2007, amended by Ordinance No. 310-09, passed March 30, 2009.

C. The Board of County Commissioners authorized an agreement to share fiber optic resources by and among the City, County and RTA in Resolution No. \_\_\_\_\_, adopted \_\_\_\_\_, 2010, and Ohio Revised Code Section 307.15.

D. The Board of RTA authorized an agreement to share fiber optic resources by and among the City, County, and RTA in Resolution No. \_\_\_\_\_, adopted \_\_\_\_\_, 2010.

NOW, THEREFORE, in consideration of the premises and mutual representations and agreements contained herein, the City, County and RTA agree as follows:

ARTICLE I. CONSENT TO USE FIBER OPTIC RESOURCES

The parties hereby agree that upon completion of identification tasks described below and upon compliance with the protocols to be established by the Fiber Optic Sharing Committee ("the Committee," more fully described in Article III), that any Fiber Resources belonging to any party ("Owner") may at the option and discretion of the Owner be used by any other party ("User") subject to the terms and condition of this Agreement and the Committee's protocol. "Fiber Resources" shall mean fiber, cable, conduit and related equipment belonging to any party to this Agreement. The parties acknowledge that Fiber Resources made available under this Agreement for sharing shall be available "as is" and "where is" and each User releases the Owner from costs, damages and expenses arising out of the User's use of an Owner's Fiber Resources. They further agree that there shall be no charge assessed against any party for use of another party's Fiber Resources under this Agreement.

ARTICLE II. IDENTIFICATION TASKS

A. As soon as reasonably possible following the effective date of this Agreement, each party shall submit to the other parties a list of currently-existing or planned Fiber Resources. If any party initiates a project creating additional Fiber Resources, such party has a duty to update its list and promptly deliver the updated list to the other parties and to the Committee.

B. As soon as reasonably possible following the receipt of the last list described in Paragraph A of this Article II, representatives of the City and the County will jointly prepare a GIS map showing the location of existing available fiber and to-be-available fiber and other pertinent Fiber Resources, and share the map with GCRTA which will provide any comments or additional input it may have as soon as possible. The GIS map shall be classified by the parties as exempt from public disclosure as an infrastructure record pursuant to Ohio Revised Code Section 149.433(A).

ARTICLE III. FIBER OPTIC SHARING COMMITTEE

The City appoints its Commissioner of Information Technology, the County appoints its Chief Technology Officer and RTA appoints its Director of Information Technology to the Fiber Optic Sharing Committee. At the first meeting of the Committee, each Committee member specified in the first

sentence of this paragraph shall designate an alternate individual to represent his or her governmental unit at Committee meetings.

The Committee's duties shall be to: review requests for usage of available Fiber Resources; verify that the Owner has consented in writing to the specific usage; update the GIS map described in Article II; issue a Fiber Resources protocol document addressing issues related to sharing consistent with this Agreement; and establish a schedule for performing the actions listed in this Agreement.

The Committee shall call its first meeting within 90 days of the effective date of this Agreement, at which meeting it shall adopt rules of governance and shall begin working on the tasks set forth in the preceding paragraph.

The Committee shall also create and maintain custody of a separate map memorializing each agreed-upon Fiber Resources sharing arrangement, with the Owner's and User's Committee representatives initialing and dating the map. The Committee shall update the map as additional sharing arrangements are made. The Committee shall also prepare a report describing any Fiber Resources sharing arrangement and recommending changes to improve Fiber Resources sharing arrangements, if necessary, one year after the first Fiber Resources sharing arrangement map is initialed and dated. The Committee shall meet from time to time as determined to be necessary by the Committee members, but not less than once per year on or about the anniversary date of the first Committee meeting. The sharing arrangement map and report shall be classified by the parties as exempt from public disclosure as an infrastructure record pursuant to Section 149.433(A).

Routine meetings of the Committee shall take place in the City of Cleveland following reasonable notice to Committee members. Emergency meetings shall take place as soon as possible upon an emergency request by a member, and may take place in any reasonable manner as determined by at least two members of the Committee. An Emergency shall be defined as a complete outage of a critical network service, damaged fiber that is essential to the operations of a party to this Agreement and which cannot be repaired in the immediate future, and events of similar magnitude.

The parties acknowledge that the Committee is not intended to be a public body under Section 121.22 of the Ohio Revised Code.

#### ARTICLE IV. TERM

This Agreement shall be for a one-year term with five one-year options to renew exercisable upon the agreement of all parties established by written notice

of intent to renew given by each party to the other parties at least 120 days prior to the end of the initial one-year term or any option year term.

#### ARTICLE V. FIBER USAGE

The following rules apply to the use of fiber under this Agreement:

- A. A User can terminate its usage of an Owner's Fiber Resources at any time by providing written notice as soon as practicable to the Owner of the Fiber Resources and to the Committee.
- B. A Fiber Resources Owner may terminate a User's use of any or all of its Fiber Resources for any reason and will make its best efforts to give 120 days' advance written notice to the User and to the Committee, except in the case of a public safety, national or other emergency.
- C. Users must comply with the Owner's existing labeling standard.
- D. Each party's legal representative shall decide, in its sole discretion, whether formal approval of its legislative body is needed in the case of any particular sharing arrangement.
- E. All Fiber Resources subject to this Agreement shall be and remain owned by the Owner. The Owner shall maintain records relating to the Fiber Resources, including records relating to allocation of the fiber. Users shall notify the Owner of any irregularity it discovers during its usual and ordinary monitoring of Owner's equipment it uses.
- F. If any party discovers a break in any fiber subject to this Agreement, such party shall promptly notify the other parties and the Committee of such break.
- G. In an Emergency situation, any party finding an alternate route, or other solution, shall make it available to the other parties to the extent possible to do so by notifying the other parties and the Committee.
- H. If capacity is exceeded during an Emergency, the Owner will receive priority in using its own Fiber Resources. The Owner will provide prompt notice of such an event to the other parties and to the Committee.

- I. Owners are under no duty to repair fiber because of this Agreement. In the event any Owner determines that any of its Fiber Resources which are subject to a sharing arrangement under this Agreement need repair, the Owner shall promptly notify the other parties and the Committee what it intends to repair and, if possible, the time frame for repairs.
- J. The Owner shall be permitted unfettered access to Fiber Resources owned by it.
- K. Unless specifically authorized in a separate document, each party may only repair its own Fiber Resources.

ARTICLE VI. NO WARRANTIES; CONSEQUENTIAL DAMAGES

The parties make no warranties, either express or implied with respect to Fiber Resources subject to this Agreement. In no event shall any party be liable for payment of any damages, including without limitation, consequential damages, to the other party for the use of that party's Fiber Resources. The above notwithstanding, User shall be responsible to an Owner for damage to an Owner's Fiber Resources caused by the User, its employees, contractors or agents.

ARTICLE VII. NOTICES

Notices given under this Agreement shall be given in writing and deemed given when mailed, postage prepaid, to the following addresses:

To the City:                    Director of Finance  
   City of Cleveland  
   601 Lakeside Avenue  
   Cleveland, Ohio 44114

With a copy to:                Commissioner of IT  
   City of Cleveland  
   205 St. Clair Avenue  
   Cleveland, Ohio 44113

To the County:                 John C. Hunter  
   Interim Director  
   1255 Euclid Avenue  
   The Sterling Building – 4<sup>th</sup> Floor

Cleveland, Ohio 44115  
(216) 443-8011 jchunter@cuyahogacounty.us

With a copy to: Cuyahoga County Executive  
1219 Ontario Avenue  
Cleveland, Ohio 44113

To RTA: Hamid Manteghi  
Director of Information Systems  
Greater Cleveland Regional Transit Authority  
1240 West 6<sup>th</sup> Street  
Cleveland, Ohio 44113  
(216) 566-5153 hmanteghi@gcrta.org

With a copy to: Loretta Kirk  
Deputy General Manager - Finance & Administration  
Greater Cleveland Regional Transit Authority  
1240 West 6<sup>th</sup> Street  
Cleveland, Ohio 44113

Notices to the Committee shall be given in a manner that shall be set forth in the Committee's rules of governance.

#### ARTICLE VIII. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Ohio and Cuyahoga County and the Charter of the City of Cleveland.

#### ARTICLE IX. CONFIDENTIALITY

##### A. Information

Each party's documentation and information shall remain its own property. Each party authorizes the other parties to make use of the other parties' documentation and information as is appropriate solely for the purpose of sharing Fiber Resources under this Agreement. To the extent permitted by law, each party shall treat such documentation and information as proprietary confidential information.

During the term of this Agreement, each party's employees and agents may receive or review other parties' proprietary and confidential information. Each party agrees that its agents and employees shall neither use nor disclose to third parties such proprietary information without prior written permission from

the party generating the documentation or information. Each party's officers, employees, and agents must adhere to this confidentiality obligation. However, this obligation shall not apply to documentation or information which is: (1) readily available to the general public in the form as disclosed by the disclosing party; or (2) obtained or acquired by the disclosing party in good faith and not accompanied by an obligation of confidentiality from a third party who has received the same documentation or information in good faith and is not under any obligation not to disclose the documentation or information.

B. Permitted Disclosure

The provisions of this Article shall in no way restrict any disclosure by any party if such disclosure is required pursuant to: (1) any local, state or federal law of the jurisdictions governing the matter; (2) the order of any court or governmental agency; or (3) if any party in its judgment determines that such disclosure is necessary in order to comply with, or avoid violation of, any of the foregoing.

ARTICLE X. CONSTRUCTION OF AGREEMENT

All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Agreement or any paragraph or clause of this Agreement may require, the same as if such words have been fully and properly written in the number and gender. The headings of sections and paragraphs, if any, to the extent used in this Agreement are used for reference only, and in no way define, limit, or describe the scope or intent of any provision. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

**[The remainder of this page is intentionally left blank]**



IN WITNESS WHEREOF, the parties have caused its Agreement to be executed as of the date first above written.

**CUYAHOGA COUNTY**

Approved as to form:

By: \_\_\_\_\_  
Assistant Prosecuting Attorney

By: \_\_\_\_\_  
Commissioner

By: \_\_\_\_\_  
Commissioner

By: \_\_\_\_\_  
Commissioner

**CITY OF CLEVELAND**

Approved as to form:

By: \_\_\_\_\_  
Assistant Director of Law

By: \_\_\_\_\_  
Director of Finance

**GREATER CLEVELAND REGIONAL  
TRANSIT AUTHORITY**

Approved as to form:

By: \_\_\_\_\_  
Sheryl King Benford  
General Counsel, Deputy General  
Manager for Legal Affairs

By: \_\_\_\_\_  
Joseph A. Calabrese  
General Manager/Secretary-Treasurer



Greater Cleveland Regional Transit Authority  
**STAFF SUMMARY AND COMMENTS**

TITLE/DESCRIPTION:  AUTHORIZING AN INTERAGENCY AGREEMENT TO SHARE FIBER OPTIC RESOURCES	Resolution No.: 2010-79
	Date: October 15, 2010
	Initiator: Finance & Administration and OMB
ACTION REQUEST: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

- 1.0 PURPOSE/SCOPE: This resolution authorizes the General Manager/Secretary Treasurer to execute an Interagency Agreement with the City of Cleveland and Cuyahoga County for sharing of fiber resources.
- 2.0 DESCRIPTION/JUSTIFICATION: The parties have determined to share fiber optic resources in order to provide additional backbone infrastructure to the parties at no additional cost to the parties.
- 3.0 PROCUREMENT BACKGROUND: Does not apply.
- 4.0 DBE/AFFIRMATIVE ACTION BACKGROUND: Does not apply.
- 5.0 POLICY IMPACT: This action permits collaboration among the City of Cleveland, Cuyahoga County, and Greater Cleveland Regional Transit Authority.
- 6.0 ECONOMIC IMPACT: Does not apply.
- 7.0 ALTERNATIVES: Not approve the resolution, which may require the Authority to acquire fiber optics and leased line services from third party providers at additional cost.
- 8.0 RECOMMENDATION: The Operations Committee of the Board of Trustees reviewed this agreement at its October 12, 2010 meeting and recommended it to the Board of Trustees for approval. It is recommended that the Board of Trustees accepts this interagency agreement and adopt this resolution.
- 9.0 ATTACHMENTS: None.

Recommended and certified as appropriate to the availability of funds, legal form and conformance with the Procurement requirements.

\_\_\_\_\_  
CEO, General Manager/Secretary-Treasurer