



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   
**Date:** October 23, 2014  
**Initiated By:** Dana McDaniel, Development Director  
**Re: Resolution 85-14 - Authorizing an Infeasible Right to Use (IRU) Agreement with the Ohio Academic Resource Network (OARnet)**

## Summary

Resolution 85-14 authorizes the City Manager to enter into an IRU with OARnet. Council may recall that OARnet is a division of the Ohio Board of Regents Ohio Technology Consortium. OARnet serves Ohio's education, health care, public broadcasting and government communities. OARnet's primary mission to those they serve is to:

1. Increase access to affordable broadband service.
2. Reduce the cost of technology through aggregate purchasing.
3. Maximize shared services opportunities.

Under a recent agreement, OARnet will supply network backbone service for the State of Ohio and its agencies, adding nearly 2,300 end-sites to the network.

In 2005, the City of Dublin in partnership with OARnet, established the Central Ohio Research Network (CORN). This network is lit and operated by OARnet. This network is in place to enable connectivity among/between government, local schools, higher education, businesses, the Ohio Supercomputer and colleges, universities and research institutes in Central Ohio. CORN is interconnected to OARnet's larger statewide network and to other similar networks in other states across the nation.

The 2014-2018 Capital Improvements Plan provided funding for the development of a 100 gigabit capable network. City staff continues to develop the service concepts, engineering and deployment plan for this network. Staff expects to announce specifics regarding the implementation of this plan in November. Costs associated with making the 100 gigabit network a reality include engineering/design, 100 gigabit router equipment, overbuild of portions of the existing optical fiber backbone, and lateral builds with routers into buildings. The City's 2014 capital budget allocates \$520,000 for the initial implementation of the 100 gigabit project. A significant portion of this budget, approximately \$350,000, is allocated for the 100 gigabit router and individual building routers.

As previously stated, OARnet has been tasked to interconnect various state agencies in Central Ohio via optical fiber, similar to how the City of Dublin has interconnected its own public facilities. OARnet recently approached staff about obtaining access to an additional pair of optical fibers from the bundle of optical fiber the City owns throughout Central Ohio to assist with this effort. Staff has determined that an additional pair of fiber is available in the City's system. Staff

negotiated the attached IRU with OARnet for the use of these fibers. Typically, the City has leased its optical fiber for \$3,000 per month. This IRU would require OARnet to provide \$360,000 worth of equipment that will be used in support of the City's 100 gigabit project. This equipment will be primarily in the form of routers, which again is a significant portion of the initial cost of the 100 gigabit backbone. By doing so, the City can then use \$360,000 of the \$520,000 capital budget to more aggressively overbuild its optical fiber backbone and deploy into more buildings with optical fiber laterals. Staff recommends a 15-year lease in exchange for the \$360,000, since the City will realize the value of the money up front. OARnet's payment of \$360,000 up front in the form of equipment in support of the 100 gigabit project will be instrumental to the overall implementation of this program.

**Recommendation**

Staff recommends approval of Resolution 85-14. Please contact Dana McDaniel with any questions.

# RECORD OF RESOLUTIONS

Dayson Legal Blank, Inc., Form No. 30045

**85-14**

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

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

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INDEFEASIBLE RIGHT TO USE AGREEMENT WITH THE OHIO STATE UNIVERSITY ON BEHALF OF OARNET.**

**WHEREAS**, the City of Dublin has an existing optical fiber system (hereinafter referred to as the "Dublink Fiber System") throughout the City of Dublin, Ohio and the greater Columbus, Ohio metropolitan area; and

**WHEREAS**, the City of Dublin has excess fibers within the Dublink Fiber System and is willing, from time to time, to provide such fibers to interested users; and

**WHEREAS**, the City of Dublin desires to grant OARnet an indefeasible right to use two (2) fiber strands within the Dublink Fiber System and the parties must execute an Indefeasible Right to Use Agreement to memorialize this engagement; and

**WHEREAS**, the City of Dublin and OARnet have a long-standing relationship in the provision of broadband service for research and educational purposes, and are now cooperating in Dublin's creation of the 100 gigabit network in Dublin.

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

Section 1. The City Manager is hereby authorized to execute an Indefeasible Right to Use Agreement between the City of Dublin and OARnet, said Agreement authorizing the City of Dublin to give OARnet certain use rights to two (2) strands of fiber within the Dublink Fiber System.

Section 2. This Resolution shall take effect upon passage in accordance with Section 4.04(a) of the Revised Charter.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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

ATTEST:

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

**CITY OF DUBLIN, OHIO**  
**INDEFEASIBLE RIGHT-TO-USE AGREEMENT**

THIS INDEFEASIBLE RIGHT-TO-USE AGREEMENT (hereinafter referred to as the "Agreement") made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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 THE OHIO STATE UNIVERSITY ON BEHALF OF OARNET, an Ohio political subdivision and/or state agency (hereinafter referred to as "User"), having an office at 1480 W. Lane Avenue, Columbus, Ohio 43221, and which are sometimes 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") throughout the City of Dublin, Ohio and the greater Columbus, Ohio metropolitan area; and

WHEREAS, the Owner has excess fibers in the Fiber System and is willing, from time to time, to provide such fibers to User and to grant User an Indefeasible Right of Use or IRU (as hereinafter defined) in and to such fibers for the purpose of providing telecommunications, video, data, and/or information services; and

WHEREAS, in connection with the grant to User of an IRU in and to such fibers, the Owner is willing to allow User to use certain other property owned by the Owner, including, but not limited to, innerduct, conduit, building entrance facilities and associated appurtenances; and

WHEREAS, user will, among other things, use the Owner's system for the purpose of connecting schools, research universities, medium and smaller universities and colleges, government agencies and corporations in order to foster new collaborations between and among these entities, while at the same time promoting critical educational, scientific and industrial capacities and research thereby advancing a technology based economy.

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); and

WHEREAS, in connection with undertaking one or more projects for which the Owner will provide fibers in the Fiber System to User, the Parties have agreed to enter into this Agreement which embodies the mutual covenants and agreements for the long term relationship between the Parties hereto and for each such project; 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 will incorporate the

covenants and agreements of this Agreement and which will 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:

I. DEFINITIONS.

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

- a. **Agreement:** This Indefeasible Right-to-Use Agreement between the Owner and User which identify the specific optical fiber strands and facilities to be as provided to User by Owner and which set forth the associated fees/compensation, terms and conditions for User's use of such optical fiber strands and facilities.
- b. **Fiber System:** The Ninety-Six (96) 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 that is detailed in Exhibit A appended hereto.
- c. **User System:** The optical fiber strands, innerduct, conduit, building entrance facilities and associated appurtenances in the Fiber System, to be provided to User under the terms of this Agreement and the associated rights to access such fiber strands at Demarcation Points as specified herein all as described herein and detailed on Exhibit B to be provided as Demarcation Points are determined. The Parties shall list the facilities User is connecting to the Fiber System in Exhibit B. From time to time, User may request additional or modified connections of facilities to the Fiber System in accordance with the terms of this Agreement. All such requests for additional or modified connections shall be made in writing to Owner and Owner shall review such request within thirty (30) days of receipt. Upon Owner's review of such additional or modified connections, the Parties shall appropriately amend Exhibit B to reflect the changed circumstances.

II. GRANT

A. The Owner hereby grants to User an Indefeasible Right of Use (IRU) of the following Owner Fiber System components:

- a. Two (2) strands of fiber optic cable throughout the Owner's Fiber System, which is described in Section I (b) above and in Exhibit A appended hereto. The User may connect any of the facilities as described in Exhibit B to the Owner's Fiber System. Additionally, User may use the portions of the User System granted herein to connect to other facilities inside and outside of the City of Dublin, Ohio.

Such individual Owner Fiber System components collectively shall comprise the User System as defined in I (c) of this Agreement. The User System shall be inclusive of the Owner's Fiber System between and including the Owner's sides of the originating and terminating demarcation points. For the purpose of this Agreement, a demarcation point ("Demarcation Point") shall be considered the minimal point of entry, which is the closest practical point to a User's facility where current and existing portions of Owner's Fiber System comprising the User System, either exist in the public rights of way or cross the User facility's property line, whichever may be closest to the User's facility. User shall be responsible for all infrastructure, equipment and service issues between the Demarcation Point and its facilities, unless Owner otherwise agrees to provide.

III. TERM.

- A. Unless sooner terminated in accordance with the terms of this Agreement, the term of this Agreement is for Fifteen (15) years (hereinafter referred to as the "Term"). The Term shall commence immediately upon final execution of this Agreement by the Parties (hereinafter referred to as the "Commencement Date") and shall expire fifteen years after the Commencement Date (hereinafter referred to as the Expiration Date").

IV. CONSIDERATION.

- A. As consideration for, as inducement to, and as a required condition of Owner granting User the specific rights to use portions of Owners Fiber System (i.e. the User System) as described herein, the User hereby agrees to purchase \$360,000 worth of telecommunications equipment (the "Consideration"). The Consideration shall be ordered by User, approved by Owner and delivered to a location selection by Owner. Owner shall have the right to approve the adequacy of the Consideration. Upon delivery, Owner shall own the Consideration.

V. OWNERS OBLIGATIONS.

- A. Owner shall for a period of time equal and coterminous with the term of this Agreement as defined in III above:
- a. Owner will provide the User System for User's use in accordance with the terms of this Agreement.
  - 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.
  - c. Maintain the User System to the specifications provided in Agreement Exhibit C.

VI. USER OBLIGATIONS.

- A. User shall for a period of time equal and coterminous with the term of this Agreement as defined in III above:
- a. Provide and pay for all of User's required lateral connectivity from all necessary termination points of User's proprietary fiber and equipment to all the necessary Demarcation Points of Owner's Fiber System, unless Owner otherwise agrees to provide.
  - b. Pay for any and all maintenance costs as may be required to be paid by User pursuant to the requirements of Section VIII (a-c) below. Owner's management agent's current charges and application rules are identified in Exhibit D attached hereto.

VII. JOINT OBLIGATIONS.

- A. The Owner and User jointly for a period of time equal and coterminous with the term of this Agreement as defined in Section III above :
- a. Agree that within thirty (30) days of final execution of this Agreement the Parties will 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.

VIII. MAINTENANCE.

- A. All maintenance and repair functions on the Fiber System and all facilities through which the Fiber System passes, including, but not limited to, conduit, innerduct, poles, and equipment 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 C.
- a. Regular Maintenance: Owner may from time to time undertake and provide for Regular Maintenance activities 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.

- 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. 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 will 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 will 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 will be those identified in Exhibit D with the understanding that such rates are subject to change at any time.
  - c. **Emergency Maintenance:** The Owner may undertake and provide for Emergency Maintenance and repair activities for the Fiber System and/or User System. 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. The costs and expenses associated with such Emergency Maintenance shall be apportioned between Owner and User in percentages equal to their respective interests of control (based on the terms of this Agreement) over the portions of the User System and/or Fiber System requiring such Emergency Maintenance. The Owner will 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.
- B. 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 System, User, or others acting in User's behalf, shall have the right, but not the obligation, to thereafter provide for the previously Owner provided maintenance and repair of the User System, at the User's sole cost and expense. Any such discontinuance 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, or others acting in User's behalf, 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.
- C. 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.

- D. 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.

IX. USE OF THE USER SYSTEM.

- A. User shall have exclusive control over its provision of telecommunications, video, data, and/or information services.
- B. User hereby certifies that it is authorized or will 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.
- C. 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.

X. INDEMNIFICATION.

- A. 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, 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 herein shall also specifically include all claims of intellectual property, copyright or trademark infringement made by third parties against Owner.

- B. User shall, where lawful, be required as a condition of this Agreement to make Columbus Fibernet, LLC, 1810 Arlingate Lane, Columbus, Ohio 43228, an Ohio limited liability company ("Fibernet") a third party beneficiary of such this Agreement for the limited purpose of User providing Seller specific indemnification as follows: User shall and indemnify, protect, and defend Fibernet against, and hold Fibernet harmless from, any claims, losses, damages, costs or expenses including, without limitation, reasonable attorneys' fees, asserted against, incurred, or suffered by Fibernet resulting from any personal injury or property damage occurring in, on, or about the Fiber System or relating thereto from any cause whatsoever caused by User other than as a consequence of the acts or omissions of Fibernet, its agents, employees, or contractors.

XI. INSURANCE.

- A. 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.
- B. 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 Owners 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.
- C. 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  
5200 Emerald Parkway  
Dublin, Ohio 43017-1006

- D. 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.
- E. 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.
- F. User shall be responsible for all User contractors' or subcontractors' compliance with the insurance requirements.

- G. 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.
- H. 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.
- I. The User shall provide Workers' Compensation insurance covering all of the User's employees in accordance with the laws of the state of Ohio.
- J. 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.
- K. 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.

## XII. DEFAULT.

- A. 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.
- B. 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.

- C. If User, shall 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 shall be adjudicated a bankrupt or insolvent, or shall 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 shall 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.

### XIII. FORCE MAJEURE.

- A. 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 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").

### XIV. ASSIGNMENT.

- A. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors or assigns; provided, however, that no assignment hereof or sublease, assignment or licensing (hereinafter collectively referred to as a "Transfer") of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of each Party hereto.

### XV. WAIVER OF TERMS OR CONSENT TO BREACH.

- A. 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.

XVI. RELATIONSHIP NOT A PARTNERSHIP OR AN AGENCY.

A. 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.

XVII. NO THIRD-PARTY BENEFICIARIES.

A. This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and assigns, and except for the requirements of Section X B 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.

XVIII. EFFECT OF SECTION HEADINGS.

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

XIX. NOTICES.

A. 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:

If to User to:  
Executive Director  
OARnet  
1224 Kinnear Road  
Columbus, OH 43212

If to Owner to:  
City Manager  
City of Dublin, Ohio  
5200 Emerald Parkway  
Dublin, OH 43017-1006

With a Copy to:  
General Counsel  
Ohio State University  
1590 N. High Street  
Columbus, OH 43201

With a Copy to:  
Law Director  
City of Dublin, Ohio  
5200 Emerald Parkway  
Dublin, OH 43017-1006

B. 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.

XX. SEVERABILITY.

A. 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.

**XXI. COMPLIANCE WITH LAW.**

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

**XXII. GOVERNING LAW AND VENUE.**

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

**XXIII. ENTIRE AGREEMENT.**

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.

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

USER:

The Ohio State University on behalf of OARNET an Ohio political subdivision and/or state agency.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

OWNER:

City of Dublin, Ohio, an Ohio municipal corporation.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

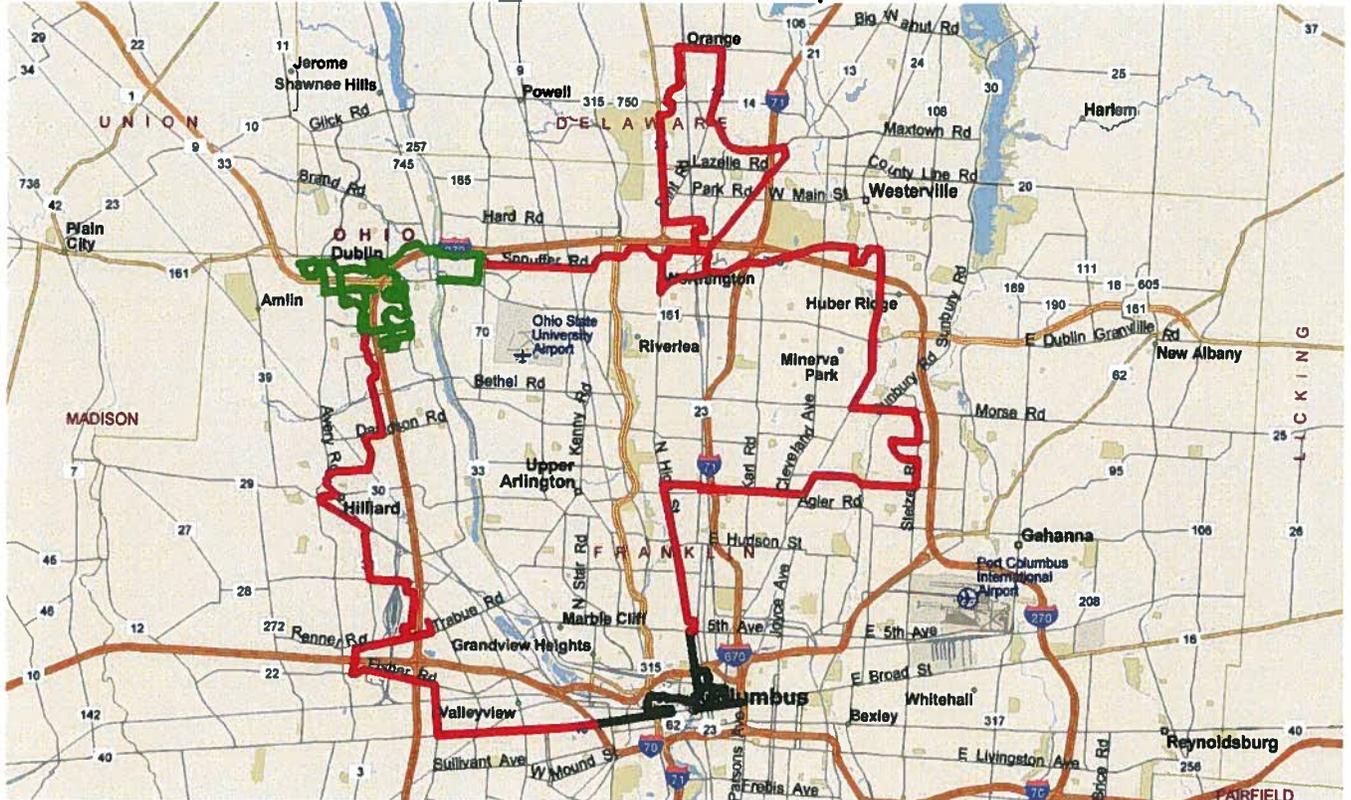
**Approved As To Form:**

\_\_\_\_\_  
Law Director, City of Dublin, Ohio.

**Exhibit A**

**OWNERS FIBER SYSTEM DESCRIPTION AND MAP**

**CFN\_Dublink Route Map**



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**Exhibit B**

**USER SYSTEM DESCRIPTION AND MAP**

OARnet will provide the Demarcation Points to the City as determined at a later date. When provided, the City will memorialize these Demarcation Points on a map(s) and attach hereto for record.

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**Exhibit C**

**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 will endeavor to keep the number of splices in a span to a minimum.

III. **Optical Fiber Specifications**

The Owner will 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, _____	_____	dB/Km
Cladding diameter	_____	um
Cutoff wavelength	_____	nm
Zero dispersion wavelength	_____	nm
Maximum dispersion (____ - ____)	_____	ps/ (nm-km)

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**Exhibit D**

**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 will 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:**

<b>Labor Rates</b>	<b>Hourly Rate</b>	<b>Overtime Rate</b>
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
<b>Equipment Rates</b>	<b>Hourly Rate</b>	
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	

Charges will be made for travel time to the location where maintenance is to be performed. If maintenance carries over after 5:00 p.m., or maintenance is required on Saturday, Sunday, or

during holiday hours, charges will also be made for travel time from the said location. Charges will be for a minimum of one (1) hour for normal hours and for a minimum of two (2) hours for overtime holiday hours and special call out.

All rates, charges, and holiday schedules are subject to change.

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END OF AGREEMENT AND EXHIBITS