



To: Members of Dublin City Council

From: Dana L. McDaniel, City Manager

Date: May 5, 2016

Initiated By: Doug McCollough, Chief Information Officer

Re: Resolution 28-16 – Dark Fiber Lease

Summary

Resolution 28-16 authorizes the City Manager to enter into an Agreement (Enclosure 1) for the purpose of leasing dark optical fibers considered to be extra capacity within the City's Dublin optical fiber system. In 2011, Council authorized staff to lease up to 18 (9 pair) of the City's Dublin optical fibers. Council authorized these leases for the purpose of earning revenues from "dark fibers" not anticipated to be put into use for the foreseeable future. To date, the City has leased 10 (5 pair) to private companies and 2 (1 pair) to Washington Township at a reduced rate for a total of 12 (6 pair) of optical fibers of the 18 (9 pair) authorized. The City has recently received requests from four private companies to lease 10 (5 pair) of optical fiber. Staff believes the 100 gigabit project and Dublin's presence in various data centers are driving the interest in more fiber. Staff requests Council increase the total number of pairs available for leasing from 18 (9 pair) of fibers to 30 (15 pair) of fibers. The lease rate proposed is \$3,000 per month as previously authorized by City Council. The following table summarizes the leases to date and shows the additional revenues that could potentially be earned:

Lessee	Optical fiber pairs	Lease rate per pair per month	Total revenue per pair per year	Length of Term	Total Revenue per Term
Current Leases					
Washington Twp	1	\$1,750	\$21,000	5 yr + 5yr option	\$210,000
US Signal	2	\$3,000	\$72,000	10 yr	\$720,000
Expedient	2	\$3,000	\$72,000	10 yr	\$720,000
Mercury Fiber	1	\$3,000	\$36,000	10 yr	\$360,000
Total Pairs	6	Total Annually	\$201,000	Total Term	\$2,010,000
Additional Allocation					
Immediate leases	5	\$3,000	\$180,000	10 yr	\$1,800,000
Future leases	4	\$3,000	\$144,000	10 yr	\$1,440,000
Total Pairs	15	Total Annually	\$525,000	Total Revenue	\$5,250,000
Expired lease				3 yr	\$168,000
Grand Total					\$5,418,000

As in the past, staff has retained a consultant to help identify and attract potential lessees to the City. Not every lease involves the consultant. The City will pay the consultant \$15,000 per pair of optical fibers leased at \$3,000 per month with a 10-year term. This is equal to a 4 percent commission on the executed lease. Funding currently exists in the budget for the consultant fees, and an appropriations ordinance will be brought forward at a later date for any necessary adjustments.

The City of Dublin possesses 96 optical fiber (48 pair) throughout the Dublin fiber optic system. The City possessed more fiber in certain parts of the system. Overall, should Resolution 28-16 be passed, the allocation of the City’s fiber optic system will look like the following:

Totals	Allocated		Actual Usage		Unallocated	
	Strands	Pairs	Strands	Pairs	Strands	Pairs
IRUs/Econ. Dev.	36	18	36	18	0	0
Leases	30	15	22	11	8	4
City Use	30	15	22	11	8	4
Total	96	48	80	40	16	8

Recommendation

Staff recommends Council approve Resolution 28-16, potentially earning the City approximately \$5.4 million. Staff will monitor the ongoing availability of its optical fiber capacity and will make recommendations to Council as necessary to ensure this resource is not depleted.

Please contact Doug McCollough at 410-4412 with any questions.

RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc., Form No. 30045

Resolution No. 28-16 Passed _____, 20____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE INDEFEASIBLE RIGHT TO USE AGREEMENTS FOR THE PURPOSE OF LEASING DARK FIBER NOT TO EXCEED A TOTAL NUMBER OF 15 LEASED PAIRS

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 provides access to bandwidth and consists of at least 96 dark optical fibers over a 120+/- mile route; and

WHEREAS, the City of Dublin promotes the access to its bandwidth for institutional use; point-to-point connectivity; and for purposes that promote economic development; and

WHEREAS, the City of Dublin desires to make certain of its own dark/unused optical fiber available for leasing; and

WHEREAS, leasing certain dark optical fiber would result in creating non-tax revenues for the City of Dublin; and

WHEREAS, it is necessary to respond quickly to market conditions and demands when leasing opportunities arise; and

WHEREAS, it is necessary for the City to enter into certain Indefeasible Right of Use Agreement(s) when leasing dark optical fiber(s); and

WHEREAS, City Council has previously authorized the City Manager to enter into Indefeasible Right of Use Agreements for up to 18 (9 pair) of the City's 96 (48 pair) fibers.

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

Section 1. The City Manager is hereby authorized to make available for the purpose of leasing 30 (15 pair) of the City's optical fibers.

Section 2. The City Manager is hereby authorized to lease said pairs of dark optical fiber via an Indefeasible Right of Use (IRU) Agreement in accordance with the following:

- a. Lease shall be no less than \$3,000 per month for one pair of dark optical fiber.
- b. The City Manager shall strive to maximize the per month lease rate set forth in Section 2(a) above, whenever possible.
- c. The City Manager shall first seek Council's authorization to lease fiber at any monthly rate less than that set forth in Section 2(a) above.
- d. The term for said lease shall be no less than three (3) years.

Section 3. The City Manager is hereby authorized to enter into Indefeasible Right of Use Agreement(s) and other necessary ancillary agreements consistent with this Resolution with lessee(s) approved by the City Manager and in the form and manner presented to and approved by Dublin City Council via this Resolution.

Section 4. This Resolution shall take effect upon passage in accordance with Section 4.04(a) of the Revised Charter.

Passed this _____ day of _____ 2016.

Mayor - Presiding Officer

ATTEST:

Clerk of Council

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

THIS INDEFEASIBLE RIGHT-TO-USE AGREEMENT is made and entered into as of the ____ day of May, 2016, 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 _____ (hereinafter referred to as "User"), Owner and User referred to individually as "Party" and collectively as "Parties."

WITNESSETH:

WHEREAS, 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, 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 to Use or IRU (hereinafter referred to as "IRU") 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, Owner is willing to allow User to use certain other property owned by Owner, including, but not limited to, innerduct, conduit, building entrance facilities and associated appurtenances; and

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, 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 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:

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 meaning specified:

- a. Agreement: This Indefeasible Right to Use Agreement between Owner and User which identifies the specific optical fiber strands and facilities to be as provided to User by Owner and which sets forth the associated fees/compensation, 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 Owner and located throughout the Rights of Way of the City of Dublin, Ohio and the greater Columbus, Ohio metropolitan area (a general depiction of which is attached hereto as Exhibit "A")

2. GRANT.

2.1 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 (the "User System"). User will work with Owner to define connections to facilities within the Fiber System.

3. TERM.

3.1 Unless sooner terminated in accordance with the terms of this Agreement, the term of this Agreement is for ten (10) years (hereinafter referred to as the "Initial Term"). After the Initial Term, User shall have the right, in its sole discretion, to renew this Agreement for an additional five (5) or ten (10) year term, at the same pricing set forth in this Agreement. Such renewal shall be memorialized in writing from User to Owner at least thirty (30) days prior to termination of the Initial Term. In the event that User does not renew this Agreement, this Agreement shall terminate. The entire duration this Agreement is in full force and effect is referred to herein as the "Term".

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 (the "User System") as described herein, User hereby agrees:

- a. To compensate Owner in the amount of Three Thousand (\$3,000) per month.

- b. 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. OWNER'S OBLIGATIONS.

5.1 Owner shall:

- a. 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 Owner.
- c. Maintain the User System to User's specifications.

6. USER OBLIGATIONS.

6.1 User shall:

- a. When lateral connectivity is not provided by Owner, provide and pay for lateral connectivity from necessary termination points of User's proprietary fiber and equipment to the necessary demarcation points of Owner's Fiber System. In this event User shall own the lateral.
- 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, and any ring or concentrator operations.
- c. Pay all necessary costs if 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 C attached hereto.
- d. Agree that it shall not sublease or subdivide the User System unless otherwise agreed to by Owner. User further agrees to continually meet the requirements of this Agreement. In the event of any breach of the provisions contained in this Section, Owner has the right to terminate this Agreement upon giving thirty (30) days written notice to User.

- e. Agree to 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.

7. JOINT OBLIGATIONS.

7.1 Owner and User jointly:

- a. Agree that within sixty (60) 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.

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 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 Owner in any maintenance or repair of the User System. Owner shall maintain 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 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 Owner's sole cost, and
- b. Scheduled Maintenance: 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 User's request. Such User requested Scheduled Maintenance shall be performed at User's sole cost and expense. User may request such Scheduled Maintenance by delivering to 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, Owner will provide an estimate of the price and timing of such Scheduled Maintenance. Following User's acceptance of such estimate, Owner will schedule and have such Scheduled Maintenance performed. Owner will have such Scheduled Maintenance performed on a

time-and-materials basis at the standard rates then in effect at the time services are performed. Rates in effect will be those identified in Exhibit C with the understanding that such rates are subject to change at any time.

- c. **Emergency Maintenance:** Owner may undertake and provide for Emergency Maintenance and repair activities for the Fiber System and/or User System. Where necessary, 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. 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. 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

8.2 In the event Owner, or others acting in Owner's behalf, at any time during the Term of this Agreement, discontinues maintenance and/or repair of the User Systems, User, or others acting in User's behalf, shall have the right, but not the obligation, to thereafter provide for the previous Owner provided maintenance and repair of the User System, at 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, 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. As an alternate remedy, User may elect to terminate this Agreement should Owner discontinue maintenance and/or repair of the User System.

8.3 In the event any failure, interruption or impairment adversely affects both Owner's Fiber System and User System, restoration of the User System shall at all times be subordinate to restoration of 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 Owner is unable to provide timely repair service to the User System, 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 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 Owner to work on Owner's Fiber System. Currently, Columbus Fibernet, LLC is the only company authorized to perform such repair or maintenance work on the Fiber

System, although Owner may authorize other entities to perform such work on the Fiber System from time to time. Prior to User's undertaking Emergency Maintenance or entering an Owner's facility for repair, User shall first notify Owner of the contemplated action and receive Owner's concurrence decision, a decision that 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 User in any repair of the User System.

9. USE OF 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 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 Owner.

9.3 User understands and acknowledges that its use of the Fiber System and the 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 the User System are located. User represents and warrants that it shall operate on the Fiber System and the 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 User undertakes and agrees to protect, indemnify, defend, and hold harmless 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 User, or User's officers, agents, employees, or subcontractors, except for the active negligence or willful misconduct of 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.

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 User shall furnish 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 User at User's sole cost and expense.

11.3 User endorsements shall name 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 Owner at the following address:

City of Dublin
Law Director
5200 Emerald Parkway
Dublin, Ohio 43017-1006

11.4 Such insurance shall not limit or qualify the obligations User assumed under the Agreement. 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 Owner, which may be applicable, shall be deemed to be excess insurance and User's insurance is primary for all purposes despite any conflicting provision in 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 User to maintain such insurance, or to provide such endorsements to Owner when due, shall be an event of default under the provisions of this Agreement.

11.8 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 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 Owner's Director of Law.

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

11.10 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.

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 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 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 Owner, 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, Owner shall not be in default under this Agreement or in breach of any provision hereof unless and until User shall have given Owner written notice of such breach and 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 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 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, 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 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 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; 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. Said consent shall not be unreasonably withheld.

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 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 is for the sole benefit of the Parties hereto and their respective permitted successors and assigns, and 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:

If to User:

If to Owner to:

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

With a Copy to:

City of Dublin
Law Director
5200 Emerald Parkway
Dublin, Ohio 43017-1006

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 will 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.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

USER:

By _____

Its _____

OWNER:

City of Dublin, Ohio
an Ohio municipal corporation.

By: Dana McDaniel

Its: City Manager

Approved As To Form:

Law Director, City of Dublin, Ohio.

Exhibit A

DubLink Fiber Route

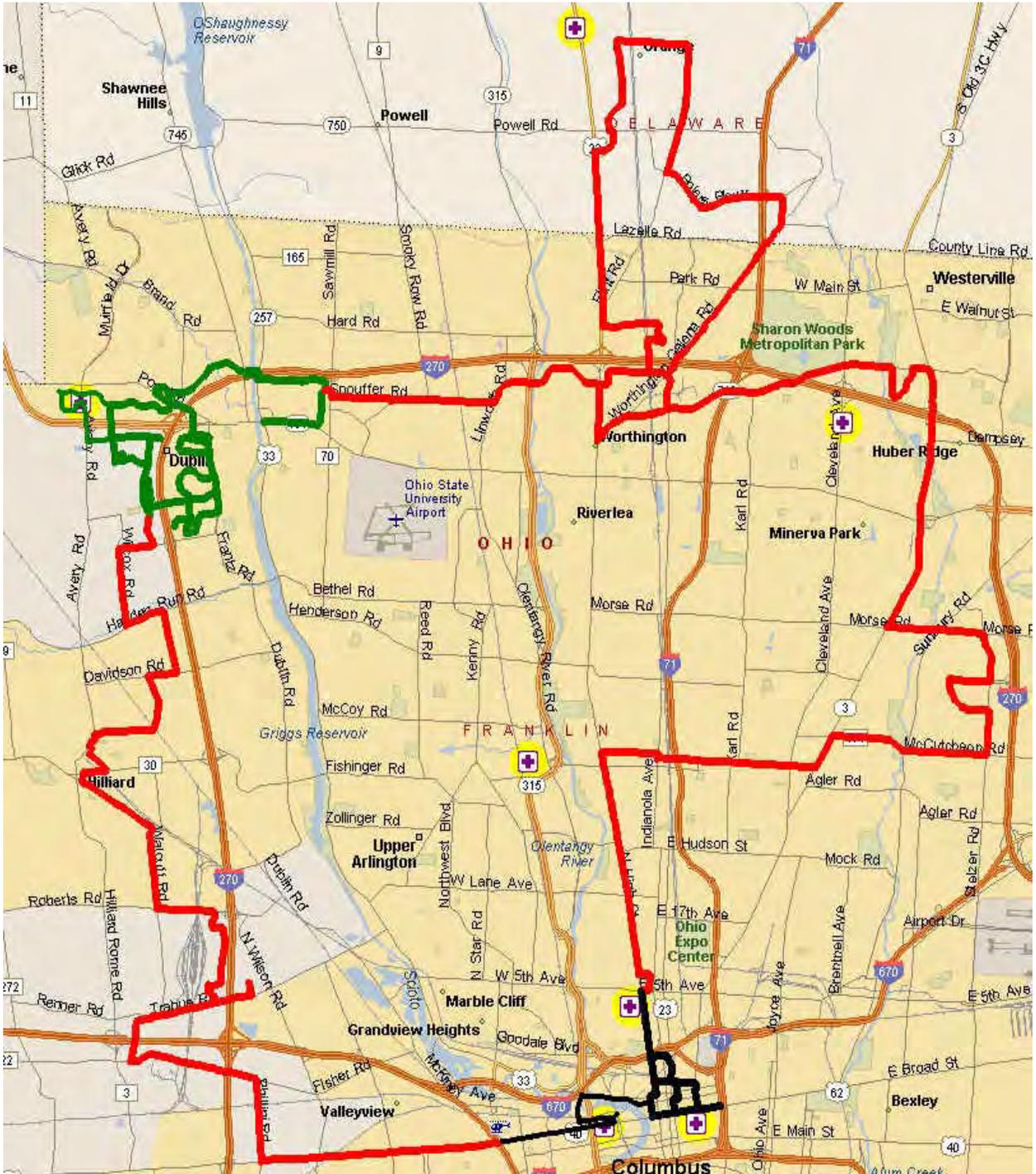


Exhibit B

FIBER SYSTEM SPECIFICATIONS

I. General

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

II. Design Criteria

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

III. Optical Fiber Specifications

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

A. Single Mode Fiber

<u>Parameter</u> <u>Units</u>	<u>Specifications</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 C

MAINTENANCE AND REPAIR

Charges for Time and Material Service

Owner or Owner's agent may perform maintenance service at the rates established below, which rates are subject to change. Unless specifically authorized by 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:

<u>Labor Rates</u>	New Hourly Rate	New OT Rate
Project Manager	\$ 102.52	\$ 158.71
Professional Engineer	\$ 88.86	\$ 137.55
Right of Way Agent	\$ 66.30	\$ 102.63
Supervisor	\$ 65.20	\$ 100.93
Foreman	\$ 50.44	\$ 78.08
Operator	\$ 42.99	\$ 66.54
Truck Driver	\$ 35.54	\$ 55.02
Laborer	\$ 29.67	\$ 45.93
RCDD	\$ 125.00	\$ -

<u>Equipment Rates</u>	New Hourly Rate
Pick Up	\$ 16.89
1-Ton	\$ 18.24
2-ton	\$ 20.95
Trailer	\$ 9.46
Rubber Tire Hoe	\$ 32.43
Rodder	\$ 29.39
Winch Truck	\$ 29.39
A/C	\$ 15.54
Light Plant	\$ 20.81
Arrow Board	\$ 12.16
2" water pump	\$ 6.76
Generator	\$ 6.76
Cable Cart	\$ 9.46
MH Package	\$ 19.60

<u>Locating Crew Rate</u>	
Foreman	\$ 50.44
Truck	\$ 16.89
Total	\$ 67.32