

NOTICE OF PROCEEDINGS MEETING
City Council of the City of Defiance, Ohio
Charles D. Beard Council Chambers
City Hall, 631 Perry Street, Defiance, OH 43512

REGULAR MEETING OF COUNCIL
TUESDAY JANUARY 10, 2023
OPENING COMMENTS - 7:00 P.M.

PUBLIC HEARING: NONE

SPECIAL GUEST: BICENTENNIAL COMMITTEE REPRESENTED BY KIRSTIE MACK - UPDATE ON THE YEAR'S ACTIVITIES/EVENTS

FIRST READING: AN ORDINANCE AUTHORIZING A THIRD AMENDMENT TO A LEASE AGREEMENT WITH DEFIANCE HOLDINGS, LLC

FIRST READING: AN ORDINANCE AUTHORIZING A CONTRACT FOR CONTINUED MONITORING OF FLOW METERS THROUGHOUT THE CITY SEWER SYSTEM

STUDY SESSION: NONE

CITIZEN CONCERNS: NAME & ADDRESS FOR THE RECORD (5 MINS)

LIAISON ASSIGNMENTS	TIME P.M.	DATE (2023)	AGENDA
COMMITTEE OF A WHOLE McMASTER	7:00	Tuesday - JANUARY	NO MEETING
BUILDING & LANDS EURESTE	7:00	Tuesday - JANUARY	NO MEETING
ECONOMIC DEVELOPMENT ENGEL	7:00	Tuesday - JANUARY	NO MEETING
FINANCE & BUDGET HANCOCK	7:00	Tuesday - JANUARY	NO MEETING
POLICE & FIRE KRUTSCH	7:00	Tuesday - JANUARY	NO MEETING
PUBLIC RELATIONS MAST	7:00	Tuesday - JANUARY	NO MEETING
PUBLIC UTILITIES, GAS & LIGHTS CORBITT	7:00	Tuesday - JANUARY	NO MEETING
SEWER & SANITATION CORBITT	7:00	Tuesday - JANUARY	NO MEETING
STREETS & SIDEWALKS MAST	7:00	Tuesday - JANUARY	NO MEETING
WATERWORKS - SERVICE WAXLER	7:00	Tuesday - JANUARY	NO MEETING
TRAFFIC COMMISSION: MACK. Mayor. Zeedyk. Shafer. Wilkins. Sprow. Waxler. Eureste. Krutsch	5:30	Tuesday - JANUARY	NO MEETING
BOARD OF CONTROL MEETING: MAYOR. Mack. O'Donnell.	1:30 P.M. MONDAY 9:00 A.M. THURSDAY	MONDAY and THURSDAY	POSTED AT 631 PERRY STREET MEETINGS IN FRONT CONFERENCE ROOM

Ordinance No. _____

AN ORDINANCE AUTHORIZING A THIRD AMENDMENT TO A LEASE AGREEMENT WITH DEFIANCE HOLDINGS, LLC

WHEREAS, Council authorized a Lease Agreement with Defiance Holdings, LLC to occupy municipal property for the placement of telecommunications equipment in Ordinance No. 7841 on August 23, 2016, and the parties executed the agreement on August 30, 2016; and,

WHEREAS, Council further authorized an amendment to this Lease Agreement due to unfavorable soil conditions at one of the locations of the leased property in Ordinance No. 7970 on December 12, 2017, and the parties executed the amendment on January 25, 2018; and,

WHEREAS, Council authorized a second amendment to the Lease Agreement in order to allow Defiance Holdings, LLC to construct an additional tower on City-owned property located at 11795 Precision Way, Defiance, OH 43512 in Ordinance No. 8353 on November 9, 2021 and the parties executed the amendment on December 9, 2021; and,

WHEREAS, the parties wish to shift the permanent easement for ingress and egress located at 11795 Precision Way, Defiance, OH 43512 to overlap with an existing parking lot onsite; and,

WHEREAS, Council finds that the amendment to this lease agreement is necessary and in the interest of public safety by avoiding the addition of another curb cut onto Precision Way;

Now therefore, be it enacted by the Council of the Municipality of Defiance, Ohio, that:

Section 1: The City Administrator is directed to further amend the Lease Agreement between the City of Defiance, Ohio and Defiance Holdings, LLC according to the Third Amendment to the Lease Agreement attached hereto as "Exhibit A."

Section 2: Except as expressly modified by Section 1 of this Ordinance, the Lease Agreement dated August 30, 2016, and amended on January 25, 2018 and on December 9, 2021, shall be, and is, hereby ratified and confirmed.

Section 3: It is found and determined that all legislative actions pertaining to the adoption of this Ordinance were taken in Public Session and that all deliberations that affected or influenced any such legislative act, including all deliberations in Committee, were conducted in Public Session or in Executive Session duly convened in accordance with law.

Section 4: This Ordinance shall be effective on the earliest date permitted by law.

Passed: _____, 2023 _____
President of Council

Attest: _____, Clerk

Approved: _____, 2023 _____
Mayor

THIRD AMENDMENT TO LEASE AGREEMENT

This Third Amendment to the Lease Agreement dated February ____, 2023, is made and entered into by and between the City of Defiance, Ohio ("Landlord"), and Defiance Holdings, LLC of Defiance, Ohio ("Tenant").

Whereas, the parties entered into an amended lease agreement on August 30, 2016 in which Landlord made an antenna mounting location available at an elevated water storage tower located at 400 Carter Avenue, Defiance, Ohio; and

Whereas, the parties entered into a further amendment to that lease agreement on January 25, 2018, as authorized by the City Council of Defiance, Ohio in Ordinance No. 7970 on December 12, 2017, which identified a replacement antenna mounting location; and

Whereas, the parties approved a Second Amendment to the agreement on December 9, 2021, as authorized by the City Council of Defiance, Ohio in Ordinance No. 8353 on November 9, 2021, which allowed Tenant to construct new transmission towers at 400 Carter Avenue and at 11795 Precision Way; and

Whereas, Tenant requires a utilities easement and a communications easement ("easements") to access the antenna mounting location and operate the planned telecommunications tower; and

Whereas, the parties desire to authorize Tenant to construct a new antenna mounting location and telecommunications tower on property that Landlord owns at 11795 Precision Way, Defiance, OH 43512 and a permanent easement for both utilities and ingress and egress to and from the site; and

Whereas, the Second Amendment authorized a 20' wide permanent easement for utilities southeast of the entryway to an existing parking lot; and

Whereas, the parties desire to shift the 20' permanent easement so that Tenant can make use of the existing parking lot for ingress and egress to Tenant's planned telecommunications tower.

Now, therefore, in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lease Agreement dated August 30, 2016, amended on January 25, 2018, and further amended on December 9, 2021, is further amended as follows:

ARTICLE 1: PREMISES

The area and legal description identified in "Attachment B" of the Second Amendment to the Lease Agreement shall be amended and incorporated into the Agreement as "Amended Attachment B."

ARTICLE 2: EFFECTIVENESS

All provisions of the original Lease Agreement dated August 30, 2016, and all provisions of subsequent amendments, not inconsistent with this Third Amendment to the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have signed this Third Amendment to the Lease Agreement on this ___ day of February, 2023.

LANDLORD:
City of Defiance, Ohio

TENANT:
Defiance Holdings, LLC

By: _____
Ryan Mack
City Administrator

By: _____
Phillip D. Maag
President

Witness:

State of Ohio
County of Defiance, ss:

Before me, a notary public in and for the State of Ohio, personally appeared **Ryan Mack**, known to me to be the City Administrator of the City of Defiance, Ohio, who executed the foregoing instrument and acknowledged that said instrument is the free act and deed of the municipal corporation for the purposes therein mentioned and pursuant to Ordinance ____, passed January 10, 2023.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Defiance, Ohio this ___ day of February, 2023.

Notary Public/State of Ohio

State of Ohio
County of Defiance, ss:

Before me, a notary public in and for the State of Ohio, personally appeared **Phillip D. Maag**, known to me to be the President of Defiance Holdings, LLC, who executed the foregoing instrument and acknowledged that said instrument is the free act and deed of the limited liability corporation for the purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Defiance, Ohio this ___ day of _____, 2023.

Notary Public/State of Ohio



From the Office of Thomas J. Henry Surveyor
22119 Gruber Road, Defiance, Ohio

November 29, 2022

D 6432

Legal Description of ... *Leased Area for Utility Easement & Access Drive* **For... *City of Defiance to MetaLink Technologies***

Being a part of the West half (1/2) of the Southeast quarter (1/4) and a part of the Southwest quarter (1/4) of Section 27, Township 4 North, Range 4 East, City of Defiance, Township of Defiance and County of Defiance, Ohio and being more particularly described as follows: Commencing at the northeast corner of Plummer Second Addition monumented by a 5/8-inch capped iron pin set;

Thence South 73 degrees 03 minutes 57 seconds West, on the northerly line of Plummer Second Addition extended, 63.27 feet;

Thence North 0 degrees 57 minutes 05 seconds East, 175.76 feet to the point of beginning for the 20 feet access drive;

Thence South 65 degrees 58 minutes 00 seconds West, 451.65 feet;

Thence South 24 degrees 02 minutes 00 seconds East, 66.56 feet;

Thence South 67 degrees 03 minutes 36 seconds West, 65.53 feet to Precision Way;

Thence North 22 degrees 46 minutes 18 seconds West, along Precision Way, 21.87 feet;

Thence North 59 degrees 12 minutes 04 seconds East, 26.58 feet;

Thence North 33 degrees 44 minutes 44 seconds East, 18.09 feet;

Thence North 14 degrees 42 minutes 27 seconds West, 11.51 feet;

Thence North 21 degrees 53 minutes 10 seconds West, 39.35 feet;

Thence North 65 degrees 58 minutes 00 seconds East, 480.97 feet;

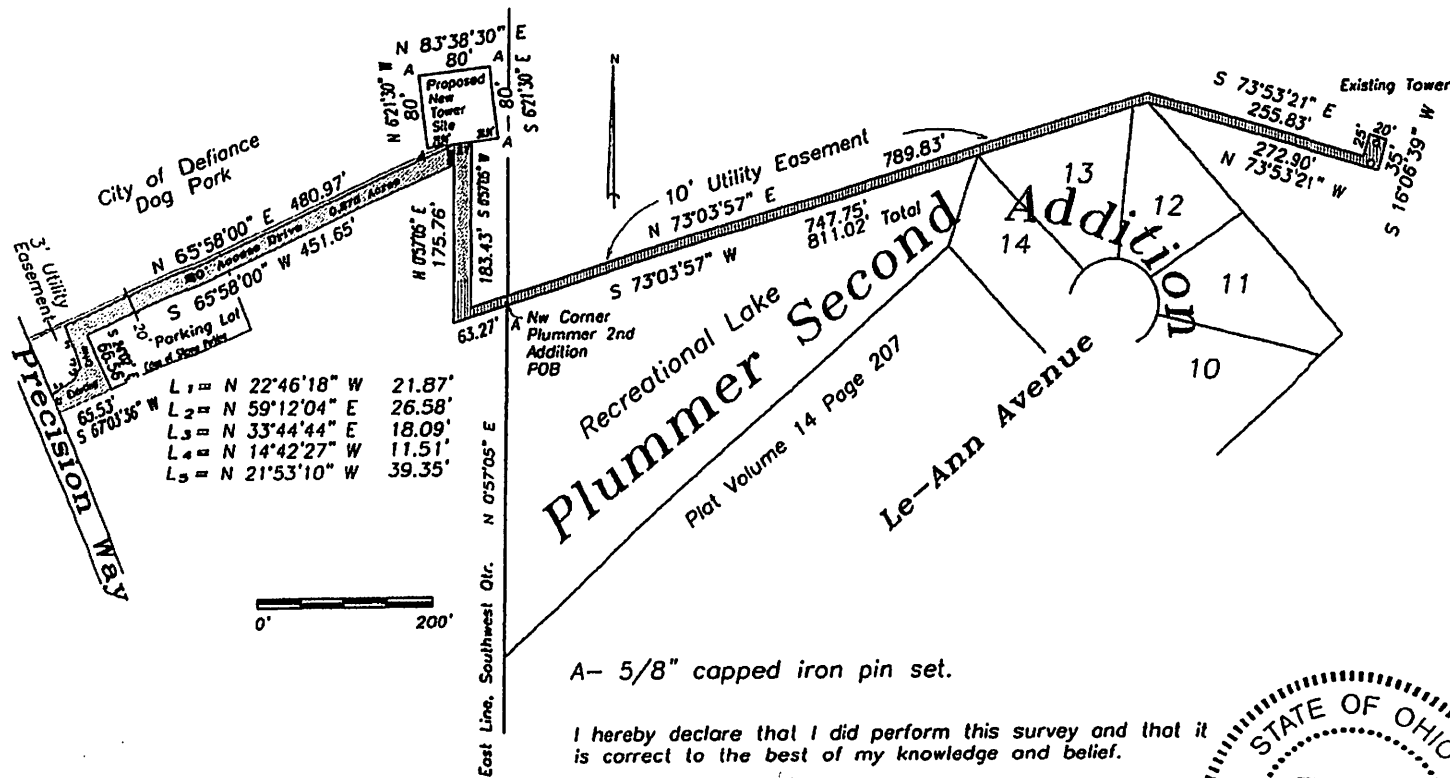
Thence South 0 degrees 57 minutes 05 seconds West, 22.06 feet to the point of beginning. The access drive area herein described contains 0.278 acres more or less. Grantor also grants to the grantee a 3.0 feet utility easement along the northerly line of access drive to Precision Way.

The basis of bearings is the Ohio North Coordinates. Thomas J Henry, Registered Surveyor No. 6787, prepared this description.

Plat of Survey

Being a part of the West half (1/2) of the Southeast quarter (1/4) and a part of the East half (1/2) of the Southwest quarter (1/4) of Section 27, Township 4 North, Range 4 East, City of Defiance, Defiance Township, Defiance County, Ohio.

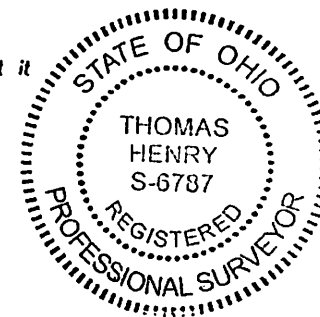
For... MetaLink Technologies



A- 5/8" capped iron pin set.

I hereby declare that I did perform this survey and that it is correct to the best of my knowledge and belief.

11-29-22
 Thomas J. Henry
 Registered Surveyor No. 6787



THIRD AMENDMENT TO LEASE AGREEMENT

This Third Amendment to the Lease Agreement dated February ____, 2023, is made and entered into by and between the City of Defiance, Ohio (“Landlord”), and Defiance Holdings, LLC of Defiance, Ohio (“Tenant”).

Whereas, the parties entered into an amended lease agreement on August 30, 2016 in which Landlord made an antenna mounting location available at an elevated water storage tower located at 400 Carter Avenue, Defiance, Ohio; and

Whereas, the parties entered into a further amendment to that lease agreement on January 25, 2018, as authorized by the City Council of Defiance, Ohio in Ordinance No. 7970 on December 12, 2017, which identified a replacement antenna mounting location; and

Whereas, the parties approved a Second Amendment to the agreement on December 9, 2021, as authorized by the City Council of Defiance, Ohio in Ordinance No. 8353 on November 9, 2021, which allowed Tenant to construct new transmission towers at 400 Carter Avenue and at 11795 Precision Way; and

Whereas, Tenant requires a utilities easement and a communications easement (“easements”) to access the antenna mounting location and operate the planned telecommunications tower; and

Whereas, the parties desire to authorize Tenant to construct a new antenna mounting location and telecommunications tower on property that Landlord owns at 11795 Precision Way, Defiance, OH 43512 and a permanent easement for both utilities and ingress and egress to and from the site; and

Whereas, the Second Amendment authorized a 20’ wide permanent easement for utilities southeast of the entryway to an existing parking lot; and

Whereas, the parties desire to shift the 20’ permanent easement so that Tenant can make use of the existing parking lot for ingress and egress to Tenant’s planned telecommunications tower.

Now, therefore, in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lease Agreement dated August 30, 2016, amended on January 25, 2018, and further amended on December 9, 2021, is further amended as follows:

ARTICLE 1: PREMISES

The area and legal description identified in “Attachment B” of the Second Amendment to the Lease Agreement shall be amended and incorporated into the Agreement as “Amended Attachment B.”

ARTICLE 2: EFFECTIVENESS

All provisions of the original Lease Agreement dated August 30, 2016, and all provisions of subsequent amendments, not inconsistent with this Third Amendment to the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have signed this Third Amendment to the Lease Agreement on this ____ day of February, 2023.

LANDLORD:
City of Defiance, Ohio

TENANT:
Defiance Holdings, LLC

By: _____
Ryan Mack
City Administrator

By: _____
Phillip D. Maag
President

Witness:

State of Ohio
County of Defiance, ss:

Before me, a notary public in and for the State of Ohio, personally appeared **Ryan Mack**, known to me to be the City Administrator of the City of Defiance, Ohio, who executed the foregoing instrument and acknowledged that said instrument is the free act and deed of the municipal corporation for the purposes therein mentioned and pursuant to Ordinance _____, passed January 10, 2023.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Defiance, Ohio this ____ day of February, 2023.

Notary Public/State of Ohio

State of Ohio
County of Defiance, ss:

Before me, a notary public in and for the State of Ohio, personally appeared **Phillip D. Maag**, known to me to be the President of Defiance Holdings, LLC, who executed the foregoing instrument and acknowledged that said instrument is the free act and deed of the limited liability corporation for the purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Defiance, Ohio this ____ day of _____, 2023.

Notary Public/State of Ohio

Ordinance No. _____

AN ORDINANCE AUTHORIZING A CONTRACT FOR CONTINUED MONITORING OF FLOW METERS THROUGHOUT THE CITY SEWER SYSTEM

WHEREAS, the City has various sensor sites and other equipment throughout the sewer system within its boundaries to monitor combined sewer overflows; and,

WHEREAS, Xylem Vue submitted a quote to continue these monitoring and maintenance services for one year for \$57,740.00; and,

WHEREAS, real time reports from this system will aid the City Administration in negotiations with the Ohio Environmental Protection Agency ("OEPA") on the new Integrated Watershed Improvement Plan; and,

WHEREAS, Council finds that this expenditure will help the City establish that its percent capture rate complies with the Clean Water Act of 1972;

Now therefore, be it enacted by the Council of the Municipality of Defiance, Ohio, that:

Section 1: The City Administrator is directed to enter into a one-year contract with Xylem Vue to provide monitoring and data management services, including maintenance visits throughout the contract period and cellular service to ten (10) level sensor sites, described by the September 23, 2023 quote and on file in the office of the Law Director at the quoted price of \$57,740.00.

Section 2: The Finance Director shall pay the contract price from Section 1 from appropriated funds allocated by expenditure from Line 589-540-52-977050 of the 2023 annual budget.

Section 3: It is found and determined that all legislative actions pertaining to the adoption of this Ordinance were taken in Public Session and that all deliberations that affected or influenced any such legislative act, including all deliberations in Committee, were conducted in Public Session or in Executive Session duly convened in accordance with law.

Section 4: This Ordinance shall be effective on the earliest date permitted by law.

Passed: _____, 2023

President of Council

Attest: _____, Clerk

Approved: _____, 2023

Mayor