



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:** Members of Dublin City Council  
**From:** Marsha I. Grigsby, City Manager *MIG*  
**Date:** March 8, 2013  
**Initiated By:** Dana L. McDaniel, Deputy City Manager/Director of Economic Development  
Bob Schaber, Network Operations Manager  
**Re:** Resolution 10 -13 – Broadband Services Agreement

## Background

Resolution No. 10 -13 authorizes the City Manager to enter into a Broadband Services Agreement with Metro Data Center, LLC for the purpose of leasing excess capacity broadband services. This excess capacity will be leased to Metro Data Center, LLC for \$1,750 per month.

Council may recall that the City relocated its computer servers and established a new point of presence for its fiber optics system at Metro Data Center, located at 565 Metro Place South. As a result of this relocation, the City of Dublin's fiber optic system is now interconnected to multiple data centers. This interconnection has positioned the City to bulk purchase, in large quantities and increments, broadband services capacity at extremely low cost compared to previous purchases.

Every three years, the City makes a significant increase in broadband services purchasing due to the changing requirements of its own hosted solutions and the bandwidth heavy applications the City deploys on an ongoing basis. Due to a combination of having to purchase in incremental allotments and the need to carry some additional capacity, the City has extra capacity that it will not be using in the immediate future. Since Metro Data Center, LLC houses the City's servers and needs additional broadband, they are willing to lease a portion of the City's extra capacity. It is not feasible, at this time, for the City to lease the same broadband to others, as it can only be delivered within the Metro Data Center's facility.

## Recommendation

Staff recommends approval of Resolution No. 10 -13. Leasing excess capacity bandwidth while not in use by the City will lower the City's cost of its broadband services even further. The concept of this lease is similar to the City leasing its excess capacity dark fiber. The City reserves the right to terminate the lease of this excess capacity when the City needs it for its own use. Please address any questions to Dana McDaniel or Bob Schaber.

# RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc., Form No. 30045

**10-13**

Resolution No. \_\_\_\_\_

Passed \_\_\_\_\_, 20\_\_\_\_

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO  
ENTER INTO A BROADBAND SERVICES AGREEMENT  
WITH METRO DATA CENTER, LLC.**

**WHEREAS**, the City of Dublin has adopted certain telecommunication-related goals, including compliance with the Telecommunications Act of 1996, facilitating the rapid deployment of bandwidth and associated services/technologies and enhancing economic development; and

**WHEREAS**, the City of Dublin has determined that available bandwidth is a critical infrastructure necessary to meet these goals; and

**WHEREAS**, the City of Dublin owns and manages its own underground optical fiber system, which enables the City to bulk purchase certain broadband services and backhaul them over its own fiber optics to its designated points of presence; and

**WHEREAS**, the City of Dublin bulk purchased certain incremental quantities of broadband service for its own use; and

**WHEREAS**, the City of Dublin possesses excess capacity broadband services only within the Metro Data Center; and

**WHEREAS**, the City of Dublin desires to make certain of its own excess broadband service available for leasing; and

**WHEREAS**, leasing excess capacity broadband service to Metro Data Center, LLC will result in creating non-tax revenues for the City of Dublin and further minimize the City's overall cost for broadband services; and

**WHEREAS**, the City of Dublin desires to lease a portion of its excess capacity of broadband services to Metro Data Center, LLC., in accordance with the terms and conditions set forth in a Broadband Services Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Dublin, State of Ohio, \_\_\_\_\_ of the elected members concurring:

**Section 1.** That the City Manager is hereby authorized to lease said excess capacity broadband services in accordance with the covenants and agreements set forth in the Broadband Services Agreement.

**Section 2.** That this Resolution shall take effect and be in force on the earliest date permitted by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
Mayor - Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of Council

## **BROADBAND SERVICES AGREEMENT**

This Broadband Agreement ("Agreement") is made and entered into and effective on this \_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date") by and between the City of Dublin, Ohio ("Dublin"), an Ohio Municipal Corporation, with offices located at 5200 Emerald Parkway, Dublin, Ohio 43017 and Metro Data Center, LLC ("Metro Data Center"), a limited liability company, with an office and principal place of business located at 565 Metro Place South, Suite 300, Dublin, Ohio 43017.

### **Recitals**

WHEREAS, Dublin owns and operates a fiber optic network; and

WHEREAS, Metro Data Center desires to purchase broadband service from Dublin; and

WHEREAS, Dublin desires to provide broadband service to Metro Data Center ("Services"), in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, the parties, intending to be legally bound, agree as follows:

### **Provisions**

**I. Performance of the Services.** Dublin shall:

- A. Provide Metro Data Center with Services at a maximum of 500 megabits per second. The Services shall be provided at the following Metro Data Center site: 565 Metro Place South, Suite 300, Dublin, Ohio.
- B. Give prompt notice to Metro Data Center should Dublin observe or otherwise become aware of any nonconformance with the Agreement.
- C. If requested, perform Information Technology Services "IT Services" pursuant to the attached Exhibit A.

**II. Obligations of Metro Data Center.** Metro Data Center shall:

- A. Assist Dublin by placing at its disposal all available information pertinent to the provision of the Services.
- B. Use its best efforts to secure release of other data applicable to the project held by others.
- D. Make all necessary provisions to enter upon public and private property as required to perform the Services.
- E. Comply with all applicable laws and regulations, including the terms of this Agreement, in the use of the Services.

- F. Be responsible for all use (whether or not authorized) of the Service, which use shall be deemed Metro Data Center's use for purposes of this Agreement.
- G. Be responsible for all content that is stored or transmitted via the Service.
- H. Give prompt notice to Dublin should Metro Data Center observe or otherwise become aware of any fault or deficiency in the Services or any nonconformance with the Agreement.

**III. Term, Termination and Force Majeure.** The Agreement shall commence on the \_\_\_ day of \_\_\_\_\_, 20\_\_ and shall terminate on the \_\_\_ day of \_\_\_\_\_, 20\_\_.

Either party may terminate this Agreement at any time by giving \_\_\_\_ (\_\_\_\_) days advance written notice to the other party.

In the event that Metro Data Center terminates this Agreement early for any reason other than a material breach by Dublin, Metro Data Center shall promptly pay Dublin a termination fee equal to the fees that would have been due for the remainder of the term. The foregoing shall be in addition to any other rights and remedies that Dublin may have under this Agreement at law or equity.

Dublin, at its sole discretion may immediately terminate this Agreement and/or suspend the Services, without advance notice to Metro Data Center, for any violation of the Acceptable Use Policy.

Except for the obligation to make payments hereunder, either party shall be relieved of its obligations under this Agreement to the extent that its performance is delayed or prevented by a Force Majeure event. Upon the occurrence of a Force Majeure event, the party whose performance is affected shall give written notice to the other party describing the affected performance. The parties shall confer within two (2) business days, in good faith, to agree upon equitable, reasonable action to minimize the impact on both parties, including without limitation implementing disaster recovery services. The party whose performance is affected shall use best efforts to minimize the delay caused by the Force Majeure event and to re-commence its performance as if no Force Majeure event had occurred.

**IV. Payment.**

Dublin will invoice and Metro Data Center will pay Dublin One Thousand Seven Hundred Fifty Dollars (\$1,750) per month for the Services.

Metro Data Center agrees to pay each invoice within thirty (30) days following receipt from Dublin.

## V. **Monitoring.**

Dublin shall have the right, but not the obligation, to monitor traffic and content on its broadband network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters). Dublin shall the right, but not the obligation, to upgrade, modify, and enhance the Services and take any action that Dublin deems appropriate to protect the Services and its facilities.

## VI. **Acceptable Use Policy.**

The Services may only be used for lawful and appropriate purposes. Metro Data Center and its users may not transmit, retransmit, redirect, or store material in violation of federal or state laws or regulations or industry or community standards, including, but not limited to, obscenity, indecency, defamatory or material infringing trademarks or copyrights. Metro Data Center may not abuse or fraudulently use the Services, nor allow such use by others. The foregoing paragraph is inapplicable to law enforcement officials performed authorized law enforcement activity. The following illustrate some, but not all, uses that are prohibited under this Acceptable Use Policy:

1. **Child Pornography:** It is illegal under federal and state child exploitation statutes to possess, produce, receive, transport or distribute by any means, including computer, visual depictions of “sexual intercourse” and/or “sexually explicit conduct” involving persons under the age of 18.
2. **Inappropriate Content:** Using the Services to transmit distribute, redirect, or store material that, as reasonably determined by Dublin, is inappropriate, obscene, defamatory, libelous, threatening, abusive, hateful or which contains or incites violence.
3. **Denial of Services:** Engaging in activity that may or will interfere with the service of another user, host or network on the internet. Metro Data Center is also prohibited from activity considered a precursor to attempted security violations including, but not limited to, any form of scanning, probing, or other testing or information gathering activity, without prior express written consent from Dublin.
4. **Distribution of Viruses:** Distribution of software, programs or messages that may cause damage or annoyance to persons, data, and/or computer systems. Hosts not timely secured or removed by Metro Data Center may be blocked by Dublin from accessing the network.
5. **Forging Headers:** Forging or misrepresenting a message header of an electronic transmission originating or passing through Dublin’s Network.
6. **E-mail Spamming [or Mail-bombing]:** The transmitting of unsolicited e-mail to multiple recipients, sending large amounts of e-mail repeatedly that annoys, harasses or threatens another person or entity, or attempts to use Dublin servers as a mail drop or name server for SPAM. Sending unsolicited bulk e-mail from another internet service provider’s network advertising or implicating any service hosted or provided by Dublin.

7. **Fraudulent Activities:** Fraudulent activities include, but are not limited to, intentional misrepresentations or misleading statements, writings or activities made with the intent that the person receiving it will act upon it; obtaining Services with the intent to avoid payment; and hosting of phishing websites.
8. **Unauthorized Access:** Unauthorized access includes, but is not limited to, the illegal or unauthorized access to the other computers, accounts, or networks; accessing or attempting to access computer resources belonging to another party; attempting to penetrate security measures of other systems; using Dublin services or equipment not included in Metro Data Center's contract; devising way to circumvent security in order to access unsubscribed services; using the Services in a manner that encumbers disk space, processors or other system resources beyond amounts allowed by the specific type of Services; and/or interfering with the Services, overloading the Services or attempting to disable a host not assigned to Metro Data Center.
9. **Network Sabotage:** Use of Dublin Services in a manner that interferes with others' use of the internet or Dublin's Network.
10. **Pyramid Schemes:** Use of a fraudulent system of achieving financial gain, which requires an endless stream of recruits for success.
11. **Unlawful Acts:** Use of Dublin Services to violate the law or to aid any unlawful act.
12. **Non-e-mail Based Spamming:** Posting of messages to newsgroups/blogs/services that are irrelevant, blanket posting of messages to multiple newsgroups/blogs/services, and the posting of annoying, harassing and/or threatening messages. Violation of any rules, policies or charters posted online by any search engine, subscription web service, chat area, bulletin board, webpage, or any other service accessed via the Dublin Network is prohibited.
13. **Facilitating a Violation of this Acceptable Use Policy:** Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to allow a user to violate this Acceptable Use Policy. This includes, but is not limited to, the facilitation of the means to spam, initiation of pinging, flooding, mail bombing, denial of service attacks, and piracy of software.
14. **Blacklisting:** Behavior by Metro Data Center that causes or could cause blacklisting must be remedied within 48 hours of written, electronic or telephonic notice from Dublin. Activities that result in re-listing are prohibited and must stopped immediately. Known spammers, previously unidentified, will be removed from the network once identified.

**Violations and Enforcement.** At Dublin's sole and reasonable discretion, violations of any element of this Acceptable Use Policy may result in a warning to the offender followed by suspension or termination of the Services if Metro Data Center does not cease the violation. Dublin may immediately suspend or terminate Services with or without notice if Dublin reasonably determines that a violation of the Acceptable Use Policy has occurred. Dublin will enforce this Acceptable Use Policy according to the severity of the offense and violator's history of prior Acceptable Use Policy infringements. Severe and/or repeated offenses will result in immediate termination of Services. Dublin is not liable for damages of any nature suffered by Metro Data Center, end-user, or any Third-Party resulting in whole or in part from Dublin

exercising its rights under this Acceptable Use Policy. Dublin has no practical ability to monitor all conduct, communications, or content that might violate this Acceptable Use Policy prior to its transmission over the Dublin Network but, where possible and necessary, may do so at its discretion,. Therefore, Dublin does not assume liability for others; violations of the Acceptable Use Policy or failures to terminate those violations. Dublin reserves the right to assess time and materials charges to resolve Metro Data Center issues that are not resolved by Metro Data Center in a timely manner.

Because Dublin acts only as a conduit for transmission of data it is not subject to the Health Insurance Portability and Accountability Act (as per FR 82476), or Gramm-Leach-Bliley Act (as per 16 C.F.R. §314.2(d)); Metro Data Center is solely responsible for complying with such statutes, rules and regulations.

Dublin reserves the right to modify this Acceptable Use Policy at any time without prior notification to Metro Data Center. However, such amendment shall not restrict or negatively affect any law enforcement officer engaging in authorized law enforcement research or activities.

TO REPORT A VIOLATION OF THIS ACCEPTABLE USE POLICY OR AN ABUSE OF DUBLIN'S SERVICES, PLEASE E-MAIL: \_\_\_\_\_.

#### **VII. Warranty and Warranty Disclaimers.**

Dublin warrants that the Services will be performed in a good and workmanlike manner, in accordance with accepted industry standards.

**THE SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE NOT COVERED BY ANY OTHER WARRANTIES OF ANY KIND; AND DUBLIN DISCLAIMS ANY WARRANTIES NOT EXPRESSLY STATED HEREIN, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, NONINFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY FOR A PARTICULAR PURPOSE, OR ARISING OUT OF A COURSE OF DEALING, USAGE OR TRADE PRACTICE. NO ADVICE OR INFORMATION GIVEN BY DUBLIN, ITS OFFICIALS, ITS CONSULTANTS, OR ITS EMPLOYEES SHALL CREATE ANY WARRANTY.**

**METRO DATA CENTER ASSUMES ALL RISK AND RESPONSIBILITY FOR USE OF THE SERVICES. DUBLIN HAS NO CONTROL OVER CONTENT APPLICABLE OR ACTIONS OCCURRING THROUGH ANY SERVICES; AND DUBLIN DISCLAIMS ALL RESPONSIBILITY FOR SUCH CONTENT AND ACTIONS. DUBLIN DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, SECURE OR MEET METRO DATA CENTER'S REQUIREMENTS.**

#### **VIII. Limitations of Liability.**

**DUBLIN SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT,**

**REGARDLESS OF WHETHER OR NOT DUBLIN HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF DUBLIN FOR ANY AND ALL REASONS AND FOR ALL CAUSES OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO THE LESSER OF: (1) THE FEES PAID TO DUBLIN UNDER THIS AGREEMENT IN THE TWO (2) MONTHS PRECEDING THE DATE THAT THE CLAIM OR CAUSE OF ACTION AROSE; OR (2) DUBLIN'S LIMITS OF LIABILITY INSURANCE.**

**IX. Insurance.**

Metro Data Center, at its own expense, shall secure and maintain throughout the term of this Agreement general liability insurance, with competent, qualified, and licensed issuing insurance companies, with minimum limits of not less than \$1,000,000 US per occurrence for personal injuries, wrongful death, survival, loss of consortium, and/or loss of damage to property. Such insurance may be provided in primary and excess, including umbrella or catastrophe, policy forms. Metro Data Center shall also carry such insurance as will protect it from all claims under any applicable Workers Compensation laws. Upon request, Metro Data Center shall provide Dublin with evidence of the necessary insurance policies required under this section.

**X. Indemnification.** Metro Data Center hereby agrees to indemnify, defend and hold harmless Dublin, its officers, officials, employees or any combination thereof, from and against any and all actions, causes of action, claims, demands, liabilities, losses, judgments, damages, fines, penalties or expenses and charges of any kind or nature (a "Claim") including, without limitation, any interest, reasonable attorneys' fees and other costs, expenses and charges which Dublin may at any time incur, sustain, or become subject to by reason of any Claim or Claims arising, directly or indirectly, from or in connection with this Agreement.

This Section shall survive the termination of this Agreement.

**XI. Non-Disclosure and Confidentiality.**

Each party acknowledges that it and its employees or agents may, in the course of this Agreement, be exposed to acquire Confidential Information belonging to relating to the other party. For purposes of this Agreement, confidential information is defined as: information (whether oral, electronic or written, including all media on which such information is contained), whether or not created by the party disclosing the information (the "Owner"), which information is used in the Owner's business and: (a) is proprietary to, about, or created by the Owner; (b) gives the Owner some competitive business advantage or the opportunity of obtaining such advantage; or (c) is designated as Confidential Information by the Owner; or from the circumstances surrounding disclosure, it should reasonably be assumed by the party receiving such information (the "Recipient") that the disclosed information is the Owner's Confidential Information.

- a. Such Confidential Information includes, but is not limited to, the following types of information and any other information of a similar nature (regardless of whether or not reduced to writing or designated as confidential): (a) trade secrets, drawings, works of authorship, formulae, inventions, know-how, techniques, design details and specifications,

software programs and software source documents, information relating to proprietary rights prior to any public disclosure thereof; information regarding acquiring, protecting, enforcing and licensing proprietary rights (including without limitation patents, copyrights, trade names and trade secrets); (b) information regarding research, development, service offerings and products, marketing and selling plans, business plans, budgets, business methodologies, metrics, services and operational manuals, checklists, forms, scorecards, unpublished financial statements, policies, procedures or processes, licensing and distribution arrangements, prices and costs and lists of, or information about, personnel, suppliers, or goods or services sold or offered for sale; (c) all customer data including entity names and contact names, and their respective addresses, telephone numbers, facsimile numbers, e-mail addresses, and instant messaging information; (d) the existence of any business discussions, negotiations or agreements between the parties; work product resulting from or related to work or projects performed or to be performed for either party or for customers of either party (including all media on which such information is contained); (f) any other non-public information belonging to an Owner; and (g) other significant business information otherwise defined as “trade secrets” under the Uniform Trade Secrets Act of the state in which the Owner has its principal place of business.

- b. Information shall not be deemed confidential or proprietary for purposes of this Agreement, and Owner shall have no obligation with respect to any such information, which: (a) is already known to Recipient at the time of its disclosure; (b) is or becomes publicly known through no wrongful act of Recipient; or (c) is properly received by Recipient from a third party which is not subject to a duty of confidentiality to Owner with respect to such information.

At all times during this Agreement, and at all times following the expiration or termination of this Agreement, neither party shall, without the other party’s prior written consent: (1) obtain or attempt to obtain, possession of or access to any Confidential Information belonging to the other party; (2) convert or attempt to convert to its own use or the use of any entity or person any Confidential Information belonging to the other party; and (3) disclose or attempt to disclose to any third-party any Confidential Information belonging to the other party.

Each party shall use Confidential Information solely for the purpose of carrying out its obligations under this Agreement ; and shall take all necessary steps to protect all Confidential Information from disclosure, using the same degree of care with respect to Confidential Information belonging to the other party as it would use to protect its own Confidential Information.

The parties acknowledge that the provisions of this paragraph shall not apply to: (a) Confidential Information which at the time of disclosure is, without fault of the recipient, available to the public by publication or otherwise; (b) Confidential Information which a party can show was in its possession at the time of disclosure and was not acquired, directly or indirectly, from the other party; (c) Confidential Information received from a third-party which had the right to transmit the Confidential Information without violating: any secrecy agreement, federal law, state law, or regulations promulgated to enforce them, as appropriate; and (d) Confidential Information which is required to be disclosed pursuant to an order by a court of competent jurisdiction or otherwise by law.

This Section shall survive the termination of this Agreement.

## **XII. Property Rights.**

All Dublin property shall remain the sole and exclusive property of Dublin. Metro Data Center acquires no interest in Dublin property and the Dublin Network by virtue of the payments provided for herein.

If applicable, Metro Data Center may use Dublin property intended by Dublin to be provided in conjunction with the delivery of the Services. Metro Data Center may not reproduce, modify, or distribute Dublin Property, nor use it for the benefit of any third-party. All rights in Dublin property not expressly granted to Metro Data Center are reserved for Dublin.

**XIII. Relationship of the Parties.** The parties acknowledge and agree that Metro Data Center is an independent contractor and is not an agent or employee of Dublin. Nothing in this Agreement shall be construed to create a relationship between Dublin and Metro Data Center of a partnership, association, or joint venture.

**XIV. Taxes.**

Metro Data Center is subject to and responsible for all applicable federal, state, and local taxes.

**XV. Assignment.** Neither party may assign this Agreement without obtaining express, written consent from the other party prior to assignment.

**XVI. Entire Agreement / Amendment.** This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. This Agreement may be amended or modified only by a writing executed by the duly authorized officers of the parties hereto. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by both parties in accordance with the laws of the State of Ohio.

**XVII. Discrimination.**

- A. No discrimination for reason of race, religion, sex, age or country of national origin shall be permitted or authorized by Dublin and/or Metro Data Center in connection with the Services.
- B. Nothing in this Agreement shall require the commission of any act contrary to any law or any rules or regulations of any union, guild, or similar body having jurisdiction over the Services or the parties.

**XVIII. Governing Law/Venue.** Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the parties, or of any of the parties' employees, agents or affiliated businesses, will be resolved under the laws of the State of Ohio, in any court of competent jurisdiction in Franklin County, Ohio.

**XIX. Severability.** If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a valid, mutually agreeable and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.

**XX. Paragraph Headings.** Paragraph headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

**XXI. Notice.** Any notices required or permitted to be sent hereunder shall be in writing and shall be addressed as follows and shall be delivered either by personal delivery or by the U.S. mail, facsimile, or email:

Notice to Dublin:  
City of Dublin  
Marsha I. Grigsby, City Manager  
5200 Emerald Parkway  
Dublin, Ohio 43017

Notice to Metro Data Center:

All notices shall be effective upon receipt, or upon such later date following receipt as is set forth in the notice. Either party may, by written notice to the other, change the representative or the address to which such notices are to be sent.

**XXII. No Third-Party Beneficiaries.**

There are no third-party beneficiaries to this Agreement and the Agreement shall not be construed to create any right enforceable by any other person or entity, other than the parties.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF DUBLIN, OHIO

BY: \_\_\_\_\_  
Marsha I. Grigsby, City Manager

BY: \_\_\_\_\_  
Peter Husenitza, Information Technology Director

METRO DATA CENTER, LLC

PRINT: \_\_\_\_\_

SIGN: \_\_\_\_\_

ITS: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Stephen J. Smith, Law Director

**CERTIFICATION OF FUNDS**

I hereby certify that the funds required to meet the City's obligation, payment, or expenditure under this Agreement have been lawfully appropriated or authorized for such purpose and are free from any obligation now outstanding.

\_\_\_\_\_  
Director of Finance

\_\_\_\_\_  
Date

## Exhibit A

*Information Technology Services* provided under this agreement may include, but are not limited, to the following: Network Engineering, troubleshooting, preventive maintenance services, and diagnostic services, repair services (both emergency and non-emergency).

**Service Availability and Scheduling.** IT Services shall be provided to the extent of the City of Dublin's available excess capacity and are subject to the priorities of the City of Dublin's need to maintain its own network. The City of Dublin shall make a reasonable effort to complete scheduled work within one (1) business day; or other agreed upon completion schedule established to account for the complexity of the anticipated work. In the event Dublin determines that it is not reasonably able to complete the requested work in a timely manner due to workload, complexity of the work, and/or other circumstances, Dublin will notify the Metro Data Center to make reasonable efforts to minimize the impact on the Metro Data Center's operations.

If the Metro Data Center wishes to receive services it shall make a reasonable attempt to contact Dublin in advance to schedule the service.

**Charges.** All invoices shall be charged on a "time & material" basis: Labor and parts will be charged at the applicable rates as noted below. The current rates and charges listed herein are subject to change. The City of Dublin shall make a reasonable effort to diagnose the service to be rendered and all applicable charges. "Charges" shall include all costs associated with providing the service, including, but not limited to, hourly service charges, parts, administrative and/or diagnostic fees, after-hours or overtime fees, and specialty repair fees (if applicable).

**Labor Rates.** At the current time, the City of Dublin's labor rates are \$127.00 per hour. These rates are subject to change. The City of Dublin shall provide the Metro Data Center a 30- day notice of any increase.

**Parts.** Parts used for the provision of IT services shall be purchased through the City of Dublin. Parts are charged to customers at the cost plus a 5% mark-up.

Use of after-market parts, in addition to or instead of original equipment manufacturer parts, may be used contingent upon those after-market parts being covered under the same level and standard of warranty as original parts, and which parts perform in the same manner as original parts.

**Diagnostics.** After conducting an initial diagnosis, the City of Dublin shall provide a written estimate of the charges, along with an estimated date for completion, to the Metro Data Center. Upon written acceptance of the estimate by the Metro Data Center, Dublin shall provide the service and complete the work. Each Party shall keep accurate records of all services requested and received.

**Billing and Payment.** The City of Dublin shall promptly invoice Metro Data Center for services provided hereunder. Billing shall be provided monthly to the Metro Data Center.

Level of Service Repairs, preventive maintenance and other services shall be provided in a workman-like manner and in accord with the customary standards in the industry of Information Technology.