



City of Dublin

Office of the City Manager
5200 Emerald Parkway • Dublin, OH 43017-1090
Phone: 614-410-4400 • Fax: 614-410-4490

Memo

To: Dublin City Council
From: Marsha I. Grigsby, City Manager *MIG*
Date: February 7, 2013
Initiated By: Colleen Gilger, Economic Development Manager
Re: Ordinance 16-13 - Economic Development Agreement with CareWorks

Background

Staff has been in discussions with CareWorks regarding potential renewal options for its two facilities in Dublin. The company plans to grow both its employee headcount and square-footage over the next five years and was considering several real estate options both in and outside of Dublin. The company's facilities on Glendon Court in Dublin currently serve as the corporate headquarters, with 820 jobs on site.

The CareWorks Family of Companies (six different CareWorks' branded companies all headquartered in Dublin) provides a suite of claims and medical management services for workers' compensation, disability and integrated absence management along with technology and risk management solutions. CareWorks was named the #1 Best Place to Work in Central Ohio in 2012 in the 'large company' category.

The company is under a current EDA with the City through 2014, tied to company retention, job growth and a five-year lease extension (2010-2014) that was executed in late 2008. At that time, the company was required to grow its headcount from 600 to 650, and they have exceeded growth expectations.

The new Economic Development Agreement proposed to CareWorks includes a three-year, 15% Performance Incentive on withholdings collected (2015-2017), which is capped at \$395,000 for the term of the agreement, in consideration of the company retaining 820 jobs and creating 40 jobs with an average annual salary between \$48,000 - \$50,000 in Dublin by the end of 2017. Also proposed is a five-year renewal extension of an Indefeasible Right to Use (IRU) agreement for two strands of DubLink fiber, to run concurrent with the two facility leases through 2019. The company is growing its leasable square-footage in both buildings to include an additional 14,000 SF.

The City estimates it would retain more than \$800,000 annually in current withholdings; and over the new five-year lease term (2015-2019) would net approximately \$3.9 million in total income tax withholdings, should the company grow according to expectations.

Recommendation

Staff recommends Council passage of Ordinance 16-13 at the second reading/public hearing on February 25, 2013. Please contact Colleen Gilger with any questions.

RECORD OF ORDINANCES

Ordinance No. 16-13 Passed _____, 20____

AN ORDINANCE AUTHORIZING THE PROVISION OF CERTAIN INCENTIVES TO CAREWORKS FAMILY OF COMPANIES TO INDUCE IT TO RETAIN AN OFFICE AND ASSOCIATED OPERATIONS AND WORKFORCE WITHIN THE CITY, AND AUTHORIZING THE EXECUTION OF AN ECONOMIC DEVELOPMENT AGREEMENT

WHEREAS, consistent with its Economic Development Strategy (the "*Strategy*") approved by Dublin City Council Resolution No. 07-94 adopted on June 20, 1994, and the updated Strategy approved by Dublin City Council Resolution No. 30-04 adopted on July 6, 2004, the City desires to encourage commercial office development and create and preserve jobs and employment opportunities within the City; and

WHEREAS, CareWorks Family of Companies (the "*Company*") recently performed a comprehensive examination of its workforce needs, and based on the results of this examination, and induced by and in reliance on the economic development incentives provided in the proposed Economic Development Agreement (as described below), the Company is desirous of leasing a facility within the City to retain an office and associated operations and workforce within the City in order to achieve the payroll withholding targets set forth in the Economic Development Agreement; and

WHEREAS, this Council has determined that it is necessary and appropriate and in the best interests of the City to provide for certain economic development incentives to the Company, as described in the proposed Economic Development Agreement; and

WHEREAS, this Council has determined to offer the economic development incentives, the terms of which are set forth in a substantially final form of Economic Development Agreement presently on file in the office of the Clerk of Council, to induce the Company to lease a facility and retain an office and associated operations and workforce, all within the City, which will result in the creation of new jobs and employment opportunities and the preservation of existing jobs and employment opportunities, thereby improving the economic welfare of the people of the State of Ohio and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, State of Ohio, _____ of the elected members concurring, that:

Section 1. The Economic Development Agreement by and between the City and the Company, in the form presently on file with the Clerk of Council, providing for, among other things, the provision of certain economic development incentives in consideration for the Company's agreement to lease a facility within the City for the retention of an office and associated operations and workforce within the City, which will result in the creation of new jobs employment opportunities and the preservation of existing jobs and employment opportunities, is hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, is hereby authorized to execute that Economic Development Agreement, provided further that the approval of changes thereto by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the City Manager, for and in the name of the City, to execute any amendments to the Economic Development Agreement, which amendments are not inconsistent with this Ordinance and not substantially adverse to this City.

Section 2. This Council further hereby authorizes and directs the City Manager, the Director of Law, the Director of Finance, the Clerk of Council, or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Ordinance.

Section 3. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were

RECORD OF ORDINANCES

Ordinance No. 16-13

Page 2 of 2
Passed _____, 20____

taken in open meetings of this Council or committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

Section 4. This Ordinance shall be in full force and effect on the earliest date permitted by law.

Signed:

Mayor - Presiding Officer

Attest:

Clerk of Council

Passed: _____, 2013

Effective: _____, 2013

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the “*Agreement*”) is made and entered into this ____ day of _____, 2013, by and between the CITY OF DUBLIN, OHIO (the “*City*”), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (the “*State*”) and its Charter, and CAREWORKS FAMILY OF COMPANIES, an Ohio company (the “*Company*” and together with the City, the “*Parties*”), under the circumstances summarized in the following recitals.

RECITALS:

WHEREAS, consistent with its Economic Development Strategy (the “*Strategy*”) approved by Dublin City Council Resolution No. 07-94 adopted on June 20, 1994, and the updated Strategy approved by Dublin City Council Resolution No. 30-04 adopted on July 6, 2004, the City desires to encourage commercial office development and create and preserve jobs and employment opportunities within the City; and

WHEREAS, based on the results of the Company’s recent comprehensive examination of workforce needs, and induced by and in reliance on the economic development incentives provided in this Agreement, the Company desires to retain an office and associated operations and workforce within the City; and

WHEREAS, pursuant to Ordinance No. ___-13 passed on _____, 2013 (the “*Ordinance*”), the City has determined to offer the economic development incentives described herein to induce the Company to lease a facility within the City for the retention of an office and associated operations and workforce within the City, which will result in the creation of new jobs and employment opportunities and the preservation of existing jobs and employment opportunities to improve the economic welfare of the people of the State of Ohio and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, the City and the Company have determined to enter into this Agreement to provide these incentives in order to induce the Company to lease a facility and retain its operations and workforce, all within the City;

NOW THEREFORE, the City and the Company covenant, agree and obligate themselves as follows:

Section 1. Company’s Agreement to Lease a Facility and Retain Its Operations and Workforce Within the City. In consideration for the economic development incentives to be provided by the City herein, the Company agrees that it will lease a facility within the City for the retention of an office and associated operations and workforce within the City, all consistent with the terms of this Agreement. The Company expects to retain eight hundred twenty (820) existing employee positions within the City. Also, the Company expects to create forty (40) new employee positions within the City by December 31, 2018. The average annual wage of these employees is estimated to be approximately Forty-Nine Thousand Three Hundred Dollars (\$49,300), with total estimated payroll withholdings of approximately Two Million, Five Hundred Twenty-Six Thousand

Dollars (\$2,526,000) over the three-year term (2015-2017) of this Agreement. The Company agrees that the City's obligations to remit payments pursuant to Section 2 of this Agreement shall be contingent upon (a) the Company delivering to the City a fully executed copy of an agreement evidencing the Company's lease of a facility within the City for a period of at least five (5) years (from November 2014 to November 2019) and (b) such other conditions as are set forth in Section 2.

Section 2. City Agreement to Provide Incentives.

(a) General. In consideration for the Company's agreement to lease a facility within the City for the retention of an office and associated operations and workforce within the City, the City agrees to provide economic development incentives to the Company in accordance with this Section.

(b) Workforce Creation Incentive.

(i) Calculation of Actual Payroll Withholding Taxes. On or before March 15 of each of the years 2016 through 2018, the City shall calculate the actual payroll withholding taxes collected and received during the then preceding calendar year and in respect of that preceding calendar year by the City from all Employees (as defined below). For purposes of that calculation, the Company acknowledges and agrees that the total amount of actual payroll withholding taxes in respect of any calendar year shall be determined based solely upon the amount of payroll withholding tax payments actually received by the City from the Company during that calendar year. The Company agrees that the determination of whether to include in such calculation any amount received by the City in respect of any calendar year but following the conclusion of that calendar year, shall be solely within the discretion of the City. For purposes of this Section 2, "Employees" shall include only those individuals employed by the Company or an Affiliated Entity working at offices located within the City. For purposes of this Section 2, "Affiliated Entity" shall mean any entity listed on **EXHIBIT A** or any entity controlled by or under common control with the Company and, "controlled by" or "under common control with" will refer to the possession, directly or indirectly, of the legal power to direct or cause the direction of the management and policies of an entity, whether through the exercise of, or the ability to exercise, voting power or by contract. The Parties agree that the Company may revise **EXHIBIT A** from time to time in a manner consistent with this Agreement, subject to the City's prior written approval which approval shall not be unreasonably withheld.

(ii) Information Relating to Employees. The Company agrees that, in accordance with the Dublin City Code, the annual payroll reconciliation and related W-2 forms relating to its Employees will be provided to the City prior to February 28 of each calendar year.

(iii) Annual Incentive Payments to the Company. If the actual payroll withholding taxes collected and received by the City during the then preceding calendar year and in respect of that preceding calendar year from all Employees, net of refunds

(such amount being referred to as the “*Actual Withholdings*”), equal or exceed the Target Withholdings (as defined in subsection 2(b)(iv)) for that preceding calendar year, the City shall, on or before April 15 of the then current calendar year, pay to the Company, solely from nontax revenues (as defined in subsection 2(d)), an amount equal to the product of (A) an amount equal to the Actual Withholdings, multiplied by (B) fifteen percent (15%) (with each such product being referred to as an “*Annual Incentive Payment*”); *provided, however,* that (1) the City shall not be required pursuant to this subsection 2(b) to remit an Annual Incentive Payment to the Company in excess of the Annual Cap (as defined in subsection 2(b)(iv)) in any calendar year, and (2) the aggregate amount of all Annual Incentive Payments remitted pursuant to this subsection 2(b) by the City to the Company shall not exceed Three Hundred Ninety-Five Thousand and 00/100 Dollars (\$395,000.00).

(iv) Target Withholdings and Annual Cap. The Target Withholdings and Annual Cap for each of the calendar years 2015 through 2017 shall be:

<u>Calendar Year</u>	<u>Target Withholdings</u>	<u>Annual Cap</u>
2015	\$ 826,000	\$ 127,500
2016	840,000	132,500
2017	860,000	135,000

(v) Forfeiture of Right to Receive Workforce Creation Incentive Payment. The Company agrees and acknowledges that Annual Incentive Payments provided for in subsection 2(b) are being made by the City to the Company in consideration for the Company’s agreement to execute a lease within the City for the retention of an office and associated operations and workforce within the City and to create additional employment opportunities and retain existing employment opportunities, all within the City. The Company further agrees that if the Target Withholdings requirement is not met for any given calendar year as set forth in subsection 2(b)(iv), the City shall not be obligated to make an Annual Incentive Payment to the Company for the calendar year in respect of which the Target Withholdings requirement was not satisfied. Failure to satisfy the Target Withholdings requirement in respect of any one calendar year does not prohibit the Company from receiving an Annual Incentive Payment for any subsequent calendar year in respect of which the Target Withholdings requirement is satisfied.

(c) Method of Payment. The payments to be paid to the Company as provided in this Section 2 shall be made by the City to the Company by electronic funds transfer or by such other manner as is mutually agreed to by the City and the Company.

(d) City’s Obligation to Make Payments Not Debt; Payments Limited to Non-Tax Revenues. Notwithstanding anything to the contrary herein, the obligations of the City pursuant to this Agreement shall not be a general obligation debt or bonded indebtedness, or a pledge of the general credit or taxes levied by the City, and the Company shall have no right to have excises or taxes levied by the City, the State or any other political subdivision of the State for the performance of any obligations of the City herein. Consistent with Section 13 of Article VIII, Ohio Constitution, any payments or advances required to be made by the City pursuant to this

Section 2 shall be payable solely from the City's non-tax revenues. Further, since Ohio law limits the City to appropriating monies for such expenditures only on an annual basis, the obligation of the City to make payments pursuant to this Section 2 shall be subject to annual appropriations by the City Council and certification by the Director of Finance of the City as to the availability of such non-tax revenues. For purpose of this Agreement, "nontax revenues" shall mean, all moneys of the City which are not moneys raised by taxation, to the extent available for such purposes, including, but not limited to the following: (i) grants from the United States of America and the State; (ii) payments in lieu of taxes now or hereafter authorized to be used for the purposes by State statute; (iii) fines and forfeitures which are deposited in the City's General Fund; (iv) fees deposited in the City's General Fund from properly imposed licenses and permits; (v) investment earnings on the City's General Fund and which are credited to the City's General Fund; (vi) investment earnings of other funds of the City that are credited to the City's General Fund; (vii) proceeds from the sale of assets which are deposited in the City's General Fund; (viii) rental income which is deposited in the City's General Fund; and (ix) gifts and donations.

(e) Dublink Fiber Network. The City will continue to provide to the Company access to two (2) fiber strands in the City's Dublink fiber optic network, all in accordance with the Fiber Use Agreement which was executed by the Parties as of May 11, 2011. Renewal of this Indefeasible Right to Use (IRU) (Exhibit "B", attached) through December 31, 2019, will be executed between the City and the Company.

Section 3. Miscellaneous.

(a) Assignment. This Agreement may not be assigned without the prior written consent of all non-assigning Parties.

(b) Binding Effect. The provisions of this Agreement shall be binding upon the successors or assigns of the Parties.

(c) Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(d) Day for Performance. Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.

(e) Economic Development Assistance Certification. The Company has made no false statements to the City in the process of obtaining approval of the incentives described in this Agreement. If any representative of the Company has knowingly made a false statement to the City to obtain the incentives described in this Agreement, the Company shall be required to immediately return all benefits received under this Agreement pursuant Ohio Revised Code Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to Ohio Revised Code Section 9.66(C)(1). The Company acknowledges that any person who provides a false statement to secure economic development

assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months

(f) Entire Agreement. This Agreement (including all exhibits hereto which are hereby incorporated herein by reference) constitutes the entire Agreement between the Parties on the subject matter hereof and supersedes all prior negotiations, agreements and understandings, both written and oral, between the Parties with respect to such subject matter. This Agreement may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

(g) Events of Default and Remedies. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by any Party hereto, such defaulting Party shall, upon written notice from any non-defaulting Party, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the defaulting Party shall upon written notice from any non-defaulting Party commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the defaulting Party.

(h) Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(i) Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the City or the Company other than in his or her official capacity, and neither the members of the legislative body of the City nor any official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the City and the Company contained in this Agreement.

(j) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its principles of conflicts of laws. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Company, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

(k) Legal Authority. The Parties respectively represent and covenant that each is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. The Parties further respectively represent and covenant that this Agreement has, by proper action, been duly authorized, executed and delivered by the Parties and all steps necessary to be taken by the Parties have been taken to constitute this Agreement, and the covenants and agreements of the Parties contemplated herein, as a valid and binding obligation of the Parties, enforceable in accordance with its terms.

(l) Limit on Liability. Notwithstanding any clause or provision of this Agreement to the contrary, in no event shall City or the Company be liable to each other for punitive, special, consequential, or indirect damages of any type and regardless of whether such damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law.

(m) Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, notices shall be addressed to:

- (i) the City at: City of Dublin, Ohio
5800 Shier Rings Road
Dublin, Ohio 43016-7295
Attention: Economic Development Director
- (ii) the Company at: CareWorks Family of Companies
5555 Glendon Court
Dublin, Ohio 43016
Attention: Chief Financial Officer

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices; certificates, requests or other communications shall be sent.

(n) No Waiver. No right or remedy herein conferred upon or reserved to any Party is intended to be exclusive of any other right or remedy, and each and every right or remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of any event of default hereunder. The failure of any Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to the Parties hereto may be exercised from time to time and as often as may be deemed expedient by the parties hereto, as the case may be.

(o) Recitals. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

(p) Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

(q) Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

(remainder of page intentionally left blank – signature page follows)

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF DUBLIN, OHIO

By: _____

Printed: Marsha I. Grigsby

Title: City Manager

Approved as to Form:

By: _____

Printed: Stephen J. Smith

Title: Director of Law

CAREWORKS FAMILY OF COMPANIES

By: _____

Printed: _____

Title: _____

FISCAL OFFICER’S CERTIFICATE

The undersigned, Director of Finance of the City under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City under the foregoing Agreement during Fiscal Year 2013 have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2013

Angel L. Mumma
Director of Finance/Deputy City Manager
City of Dublin, Ohio

EXHIBIT A

List of Affiliated Entities

Name of Affiliated Entity

Employer ID Number

CareWorks Family of Companies

CareWorks Ltd.

CareWorks of Ohio Ltd.

CCI Investments Ltd. (dba CareWorks Consultants, Inc.)

CareWorks Technologies Ltd.

CareWorks USA Ltd.

VocWorks Ltd.

RiskControl 360 LLC

CITY OF DUBLIN, OHIO
INDEFEASABLE RIGHT-TO-USE AGREEMENT

THIS INDEFEASABLE RIGHT-TO-USE AGREEMENT is made and entered into as of the ____ day of _____, 2013, between the City of Dublin, Ohio, an Ohio municipal corporation (hereinafter referred to as the "Owner"), having an office at 5200 Emerald Parkway, Dublin, Ohio 43017-1006, and CareWorks Family of Companies, an Ohio company with an office located at 5555 Glendon Ct. # 300, Dublin, Ohio 43016 (hereinafter referred to as "User"), Owner and User referred to individually as "Party" and collectively as "Parties."

WITNESSETH:

WHEREAS, the Owner has an existing optical fiber system (hereinafter referred to as the "Fiber System" and further defined in Section 1.1(b)) throughout the City of Dublin, Ohio and the greater Columbus, Ohio metropolitan area;

WHEREAS, the Owner is willing to grant User an indefeasible right of use (hereinafter referred to as "IRU") in and to fibers within the Fiber System to allow User to provide telecommunications, video, data, and/or information services;

WHEREAS, Owner has previously granted User an IRU in and to fibers within the Fiber System by which User currently provides telecommunications, video, data, and/or information services that shall expire on October 21, 2014;

WHEREAS, the Parties desire to continue and extend the IRU for an additional period upon the October 21, 2014 expiration;

WHEREAS, User has obtained any and all permits or approvals required to engage in its intended purpose and for the use and occupancy of space in the rights of way and further agrees to adhere to any and all requirements of federal, state and local laws, rules or regulations (specifically inclusive of, but not limited to, Chapter 98 of the Codified Ordinances of the City of Dublin, Ohio);

WHEREAS, the Parties have agreed to enter into this Agreement which embodies the mutual covenants and agreements between the Parties hereto; and

WHEREAS, the Parties may in the future agree to enter into additional separate agreement(s) for additional and/or separate optical fiber uses which shall incorporate the covenants and agreements of this Agreement and which shall also set forth the terms and provisions unique to each additional or different specific project.

NOW, THEREFORE, pursuant to the terms of any right of way occupancy requirement and/or Construction Permit required by Chapter 98 of the Codified Ordinances of the City of Dublin, Ohio, for and in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties hereto do hereby agree as follows:

Exhibit B

1. DEFINITIONS.

1.1 The following terms, whether in the singular or in the plural, when used in this Agreement and initially capitalized, shall have the meanings specified:

- a. Agreement: This Indefeasible Right-to-Use Agreement between the Owner and User, which identifies the specific optical fiber strands and facilities to be provided to User by Owner, and which set forth the terms and conditions for User's use of such optical fiber strands and facilities.
- b. Fiber System: The optical fiber strands, innerduct, conduit, building entrance facilities, associated appurtenances, and capacity owned by the Owner and located throughout the rights of way of the City of Dublin, Ohio and the greater Columbus, Ohio metropolitan area (a map of the fiber route attached hereto as Exhibit "1").

2. GRANT.

2.1 The Owner hereby grants to User an IRU of the following Fiber System components. Owner warrants that it has all rights necessary to make such a grant to User.

- a. Two (2) strands of fiber optic cable in the Fiber System, along the route described in Exhibit 1.

3. TERM.

3.1 Unless changed in accordance with the terms of this Agreement, the term of this Agreement shall be coterminous with User's land lease of the property located at 5500 and 5555 Glendon Ct., Dublin, Ohio 43016, without any amendment to the term of that lease (hereinafter referred to as the "Term"). Thus, the Term shall commence on October 21, 2014 (hereinafter referred to as the "Commencement Date"), and shall expire on December 31, 2019 (hereinafter referred to as the "Expiration Date").

4. CONSIDERATION.

4.1 As consideration for, as inducement to, and as a required condition of Owner granting User the specific rights to use portions of the Fiber System (hereinafter referred to as the "User System") as described herein, the User hereby agrees that any failure of User to satisfy the terms and conditions of this Agreement shall be considered a material breach of this Agreement and Owner may then terminate this Agreement upon giving sixty (60) days written notice to User.

5. OWNERS OBLIGATIONS.

5.1 Owner shall:

- a. Grant the User an IRU in accordance with the terms of this Agreement.

Exhibit B

- b. Provide and/or control maintenance and repair functions on the User System and all facilities in the Fiber System through which the User System passes, including, but not limited to, conduit, innerduct, poles and equipment, shall be performed under the direction of the Owner.

6. USER OBLIGATIONS.

6.1 User shall:

- a. Provide and pay for lateral connectivity from necessary termination points of User's proprietary fiber and equipment to the necessary demarcation points of the Fiber System.
- b. Pay for any building or external network service connection and disconnection charges for each building service added or deleted before, during or after the initial establishment and cutover of a User System fiber segment. User shall be responsible for any and all costs associated with lateral connectivity to the Fiber System and shall pay for the costs of all splicing, distribution segment, service connections, head end equipment, and any ring or concentrator operations.
- c. If performing any splicing in the User System, utilize the services of Columbus Fibernet, LLC (Fishel) to perform the splicing.
- d. Pay all necessary costs if the User requires installation of a new distribution ring or concentrator in an already established Fiber System or User System distribution segment, rearrangement of existing service connections, and rearrangement of a ring or concentrator operation. Owner's management agent's current charges and application rules are identified in Exhibit 3 attached hereto.
- e. Not use the User System provided in this Agreement to provide services to other carriers or service providers without the prior written consent of the Owner. User also agrees that it shall not sublease or subdivide the User System. User further agrees to continually meet the requirements of this Agreement. In the event of any breach of the provisions contained in this Section, the Owner has the right to terminate this Agreement upon giving thirty (30) days written notice to User.
- f. Pay any and all maintenance costs as may be required to be paid by User pursuant to the requirements of Section 8.1(a-c) below.
- g. Pay any costs associated with disconnecting from the Fiber System, and shall ensure that the User System, including the strands of fiber and any associated appurtenances, are left in the condition that existed prior to the User connecting to the Fiber System. User agrees that should the Owner determine, in the Owner's sole discretion, that upon disconnection User has not left the User System in the condition that existed prior to the User connecting to the Fiber System, the Owner shall restore and repair the User System at the sole cost and expense of User.

Exhibit B

7. JOINT OBLIGATIONS.

7.1 The Owner and User jointly:

- a. Agree that within sixty (60) days of final execution of this Agreement the Parties shall agree upon an acceptance plan for User's initial activation and the "go-live" of User's System.
- b. Shall provide each other a twenty-four (24) hour a day, three hundred sixty-five (365) days per year, coordination telephone number.

8. MAINTENANCE.

8.1 All maintenance and repair functions on the User System and all facilities through which the User System passes, including, but not limited to, conduit, innerduct, poles, and equipment, but specifically excluding all User owned and controlled opto-electronics, shall be performed by or at the direction of the Owner or Owner's appointed agent with reasonable notice to User. Except as otherwise may be agreed to by the parties, User is prohibited from performing any maintenance or repair on the Fiber System or User System. User shall have the right to have an employee or representative available to assist the Owner in any maintenance or repair of the User System. The Owner shall maintain the User System in accordance with the technical specifications (hereinafter referred to as the "Specifications") attached hereto in Exhibit "B".

- a. **Regular Maintenance:** Owner may from time to time undertake and provide for regular maintenance activities ("Regular Maintenance") in an attempt to keep the Fiber System and/or User System in good working order and repair so that it performs to a standard equal to that which is then commonly believed to be acceptable for systems of similar construction, location, use and type. Such Regular Maintenance shall be performed at the Owner's sole cost, and expense.
- b. **Scheduled Maintenance:** The Owner from time to time may schedule and perform specific periodic maintenance to protect the integrity of the Fiber System and/or User System and perform changes or modifications to the Fiber System and/or User System (including but not limited to fiber slicing, etc.) at the User's request ("Scheduled Maintenance"). Such User requested Scheduled Maintenance shall be performed at the User's sole cost and expense. User may request such Scheduled Maintenance by delivering to the Owner a Statement of Work detailing the service User desires to be performed, including the time schedule for such services. Upon receipt of such a Statement of Work, the Owner shall provide an estimate of the price and timing of such Scheduled Maintenance. Following User's acceptance of such estimate, the Owner will schedule and have such Scheduled Maintenance performed. The Owner shall have such Scheduled Maintenance performed on a time-and-materials basis at the standard rates in then effect at the time services are performed. Rates in effect shall be those identified in Exhibit "C", attached hereto, with the understanding that such rates are subject to change at any time.

Exhibit B

- c. **Emergency Maintenance:** The Owner may undertake and provide for emergency maintenance and repair activities for the Fiber System and/or User System ("Emergency Maintenance"). Where necessary, the Owner shall attempt to respond to any failure, interruption or impairment in the operation of the User System within twenty-four (24) hours after receiving a report of any such failure, interruption or impairment. The Owner shall use its best efforts to perform maintenance and repair to correct any failure, interruption or impairment in the operation of the User System when reported by User in accordance with the procedures set forth in this Agreement. User shall be responsible for the costs and expenses associated with such Emergency Maintenance as it relates to User's actual use of the User System and/or Fiber System requiring such Emergency Maintenance. The Owner shall have such Emergency Maintenance performed on a time-and-materials basis at the emergency maintenance rates then in effect at the time services are performed

8.2 In the event the Owner, or others acting in the Owner's behalf, at any time during the Term of this Agreement, discontinues maintenance and/or repair of the User Systems, User, or any party acting in User's behalf, shall have the right, but not the obligation, to thereafter provide for any maintenance and repair of the User System, at the User's sole cost and expense. Any such discontinuance by the Owner shall be upon not less than six (6) months prior written notice to User. In the event of such discontinuance, the Owner shall obtain for User, approval for adequate access to the rights of way in, on, across, along or through which the User System is located, for the purpose of permitting User (or others acting in User's behalf) to undertake such maintenance and repair of the User System. As an alternate remedy, User may elect to terminate this Agreement.

8.3 In the event any failure, interruption or impairment adversely affects both the Owner's Fiber System and the User System, restoration of the User System shall at all times be subordinate to restoration of the Owner's Fiber System with special priority for Owner's public safety and municipal infrastructure functions carried over the Fiber System, unless otherwise agreed to in advance by the parties hereto. In such event or in the event the Owner is unable to provide timely repair service to the User System, the Owner may, following written request, permit User to make repairs to restore the User System as long as such restoration efforts do not interfere with the Owner's restoration activities.

8.4 Any User subcontractors or employees who undertake repair or maintenance work on the User System shall first be approved by the Owner to work on the Owner's Fiber System. Prior to User's undertaking Emergency Maintenance or entering an Owner's facility for repair, User shall first notify the Owner of the contemplated action and receive the Owner's concurrence decision, a decision that the Owner shall provide to User no later than twelve (12) hours from User's notification to Owner of contemplated action. When User undertakes Emergency Maintenance of the User System, User shall have an Owner employee or representative available to assist the User in any repair of the User System.

Exhibit B

9. USE OF THE USER SYSTEM.

9.1 User shall have exclusive control over its provision of telecommunications, video, data, and/or information services.

9.2 User hereby certifies that it is authorized or shall be authorized, where required, on the effective date of this Agreement, to provide telecommunications, video, data, and/or information services within the State of Ohio, the City of Dublin, Ohio and in such other jurisdictions as the User System may exist, and that such services can be provided on the Fiber optic cable systems such as the Fiber System owned and operated by the Owner.

9.3 User understands and acknowledges that its use of the Fiber System and User System are subject to all applicable local, state and federal laws, rules and regulations, as enacted, either currently or in the future, in the jurisdictions in which the Fiber System and User System are located. User represents and warrants that it shall operate on the Fiber System and User System subject to, and in accordance with, all laws, rules and regulations and shall secure all permits, approvals, and authorizations from all such jurisdictional entities as may be necessary.

10. INDEMNIFICATION.

10.1 The User undertakes and agrees to protect, indemnify, defend, and hold harmless the Owner and all of its elected officials, officers and employees, agents and volunteers from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines, penalties, costs, attorneys fees and costs, expenses or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including User's employees and agents, or damage or destruction to any property of either party hereto, or third persons in any manner arising by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement, or use of the Fiber System on the part of the User, or the User's officers, agents, employees, or subcontractors, except for the active negligence or willful misconduct of the Owner, and its elected officials, officers, employees, agents and volunteers. User's indemnity requirements for its conduct herein shall also specifically include all claims of intellectual property, copyright or trademark infringement, or any other breach of this Agreement made by third parties against Owner.

11. INSURANCE.

11.1 During the Term of this Agreement, unless otherwise agreed to in writing by the authorized representatives, User shall at its own expense, maintain in effect, insurance coverage with limits not less than those set forth herein.

11.2 The User shall furnish the Owner's authorized representative within thirty (30) days after the Commencement Date of the Agreement with insurance endorsements acceptable to Owner's Director of Law. The endorsements shall be evidence that the policies providing coverage and limits of insurance are in full force and effect. Such insurance shall be maintained by the User at the User's sole cost and expense.

Exhibit B

11.3 The User endorsements shall name the Owner and all of its elected officials, officers and employees, agents and volunteers as additional insureds. The endorsements shall also contain a provision that the policy cannot be canceled or reduced in coverage or amount without first giving thirty (30) calendar days written notice thereof by registered mail to the Owner at the following address:

City of Dublin
Law Director
Ice Miller LLP
250 West Street
Columbus, Ohio 43215

11.4 Such insurance shall not limit or qualify the obligations the User assumed under the Agreement. The Owner shall not by reason of its inclusion under these policies incur liability to the insurance carrier for payment of the premium for these policies.

11.5 Any insurance or other liability protection carried or possessed by the Owner, which may be applicable, shall be deemed to be excess insurance and the User's insurance is primary for all purposes despite any conflicting provision in the User's policies to the contrary.

11.6 User shall be responsible for all User contractors' or subcontractors' compliance with the insurance requirements.

11.7 Failure of the User to maintain such insurance, or to provide such endorsements to the Owner when due, shall be an event of default under the provisions of this Agreement.

11.8 The User shall obtain and maintain Commercial General Liability Insurance, including the following coverages: Product liability hazard of User's premises/operations (including explosion, collapse and underground coverages); independent contractors; products and completed operations (extending for one (1) year after the termination of this Agreement); blanket contractual liability (covering the liability assumed in this Agreement); personal injury (including death); and broad form property damage. Such coverage shall provide coverage for total limits actually arranged by the User but not less than Two Million Dollars and No Cents (US\$2,000,000.00) combined single limit. Should the policy have an aggregate limit, such aggregate limits should not be less than double the combined single limit and be specific for this Agreement. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be in a form acceptable to the Owner's Director of Law.

11.9 The User shall provide Workers' Compensation insurance covering all of the User's employees in accordance with the laws of the state of Ohio.

11.10 The User may use an Umbrella or Excess Liability coverage to net coverage limits specified in the Agreement. Evidence of Excess Liability shall be in a form acceptable to Owners Director of Law.

Exhibit B

11.11 The foregoing insurance requirements are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the User under this Agreement.

12. DEFAULT.

12.1 Unless otherwise specified in this Agreement, User shall not be in default under this Agreement, or in breach of any provision hereof unless and until the Owner shall have given User written notice of a breach and User shall have failed to cure the same within thirty (30) days after receipt of a notice; provided, however, that where such breach cannot reasonably be cured within such thirty (30) day period, if User shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such breach shall be extended for a reasonable period of time to complete such curing. Upon the failure by User to timely cure any such breach after notice thereof from the Owner, the Owner shall have the right to take such action as it may determine, in its sole discretion, to be necessary to cure the breach or terminate this Agreement or pursue such other remedies as may be provided at law or in equity.

12.2 Unless otherwise specified in this Agreement, the Owner shall not be in default under this Agreement or in breach of any provision hereof unless and until User shall have given the Owner written notice of such breach and the Owner shall have failed to cure the same within thirty (30) days after receipt of such notice; provided, however, that where such breach cannot be reasonably be cured within such thirty (30) day period, if the Owner shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such breach shall be extended for a reasonable period of time to complete such curing. Upon the failure by the Owner to timely cure any such breach after notice thereof from User, User shall have the right to take such action as it may determine, in its sole discretion, to be necessary to cure the breach or terminate this Agreement or pursue other remedies as may be provided at law or in equity.

12.3 If User should file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law, or should be adjudicated bankrupt or insolvent, or should make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if any involuntary petition proposing the adjudication of User, as a bankrupt or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law should be filed in any court and such petition shall not be discharged or denied within ninety (90) days after the filing thereof, or if a receiver, trustee or liquidator of all or substantially all of the assets of User shall be appointed then the Owner may, at its sole option, immediately terminate this Agreement.

13. FORCE MAJEURE.

13.1 Neither Party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control (except for the fulfillment of payment obligations as set forth herein), including, but not limited to: acts of God, fire, flood, earthquake or other catastrophes; adverse weather conditions; material or facility

Exhibit B

shortages or unavailability not resulting from such Party's failure to timely place orders therefor; lack of transportation; national emergencies; insurrections; riots, wars; or strikes, lockouts, work stoppages or other labor difficulties (collectively, "Force Majeure Events").

14. ASSIGNMENT.

14.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors or assigns. User shall not assign, sublease, or license (hereinafter collectively referred to as a "Transfer") any rights or obligations hereunder without the prior written consent of the Owner.

15. WAIVER OF TERMS OR CONSENT TO BREACH.

15.1 No term or provision of this Agreement shall be waived and no breach excused, unless such waiver or consent shall be in writing and signed by a duly authorized officer of the Party claimed to have waived or consented to such breach. Any consent by either Party to, or waiver of, a breach by the other Party shall not constitute a waiver of or consent to any subsequent or different breach of this Agreement by the other Party, such failure to enforce shall not be considered a consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

16. RELATIONSHIP NOT A PARTNERSHIP OR AN AGENCY.

16.1 The relationship between User and the Owner shall not be that of partners or agents for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or agency agreement between the Parties hereto.

17. NO THIRD-PARTY BENEFICIARIES.

17.1 This Agreement shall be for the sole benefit of the Parties hereto and their respective permitted successors and assigns, and except for the requirements of Section 10.2 herein, shall not be construed as granting rights to any person or entity other than the Parties or imposing on either Party obligations to any person or entity other than a Party.

18. EFFECT OF SECTION HEADINGS.

18.1 Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

19. NOTICES.

19.1 Any written notice under this Agreement shall be deemed properly given if sent by registered or certified mail, postage prepaid, or by nationally recognized overnight delivery service or by facsimile to the address specified below, unless otherwise provided for in this Agreement:

Exhibit B

If to User to:

If to Owner to:

City Manager
City of Dublin, Ohio
5200 Emerald Parkway
Dublin, OH 43017-1006

With a Copy to:

Mr. Gregory Dunn
Ice Miller LLP
250 West Street
Columbus, Ohio 43215

19.2 Either Party may, by written notice to the other Party, change the name or address of the person to receive notices pursuant to this Agreement.

20. SEVERABILITY.

20.1 In the event any term, covenant or condition of this Agreement, or the application of such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms, covenants and conditions of this Agreement.

21. COMPLIANCE WITH LAW.

21.1 Each Party hereto agrees that it shall perform its respective rights and obligations hereunder in accordance with all applicable laws, rules and regulations.

22. GOVERNING LAW AND VENUE.

22.1 This Agreement shall be interpreted in accordance with the Charter and Codified Ordinances of the City of Dublin, as amended, the laws of the State of Ohio, and all applicable federal laws, rules and regulations as if this Agreement were executed and performed wholly within the State of Ohio. No conflict of law provisions shall be invoked so as to use the laws of any other jurisdiction. The exclusive venue for all cases or disputes related to or arising out of this Agreement shall be the state and federal courts in Franklin County, Ohio

23. ENTIRE AGREEMENT.

23.1 This Agreement, including any Exhibit attached hereto, all constitute the entire agreement between the parties with respect to the subject matter. This Agreement cannot be modified except in writing signed by both parties.

Exhibit B

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement effective the day and year first above written:

USER:

CareWorks Family of Companies

By: _____

Its: _____

OWNER:

City of Dublin, Ohio, an Ohio municipal corporation.

By: Marsha I. Grigsby

Its: City Manager

Approved As To Form:

Steve J. Smith
Law Director, City of Dublin, Ohio

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Exhibit B

Exhibit 1

DubLink Fiber Route

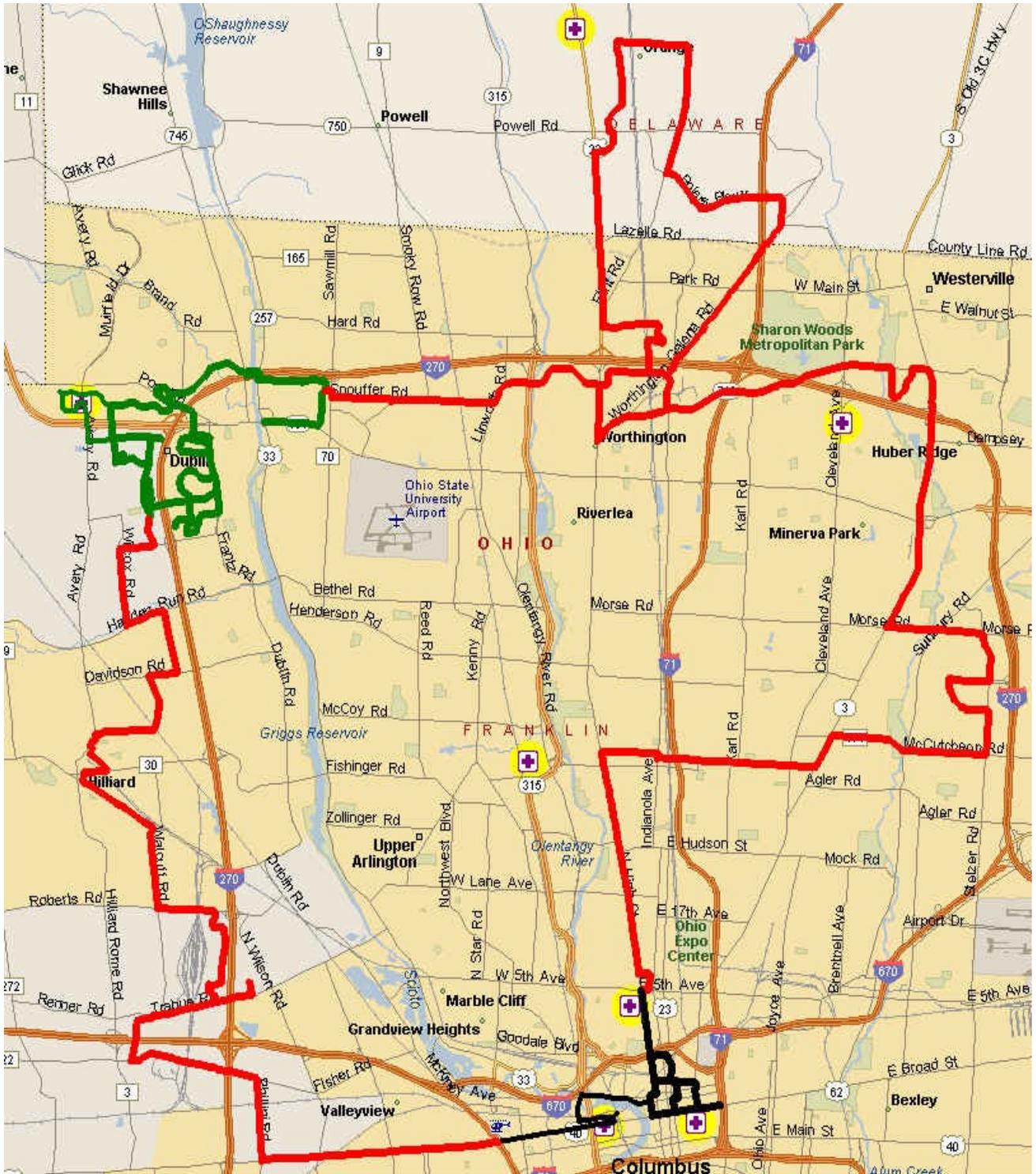


Exhibit 2

FIBER SYSTEM SPECIFICATIONS

I. General

The Owner shall install and maintain the User System within the Owner's Fiber System in accordance with the criteria and specifications that follows:

II. Design Criteria

The Owner shall endeavor to keep the number of splices in a span to a minimum.

III. Optical Fiber Specifications

The Owner shall meet the optical specifications as detailed below for the cable installed:

A. Single Mode Fiber

<u>Parameter</u>	<u>Specifications</u>	<u>Units</u>
Maximum attenuation, 1310/1550	.35/.25	dB/Km
Cladding diameter	125.0	um
Cutoff wavelength	1150-1330	nm
Zero dispersion wavelength	1300-1320	nm
Maximum dispersion (2.6 – 6.0)	.05	ps/ (nm-km)

Exhibit 3

MAINTENANCE AND REPAIR

Charges for Time and Material Service

The Owner or Owner's agent may perform maintenance service at the rates established below, which rates are subject to change. Unless specifically authorized by the User, no Scheduled Maintenance shall be performed outside of normal working hours, detailed below:

Normal Working Hours:

8:00 a.m. to 5:00 p.m.,
Monday through Friday
(Except Owner observed holiday).

Overtime Hours:

5:01 p.m. to 7:59 a.m., Saturday, Sunday,
and all Owner observed holidays.

Expenses Incurred per call out:

Labor Rates	Hourly Rate	Overtime Rate
Project Manager	75.00	112.50
Professional Engineer	65.00	97.50
Right of Way Agent	48.50	72.75
Supervisor	47.70	71.55
Foreman	36.90	55.35
Operator	31.50	47.25
Truck Driver	26.00	39.00
Laborer	21.70	32.55
Fiber Splicer	42.00	63.00
Equipment Rates	Hourly Rate	
Pickup	16.00	
1-ton/flat bed	17.60	
2-ton dump	24.00	
Trailer	16.50	
Rubber tired backhoe	36.20	
Rodding machine	21.75	
Winch truck	21.75	
Air compressor	16.00	
Light plant	17.45	
Arrow board	9.00	
2" water pump	10.00	
Generator	14.50	
Cable cart	7.00	
Manhole package	14.50	
Fusion splicing package	30.00	