



To: Members of Dublin City Council
From: Dana L. McDaniel, City Manager
Date: November 18, 2016
Initiated By: Terry D. Foegler, Director of Strategic Initiatives and Special Projects
Angel L. Mumma, Director of Finance
Philip K. Hartman, Assistant Law Director
Re: Ordinances 57-16 and 58-16 Relating to the Development of a New Dublin Branch Library by the Columbus Metropolitan Library District

Background

Ordinances 57-16 and 58-16 authorize the City Manager to enter into the agreements with the Columbus Metropolitan Library (CML) and the Dublin City School District (DCSD) needed to implement the redevelopment of the new Dublin Branch of the Columbus Metropolitan Library and adjacent public parking garage.

Ordinance 57-16 authorizes the execution of the proposed Development Agreement with the CML that will result in the construction of a new 42,500 square foot library building (over twice the size of the current building), a new four-level City-owned parking structure (approximately 500 parking spaces) just west of the new library building, and a new and reconstructed series of roadways that will provide the urban grid for the entire library-parking garage development site.

Ordinance 58-16 authorizes the execution of an agreement with the DCSD that provides the City with a substantial portion of the right-of-way (specifically for the new section of Franklin Street and the reconstructed North Street) required to construct the roadway grid surrounding the library and garage development site. The agreement also terminates the DCSD "restriction of record" on those portions of the existing CML site that will be transferred from the CML to the City of Dublin. In exchange for these real estate considerations, the City is making provisions for the DCSD to connect all of its existing facilities except for three school buildings to Dublin's high speed fiber optics system known as DubLink.

The CML Development Agreement: Ordinance 57-16

The proposed development Agreement with CML, authorized by Ordinance 57-16, includes several noteworthy provisions. First, the CML commits to invest approximately \$18.5 million to develop the 42,500 square foot library building, \$1,083,000 of which represents its contribution to the new City-owned parking garage and which contribution is based upon the estimated construction cost of 200 surface parking spaces. The CML also agrees to provide, at no cost to the city, the land needed to construct the new roadway grid and parking structure, effectively reducing the size of the CML site from its current 3.47 acres to approximately 1.15 acres. Additionally, the CML agrees to continue the operation of the new branch library facility as a library for a period of at least 20 years.

In return, the City of Dublin agrees to construct, own, operate and maintain:

- the new 500-space parking garage within which the CML would retain an easement for 200 parking spaces (currently programmed within the City's Five Year Capital Improvement Program at \$10 million);
- the roadway grid system, which includes the reconstructed North High Street, a new roadway called Rock Cress Avenue located on the north side of the CML site, a reconstructed North Street located along the southern side of the CML site, a new section of North Franklin Street located along the western edge of the CML site, and the burial of overhead utilities (all currently programmed with the City's Five Year Capital Improvement Program at \$11.34 million).

Other key elements of the agreement relate to the ongoing operations of the parking structure, the intent to use a single construction firm to build the new library, parking garage and the street grid (other than for the North High street reconstruction) in order to capture efficiencies, and the provision of a right of first refusal to each party if either decides to dispose of its building asset at some point in the future.

The DCSD Real Estate and Transfer of Property Agreement: Ordinance 58-16

The proposed agreement with DCSD authorized by Ordinance 58-16 includes provisions for the transfer of approximately 1.35 acres of land owned by the DCSD and located on the extreme eastern edge of its 34.95 acres of Bridge Street property for the purpose of constructing a proposed new northern extension of Franklin Street (in phases) as well as provide the right-of-way for the westward extension of North Street from its current terminus at Darby Street to the proposed North Franklin Street extension.

The proposed northern extension of Franklin Street (from Bridge Street to Rock Cress Boulevard) is planned to occur in two phases, the first being from North Street to Rock Cress Boulevard in association with the new library development, and the second being from Bridge Street to North Street. The second phase of the North Franklin Street extension will occur in the future (not currently programmed in the CIP) and will require the demolition of the DCSD's Bridge Street Academy (BSA) building located within this alignment. The agreement provides that the phase 2 right-of-way for the North Franklin Street extension could be available as soon as June 2019, if needed by the City; however, it also makes provisions for the extended use of the BSA building by the DCSD if the City of Dublin is not intending to perform the phase 2 North Franklin Street extension.

Additionally, the agreement provides for the termination of the DCSD's "restriction of record" for those portions of the current CML property that will be transferred to the City of Dublin as part of the CML-City of Dublin Development Agreement. The restriction of record relates to the original terms under which the DCSD provided the CML with the land at no cost to build the new library. The restriction reserved for the DCSD establishes some rights to receive the land portion of proceeds from a future sale, if the CML site was no longer used as a library.

In exchange for these real estate considerations from the DCSD, the City of Dublin agrees to connect, at the City's cost, certain DCSD's buildings to Dublin's fiber optic network, Dublink, and its 100 gigabit capability. The City will provide connection to all DCSD buildings except Bailey Elementary, Daniel Wright elementary, and Riverside Drive Elementary as these buildings are far removed from the Dublink backbone at this time. However, the City will continue to work with the

DCSD to try to find ways to connect these buildings in the future. The total estimated cost of the connections associated with this agreement is \$800,000, of which \$300,000 will be paid by a State Capital Grant previously awarded to the City.

Summary

The new Dublin branch of the Columbus Metropolitan Library will provide an important 21st Century civic facility located in the heart of the Dublin community. In addition to serving the library, the new garage facility will provide a substantial new supply of public parking to serve our increasingly vibrant Historic District. The new roadways being constructed in association with this project will provide important new connections as contemplated within the City's Thoroughfare Plan and provide more traffic circulation options, better serving the immediate area and the broader Bridge Street District roadway system. Depending on the timeliness of the development review and approval process, the redevelopment of this library could begin later in 2017. The City's financial contributions necessary to implement these agreements are currently programmed within the Five-Year Capital Improvement Program.

Recommendation

The Administration recommends that City Council hold a public hearing on Ordinances 57-16 and 58-16 and approve these ordinances at its December 5, 2016 Council meeting.

RECORD OF ORDINANCES

Ordinance No. 58-16

Passed _____, 20____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL ESTATE AND TRANSFER OF PROPERTY AGREEMENT AND OTHER NECESSARY DOCUMENTS WITH THE DUBLIN CITY SCHOOL DISTRICT ("DCSD") TO FACILITATE THE BUILDING OF A PARKING GARAGE, LIBRARY AND ADJACENT STREETS ON THE CURRENT LIBRARY SITE IN HISTORIC DISTRICT

WHEREAS, DCSD and the City desire to work cooperatively to help facilitate the development of a City-owned parking garage, adjacent streets, and a new Dublin branch library by the Columbus Metropolitan Library (CML) (the "Project"); and

WHEREAS, the implementation of the Project requires that DCSD and the City agree upon terms that will make certain real estate available to the City, which is needed to facilitate the development of the Project; and

WHEREAS, the proposed Real Estate and Transfer of Property Agreement (the "Agreement") reflects the mutually beneficial terms agreed to by the City and DCSD, which will provide the needed real estate to the City in exchange for a series of technology infrastructure enhancements that will benefit DCSD by providing better digital connectivity among its many facilities and by reducing its costs to secure such technology infrastructure services from other third party providers while also expanding the service area of such technology infrastructure to the broader Dublin community; and

WHEREAS, DCSD is the owner of a certain parcel of real property north of Bridge Street, south and east of I-270 and west of North High Street situated in the City of Dublin, County of Franklin and State of Ohio, containing approximately 34.95 acres with a tax parcel number 273-000001 as depicted on Exhibit "A" to the attached form of the Agreement (said real property, together with all appurtenances and hereditaments thereto, shall be referred to as the "DCSD Property"); and

WHEREAS, the City requires certain portions of the eastern edge of the DCSD Property consisting of a total of 1.35 acres for right-of-way needed to build a section of Franklin Street (in two phases) from Bridge Street/SR 161 to the proposed Rock Cress and to build a western extension of North Street to the new Franklin Street as depicted on Exhibit "A" to the attached form of the Agreement; and

WHEREAS, CML holds fee simple title to three combined parcels adjacent to the DCSD Property (273-00038, 273-004507 and 273-000010) with a combined acreage of 3.47 acres adjacent to the west of the CML Property as depicted on Exhibit "A" to the attached form of the Agreement (said real property, together with all appurtenances and hereditaments thereto, shall be referred to as the "Library Property"); and

WHEREAS, DCSD through a "restriction of record" has certain residual rights to the CML property if and when said property ceases to operate as a library; and

WHEREAS, CML is desirous of transferring approximately 2.32 acres of the Library Property to the City as depicted on Exhibit "A" to the attached form of the Agreement for the development of a new road on the northern portion of the Library Property to be named Rock Cress, a portion of the new road located along the western edge of the Library property to be named Franklin Street (northern portion), a portion of a reconstructed roadway known as North Street, and a public parking garage on the western portion of the Library Property, which transfers also include the remaining strip of the Library Property to north of Rock Cress as Greenway; and

WHEREAS, DCSD agrees to waive the restriction of record as it relates to CML's transfer of 2.32 acres of the Library Property to the City for the development of those roadways, green space and the public parking garage; and

RECORD OF ORDINANCES

Ordinance No. 58-16

Passed Page 2 of 2, 20

WHEREAS, the City, in exchange for the above land area and waiver, agrees to connect its fiber network (Dublink) to all DCSD School facilities in place at the time of the execution of this Agreement (except Bailey Elementary, Daniel Wright Elementary and Riverside Drive Elementary) and to dedicate two pairs of fibers within Dublink for use by DCSD.

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

Section 1. The City Manager is hereby authorized to execute all necessary documentation, including but not limited to, the Real Estate and Transfer of Property Agreement in substantially the same form as the one attached hereto, with changes not inconsistent with this Ordinance, not substantially adverse to the City, and which shall be approved by the City Manager and Director of Law. The approval of changes thereto by those officials, and their character as not being substantially adverse to the City, shall be evidenced conclusively by their execution thereof.

Section 2. The Ordinance shall take effect at the earliest date allowed by law.

Passed this _____ day of _____, 2016.

Mayor – Presiding Officer

ATTEST:

Clerk of Council

REAL ESTATE AND TRANSFER OF PROPERTY AGREEMENT

THIS REAL ESTATE AND TRANSFER OF PROPERTY AGREEMENT (hereinafter the "Agreement") is made and entered into on the ___ day of _____, 2016 (the "Effective Date") by and between the City of Dublin, Ohio, an Ohio municipal corporation (the "City"), having an office at 5200 Emerald Parkway, Dublin, Ohio 43017, and Dublin City School District Board of Education, an Ohio school district ("DCSD"), having an official address of 7030 Coffman Road, Dublin, Ohio 43017 (the City and DCSD may be referred to herein together as "Parties" and singularly as "Party").

RECITALS

WHEREAS, DCSD and the City desire to work cooperatively to help facilitate the redevelopment of a new Dublin branch library (the "Project") by the Columbus Metropolitan Library (CML); and

WHEREAS, the implementation of the Project requires that DCSD and the City agree upon terms that will make certain real estate available to the City which is needed to facilitate the development of the Project; and

WHEREAS, this Agreement reflects the mutually beneficial terms agreed to by the Parties which will provide the needed real estate to the City in exchange for a series of technology infrastructure enhancements that will benefit DCSD by providing better digital connectivity among its many facilities and by reducing its costs to secure such technology infrastructure services from other third party providers; and

WHEREAS, DCSD is the owner of a certain parcel of real property north of Bridge Street, south and east of I-270 and west of North High Street situated in the City of Dublin, County of Franklin and State of Ohio, containing 34.95 acres, more or less, with a tax parcel number 273-000001, which real property is more fully depicted on Exhibit "A", attached hereto and made a part hereof (said real property, together with all appurtenances and hereditaments thereto, shall be referred to as the "DCSD Property"); and

WHEREAS, the City requires certain portions of the DCSD Property as identified on Exhibit "A" consisting of a total of 1.35 acres, more or less, for right of way to build a section of Franklin Street (in two phases) from Bridge Street/SR 161 to the proposed Rock Cress and to build a western extension of North Street to the New Franklin Street; and

WHEREAS, the City anticipates needing access to certain portions of the DCSD Property as identified on Exhibit "A" as "Early Utility Work Area" and illustrated on Exhibit "A" by the hatch marks for utility work prior to DCSD's transfer of 1.32 acres for right of way to the City; and

WHEREAS, DCSD agrees to provide to the City easement(s) or other acceptable conveyance documents required by the specific utility providers for the "Early Utility Work

Area” identified on Exhibit “A” with hatch marks to then be vacated or released upon DCSD transfer of the 1.35 acres, more or less, of right of way to the City; and

WHEREAS, CML holds fee simple title to 3 combined parcels adjacent to the DCSD Property (273-00038, 273-004507 and 273-000010) with a combined acreage of 3.47 acres as shown in Exhibit “A” (said real property, together with all appurtenances and hereditaments thereto, shall be referred to as the “Library Property”); and

WHEREAS, DCSD through a “restriction of record” has the right to purchase the Library Property back for the value of the improvements should the Library Property cease being used as a Library or, if DCSD declines to purchase the Library Property back, DCSD is entitled to receive the proceeds of any sale of the Library Property which relates to the value of the land (not improvements); and

WHEREAS, CML is desirous of transferring 2.32 acres, more or less, of the Library Property to the City for the development of a road on the northern portion of the Library Property to be named Rock Cress (0.63 acres), a greenway directly adjacent to the north of Rock Cress (0.29 acres), a portion of the new road located along the western edge of the Library Property to be named Franklin Street (northern portion) (0.10 acres), a portion of the Library Property for the extension of North Street (0.05 acres), and a Public Parking Garage on the western portion of the Library Property (1.25 acres) as all are identified on Exhibit “A”; and

WHEREAS, DCSD agrees to waive the restriction of record as it relates to CML’s transfer of 2.32 acres, more or less, of the Library Property to the City as outlined herein; and

WHEREAS, pursuant to authority under Ohio law, including but not limited to Ohio Revised Code §3313.40, the City, in exchange for the above land area and waivers, agrees to connect its fiber network (Dublink) to all DCSD School facilities in place at the time of the execution of this Agreement (except Bailey Elementary, Daniel Wright Elementary and Riverside Drive Elementary), and to dedicate 2 pairs of fibers within Dublink for use by DCSD, and to grant to DCSD any appropriate easements necessary for DCSD to access and utilize the Dublink network.

STATEMENT OF THE AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to and incorporate in the foregoing Recitals and as follows:

ARTICLE I **EXCHANGE OF RIGHTS**

1.01 Agreement. For the consideration and on the terms and conditions set forth herein, DCSD hereby agrees to transfer certain real property rights to the City in exchange for the City providing access to Dublink and bringing laterals to certain school buildings, all as more specifically contemplated in the recitals above.

ARTICLE II
Property Transfers

2.01 Transfer of Real Property. DCSD agrees to transfer fee simple ownership rights in the following real estate to the City, as depicted in Exhibit A:

- a. An approximate 0.53 acres to be split from parcel no. 273-000001 to build the northern portion of Franklin Street directly adjacent to the west of the Library Property.
- b. An approximate 0.64 acres to be split from parcel no. 273-000001 to build the southern portion of Franklin Street to connect to Bridge Street (which includes the West Bridge Academy “WBA building”). Pursuant to the terms of a Lease attached hereto as Exhibit “B”, DCSD will continue to have the right to use and occupy the WBA building.
- c. An approximate 0.18 acres to be split from parcel no. 273-000001 to build a western portion of North Street providing public access to the DCSD Property to the west, to the City of Dublin’s Darby Street parking facility to the south, to the CML property to the north, and to provide a dedicated connection to the new Franklin Street right of way.
- d. DCSD agrees to provide such conveyance documents or easements as may be needed for portions of the DCSD Property identified and illustrated on Exhibit “A” as “Early Utility Work Area” by hatch marks for utility work prior to DCSD’s transfer of 1.35 acres for right of way to the City. DCSD agrees to timely provide to the City easement(s) or other acceptable conveyance documents required by the specific utility providers for the “Early Work Area,” provided such easements do not unduly interfere with the programming, safety, and activities of the DCSD. The conveyance documents or easements shall be vacated or released by the Parties upon DCSD transfer of the 1.35 acres right of way to the City.
- e. The DCSD agrees to provide such temporary construction easements as may be needed to accommodate the construction of the Franklin Street roadway, provided such easements do not unduly interfere with the programming, safety, and activities of the DCSD.
- f. The City agrees to provide legal descriptions and surveys and other work necessary to complete the foregoing lot splits and otherwise prepare such real property for transfer.

2.02 Landscaping/Demolition. The City will work with DCSD to ensure that appropriate landscaping and/or other design features are incorporated into the roadway design for Franklin Street to provide for the safe use of the DCSD Property by the students and other users.

The City will incur all costs associated with demolition of the WBA building and improvements located within the ROW as well as the remainder of the WBA building on the remaining DCSD Property. After demolition the City shall landscape the WBA building area to blend in with the DCSD Property directly adjacent thereto.

2.03 Plat or Deed to Transfer. The conveyance by DCSD of the tracts described in Section 2.01 above, unless described otherwise therein, shall be by a good and sufficient limited warranty deed or dedicated by plat. DCSD agrees to execute any and all supplemental instruments or documents necessary to vest the City with the rights, titles and interests described in Section 2.01.

2.04 Warranty of Title. DCSD shall, and hereby does, warrant that the portion(s) of the DCSD Property described in section 2.01 is free and clear from all liens and encumbrances arising during DCSD's periods of ownership, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; and (c) zoning and building laws, ordinances, rules and regulations.

2.05 Elimination of Others' Interest. DCSD shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to the City releases and cancellations of any and all other rights, titles and interests in the portions of the DCSD Property described in Section 2.01, such as, but not limited to, those belonging to tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, if any.

DCSD and the City agree that if a mortgagee of DCSD or of a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee's mortgage lien secured by the property described in Exhibit A, then and in that event this Agreement shall become null and void and the Parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term "fails to cooperate" shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee's mortgage lien that the City, in its sole discretion, deems to be excessive. DCSD shall cooperate with all pre-acquisition due diligence by the City.

2.06 Closing Date. The consummation and closing of the applicable portions of the DCSD Property shall occur at such time and place as the Parties may agree, but no later than thirty (30) days after the completion or waiver of the contingencies in section 3.01.

2.07 Physical Possession of Land and Improvements; Demolition. DCSD will have extended rights to occupy the WBA pursuant to a separate lease agreement reflecting all the terms and conditions for the period of occupancy in a form substantially similar the Exhibit "B". Once the Lease is terminated DCSD grants the City up to one (1) year from DCSD vacation to demolish the WBA building. Such grant gives the City the right to occupy the necessary school property for the purpose of demolition, clean up and landscaping of the area once occupied by the WBA building. The City agrees during this time not to interfere with the reasonable use of the DCSD Property by DCSD.

2.08 Waiver of Restriction of Record. DCSD agrees via plat or deed or other mutually agreed upon instrument to release/waive any real estate interest of record it may have for the following portions of the real estate recorded in the name of CML (i.e. Library Property) and parts of Parcel nos. 273-004507 and 273-000010 upon the properties transfer from CML to the City as stated herein.

- a. 1.21 acres, more or less, located on the western portion of the Library Property, to accommodate a new parking structure to be built by the City to service the new library and provide additional public parking;
- b. 0.63 acres, more or less, needed for ROW for a new road to be named Rock Cress, located on the northern portion of the Library Property; and
- c. 0.10 acres, more or less located along the western edge of the Library property and needed for ROW for a new road to be named Franklin Street; and
- d. 0.29 acres, more or less, of real estate remaining to the north of the new road, Rock Cress.

DCSD will retain its restrictions of record with respect to the balance of the Library Property.

2.09 Dublink. The City agrees to complete the following on or before April 1, 2017:

- a. Install and own lateral connections from and complete any other work necessary to connect the Dublink fiber network to all DCSD School facilities in place at the time of the execution of this Agreement except Bailey Elementary, Daniel Wright Elementary, and Riverside Drive Elementary.
- b. The dedication of 2 pairs of fibers within Dublink for use by the DCSD through the execution of an Indefeasible Right-to-Use Agreement in a form substantially similar to Exhibit "C", which shall include any easements or other real estate interests necessary to access and use the same.

2.10 Council of Governments. The City will explore the opportunities to form a Council of Governments ("COG"), which would include DCSD.

ARTICLE III **CONTINGENCIES**

3.01 Contingencies. This Agreement and the terms herein shall be contingent upon the following:

- a. The City entering into an agreement with CML for redevelopment of the Dublin Branch Library, including the dedication of the property interest needed from the Library Property as shown on Exhibit "A" and for the roadway and parking facility uses as stated herein;
- b. Dublin City Council approving this Agreement;
- c. Dublin City School District Board of Education approving this Agreement; and
- d. Dublin City Schools District Board of Education approving those things that might be necessary for CML to proceed with the development of the new Library facility on the remaining Library Property.

In the event that contingencies a. and d. above are not met, the City shall nonetheless perform its obligations required by Section 2.09 and 2.10 and DCSD shall provide the property transfers for the Franklin Street and North Street rights of way to the City as provided for in Section 2.01. In such an event the City shall be entitled to deduct, pursuant to Section 1(d) of the City of Dublin-Dublin City School District Bridge Street District Cooperative Agreement dated April 14, 2014 (the "Cooperative Agreement"), its actual costs in performing those obligations outlined in Section 2.09, less the value of the Franklin Street and North Street rights of way (appraised value of \$557,599), from the payments due to DCSD under the Cooperative Agreement. The deduction shall be made in five equal annual installments beginning the calendar year after the improvements described in Section 2.09 are completed. In such event, DCSD shall not be required to perform its obligations under Article II except with respect to the Franklin Street and North Street rights of way. For example, if the contingencies in a. and d. are not met and the Dublinlink installation required by Section 2.09 costs \$1,000,000, then the City shall be entitled to deduct over a five-year period a total of \$442,401 from the annual payments due to DCSD under the Cooperative Agreement. That deduction would occur in five equal annual installments of \$88,480 beginning in calendar year 2018 and continuing through and including calendar year 2022.

ARTICLE IV NOTICES

4.01. Notices. Whenever in this Agreement it shall be required or permitted that notice be given or served by either Party hereto on the other, such notice shall be in writing and shall be deemed served when either delivered in person to the following designated agents for that purpose, or deposited in the United States Mail, by certified or registered mail, postage prepaid, return receipt requested, addressed to the other Party as follows:

If to DCSD:	Dublin City School District Attn: 7030 Coffman Road Dublin, Ohio 43017
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With copy to: Todd Reutzel
Bricker & Eckler LLP
100 S. 3rd Street
Columbus, Ohio 43215
treutzel@bricker.com

or such other address as DCSD may hereinafter designate by written notice to the City. Any notice to be served on the City shall be addressed as follows:

If to the City: Dana L. McDaniel
City Manager
City of Dublin
5200 Emerald Parkway
Dublin, Ohio 43017

with copy to: Philip K. Hartmann
Frost Brown Todd LLC
One Columbus, 10 West Broad Street
Columbus, Ohio 43215,

or such other address as the City may hereinafter designate by written notice to DCSD.

ARTICLE V **GENERAL PROVISIONS**

5.01 Governing Law. This Agreement is being executed and delivered in the State of Ohio and shall be construed and enforced in accordance with the laws of the State of Ohio. For all litigation, disputes and controversies which may arise out of or in connection with this Agreement, the undersigned hereby waive the right to trial by jury and consent to the jurisdiction of the courts in the State of Ohio.

5.02 Entire Agreement. This Agreement constitutes the entire contract between the parties hereto relating to the Recitals described herein, and may not be modified except by an instrument in writing signed by the Parties hereto, and supersedes all previous agreements, written or oral, if any, of the Parties.

5.03 Time of Essence. Time is of the essence of this Agreement in all respects.

5.04 Assignment. This Agreement shall not be assigned without the written approval of the other Party, which approval shall not be unreasonable withheld. If assigned, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.

5.05 Invalidity. In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

5.06 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, nor shall the same constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing waiver. No waiver shall be binding, unless executed, in writing, by the party making the waiver.

5.07 Financial Obligations. Notwithstanding any other provision of this agreement, the obligations of the City hereunder requiring expenditure of funds to perform those obligations are subject to appropriation by City Council of funds necessary to perform those obligations and do not constitute an indebtedness of the City within the provisions and limitations of the laws and the Constitution of the State, and neither the School District nor any other party has the right to have taxes or excises levied by the City for the payment or performance of its obligations hereunder.

5.08 Headings. The section headings contained in this Agreement are for convenience only and shall not be considered for any purpose in construing this Agreement. As used in this Agreement, the masculine, feminine and neuter genders, and the singular and plural numbers shall be each deemed to include the other whenever the context so requires.

5.09 Survival. The terms and provisions of this Agreement shall survive the delivery of the deed of conveyance hereunder.

5.10 Counterparts. This Agreement may be executed in one or more counterparts all of which will be considered one and the same agreement, binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

DUBLIN CITY SCHOOL DISTRICT
BOARD OF EDUCATION
An Ohio school district

THE CITY OF DUBLIN, OHIO
An Ohio municipal corporation

By: _____

Its: Board President

By: _____

Its: Treasurer _____

Dana L. McDaniel, City Manager

STATE OF OHIO :
 : ss.
COUNTY OF FRANKLIN :

BE IT REMEMBERED, that on this ___ day of _____, 2016, before me, the subscriber, a Notary Public in and for said state, personally appeared _____, duly authorized signator for Dublin City School District Board of Education, a Party in the foregoing Agreement, and acknowledged the signing thereof to be his/her voluntary act.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Notary Public

STATE OF OHIO :
 : ss.
COUNTY OF FRANKLIN :

BE IT REMEMBERED, that on this ___ day of _____, 2016, before me, the subscriber, a Notary Public in and for said state, personally appeared Dana L. McDaniel, City Manager of the City of Dublin, Ohio, an Ohio municipal corporation, a Party in the foregoing Agreement, and acknowledged the signing thereof to be his voluntary act and deed for and on behalf of the City of Dublin, Ohio.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Notary Public

Approved as to form:

Jennifer D. Readler, Law Director

Exhibit A

Map Depicting DSCD Property, CML Property and
Future Transfers of Properties by DCSD and CML to the City

Exhibit A: DCSD and CML Properties

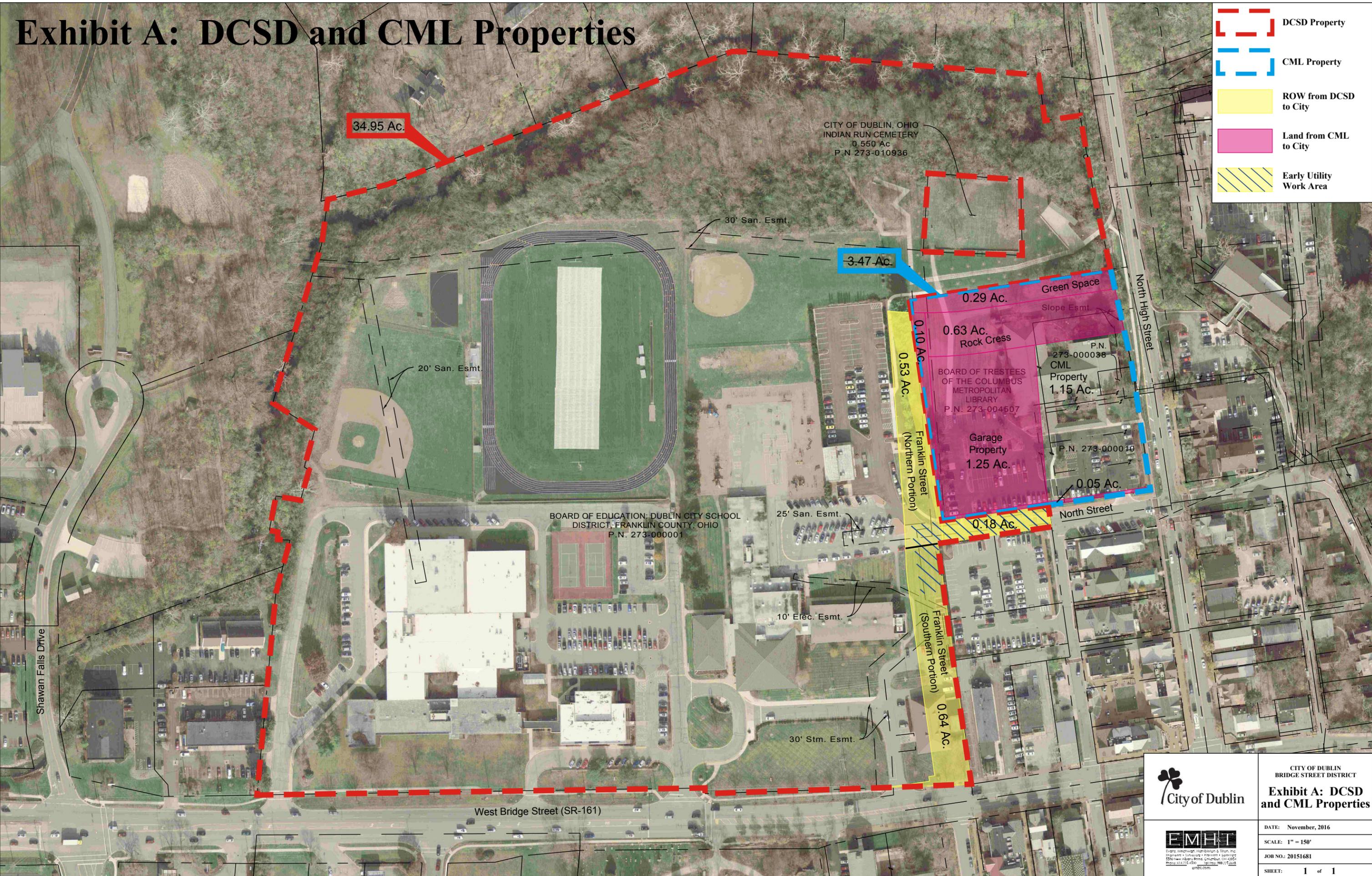
DCSD Property

CML Property

ROW from DCSD to City

Land from CML to City

Early Utility Work Area



CITY OF DUBLIN
BRIDGE STREET DISTRICT
Exhibit A: DCSD and CML Properties



DATE: November, 2016
SCALE: 1" = 150'
JOB NO: 20151681
SHEET: 1 of 1

Exhibit B
WBA Building Lease

Exhibit B

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into on this ___ day of _____, 2016, by and between the City of Dublin, Ohio, an Ohio municipal corporation ("Lessor"), and the Dublin City School District Board of Education, an Ohio school district ("Lessee"), having an official address of 7030 Coffman Road, Dublin, Ohio 43017 (Lessor and Lessee referred to together as "Parties" and singularly as "Party").

WITNESSETH:

WHEREAS, pursuant to a certain Real Estate and Transfer of Property Agreement ("Transfer Agreement") dated _____, 2016, Lessor purchased from Lessee property containing a total of 1.35 acres, more or less, for right of way needed to build a section of Franklin Street (in two phases) from Bridge Street/SR 161 to the proposed Rock Cress and to build a western extension of North Street to the New Franklin Street (the "Property");

WHEREAS, Phase 2 construction of Franklin Street will include the southern connection from North Street to Bridge Street and contains a portion of the West Bridge Academy (the "WBA Building") and consists of approximately 0.64 acres as depicted on Exhibit B of the Transfer Agreement (the "South Franklin Property");

WHEREAS, the Lessor per the terms of the Transfer Agreement will be responsible for the demolition of WBA Building immediately prior to the south Franklin Street roadway improvement construction;

WHEREAS, Lessor does not need the immediate possession of the South Franklin Property;

WHEREAS, upon the closing of the Property, Lessor has agreed to lease back to the Lessee the South Franklin Property;

WHEREAS, Lessor desires to lease back immediately upon closing of the sale and purchase of the Property to Lessee the South Franklin Property allowing Lessee the continued use of the West Bridge Academy and surrounding property;

NOW, THEREFORE, for valuable consideration, the amount and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. **PROPERTY**. As part of the consideration of Transfer Agreement between the Parties, Lessor hereby leases to Lessee rent free, and Lessee hereby leases from Lessor, rent free, the exclusive right to the South Franklin Property (including the WBA Building), except as otherwise provided in the Real Estate and Transfer of Property Agreement in Article II.

2. **DEFINED USE OF PROPERTY**. Lessee shall continue in possession of the South Franklin Property on the Closing Date in its "as is" condition. Lessee shall not sublet or assign the Lessee's interest in the South Franklin Property or any part thereof, without the prior

Exhibit B

written consent of Lessor. The South Franklin Property shall be used in a same or similar matter as it has been used prior to this Lease and other school operational purposes.

3. ASSIGNMENTS. Lessee shall not sublet or assign the Lessee's interest in the South Franklin Property or any part thereof, without the prior written consent of Lessor.

4. LEASE TERM. The term of this Lease shall be for a period commencing on the Closing Date, as that term is defined in the Transfer Agreement, continuing until the June conclusion of the 2018-2019 academic school year and continuing thereafter until terminated by one of the Parties pursuant to its termination rights under Section 15 or other applicable provisions hereof.

5. OPERATIONS ON PROPERTY. The Lessee shall not commit or permit the commission by others of any waste, injury or damage to the South Franklin Property. The Lessee will keep the South Franklin Property in good order and repair at all times.

6. MAINTENANCE. The Lessee, at its sole expense, shall keep the South Franklin Property maintained, clean and in good condition, and shall make all repairs, replacements and renewals, improvements or other modifications to the WBA Building and grounds that may be required for it to operate for its intended purpose. The Lessor shall in no event be required to make any repair, alteration or improvement to the South Franklin Property.

7. LEGAL COMPLIANCE. Comply with the requirements under state and local housing, health and safety codes that are applicable to Lessee, notwithstanding this language, Lessee will not be required to make any improvements in association with this compliance.

8. UTILITIES. Lessee hereby agrees that Lessee shall pay all of the charges incurred for any and all utilities, i.e. gas, electric, water, telephone and cable, and services, i.e. trash removal, consumed by Lessee on the South Franklin Property.

9. COMPREHENSIVE GENERAL LIABILITY INSURANCE. Lessee agrees that it will, at its sole expense, maintain for the benefit of Lessor under valid and enforceable policies issued by insurers of recognized responsibility, naming Lessee and Lessor, as their interest may appear, a general liability insurance policy providing for claims for bodily injury or death and property damage occurring upon or about the South Franklin Property, such insurance to afford protection to a limit of not less than One Million (\$1,000,000.00) Dollars with respect to bodily injury or death, and not less than Three Hundred Thousand (\$300,000.00) Dollars with respect to damage to property in any one accident. Such policies shall provide that they shall not be cancelled without at least a thirty (30) day prior written notice to the assured named therein and certificates of said coverage shall be furnished to the Lessor upon request.

10. FIRE AND CASUALTY INSURANCE. Lessee will maintain for the benefit of Lessee and Lessor a general fire and hazard insurance policy providing for claims of any property damage to the South Franklin Property, with such insurance to afford protection to a limit of not less than Three Hundred Thousand (\$300,000.00) Dollars (or, if less, coverage at replacement value) with respect to fire and/or casualty loss to the South Franklin Property.

Exhibit B

Lessee shall be entitled to all casualty insurance proceeds in the event of an occurrence of casualty, and Lessor hereby assigns to Lessee any proceeds to which it otherwise may be entitled under the casualty insurance policy maintained by Lessee; however, if any casualty would increase the cost of later demolishing and clearing the WBA Building, the Lessor shall be entitled to insurance proceeds from a casualty to the extent of the additional demolition cost arising from the casualty unless Lessee elects to use the proceeds of insurance to restore the damage to the WBA Building.

11. LIABILITY. Anything in this Lease to the contrary notwithstanding, Lessee and Lessor each waives all rights of recovery, claim, action or cause of action, against the other, its agents, officers, directors, or employees, for any loss or damage that may occur to the South Franklin Property, or any improvements thereto, or any personal property of such Party therein, or injury or death to persons, by reason of fire, the elements or any other cause which could be insured against under the terms of all risk property insurance policies, regardless of cause or origin, including negligence of the other Party hereto, its agents, officers or employees; and each Party covenants that no insurer shall hold any right of subrogation against such other Party.

12. QUIET ENJOYMENT. Lessor represents that it has full right and power to execute this Lease to the South Franklin Property leased herein and that Lessee, upon the performance of all of the terms, conditions, and covenants herein contained, shall have, hold and peaceably enjoy the South Franklin Property during the full Term of this Lease, subject and subordinate to all of the terms, covenants, and conditions of this Lease. Notwithstanding the foregoing, Lessee understand and agree that Lessor has the right to enter upon the South Franklin Property for the purpose of making surveys, soundings, drillings, appraisals, and examinations as are necessary, or for any other reasonable purpose, provided that any such entry by Lessor shall not interfere with Lessee's use of the South Franklin Property. To the extent there is any conflict with this section 12 and Article II of the Real Estate and Transfer of Property Agreement, Article II supersedes this section 12.

13. WHEN LESSOR MAY ENTER. Lessor, or Lessor's agents or representatives, may enter the South Franklin Property and WBA Building, upon forty-eight (48) hours prior notice during reasonable times for any reasonable purpose, provided Lessee is present. Lessor reserves the right to enter the South Franklin Property without notice in case of emergency.

14. DEFAULT BY LESSEE. In the event Lessee is in default of any of the terms or obligations of the Lease, violate and/or fail to comply with any of the covenants, terms, or conditions of the Lease, or any applicable laws, rules or ordinances, said default, subject to the notice and opportunity to cure provided herein, shall constitute grounds for termination of this Lease and/or eviction by Lessor and Lessor shall have all rights and remedies available to it under the terms of this Lease and applicable law. Lessor shall provide Lessee with a notice of such default, and Lessee shall have thirty (30) days (or such additional time as may be reasonably required if Lessee is diligently pursuing a cure of the default) to cure said default prior to lease termination. Lessee shall be and remain liable for damages which Lessor has sustained by virtue of Lessee's default under this Lease, taking into account, however, that Lessor does not intend to use or re-let the WBA Building after the termination of this Lease.

Exhibit B

If to Lessee: Dublin City School District
Attn:
7030 Coffman Road
Dublin, Ohio 43017

With a copy to: Todd O. Reutzel
Bricker & Eckler LLP
100 S. 3rd Street
Columbus, Ohio 43215

or such other address as Lessee may hereinafter designate by written notice to Lessor.

17. INVALIDITY. In the event that any provision of this Lease shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Lease.

18. GOVERNING LAWS. This Lease is being executed and delivered in the State of Ohio and shall be construed and enforced in accordance with the laws of the State of Ohio. For all litigation, disputes and controversies which may arise out of or in connection with this Lease, the undersigned hereby waive the right to trial by jury and consent to the jurisdiction of the courts in the State of Ohio.

19. ENTIRE AGREEMENT. This Lease constitutes the entire contract between the Parties hereto with respect to the leasing of the South Franklin Property, and may not be modified except by an instrument in writing signed by the Parties hereto, and supersedes all previous agreements, written or oral, if any, of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day first above written.

LESSOR:

THE CITY OF DUBLIN, OHIO
An Ohio municipal corporation

LESSEE:

DUBLIN CITY SCHOOL DISTRICT
BOARD OF EDUCATION,
An Ohio school district

Dana L. McDaniel, City Manager

Todd Hoadley, Superintendent

Exhibit B

STATE OF OHIO :
COUNTY OF FRANKLIN :

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____, the _____ of the City of Dublin, Ohio, an Ohio
municipal corporation, on behalf of the municipal corporation.

Notary Public

STATE OF OHIO :
COUNTY OF FRANKLIN :

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____, the _____ of the Dublin City School District
Board of Education, an Ohio school district and political subdivision, on behalf of the school
district and political subdivision.

Notary Public

Exhibit B

EXHIBIT A

10882481v2

C:\Users\00354\ND Office Echo\VAULT-phartmann@fbtlaw.com\Exhibit B- DCSD Lease Agreement of WBA 4817-9715-0525 v.1.DOCX

Exhibit C
Indefeasible Right-to-Use Agreement

C:\Users\00354\ND Office Echo\VAULT-phartmann@fbtlaw.com\Council packet copy-Exchange of Property Interests City and DCSD Agreement 4846-1054-9053 v.1.docx

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 June, 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 Dublin City School District Board of Education, an Ohio school district ("User"), having an official address of 7030 Coffman Road, Dublin, Ohio 43017 (the City and User may be referred to herein together as "Parties" and singularly as "Party").

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, User and the Owner desire to work cooperatively to help facilitate the redevelopment of a new Dublin branch library by the Columbus Metropolitan Library (CML);

WHEREAS this IRU is part of the consideration in a Real Estate and Transfer of Property Agreement between User and Owner;

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 will or 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

Exhibit C

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. 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". The Term shall begin upon execution of this Agreement.

Exhibit C

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. The execution of the Real Estate and Transfer of Property Agreement.
- 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.

Exhibit C

- 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

Exhibit C

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

Exhibit C

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 To the extent allowable under Ohio law, 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,

Exhibit C

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.

Exhibit C

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

Exhibit C

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 Owner.

15. WAIVER OF TERMS OR CONSENT TO BREACH.

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

Exhibit C

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:

With copy to:

If to the City: Dana L. McDaniel
City Manager
City of Dublin
5200 Emerald Parkway
Dublin, Ohio 43017

Exhibit C

With copy to: Philip K. Hartmann
Frost Brown Todd, LLC
One Columbus, 10 West Broad Street
Columbus, Ohio 43215

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

20. SEVERABILITY.

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

21. COMPLIANCE WITH LAW.

21.1 Each Party hereto agrees that it 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.

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

Exhibit C

USER:
Dublin City School District Board of Education

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 C

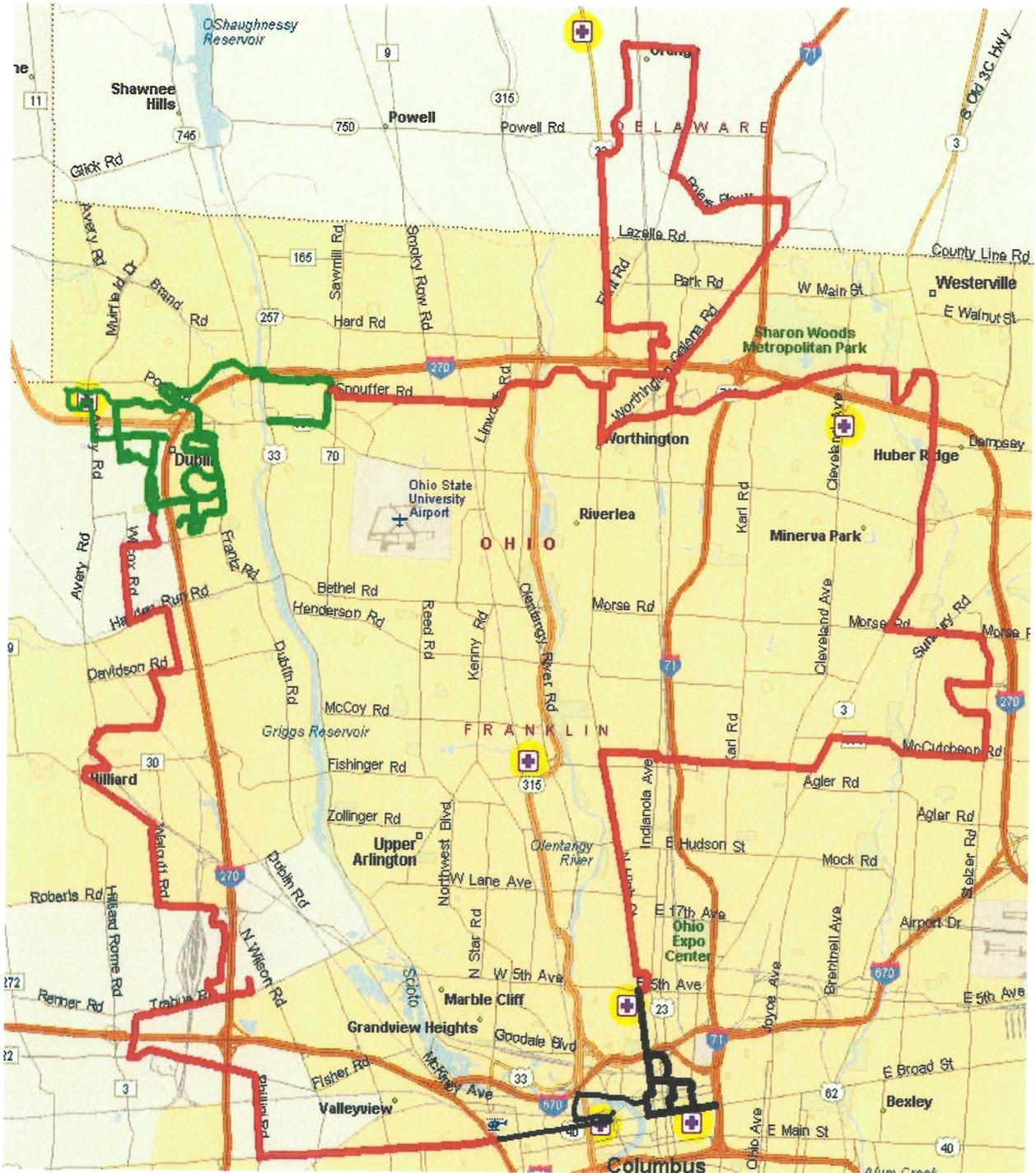


Exhibit B

FIBER SYSTEM SPECIFICATIONS

I. General

Exhibit C

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

Exhibit C

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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. <u>55</u>
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