

RESOLUTION APPROVING AGREEMENT BY AND BETWEEN THE ASHTABULA COUNTY BOARD OF COMMISSIONERS AND GREATWAVE COMMUNICATIONS FOR COMPLETION OF THE FIBER RING IN ASHTABULA COUNTY

WHEREAS, an agreement has been presented for the approval of the Board, to-wit:

Provider: Greatwave Communications, 224 State Street, PO Box 579, Conneaut, OH 44030

Scope: To complete the fiber ring in Ashtabula County that will provide the following advantages:

1. Provide an additional layer of redundancy to Ashtabula County offices
2. To establish a fiber path for future expansion for southern portion for Ashtabula County residents
3. Provision of secondary dmarc for Ashtabula County office
4. Provide a strand of fiber to the east of the Ashtabula County office

Cost: Not to Exceed, \$130,000 in total, with \$65,000 payable immediately for upfront costs

Term: timeline of project will mostly depend on material availability from suppliers; now

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio that the agreement, as noted above, is approved in accordance with the copy now on file in this office.

**ASHTABULA COUNTY COMMISSIONERS
CERTIFICATION PAGE**

Resolution No. 2022-328

July 12, 2022

**RESOLUTION APPROVING AGREEMENT BY AND BETWEEN THE ASHTABULA
COUNTY BOARD OF COMMISSIONERS AND GREATWAVE COMMUNICATIONS
FOR COMPLETION OF THE FIBER RING IN ASHTABULA COUNTY**

Upon the motion of Casey R. Kozlowski, seconded by Kathryn L. Whittington.

VOTE:

J.P. Ducro IV	Aye
Casey R. Kozlowski	Aye
Kathryn L. Whittington	Aye

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.



Lisa Hawkins, Clerk of the Board
Board of County Commissioners
Ashtabula County, Ohio

AGREEMENT

This AGREEMENT, made this 12th day of July, 2022 (the "Effective Date") between Greatwave Communications (the "Contractor"), with offices at 224 State Street, P.O. Box 579, Conneaut, OH 44030 and Ashtabula County, 25 W. Jefferson St., 2nd Floor, Old Courthouse, Jefferson, OH 44047 (the "County") for Fiber Ring Completion in Ashtabula County.

WITNESSETH: That the parties hereto, for and in consideration of Covenants and Agreement to be performed by each as hereinafter set forth, do hereby agree as follows:

ARTICLE I THE WORK

The Contractor shall furnish all the labor, services, materials, plant, equipment, tools, scaffolds, appliances, transportation, and all other things (collectively called the "Work") necessary for the timely and proper completion of the Work described in the Contract Documents for the Project as set forth in Exhibit A. In the event of inconsistencies within or between the Contract Documents, the Contractor shall provide the better quality or greater quantity of Work and shall comply with the more-strict requirement.

ARTICLE II TERM

The term of this Agreement shall commence on the Effective Date and continue through _____ (the "Completion Date"), unless otherwise terminated earlier as provided below (the "Term").

ARTICLE III COMPENSATION AND PAYMENT

3.1 The Contractor's total compensation for the Work shall be \$130,000 (the "Contract Price."

3.2 Contractor is subject to and responsible for paying fees to obtain all applicable licenses, permits, and other permissions necessary to perform its obligations under this Contract. Contractor is responsible for paying federal, state, and local taxes. Contractor agrees to withhold all income taxes due or payable for qualifying wages, salaries, and commissions paid to its employees and further agrees that any of its sub-contractors shall be required to agree to withhold any such income taxes due for services performed under this Contract.

3.3 The Contractor shall submit Application(s) for Payment to the County for work performed. The County shall pay the Contractor for the performance of the work as set forth in Exhibit A.

3.4 The Application for Payment shall be supported by documentation substantiating the Contractor's right to payment. The Contractor shall supply such additional documentation as the County may request in connection with each payment to the Contractor.

The Contractor shall list on the Application for Payment any approved Change Orders processed and performed during the time covered by the Application for Payment.

Payment of an approved Application for Payment shall be made within 45 days from the date of approval by the County's Representative. The County reserves the right to require proof of the renewal of required insurance as a condition precedent to payment.

3.5 The County reserves the right to decline to approve any Application for Payment or part thereof, or because of subsequent evidence or inspection, may nullify any previous Application for Payment, in whole or in part, to such extent as may be necessary in the County's Representative's opinion to protect the County from loss because of:

- (a) Defective Work not remedied;
- (b) Damage caused by the Contractor;
- (c) Failure to comply with the requirements of Chapter 4115, ORC.

If the basis for withholding payment pursuant to this Section is removed, payment shall be made for amounts withheld because of the basis.

3.6 The Contractor, as a condition precedent to final payment, shall provide all documents required for approval by the County's Representative.

Payment of the final Application for Payment shall be made within 45 days from the date of approval by the County.

3.7 The making of final payment by the County shall constitute a waiver of all Claims by the County except those arising after Contract Completion and the following:

- (a) Defective or nonconforming Work resulting from latent defects, fraud or gross mistakes;
- (b) Outstanding liens;
- (c) Failure of the Contractor to comply with any warranties or guarantees required by the Contract Documents.

The acceptance of final payment by the Contractor shall constitute a waiver of all Claims against the County except those that the Contractor has previously made in writing in accordance with Article IX and which remain unresolved at the time of final payment. This provision is intended to be, and shall be construed as, consistent with, and not in conflict with, Section 4113.62, ORC, to the fullest extent permitted.

ARTICLE IV SCHEDULE

Time is of the essence to this contract. The rate of progress shall be such as to complete the Project Work within the time limit specified herein.

In the event that the Work is not completed within the time limit aforesaid, the Contractor shall reimburse the County an amount equal to the County's costs for and expenses of Project inspections, supervision and similar engineering services provided by or for the County after the expiration of the aforesaid time limit, and until completion and acceptance of the Work.

In addition, in the event that the Work is not substantially completed within the time limit aforesaid, with said incompleteness prohibiting beneficial use and occupancy of the Project, in compensation for the public's loss of use of the Project, the Contractor shall forfeit liquidated damages in the amount set forth in Exhibit A. Such amounts shall be deducted from the partial or final estimates to be allowed the Contractor.

The Board of County Commissioners may for good cause shown, extend the time of completion. Any such extension of time shall not be deemed a waiver by the County of any other rights provided for under this contract, and shall not operate to release any Surety from any of bond obligations.

ARTICLE V CHANGES

The County, without invalidating the Agreement, may order changes in the Work consisting of additions, deletions or other revisions, including without limitation revisions resulting from an extension granted in accordance with Article IV. To the extent the time for the Completion Date or the Contract Price is affected, the Contract may be equitably adjusted by Change Order in accordance with this Article.

The Contractor shall not proceed with any change in the Work without the required written authorization. If the Contractor believes that any item is not Work required by the Contract Documents, the Contractor shall obtain a Change Order before proceeding with such item. Except as provided in Article IX, failure to obtain such a Change Order shall constitute a waiver by the Contractor of any Claim for additional compensation for such item.

ARTICLE VI

WARRANTIES

In addition to any other warranties, guarantees, or obligations set forth in the Bid or applicable as a matter of law and not in limitation of the terms of the Bid, the Contractor warrants and guarantees that:

- (a) The County will have good title to the Work and all materials and equipment incorporated into the work will be new;
- (b) The Work and all materials and equipment incorporated into the Work will be free from all defects, including any defects in workmanship or materials;
- (c) The Work and all equipment incorporated into the Work will be fit for the purpose for which intended;
- (d) The Work and all materials and equipment incorporated into the Work will be merchantable; and,
- (e) The Work and all materials and equipment incorporated into the Work will conform in all respects to the Plans and Specifications.

Upon notice of the breach of any of the warranties or guarantees under the Bid, the Contractor, in addition to any other requirements in the Bid, shall commence to correct such breach and all damage resulting therefrom within forty-eight (48) hours after written notice thereof, thereafter shall use its best efforts to correct such breach and damage to the satisfaction of the County and, except when an extension of time is granted in writing by the County, correct such breach and damage to the satisfaction of the County within thirty (30) days of such notice; provided that if such notice is given after final payment hereunder, such 48-hour period shall be extended to seven (7) days. If the Contractor fails to commence to correct such breach and damage, or to correct such breach and damage as provided above, the County, upon written notice to the Contractor and without prejudice to any of its other rights or remedies, may correct the deficiencies. The Contractor upon written notice from the County shall pay the County, within ten (10) days after the date of such notice, all of the County's costs and expenses incurred in connection with or related to such correction and/or breach, including without limitation the County's administrative, legal, and consulting expenses. The foregoing warranties and obligations of the Contractor shall survive the final payment and/or termination of this Agreement. If the Contractor fails to pay the County any amounts due under this Section, the Contractor shall pay the County, in addition to the amounts due, a late payment fee of one and one-half percent (1.5%) per month for each month or part thereof that the payments are not paid when due.

ARTICLE VII INSURANCE AND INDEMNIFICATION

7.1 The Contractor shall maintain insurance as set forth below:

- (a) **General Liability Coverage.** Contractor shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence. The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement.
- (b) **Automobile Liability Coverage.** Contractor shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- (c) **Workers' Compensation.** Contractor shall maintain workers' compensation coverage as required by Ohio law.

Prior to the commencement of any work under this Agreement, Contractor shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days' prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

7.2 To the maximum extent permitted by law, the Contractor shall indemnify and hold harmless the County and the County's consultants, agents, and employees from and against all claims, damages, losses, and expenses—whether proven or not—including but not limited to attorneys' and consultants' fees—whether made by County or a third-party—arising out of or related to the Contractor's performance of the Work including but not limited to the failure of the Contractor to perform its obligations under the Contract Documents, any claims for bodily injury, sickness, disease, or death or to injury to or destruction of or loss of use of real or personal property including the Work itself, claims for additional storage and handling charges, liens against funds, claims related to the alleged failure of the Contractor to perform in accordance with the Contract Documents, and/or claims related to the removal, handling, or use of any hazardous materials. The County may set off amounts equal to any sums for which it is entitled to be indemnified from the amounts otherwise due the Contractor under the Contract Documents.

7.3 The County's total liability under this Agreement shall be limited to the amount set forth in the Auditor's certificate accompanying this Agreement. Under no circumstances shall the elected officials, officers, employees, council members, or agents of the County be personally liable for any obligations or claims arising out of or related to this Agreement. No Change Order to the Contract shall be effective against the County without a new Auditor's certificate.

ARTICLE VIII SUSPENSION AND TERMINATION

8.1. The County may, without cause, order the Contractor to suspend, delay, or interrupt the Work in whole or in part for such period of time as the County may determine.

An adjustment shall be made for increases in the cost of performance of the Work, including profit and overhead on the increased cost of performance, caused by the suspension, delay or interruption, provided that the total cost of profit and overhead shall not exceed 2% of the amount of the increased cost not attributable to profit or overhead. No adjustment shall be made to the extent that: performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or an equitable adjustment is made or denied under another provision of this Agreement.

8.2 The County may, in its discretion and without cause, by written notice to the Contractor terminate this Agreement for the County's convenience.

Upon receipt of a written notice from the County terminating this Agreement without cause and for the County's convenience, the Contractor shall (i) immediately cease performing the Work, unless otherwise directed by the County, in which case the Contractor shall take the action directed by the County, (ii) take all reasonable and necessary action to protect and preserve the Work, and (iii) unless otherwise directed by the County, terminate all agreements with Subcontractors and suppliers.

If this Agreement is terminated without cause and for the County's convenience and there exists no event of the Contractor's default, as defined in this Agreement, the County will pay the Contractor (i) for Work performed under this Agreement up to the date the notice of termination is received by the Contractor at the rates for Work performed under this Agreement, including overhead and profit of 2% on the Work performed up to the date of termination.

If this Agreement is terminated without cause for the County's convenience and there exists an event of the Contractor's default, as defined in this Agreement, the Contractor shall be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default under this Agreement. The termination of this Agreement shall be without prejudice to any rights or remedies that exist at the time of termination.

8.3 If the County determines that the Contractor has failed to prosecute the Work with the necessary force or in a timely manner, or has refused to remedy any Defective Work, the County's Representative shall notify the Contractor and the Contractor's Surety of such failure or refusal. The Contractor shall begin to cure such failure or refusal within 5 days of receipt of the notice.

If the Contractor fails to cure such failure or refusal within 20 days of receipt of the notice, the County may terminate the Contract and employ upon the Work the additional force, or supply the materials or such part of either as is appropriate, and may remove Defective Work.

If the Contractor is so terminated, the Contractor's Surety shall have the option to perform the Contract. If the Contractor's Surety does not commence performance of the Contract within 10 days of the date on which the Contract was terminated, the County may complete the Work by

such means as the County's Representative deems appropriate. The County may take possession of and use all materials, facilities and equipment at the Project site or stored off site for which the County has paid.

If the Contractor is so terminated, the Contractor shall not be entitled to any further payment. If the County completes the Work and if the cost of completing the Work exceeds the balance of the Contract Price, including compensation for all direct and consequential damages incurred by the County, or the County as a result of the termination, such excess shall be paid by the Contractor or the Contractor's Surety.

If the Contractor's Surety performs the Work, the provisions of the Contract Documents shall govern such Surety's performance, with the Surety being substituted for the Contractor in all such provisions including, without limitation, provisions for payment for the Work and provisions about the right of the County to complete the Work.

Upon a final determination, by a court of competent jurisdiction, that the termination pursuant to this Section was improper, the termination shall be deemed a termination for convenience to Section 8.2.

ARTICLE IX DISPUTE RESOLUTION

9.1 If any dispute or difference of any kind (a "Dispute") arises between the Parties in connection with, or arising out of, this Agreement, the Contractor and County within thirty (30) days shall attempt to settle such Dispute in the first instance through discussions. The designated representatives of Contractor and County shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of such Dispute. If the representatives are unable to resolve the Dispute within fifteen (15) Business Days, the Dispute shall be referred within two (2) Business Days of the lapse of the fifteen (15) Business Day period to the responsible senior management of each party for resolution. Neither party shall seek any other means of resolving any Dispute arising in connection with this Agreement until the responsible senior management of Parties have had at least an additional fifteen (15) Business Days to resolve the Dispute following referral of the Dispute to them.

9.2 The Courts of Ashtabula County shall retain exclusive jurisdiction to resolve any disputes between the parties to the extent in which the parties cannot resolve their disputes within a reasonable amount of time. This Agreement does not prohibit the parties from seeking mediation before litigation.

9.3 During the pendency of any mediation or litigation the Parties shall continue to perform their obligations under this Agreement subject to Court Order.

ARTICLE X MISCELLANEOUS

10.1 No modification or waiver of any of the terms of this Agreement or of any other Contract Documents shall be effective against a party unless set forth in writing and signed by or on behalf of a party, which in the case of the County shall require the signature of the County's Representative acting under the authority of a specific resolution of the County. Under no circumstances shall forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Paragraph.

10.2 The Contractor may not assign this Agreement without the written consent of the County, which the County may withhold in its sole discretion.

10.3 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the County or the Contractor.

10.4 All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligations of the parties shall be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court of Ashtabula County, Ohio, and each party hereby expressly consents to the jurisdiction of such court.

10.5 Regardless of any provision to the contrary, the statute of limitations with respect to any defective or non-conforming Work that is not discovered by the County shall not commence until the discovery of such defective or non-conforming Work by the County.

10.6 Notices, requests, or demands by either party shall be in writing, unless otherwise expressly authorized, and shall be personally served, forwarded by expedited messenger service, sent by facsimile transmission, or be given by registered or certified mail, return receipt requested, postage prepaid, and, in the case of the County, addressed to the address/FAX number set forth at the beginning of this Agreement marked "Urgent, deliver to Service Director," and, in the case of the Contractor, addressed to its address/FAX number set forth at the beginning of this Agreement. Any party may change its address/FAX number by giving notice hereunder. All notices, requests, and demands shall be deemed received upon receipt in the case of personal delivery or delivery by expedited messenger service, including leaving the notice at the address provided herein during normal business hours; upon the expiration of forty-eight (48) hours from the time of deposit in the United States mail; or, in the case of a notice given by facsimile transmission, upon the expiration of twenty-four (24) hours after the transmission is sent.

10.7 The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and has voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party

shall not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.

10.8 If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement shall remain in full force and effect, and such term shall be deemed stricken; provided this Agreement shall be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

10.9 The Contractor, at its expense, shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work. Including, but not limited to, Ohio's Prevailing Wage law if applicable.

10.10 The Contractor shall follow all applicable safety and health regulations during the progress of the Project and shall monitor all of its employees and its subcontractors for compliance with such safety and health regulations. In undertaking the responsibilities set forth in this Paragraph, the Contractor does not assume any duty or responsibility to the employees of any Subcontractor or supplier, regardless of tier. The County assumes no responsibility for the development, review, or implementation of the any project safety plan or for Project safety and has no authority to direct the means and methods of the Contractor.

10.11 Contractor agrees that, in the hiring of employees for the performance of work under the Contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates. Contractor further agrees that neither it, its subcontractors, or any person on the Contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color. That there shall be deducted from the amount payable to the Contractor by the County under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by O.R.C. Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement. That this Agreement may be canceled or terminated by the County and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

10.12 This Agreement constitutes the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

EXHIBIT A SCOPE OF WORK

Project Title: Fiber Ring Completion to County offices

Provider: GreatWave Communications

Client Name: Ashtabula County

Current Date: June 7, 2022

Project Overview: Completion of GreatWave Communications fiber ring East of Jefferson to Conneaut

Description of Goods & Services

To complete the fiber ring in Ashtabula County that will provide the following advantages

1. Provide an additional layer of redundancy to Ashtabula County offices
2. To establish a fiber path for future expansion for southern portion for Ashtabula County residents
3. Provision of secondary dmarc for Ashtabula County office
4. Provide a strand of fiber to the east of the Ashtabula County office

Deliverables

GreatWave Communications will provide termination from of Beckwith Rd. to Marcy Rd (near State Route 167 West), about a 3.5 mile stretch down Rt. 7 to close the fiber loop back to Conneaut. This will allow immediate connectivity for residents along the Rt 7 stretch for immediate connectivity.

Upon completion of the ring, Ashtabula County offices will be provided 1 fiber from both the east and west directions of the ring. GreatWave Communications will provide the dmarc for the fiber. It will be up to Ashtabula County to provide the onsite devices to fail over in case of an immediate cut of fiber to the dmarc.

Ashtabula County will be provided 1 GB connection. GreatWave Communications shall offer, at no additional cost, a connection of up to 10 GB when available.

Future expansion will be possible to residence for high speed broadband depending on municipality/township participation of funds.

Period of Construction

Timeline of project will mostly depend on material availability from suppliers.

Payment Schedule & Terms

Before any PO is submitted by GreatWave Communications, 50% payment is required for upfront costs. This would equate to \$65,000 of the \$130,000 for which Ashtabula County is responsible.

GREATWAVE COMMUNICATIONS:

Signature: Don Zappelli

Print Name: Don ZAPPELLI

Title: CEO

Signature: _____

Print Name: _____

Title: _____

Date Signed: 7-6-2022

BOARD OF COUNTY COMMISSIONERS, ASHTABULA COUNTY, OHIO

Signature: [Signature]

Commissioner date 7-12-22

Signature: [Signature]

Commissioner date 7-12-22

Signature: [Signature]

Commissioner date 7-12-22

Approved as to legal form

[Signature]
Colleen M. O'Toole, _____ date

Ashtabula County Prosecutor

MPH 7.6.22

FISCAL OFFICER'S CERTIFICATE
5705.41 O.R.C.

The undersigned, County Auditor of Ashtabula County, hereby certifies that the amount required to meet the obligations of the County during the year 2022 under the Agreement has been lawfully appropriated for that purpose, and is in the Treasury of the County or in the process of collection and free from any previous encumbrances to the credit of:

1040.001.100.650; not to exceed \$65,000.00.

Agreement Title: RESOLUTION APPROVING AGREEMENT BY AND BETWEEN THE ASHTABULA COUNTY BOARD OF COMMISSIONERS AND GREATWAVE COMMUNICATIONS FOR COMPLETION OF THE FIBER RING IN ASHTABULA COUNTY



**David Thomas, Ashtabula County
Auditor**

Date: July 08, 2022