

**SmartPark<sup>®</sup> Telecommunications Service  
Agreement**

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**West Michigan  
Shoreline Business Centre**

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*in cooperation with*

**County of Muskegon**

**Muskegon Economic Growth Alliance**

**and**

**GTE North, Inc.**



SMARTPARK® TELECOMMUNICATIONS SERVICE

AGREEMENT

This Agreement is made and entered into this 20<sup>th</sup> day of January, 1993, by and among County of Muskegon ("Muskegon"), a Michigan County Corporation, whose address is 990 Terrace Street, Muskegon, MI 49443; Muskegon Economic Growth Alliance, ("MEGA"), a Michigan corporation, whose address is 349 West Webster, Muskegon, MI 49443; and GTE North Incorporated ("GTEN"), a Wisconsin corporation, whose address is Post Office Box 407, MC AAALA, Westfield, Indiana 46074 in contemplation of the following:

- A. The land covered by this Agreement is described as that area known as the West Michigan Shoreline Business Centre (the "Park") and owned by the County of Muskegon and MEGA, as it exists on the date of this Agreement together with all other such additional real estate incorporated into the park boundaries subsequent to the effective date of this Agreement, together with all other easements and rights-of-way granted to GTEN by Muskegon and/or MEGA.
- B. It is GTEN's intent to place Facilities, further defined to include cabling and accessories thereto, including without limitation, cross-connect facilities, splice joints, termination facilities, fiber optic nodes, remote switching equipment, and such buildings or vaults necessary to house said equipment, within the Park's common areas so as to be able to provide telecommunications services to the Park's tenants/occupants using advanced technology including, but not limited to, fiber optics. Such facilities may be located, as appropriate, within roadway rights of way, within tracts owned or controlled by Muskegon and MEGA, and within common or greenway areas, subject to restrictions on placement as hereinafter set forth.
- C. In order for GTEN to provide for such advanced telecommunications services, GTEN must be able to construct necessary conduits, cables and other tangible personal property ("Facilities") within the confines of the public and private property of the Park; and
- D. It is beneficial for the parties to be able to promote the advanced technological status of the Park. For the purposes of this Agreement, the name "West Michigan Shoreline Business Centre" will be used for advertising and promotion.

Therefore, it is agreed:

1. The recitals hereinabove set forth are incorporated by reference.

2. GTEN will furnish, install and maintain Facilities as defined above in order to be able to provide to the Park's tenants state-of-the-art advanced telecommunications services subject to requirements of federal and state law. The design, capacity and technology of the facilities shall be exclusively determined by GTEN.
  
3. Muskegon, MEGA, and their successors will permit GTEN's personnel and agents reasonable access to the Park at all reasonable times over property owned or controlled by Muskegon and/or MEGA (but said property shall not include the individual buildings at the Park) in order that GTEN may construct, install and maintain its Facilities, provided, however, and it is expressly understood, that GTEN shall repair or replace any damage to landscaping or improvements caused by or in any way arising out of the activities of GTEN's employees, contractors, personnel, or agents. In connection with the construction, installation, maintenance, and operation of the Facilities or the provision of services hereunder, each party shall indemnify and hold harmless the other parties from claims, demands and damages which result from the negligence or willful misconduct of the indemnifying party, and its agents, employees, contractors, and assigns. THE LIABILITY OF EITHER PARTY, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES, AND UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, NOTWITHSTANDING THEIR FORSEEABILITY OR DISCLOSURE BY A PARTY, INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM DELAY, LOSS OF DATA, OR NETWORK AVAILABILITY, PROFITS OR GOODWILL. THE PARTIES RECOGNIZE THAT GTE MAY FROM TIME TO TIME PROVIDE ADVICE, MAKE RECOMMENDATIONS OR SUPPLY OTHER ANALYSIS RELATED TO THE FACILITIES OR SERVICES DESCRIBED IN THIS AGREEMENT, MUSKEGON AND/OR MEGA ACKNOWLEDGE THAT THIS LIMITATION OF LIABILITY SHALL APPLY TO PROVISION OF SUCH ADVICE, RECOMMENDATIONS AND ANALYSIS. GTEN agrees to indemnify Muskegon and/or MEGA from all claims and damages arising out of Muskegon's and/or MEGA's authorized utilization of the "SmartPark® Telecommunications Service" Registered Servicemark, including assuming the defense of claims made against Muskegon and/or MEGA for any allegations of copyright infringement.
  
4. GTEN shall install its telecommunications facilities at its sole cost, subject to its right to recover said costs as permitted by applicable statute, regulation or law. In the event a tenant shall require a particular service, and it is necessary for GTEN to utilize the private property of Muskegon, MEGA or the Park, then Muskegon and/or MEGA shall provide the easement for same without charge to GTEN; provided, however, Muskegon or MEGA may charge GTEN rental not exceeding that of comparable lease within the Park for the exclusive use of private property for any building or structural improvement occupying in excess of 6000 square feet, unencumbered by setbacks.

- c. GTEN and participating SmartPark developers will establish an advertising program having local, regional and national elements which may be funded individually or jointly by participating GTE business units and developers as specified in a separate agreement. With regard to any cooperative advertising program established, whereby costs are to be shared between the parties, Muskegon and/or MEGA will be permitted to participate on terms no less favorable than those offered to any other developer within the program. Muskegon and MEGA shall, within their sole discretion, determine whether to participate in said advertising program.
- d. Muskegon and MEGA shall make available to prospective tenants GTEN's promotional materials, including GTE SmartPark® service, GTE product lines, and overall GTE telecommunications capabilities and provide prospective tenants with a packet of information concerning GTE that may be supplied by GTEN. GTEN shall be solely responsible for the preparation and cost of these promotional materials.
- e. Muskegon and MEGA shall solicit from each prospective tenant the name, address and telephone number of a contact person for GTEN to communicate with in order for GTEN to assess and recommend options for the tenant's telecommunications requirements. Muskegon and MEGA shall provide said information to GTEN's designated representative. In the event a prospective tenant declines to allow Muskegon and/or MEGA to provide such information to GTEN at the time it receives a lease or sale proposal, Muskegon and/or MEGA agrees to provide said information to GTEN promptly after the closing of the lease or sale; unless otherwise restricted by an agreement of confidentiality.

Muskegon and MEGA further agree to provide prospective tenants the name of a designated contact person at GTE and recommend that they contact GTE's representative to facilitate the installation of telecommunications service. Muskegon and MEGA agree to introduce the prospect to GTEN at the earliest appropriate time, in advance of public announcement.

- f. If requested by GTEN, Muskegon and/or MEGA agrees to provide a space within the Park's sales and leasing office, or such other location agreeable to GTEN, to be used for the installation of a SmartPark® display unit. The space shall be approximately three feet deep, four feet wide and seven feet high. The display materials shall be furnished by GTEN at its sole cost and expense; however, Muskegon and/or MEGA shall provide access to a standard electrical outlet and pay all reasonable recurring electrical cost for the operation of the display unit.

- g. In the event Muskegon and/or MEGA shall make commercial lease space available to the public, Muskegon and/or MEGA shall, at GTEN's option, make commercial lease space of up to 2500 square feet available to GTEN for a term of up to five (5) years at a rental rate not exceeding that of a comparable lease within the Park in terms of the square footage, term and incentives offered. Such space shall be within or in close proximity to the Park's on-site sales and leasing office if at all possible. GTEN shall use such space for the purpose of maintaining an on-site presence during the construction or major leasing phases of the project. This lease option is in addition to the provisions of section four above.
7. The parties recognize that the successful performance of this Agreement contemplates close cooperation among them. Accordingly, in the event any party applying either objective or its own subjective standards believes the continuation of this Agreement is not satisfactory to it, then such party shall have the right to terminate this Agreement by providing ninety (90) days prior written notice to the other parties.
8. This Agreement shall not be construed to create a joint venture, general partnership, or create the relationship of principal and agent among the parties hereto. This Agreement is strictly for the purpose of permitting joint promotional and marketing activities as well as to provide for the installation of telecommunications services.
9. Nothing in this agreement shall be construed to obligate Muskegon or MEGA to require tenants and/or purchasers at the Park to use GTEN's services as described herein. Said tenants and/or purchasers shall be free to use any service of their choice. However, Muskegon and MEGA shall, in good faith, recommend that their tenants contact GTEN for the provision of telecommunications products and services. It is further agreed that Muskegon and MEGA shall not "bypass" GTEN for their own telecommunications services at the Park, unless GTEN is unable to provide, in the reasonable judgement of Muskegon or MEGA, comparable products and services at a competitive price and service level.

Muskegon and MEGA agree not to engage in, finance, promote, construct, sell or resell "bypass" facilities, shared communications arrangements, or telecommunications products and services, either unilaterally or jointly with a third party, without the express consent of GTEN.

10. Any notice required or permitted under this Agreement may be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, certified, return receipt requested, addressed to Muskegon and MEGA or to GTEN at the addresses set forth below:

MUSKEGON:

County of Muskegon.  
Attention: Frank Bednarik  
990 Terrace Street  
Muskegon, MI 49443

GTEN:

GTE Telephone Operations  
North Area  
Attention: Carl Covely, Jr.  
MC: AAAPE  
19845 North U.S. 31  
Westfield, IN 46074

MEGA:

Muskegon Economic Growth Alliance  
349 West Webster  
P.O. Box 1087  
Muskegon, MI 49443

Any party may from time to time designate in writing other addresses.

11. In the event Muskegon and/or MEGA fails to construct the Park as contemplated herein due to any reason or cause whatsoever, the obligations of GTEN herein shall terminate in all respects.
12. Nothing contained herein shall be construed to convey or otherwise transfer title to the telecommunications facilities to be installed herein from GTEN to Muskegon or MEGA; GTEN is, and shall continue to be, the sole and exclusive owner of said facilities.
13. Nothing contained herein shall operate to restrict GTEN from utilizing the telecommunications facilities installed herein for other customers of GTEN not associated with Muskegon, MEGA or the Park.

COUNTY OF MUSKEGON  
a Michigan County Corporation

1/20/93  
Dated

By: Kenneth J. Hulka  
Kenneth J. Hulka, Chairman  
Board of Commissioners

MUSKEGON ECONOMIC GROWTH ALLIANCE;  
a Michigan Corporation

1/20/93  
Dated

By: Michael C. Mahaffey  
President

GTE NORTH INCORPORATED,  
a Wisconsin Corporation

1/20/93  
Dated

By: M. L. Keith, Jr.  
M. L. Keith, Jr.  
Vice President-  
Sales and Service

APPROVED AS TO FORM BY  
LEGAL DEPARTMENT

SP Reed