

FIBER OPTIC CABLE LEASE AGREEMENT

THIS LEASE AGREEMENT is made this ____ day of _____, 2018, by and between the Rochelle Municipal Utility Tech Center/Advanced communications (“Tech Center”) of the City of Rochelle, Illinois, a municipal corporation, and the Rochelle Municipal Utility Electric Department (“the Electric Department”) of the City of Rochelle, Illinois, a municipal corporation (and collectively referred to as “the Parties”).

RECITALS

- A.** The City of Rochelle, Illinois ("City"), a municipal corporation, owns and operates, for its telecommunications needs and to enhance the services it offers to its residents, a fiber optic cable network through the Tech Center, a department of the City.
- B.** Because it is cost-efficient to the City, when installing fiber optic cable, the City customarily installs the maximum feasible amount of fiber optic cable in its fiber infrastructure and, as a result, possesses surplus dark fiber.
- C.** In order to eliminate barriers to high-speed fiber-based internet services that exist within the City, the City has adopted a policy whereby it will lease surplus dark fibers to third parties, including private entities, on a competitively-neutral basis, for the purpose of using those surplus dark fibers to provide high-speed fiber-based internet services to businesses and residents of the City, including other departments of the City.
- D.** The Electric Department of the City of Rochelle currently utilizes dark fiber and server storage at that Rochelle Business and Technology Park and wishes to continue leasing certain surplus dark fibers and server storage from the Tech Center.
- E.** The City hereby agrees to lease to the Electric Department certain surplus dark fibers and server storage, contingent upon the Electric Department's execution of this Lease Agreement and compliance with its terms.

TERMS

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. Adoption of Recitals. The Recitals set forth above are hereby adopted and incorporated herein by reference as if set forth in full.

SECTION 2. Definitions. The following words, terms, and phrases, when used in this Lease Agreement, shall have the following meanings:

- (a) **"Dark Fiber"** shall mean any fiber optic cable not in current use.
- (b) **"Fiber Infrastructure"** shall mean City-owned conduits, inner-ducts, vaults, and other facilities through which the City may use, maintain, and repair its fiber optic cable network.
- (c) **"Surplus Dark Fiber"** shall mean any City-owned fiber optic cable within its fiber optic cable network that is not currently in use by the City and which the City has not reserved for future use.

SECTION 3. Lease of Surplus Dark Fibers. The City hereby agrees that, in exchange for the payment of the Monthly Fee, unless otherwise waived in accordance with Section 4(b), infra, and the giving of other good and valuable consideration, as further described herein, it will lease to the Electric Department 22 point to point Surplus Dark Fibers (“the Electric Department’s Fibers”) and server storage space.

SECTION 4. Monthly Fee.

- (a) In consideration for the lease of the Electric Department 's Fibers, the Electric Department shall pay as Rent to the Tech Center, a Monthly Fee of Eight Thousand Two Hundred and Forty-Eight (\$8,248.90) Dollars and 90/100 Cents. The first payment shall be due on August 1, 2018. Subsequent payments of the Monthly Fee shall be made on the first date of each following month during this Lease Agreement. Any Monthly Fee received more than fifteen days late shall be assessed a 1.5% late fee.
- (b) The Monthly Fee shall increase 3% each year of this Lease Agreement, including any additional terms as set forth in Section 6 of this Lease Agreement.

SECTION 5. Term. The Initial Term of this Lease Agreement shall be five (5) years, commencing on the date that this Lease Agreement is executed by the parties (“the Commencement Date”) and ending at 11:59 p.m. July 31, 2023.

SECTION 6. Option Terms. the Electric Department and the Tech Department shall have the mutual option to extend the initial term of this Lease Agreement for two (2) additional and successive five (5) year option periods (individually, “the Option Term” and, collectively, “the Option Terms”). The Lease Agreement shall, at the end of the Initial Term or any Option Term, unless it is the second Option Term, automatically be extended an additional Option Term, unless either party notifies the other party of its intent to terminate or to renegotiate this Lease Agreement at least one hundred eighty (180) days prior to the termination of the then-current Term. Option Terms shall be deemed a continuation of this Lease Agreement and shall not be considered a new Lease Agreement or an amendment hereto.

SECTION 7. Use.

- (a) The Electric Department shall, at the Electric Department 's sole cost and expense, use the Electric Department's Fibers to conduct its business and shall not sub-lease or assign its rights herein. Failure to use the Electric Department 's Fibers to as prescribed herein shall result in the immediate termination of this Lease Agreement.
- (b) The Electric Department further agrees that it shall use the Electric Department's Fibers in accordance with all applicable federal, state, and local laws.
- (c) This Lease Agreement does not grant the Electric Department the authority or right to provide "Cable Service" or "Local Exchange Service."
- (d) This Lease Agreement is not a franchise agreement.
- (e) The grant of this Lease Agreement shall not convey title, equitable or legal, to the Electric Department in any property of the City, including the Electric Department's Fibers, the City's Fiber Infrastructure, or the City's public rights of way, and shall only give to the Electric Department the right to use the Electric Department's Fibers for the purposes and for the period of time stated in this Lease Agreement.

SECTION 7. Maintenance and Repair.

- (a) The Tech Center, or a City-approved vendor shall be solely responsible for maintaining or repairing the Electric Department's Fibers on the Tech Center's side of the demarcation point. The Electric Department shall cooperate with and assist the Tech Center, as reasonably may be required, in performing said maintenance or repairs. In the event of a disruption in service, the Tech Center shall begin restoration activities as soon as practicable after the Tech Center becomes aware of such disruption.
- (b) The Tech Center shall be responsible for obtaining and maintaining from the appropriate public or private authority any pole attachment agreements, franchises, licenses, state, local or right-of-way permits, or other authorizations required to enter upon the property where the City's Fiber Infrastructure is located and to operate and maintain the Electric Department's Fibers.
- (c) In the event that the Electric Department learns that the Electric Department 's Fibers are damaged, it shall notify the City of said damage by telephone at (815) 561-2060 or by e-mail at jfiegeschuh@rochelleil.us
- (d) The Tech Center shall designate the particular strands of Surplus Dark Fiber that will constitute the Electric Department's Fibers and the location and manner in which they will enter and exit the City's Fiber System.

SECTION 8. Default. If either the Tech Center or the Electric Department fails to perform or observe any material term, covenant, provision, or condition of this Lease Agreement, then that party will be in default under this Lease Agreement.

SECTION 9. Right to Cure. From the date of written Notice of Default from the other party, the party in default shall have thirty (30) days to cure any default.

SECTION 10. Failure to Cure. If the party in default fails to cure the default in the time prescribed by Section 9, supra, then the other party shall have the right to terminate this Lease Agreement and may, at its discretion, pursue any other remedies that may be available to it at law or in equity not otherwise proscribed by the terms of this Lease Agreement.

SECTION 11. Force Majeure.

- (a) A “Force Majeure Event” is any event or cause beyond the reasonable control of the party claiming relief, including any action by or omission of a governmental agency or authority (including any government-imposed moratorium on activities related to this Lease Agreement or any subsequent change in government rules, regulations, codes, ordinances, or laws), material shortages, third-party labor disputes, floods, earthquakes, fires, lightning, epidemic, war, riot, civil disturbance, act of public enemy or enemies, terrorist act, sabotage, or any act of God.
- (b) Neither the Tech Center, nor the Electric Department will be considered in default under this Lease Agreement if such party’s performance is delayed by virtue of a Force Majeure Event. Upon the occurrence of such event, the parties agree to confer in good faith and to agree upon an equitable, reasonable action to continue performance under this Lease Agreement. The Tech Center and the Electric Department will use commercially reasonable efforts to minimize the delay caused by any Force Majeure Event and to resume affected performance when reasonably possible.
- (c) In the event that a Force Majeure Event prevents either party from performing under the contract for a period of 180 days, then either party, upon written notice to the other, may terminate this Lease Agreement. Upon such termination, all parties will be relieved of performance under this Lease Agreement, except that a party will continue to be liable for any breaches that occurred and were not cured prior to termination.

SECTION 12. Rights upon Expiration or Termination of the Agreement. Upon the expiration or termination of this Lease Agreement, the Electric Department’s rights to the Electric Department’s Fibers shall terminate and the Electric Department’s Fibers shall revert to the Tech Center. Upon expiration or termination of this Lease Agreement, the Electric Department shall have no continuing rights or obligations hereunder, except that any uncured defaults or any other obligations that are stipulated in this Lease Agreement shall survive the expiration or termination of this Lease Agreement. Any and all equipment furnished or supplied by the Electric Department to inter-connect to the Electric Department’s fibers shall remain the

property of the Electric Department. Any and all equipment furnished or supplied by the Tech Center under this Lease Agreement shall remain the property of the Tech Center.

SECTION 13. Assignment. This Lease Agreement may not be sold, assigned, transferred, or sublet without the prior written approval or consent of the City's governing body.

SECTION 14. Authorization. Each of the persons executing this Lease Agreement, in behalf of the respective parties, represents and warrants that he or she has the authority to bind the party in behalf of whom he or she has executed this Lease Agreement, and that all acts required and necessary for authorization to enter into and to execute this Lease Agreement have been completed.

SECTION 15. Notice. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed by first class mail:

If to the Tech Center, to:

City of Rochelle, Illinois
Attn: City Manager
420 North 6th Street
Rochelle, Illinois 61068

With a copy to:

Dominick L. Lanzito
Peterson, Johnson & Murray Chicago, LLC
200 West Adams St., Suite 2125
Chicago, IL 60606

If to the Electric Department, to:

RMU Electric Department
Attn: Superintendent
333 Lincoln Highway
Rochelle, Illinois 61068

Either party may change where notices, requests, demands, or other communications are to be given by giving written Notice to the other party of any said change.

SECTION 16. Successors and Assigns. This Lease Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors, and assigns.

SECTION 17. Non-waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Lease Agreement or to exercise any of its rights hereunder shall not waive such rights, but the party shall have the right to enforce such rights at any time and to take such action as might be lawful or authorized hereunder, whether in law or equity.

SECTION 18. Severability. If any section, sentence, clause, or phrase of this Lease Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Lease Agreement.

SECTION 19. Governing Law. This Lease Agreement shall be governed by the laws of the State of Illinois.

SECTION 20. Miscellaneous.

- (a) This Lease Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the Tech Center and the Electric Department with respect to the subject matter hereof. This Lease Agreement may only be amended by a writing signed by all parties.
- (b) The provisions of the Lease Agreement relating to indemnification shall survive any termination or expiration of this Lease Agreement. Any provision of this Lease Agreement that would require performance subsequent to the termination or expiration of this Lease Agreement shall likewise survive any such termination or expiration.
- (c) This Agreement is contingent upon the Parties, or any successor or assign hereunder, obtaining all necessary governmental approvals, permits, or licenses.
- (d) This Lease Agreement may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Lease Agreement to be executed as of the date noted above.

**TECH CENTER, a Department of the
Rochelle Municipal Utilities for the CITY
OF ROCHELLE, ILLINOIS, a municipal
corporation**

Jeff Fiegenschuh,
City Manager

**The Electric Department, a Department of
the Rochelle Municipal Utilities for the
CITY OF ROCHELLE, ILLINOIS, a
municipal corporation**

Jason Bird,
Electric Department Superintendent