

Ordinance No. _____

AN ORDINANCE AUTHORIZING THE CONVEYANCE OF MUNICIPAL PROPERTY LOCATED AT QUALITY DRIVE TO THE COMMUNITY IMPROVEMENT CORPORATION

WHEREAS, the City desires to convey to the Defiance County Community Improvement Corporation ("CIC") the real property located at Quality Drive and identified as Permanent Parcel No. B01-2111-0-001-01 by the Defiance County Auditor; and,

WHEREAS, Section 721.28 of the Ohio Revised Code authorizes a municipal corporation to transfer, lease, or convey any real property for urban redevelopment or renewal *without competitive bidding*; and,

WHEREAS, the Community Improvement Corporation ("CIC") is willing to hold the property until an end user can accept the property and convert it for further economic development; and,

WHEREAS, Council finds that the proposed plan and transfer advances the Economic Development Pillar of the Defiance Community Strategic Plan by converting vacant City property into productive use by the private sector;

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

Section 1: The transfer of the property identified as Defiance County Auditor's Parcel No. B01-2111-0-001-01 to the CIC is hereby authorized, including the cost of any title insurance policy, attorney's fees, recording costs, and other fees incidental to closing, if any.

Section 2: The Finance Director is authorized to pay the City's share of the above-referenced expenses, if any, from appropriated funds allocated by expenditure from Line 101-172-52-963000 of the 2021 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: _____, 2021

President of Council

Attest: _____, Clerk

Approved: _____, 2021

Mayor

Ordinance No. _____

AN ORDINANCE AUTHORIZING A SECOND 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, the parties have determined that the leased telecommunications tower owned by the municipality requires demolition and Defiance Holdings, LLC desires to construct a new tower on City-owned property located at 11795 Precision Way, Defiance, OH 43512; and,

WHEREAS, Defiance Holdings, LLC desires to construct a transmission tower, communication building, and other telecommunications equipment on City-owned property located at 400 Carter Avenue, Defiance, OH 43512; and,

WHEREAS, Council finds that amendments to this lease agreement are necessary to allow the City to demolish its own outdated telecommunications tower without interrupting internet service to City residents;

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 Second 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, 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: _____, 2021

President of Council

Attest: _____, Clerk

Approved: _____, 2021

Mayor

SECOND AMENDMENT TO LEASE AGREEMENT

This Second Amendment to the Lease Agreement dated December ____, 2021, 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, 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 City Council of Defiance, Ohio authorized the City Administrator to enter into an amended lease agreement to reflect the wishes of the parties in Ordinance No. ____ on November 9, 2021.

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, and amended on January 25, 2018, is further amended as follows:

ARTICLE 1: PREMISES

Landlord leases to Tenant, and Tenant leases from Landlord the following described premises:

1. Land located at 400 Carter Avenue, Defiance, OH 43512 on which to construct and maintain a transmission tower, communication building, and related details as described in Attachment A;
2. Land located at 11795 Precision Way, Defiance, OH 43512 on which to construct and maintain a transmission tower, communications building, and related details as described in Attachment B;

Additionally, Landlord promises to provide easements for utilities, communications lines, and ingress and egress as agreed by the parties and recorded separately.

ARTICLE 2: USE

The premises are used for the construction and use of a transmission tower and communication building or any lawful act or activity which entities formed under the laws of Ohio may conduct business and are herein referred to as the "Communications Facilities."

The Communications Facilities may be installed by Tenant or by any of Tenant's agents or contractors. Tenant has the right to make alterations to the Communications Facilities from time-to-time as Tenant determines to be necessary or desirable.

ARTICLE 3: TERM

The initial term ("Primary Term") of the Lease Agreement shall remain as thirty (30) years as set forth in the First Amendment To Lease Agreement commencing on the effective date of the Lease Agreement executed on August 30, 2016, unless sooner terminated as provided herein. The term of the Lease Agreement shall renew automatically for additional periods of five (5) years each ("Extended Terms"), unless terminated by Landlord giving Tenant not less than twelve (12) months' prior written notice of Landlord's intent to terminate this Lease Agreement upon the expiration of the Primary or Extended Term under which Tenant is then occupying the Premises.

Within sixty (60) days following termination of this Lease Agreement, Tenant shall restore the Premises to Landlord's exclusive possession in the same condition as they were at the commencement of the Lease Agreement, ordinary wear and tear excepted. All improvements installed or constructed by Tenant shall remain property of Tenant.

The parties recognize that the deep and massive reinforced concrete foundation required to ballast the tower erected at 400 Carter Avenue and at 11795 Precision Way, both of which are located in Defiance, Ohio, will result in permanent alteration of the land and that Tenant cannot reasonably be expected to remove the foundation in its entirety. Tenant's obligation to restore the premises shall be fully satisfied by removal of the foundation to a depth of three feet below the lowest grade of the tower site and covering the remaining concrete below that depth with topsoil or other suitable fill material acceptable to Landlord. With the exception of foundation materials installed at a depth of more than three feet below grade, all improvements installed or constructed by Tenant shall remain property of Tenant.

ARTICLE 4: RENT

In lieu of cash rent, Tenant shall provide Landlord with internet services suitable to efficient conduct of Landlord's governmental and utility operations without charge. The parties recently bifurcated internet service between Landlord's Administrative Offices and the Defiance Municipal Court and Tenant agrees to continue providing these separate services. Upon execution of the Lease Agreement, service to both Landlord's Administrative Offices and Defiance Municipal Court shall be provided at synchronous speeds of 100 MBS at each location. Service to the Defiance Police Department at 324 Perry Street, Defiance, OH 43512 shall be maintained at presently established data exchange rates.

Over the term of this Lease Agreement and any extensions thereof, static IPs shall be provided in sufficient numbers and transfer speeds shall be upgraded and maintained at rates sufficient to enable Landlord to access and use the internet in a manner that is appropriate to the conduct of the municipal operations as judged by customary standards of the industry as they evolve over time. All services shall be provided in accordance with

Tenant's customary terms and conditions of service and Landlord shall execute Tenant's standard service agreement even though services are to be provided without monetary charge.

In the event that Landlord and Tenant are unable to agree on the level of service required under this Article, the parties agree to maintain their current commitments under this Lease Agreement until the termination of the Primary Term.

ARTICLE 5: ACCESS AND UTILITIES

Landlord grants to Tenant, for use by Tenant, its employees, agents, and contractors, an easement for ingress and egress at each location listed in Article 1 on a twenty-four (24) hour daily basis. Landlord further grants to Tenant, its employees, agents, and contractors, an easement for communications and an easement for utilities at each location, connecting the towers to the existing fiber optic lines near the premises and identified in Attachments A and B.

Tenant will pay all charges for electricity supplied to the Premises. Tenant may install or improve existing utilities servicing the Communications Facilities and may install an electrical grounding system to provide the greatest possible protection from lightning damage to the Communication Facilities.

ARTICLE 6: INSTALLATION

Tenant shall install and maintain the Communications Facilities on the Premises at its sole expense and in accordance with all applicable federal, state, and local laws, rules, and regulations. Tenant will install the Communications Facilities on the Premises as soon as feasible.

ARTICLE 7: NOTICE

All notices or demands are deemed to have been given or made when delivered in person or by certified, registered, or express United States mail, delivered to the United States Postal Service, postage prepaid and addressed to the applicable Party as follows:

Landlord: City Administrator City of Defiance, Ohio 631 Perry Street Defiance, OH 43512	Tenant: President Defiance Holdings, LLC 27932 Watson Road Defiance, OH 43512
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A party may change its address to which any notice or demand may be given by written notice thereof to the other parties.

ARTICLE 8: LIABILITY AND INDEMNITY

Tenant shall be responsible for all routine maintenance of the Premises during the continuance of this Lease Agreement and for repairing any extraordinary damage to the Premises caused or reasonably believed to have been caused by the activities of the Tenant.

Tenant acknowledges that Landlord is a political subdivision of the State of Ohio and, as such, is generally immune from liability for losses occasioned by negligence of Landlord's officials and employees. Tenant further acknowledges that this Lease Agreement is not

intended to substitute contractual liability for liability for which Landlord would otherwise be accorded political subdivision immunity. Tenant shall insure the Premises and Communications Facilities against such risk of loss or damage and in such amounts as Tenant deems prudent and shall present no claim against Landlord predicated on the alleged loss or damage such property, or the alleged loss of use of such property by reason of conduct or neglect attributed to the Landlord. Nothing contained in this Lease Agreement shall alter or limit the applicability of statutory provisions prohibiting the presentation of subrogation claims against the City by any insurer.

Each Party shall maintain commercial general liability insurance providing coverage against third-party claims for loss of property, damage to property, personal injury, and death based on any alleged condition of the Premises and/or the conduct of any alleged activity on the Premises. Coverage shall be maintained on the same terms of insurance and in the same amounts that each party maintains for its protection at other locations devoted to similar use. Each Party shall cause the other to be named as an additional insured under the terms of such policy or policies and neither Party shall be deemed contractually obligated to defend or indemnify the other against third-party liabilities except to the extent that such coverage exists.

ARTICLE 9: ASSIGNMENT AND SUBLETTING BY TENANT

Tenant may, without Landlord's consent, assign or sublet any or all of Tenant's interest in this Lease Agreement or any part thereof, and/or any or all of Tenant's right, title, and interest in, and to, any or all of the Communications Facilities, to any party controlling, controlled by, or in common control with Tenant or any party acquiring substantially all of the assets or ownership interests of Tenant. No other assignment or transfer shall be effective without the prior written consent of Landlord. This Lease Agreement shall be binding upon and inure to the benefit of permitted successors and assigns.

ARTICLE 10: TENANT'S RIGHT OF FIRST REFUSAL TO PURCHASE

In the event Landlord receives an acceptable bona fide offer from a third party to purchase all or any part of the parcels described in Attachments 1 and 2, Landlord shall notify Tenant of the terms and conditions of such offer and furnish Tenant with a true copy thereof. Tenant shall then have thirty (30) days to notify Landlord that it agrees to purchase the same land on the same terms and conditions as are contained in such offer. Landlord may accept the third party's offer if Tenant declines to meet the offer or fails to reply to Landlord's notice within thirty (30) days following delivery of the notice to Tenant. Tenant's failure to purchase shall not invalidate this Lease Agreement nor any right conferred on Tenant by this Agreement and the third party purchaser shall acquire all rights conferred on Landlord by this Agreement for so long as the Lease remains in effect.

ARTICLE 11: TITLE WARRANTY

Landlord represents and warrants that Landlord has good and marketable title to the Premises and shall defend the same against any and all adverse claims. Landlord further represents and warrants that Landlord is not required to obtain any consent under any ground lease, mortgage, deed of trust, or other instrument encumbering the Premises in order for Tenant to construct, operate, maintain, or access the Communications Facilities. Landlord represents and warrants that Landlord will not pledge or encumber the Communications Facilities in any way.

ARTICLE 12: QUIET ENJOYMENT

Landlord covenants that Tenant, upon payment of rent and observing the other covenants and conditions herein upon its part to be observed, will peaceably and quietly hold and enjoy the right to use the Premises, Access Easements, and Utility Easements on the terms and conditions and for the purposes stated herein during the term of this Lease Agreement, as it may be extended, without hindrance, ejection, or molestation by Landlord or any persons or entities claiming under Landlord. Landlord will not use, allow, or permit the Premises to be used in any manner which will limit, impair, or restrict the use or operations of the Communications Facilities or allow any use which could cause any destructive or conflicting interference with the Communications Facilities.

ARTICLE 13: ENTIRE AGREEMENT AND BINDING EFFECT

Each party represents and warrants to the other that it has the right, power, authority and capacity to execute and deliver this Second Amendment to the Lease Agreement and to perform its obligations therein.

Each party represents and warrants to the other that this Second Amendment to the Lease Agreement constitutes a legal, valid, and binding act, enforceable against it in accordance with its respective terms.

Any further amendment to the Lease Agreement dated August 30, 2016 must be in writing signed by both parties.

Section captions herein are for convenience of reference only and neither limit nor amplify the provisions of this Second Amendment to the Lease Agreement. The invalidity of any portion of this Amendment shall not have any effect on the balance thereof or of the original Lease Agreement dated August 30, 2016.

All provisions of the original Lease Agreement dated August 30, 2016 not inconsistent with this Second Amendment to the Lease Agreement

IN WITNESS WHEREOF, Landlord and Tenant have signed this First Amendment on this ____ day of December, 2021.

LANDLORD:
City of Defiance, Ohio

TENANT:
Defiance Holdings, LLC

By: _____
Jeff Leonard
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 **Jeff Leonard**, 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 7970, passed December 12, 2017.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Defiance, Ohio this ____ day of December, 2021.

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 December, 2021.

Notary Public/State of Ohio

RESOLUTION No. _____

A RESOLUTION DECLARING THE SERVICES TO BE PROVIDED TO TERRITORY PROPOSED FOR ANNEXATION UPON ANNEXATION AND ESTABLISHING ZONING RESTRICTIONS

WHEREAS, Jaxson Enterprises, Ltd. and Cash Dog Enterprises, LLC, being the owners of a combined 1.557 acres located in Section 30, Richland Township, Defiance, Ohio, have filed a collective petition for annexation into the City of Defiance, Ohio; and

WHEREAS, the petitioners are seeking annexation where no land is excluded from the township; and

WHEREAS, Section 709.023(C), Ohio Revised Code requires Council to adopt a resolution stating what services the municipal corporation will provide, and an approximate date by which it will provide them;

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

Section 1: The City of Defiance consents to the approval of the aforesaid petition by the Board of Commissioners of Defiance County, Ohio, and will maintain any street or road divided or segmented by annexation.

Section 2: The City shall provide all customary governmental and utility services, including water, sewer, and trash service, to the property described by the petition in the same manner and on the same terms and conditions as are applicable to the provision of like-kind services to other property within the territorial boundaries of the municipality immediately upon annexation.

Section 3: In the event that property within the annexation territory is accorded a municipal zoning designation that permits the property to be used in a manner that Council determines is clearly incompatible with the uses permitted under the current township zoning regulations of adjacent territory, Council will require the establishment of a buffer conforming to the requirements of Section 709.023(C), Ohio Revised Code by Ordinance.

Section 4: It is found and determined that all legislative actions pertaining to the adoption of this Resolution 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 5: This Resolution shall be effective on the earliest date permitted by law.

Passed: November 9, 2021

President of Council

Attest: Lisa Elders, Clerk

Approved: November 9, 2021

Mayor

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 8313 BY APPROVING A CHANGE ORDER TO THE CONTRACT FOR THE DEMOLITION OF CERTAIN STRUCTURES ON CLINTON STREET AND DECLARING AN EMERGENCY

WHEREAS, Council authorized the award of a contract for the demolition of structures in the floodplain on 106, 110, 114, and 118 Clinton Street in Ordinance No. 8313 on May 25, 2021; and,

WHEREAS, the demolition specifications detailed the construction of a weatherized, exterior wall on the north side of 120 Clinton Street; and,

WHEREAS, the undertaking of the demolition revealed that the soil under that wall lacked a footing to support the wall; and,

WHEREAS, the modified scope of work is necessary to provide additional support for the wall with a change order in the amount of \$116,396.50;

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

Section 1: The amount approved for expenditure in Ordinance No. 8313 is hereby amended by an additional cost of \$116,396.50 payable to All Excavating & Demolition, Ltd.

Section 2: The City Administrator is directed to execute the proposed change order on file with the City Engineer in the amount specified in Section 1.

Section 3: The Finance Director is authorized to pay the change order amount from Line 403-901-52-979111 of the 2021 annual budget.

Section 4: 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 5: This Ordinance is declared to be an emergency measure necessary to preserve the health, safety or welfare of the community for the reason that immediate commencement of the modified work is necessary to meet Federal Emergency Management Agency and Ohio Emergency Management Agency grant deadlines. As such, this Ordinance shall be effective immediately upon passage by an affirmative vote of not less than five (5) Members of Council and approval of the Mayor.

Passed: _____, 2021

President of Council

Votes in Favor of Adoption: _____

Votes Opposed to Adoption: _____

Attest: _____, Clerk

Approved: _____, 2021

Mayor