

RESOLUTION NO. 2017-24

AUTHORIZING AN INTERAGENCY AGREEMENT WITH THE CITY OF CLEVELAND, CUYAHOGA COUNTY, CLEVELAND METROPARKS, OHIO DEPARTMENT OF TRANSPORTATION, OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES, AND THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY TO SHARE FIBER OPTIC RESOURCES

WHEREAS, the Greater Cleveland Regional Transit Authority, the City of Cleveland, Cuyahoga County, the Cleveland Metroparks, the Ohio Department of Transportation, and the Ohio Department of Administrative Services have negotiated an Agreement to Share Fiber Optic Resources; and

WHEREAS, by sharing fiber optic resources, agencies save costs of additional fiber and have access to more bandwidth across agencies; and

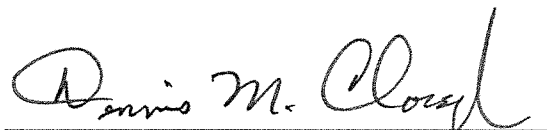
WHEREAS, it is in the best interest of the the Greater Cleveland Regional Transit Authority to authorize the CEO, General Manager/Secretary-Treasurer to execute this agreement which will allow the Authority to continue sharing fiber optic resources.

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 Transit Authority hereby authorizes the CEO, General Manager/Secretary-Treasurer to execute an Interagency Agreement with the City of Cleveland, Cuyahoga County, the Cleveland Metroparks, the Ohio Department of Transportation, and the Ohio Department of Administrative Services to share fiber optic resources for a period of five (5) years, at no cost to the agencies.

Section 2. That this resolution shall become effective immediately upon its adoption.

Adopted: April 25, 2017



President

Attest: 

CEO, General Manager/Secretary-Treasurer



TITLE/DESCRIPTION: AUTHORIZING AN INTERAGENCY AGREEMENT TO SHARE FIBER OPTIC RESOURCES AMONG AND BETWEEN SIX GOVERNMENT AGENCIES.	Resolution No.: 2017-24
	Date: April 20, 2017
	Initiator: Information Technology
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 will allow the Authority to enter into an interagency agreement to share fiber optic resources among six agencies (at no cost to each): the City of Cleveland, Cuyahoga County, the Cleveland Metroparks, the Ohio Department of Transportation, the Ohio Department of Administrative Services, and the Greater Cleveland Regional Transit Authority.
- 2.0 DESCRIPTION/JUSTIFICATION: The GCRTA has had a similar agreement with the City of Cleveland and Cuyahoga County for over eight years. This agreement will expand to include three additional agencies and allow each agency to share available fiber at no additional cost to the partnering agencies. This may save individual agency's costs by not having to purchase additional fiber. Also, expansion provides access to more bandwidth across multiple agencies.
- 3.0 PROCUREMENT BACKGROUND: Does not apply.
- 4.0 AFFIRMATIVE ACTION/DBE BACKGROUND: Does not apply.
- 5.0 POLICY IMPACT: Does not apply.
- 6.0 ECONOMIC IMPACT: No cost to GCRTA.
- 7.0 ALTERNATIVES: Reject this agreement. Rejection of this agreement would cause a cessation of joint use of current fiber assets already in place and preclude future benefits.
- 8.0 RECOMMENDATION: This agreement is an expansion of the current agreement to include additional agencies' assets, thereby providing increased opportunities to share fiber instead of each agency purchasing individually. It is recommended that the resolution be passed authorizing the CEO, General Manager/Secretary-Treasurer to enter into an interagency agreement.
- 9.0 ATTACHMENT: Draft Agreement to Share Fiber Optic Resources

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

CEO, General Manager/Secretary-Treasurer

AGREEMENT TO SHARE
FIBER OPTIC RESOURCES

This Agreement to share fiber optic resources ("Agreement") is made and entered into effective as of May 1, 2017 ("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; GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY ("RTA"), a political subdivision of the State of Ohio; BOARD OF PARK COMMISSIONERS FOR THE CLEVELAND METROPOLITAN PARK DISTRICT ("Cleveland Metroparks"), a political subdivision of the State of Ohio; OHIO DEPARTMENT OF TRANSPORTATION ("ODOT"), a Department of the State of Ohio; and OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES ("DAS"), a Department of the State of Ohio, under the circumstances described in the recitals below. The City, County, RTA, Cleveland Metroparks, ODOT and DAS are herein collectively referred to as the "Parties".

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 Owner (as defined herein).

B. The Council of the City authorized this Agreement by and among the Parties in Ordinance No. 463-16, passed April 25, 2016.

C. The Board of RTA authorized this Agreement by and among the Parties in Resolution No. _____, adopted _____.

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

ARTICLE I. CONSENT TO USE FIBER OPTIC RESOURCES

A. 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 term "Fiber Resources" shall automatically include any new or additional fiber, cable, conduit and/or any

related equipment required to make Fiber Resources functional obtained by any Party after the Effective Date. The Parties acknowledge that Fiber Resources made available under this Agreement for sharing shall be available "as is" and "where is" and each User agrees to be responsible for its own costs 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.

B. Each Owner further agrees that, subject to such Owner's prior written approval, they will provide access to and use of physical space in or on their property for an authorized User to install and maintain the equipment necessary for their use of the Fiber Resources in accordance with this Agreement. The Owner may revoke access to and use of such Owner's physical space at any time and for any reason upon reasonable written notice to the User in accordance with Article V, Paragraph B below.

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 located in Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and/or Summit counties. Additional counties may be included by the mutual agreement of the Parties. If any party initiates a project creating additional Fiber Resources in any of the aforementioned counties, such party has a duty to update its list and promptly deliver the updated list to the other parties and to the Committee; provided, however, that the Parties agree there may be projects that a party desires to maintain as confidential and that the Parties are not required to disclose such projects to the other parties and/or 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 Parties will jointly prepare, maintain, and periodically update a GIS map showing the location of existing available fiber and to-be-available fiber and other pertinent Fiber Resources. The GIS map will be hosted on the County's GIS platform (software, hardware, network, and security system) and the County will be responsible for maintaining the GIS platform. The County shall provide unrestricted access to the GIS map to the other Parties for purposes related to this Agreement. 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), and said map and other related information shall be handled by each Party in the same manner that said Party handles other confidential information.

ARTICLE III. FIBER OPTIC SHARING COMMITTEE

Each Party shall be entitled to appoint one person to serve as their representative member on the Committee.

Any Party may change its appointee at any time by written notice to the other Parties. 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) and shall be handled as any other confidential information is handled.

Following the initial meeting, the Committee shall meet on an as-needed basis in the City of Cleveland following reasonable notice to Committee members. Parties may attend meetings via telephone. 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 following notice to all Parties. 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 five-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. To the extent permitted by law, 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 six (6) months' advance written notice to the User and to the Committee; provided, however, that in the case of a public safety, national or other emergency, or in the case that such termination will cause a significant impact to a critical business function, the Parties agree not to terminate the other Users' use of the Fiber Resources until such emergency or critical business function has been addressed.
- 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/fiber 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 it is legally and physically possible to do so by notifying the other Parties and the Committee as soon as reasonably practical.
- 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, if any, 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. INSURANCE; NO WARRANTIES; CONSEQUENTIAL DAMAGES

Each Party shall be responsible for insuring its own Fiber Resources and any equipment required in order to use another Party's Fiber Resources. Each Party shall be responsible for the maintenance and upkeep of its own Fiber Resources and related equipment. 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 to the appointees of the Committee with a copy to their respective legal representatives and deemed given when mailed, postage prepaid, to the following addresses:

To the City:

City of Cleveland
Attn: Director of Finance
601 Lakeside Avenue, Room 104
Cleveland, Ohio 44114

With a copy to:

City of Cleveland
Attn: Commissioner of ITS
205 West St. Clair Avenue
Cleveland, Ohio 44114

To the County:

Cuyahoga County Department of IT
2079 E. 9th Street, 6th Floor
Cleveland, Ohio 44115

With a copy to:

Cuyahoga County Department of Law
2079 E. 9th Street, 7th Floor
Cleveland, Ohio 44115

To RTA:

Greater Cleveland Regional Transit Authority
Attn: Chief Information Officer
1240 West 6th Street
Cleveland, Ohio 44113

With a copy to:

Department

Greater Cleveland Regional Transit Authority Legal
1240 West 6th Street
Cleveland, Ohio 44113

To Cleveland
Metroparks:

Cleveland Metroparks Administration Building
4101 Fulton Parkway
Cleveland, Ohio 44144

With a copy to:

Cleveland Metroparks Legal Department
4101 Fulton Parkway
Cleveland, Ohio 44144

To ODOT:

Ohio Department of Transportation

With a copy to:

To DAS:

Department of Administrative Services
State Chief Information Officer
30 East Broad Street, 39th Floor
Columbus, Ohio 43215

With a copy to:

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

ARTICLE VIII. ADDITIONAL PARTIES

Additional public entities and/or political subdivisions may be added to this Agreement upon the mutual agreement of the Parties as evidenced by a written amendment to this Agreement.

ARTICLE IX. 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, as permitted by law. 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 Law Director

By: _____
Armond Budish, County Executive

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

**BOARD OF PARK COMMISSIONERS
FOR THE CLEVELAND
METROPOLITAN PARK DISTRICT**

Approved as to form:

By: _____
Name: Priscila A. Rocha
Title: Assistant Legal Counsel

By: _____
Name: Brian M. Zimmerman
Title: Chief Executive Officer

**OHIO DEPARTMENT OF
TRANSPORTATION**

Approved as to form:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**OHIO DEPARTMENT OF
ADMINISTRATIVE SERVICES**

Approved as to form:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____