

**To:** Members of Dublin City Council  
**From:** Dana L. McDaniel, City Manager  
**Date:** May 4, 2021  
**Initiated By:** Jennifer Readler, Law Director  
Gregory Dunn, Special Legal Counsel, IceMiller L.L.P.  
**Re:** Resolution 27-21 – Contract Modifications with Dublink Development L.L.C. and Columbus Fibernet L.L.C.

## Background

The Dublink Project originated with a series of contracts between the City of Dublin and Fishel Company. These contracts were initially entered into in 1998 and were expanded upon and modified over the years. For the purposes of this report, we will refer to Fishel and its subsidiary Dublink Development L.L.C., both as the Fishel Company. Dublink consists of a multi-conduit system owned and operated by the Fishel Company, with one conduit of the system dedicated for use by the City of Dublin. The City populated its conduit in the Dublink system with fiber optics. The City has used fiber optics over the years for institutional/public purposes, economic development attraction, retention and expansion, and dark fiber leasing. The City owns approximately 25 miles of fiber optics within the City of Dublin and nearly 100 miles of fiber optics outside the City of Dublin. The Fishel Company has contractually managed and maintained the City's fiber optics since its initial deployment.

The relationship with the Fishel Company has been a good one and at this time both the Fishel Company and the City of Dublin believe it is desirable to bring the Agreements up to date by consolidating phase lease pricing and memorializing certain operational understandings we have had with the Fishel Company. Resolution 27-21 with two associated Agreements, the Amendment to the Agreement and Maintenance Agreement with Columbus FiberNet, if passed by Council, will achieve this needed update. The two Agreements accompanying Resolution 27-21 do the following

1. The Fishel Company has built a conduit system inside the City of Dublin in multiple phases over time and each of the phases has a different pricing structure. With the addition of new conduit in the West Innovation District/University Boulevard, recently constructed conduit on Bridge Street, generally between Post/Franz Road and Riverside Drive, and City-owned conduit in Bridge Park, there would be seven (7) phases each with separate pricing structures. Therefore, it is in both the City and The Fishel Company's best interests to simplify the conduit pricing structure. Accordingly, staff and the Fishel Company propose to restructure conduit pricing to three (3) phases instead of potentially seven (7) (See Exhibit C of the Amendment to the Agreement).
2. The Maintenance Agreement for the Dublin owned fiber outside of Dublin, which is contained in the Columbus FiberNet Conduit, has expired. Staff recommends renewing the Maintenance Agreement at the same costs as in the Original Agreement (\$63,900.00 per

year). The new Agreement will add CPI cost of living adjustment not previously provided. Consistency in the management and maintenance of the City's fiber optic system is critical to the system's integrity and reliability.

3. The Fishel Company, as part of its partnership with Dublin, provided location services for the laterals, which Dublin built to serve certain Dublin K-12 Schools. The Fishel Company has been providing these services at no charge to the City. The proposed Agreement adds language that will reimburse the Fishel Company for its actual costs of providing location services for these particular laterals. The City possesses other similar laterals into privately and publicly owned buildings. Retaining the responsibility to locate these laterals is critical to maintaining the integrity of the entire system.
4. As part of the public street construction in Bridge Park, the City also constructed a multi-conduit system in which the City retains ownership. As has been accomplished with the many phases of the Dublin multi-conduit system in the public right of way over the years, it was critically important to construct a similar system in this dense urban setting in order to avoid continuous disruption by multiple service providers while accommodating and encouraging rapid service/technology deployment. Staff recommends engaging the Fishel Company to provide consistent maintenance and management of the Dublin owned conduit system for the integrity of the entire system. Staff recommends engaging the Fishel Company for Fifteen-Thousand Dollars (\$15,000.00) per year to manage and maintain this part of the system. The Fishel Company will charge lessees of the conduit the rate of \$10.00 per conduit foot. Upon receipt of payment, the Fishel Company will then remit the payment to the City of Dublin. Since the City owns this conduit in this phase, a lower rate will encourage the provisioning of better connectivity for businesses and citizens in the Bridge Park area while minimizing disruption and accelerated deterioration of other infrastructure. This arrangement keeps the Fishel Company as a "one stop shop" for companies wishing to access the Dublin system in this particular phase, as well as, throughout the City of Dublin and in its portion of the system outside the City of Dublin.

### **Recommendation**

Staff recommends Council pass Resolution 27-21 and its associated Agreements. Passing Resolution 27-21 will help to make Dublin even more competitive, while ensuring its integrity and reliability into the future.

RECORD OF RESOLUTIONS

Resolution No. 27-21 Passed \_\_\_\_\_,

A RESOLUTION AUTHORIZING THE CITY MANAGER TO  
ENTER INTO CONTRACT MODIFICATIONS WITH  
DUBLINK DEVELOPMENT COMPANY L.L.C. AND  
COLUMBUS FIBERNET L.L.C. RELATED TO THE MULTI-  
DUCT UNDERGROUND CONDUIT AND RELATED  
FACILITIES COMMONLY KNOWN AS DUBLINK

**WHEREAS**, the Dublink Project began in 1998 and has been expanded and modified over the years; and

**WHEREAS**, Fishel Company has coordinated the agreements between Dublin, its subsidiary Dublink Development Corporation and Columbus Fibernet ("collectively the Fishel Company"); and

**WHEREAS**, Dublin and the Fishel Company believe it is necessary to update the existing agreements and to memorialize certain operational understandings we have had with the Fishel Company; and

**WHEREAS**, City Council has determined it is in the best interest of the City to enter into these agreements.

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

**Section 1. Authorization of Agreements.** The City Manager is hereby authorized to execute the Amendment to the Agreement dated December 14, 1998 with Dublink Development Company LLC and the Maintenance Agreement in Connection with the Multi-Duct Underground Conduit and Related Facilities between Columbus Fibernet LLC and the City of Dublin in substantially the same form as that set forth in the attached agreements. This City Council further authorizes the City Manager, for and in the name of the City, to execute any amendments to the foregoing agreements, which amendments are not inconsistent with this Resolution and not substantially adverse to this City.

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

**Section 3.** This Resolution shall take effect upon passage in accordance with Section 4.04(a) of the Revised Charter.

RECORD OF RESOLUTIONS

*Resolution No.* 27-21 *Passed* Page 2, \_\_\_\_\_

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_

Mayor – Presiding Officer

ATTEST:

\_\_\_\_\_

Clerk of Council

**MAINTENANCE AGREEMENT  
IN CONNECTION WITH THE  
MULTI-DUCT UNDERGROUND CONDUIT AND RELATED FACILITIES  
BETWEEN COLUMBUS FIBERNET, LLC AND THE CITY OF DUBLIN**

This Maintenance Agreement hereinafter referred to as the “Agreement”, is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between Columbus Fibernet, LLC, an Ohio limited liability company with offices at 1810 Arlingate Lane, Columbus, Ohio 43228 (“Seller”) and the City of Dublin, Ohio, an Ohio municipal corporation with offices at 5200 Emerald Parkway, Dublin, Ohio 43017, (“Buyer”), For the purposes of this Agreement, Seller and Buyer shall be referred to individually as a “Party” and collectively as the “Parties.”

**WITNESSETH:**

WHEREAS, Seller and Buyer entered into that certain Contract of Sale for Multi-Duct Underground Conduit and Related Facilities on November 19, 2004 (the “Contract”), in which Buyer agreed to acquire a duct within the Conduit System, as such term is defined in the Contract, complete with a specified amount of installed optical fiber and Seller agreed to maintain such duct and fiber pursuant to the terms specified therein;

WHEREAS, Article IX, Section 9.1 of the Contract provides the terms under which Seller would provide Scheduled Maintenance, Repair, and Relocation of the Conduit System and the duct acquired by Buyer;

WHEREAS, the term of Article IX, Section 9.1 of the Contract, including all contemplated renewals, expired;

WHEREAS, Buyer desires for Seller to continue to provide such Scheduled Maintenance;  
and

WHEREAS, Seller is willing to continue to provide such Scheduled Maintenance in accordance with the terms of the Contract and this Agreement.

NOW, THEREFORE, effective as of the date hereof and in consideration of the mutual agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound Buyer and Seller agree as follows:

1. **Term.** This Agreement shall have an Effective Date when fully executed and shall terminate ten (10) years from the anniversary of that effective date.

2. **Operations and Maintenance.** Buyer shall continue to perform the maintenance, repair, and relocation requirements in accordance with the terms that follow and as further provided in Exhibit A of the Contract:

A. **Scheduled Maintenance.** Buyer shall use commercially reasonable methods to maintain, manage, and operate the Property in a secure and good condition that meets or exceeds industry standards. Seller shall use commercially reasonable methods to maintain, manage, and operate the Conduit System in a secure and good condition that meets or exceeds industry standards. Maintenance of the Property and the Conduit System shall be performed by Buyer and Seller, respectively, on a regular basis as is customary in the industry and otherwise as maybe required. All routine scheduled maintenance (“Scheduled Maintenance”) shall include, but is not limited to, locating and marking duct and pumping, venting, air quality testing, and proofing the duct when necessary.

Seller shall have no responsibility for maintaining the fiber within the duct or for maintaining the Dublink Fiber.

3. **Compensation.** Seller agrees to perform the Scheduled Maintenance pursuant to Section 2 for Buyer for an annual maintenance fee of Sixty-Three Thousand and Nine Hundred Dollars and No Cents (US\$63,900.00) (the “Annual Maintenance Fee”). The Annual Maintenance Fee shall be adjusted once each calendar year for monthly or annually recurring Scheduled Maintenance services on a date Buyer selects (and of which Buyer provides notice to Seller) to reflect net increases since the Effective Date in the original data value set forth in the U.S. Consumer Price Index (specifically, Bureau of Labor Statistics “CPI - All Urban Consumers, Not Seasonally adjusted, Midwest region”) or five percent (5%), whichever is less (the “Annual Adjustment”); provided however, that in no event shall any rate subject to the Annual Adjustment be less than its initial value set forth in this Agreement. In the event that the Bureau of Labor Statistics, or its successor organization, no longer publishes this index, Seller shall designate, with Buyer’s agreement, which shall not be unreasonably withheld, a new statistical index and formula appropriate for calculations of Annual Adjustments.
4. **Severability.** If any term or provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
5. **Modifications.** Except as otherwise provided herein, no variation, modification, or change to this Agreement shall be binding upon any Party hereto unless mutually agreed to in a writing executed by a duly authorized officer or agent of each Party.
6. **Prevailing Party.** If any Party to this Agreement brings an action or proceeding to enforce the terms of this Agreement or to declare rights under this Agreement, the prevailing Party in any such action, proceeding, or appeal thereon, shall be entitled to reasonable attorneys’ fees and expenses from the non-prevailing Party.

7. **Successors and Assigns.** All rights and obligations under this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, personal representatives, successors and assigns.
8. **Interpretation/Definitions/Counterparts.** Unless otherwise provided herein, all terms and conditions of the Contract shall remain in full force and effect and are hereby confirmed by Buyer and Seller and incorporated herein. Unless otherwise defined herein, all capitalized terms contained in this Agreement shall have the meaning ascribed to them in the Contract. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall constitute a single instrument.
9. **Conflict.** In the event of any conflict between any provisions of this Agreement and any provisions of the Contract, the provisions of this Agreement shall control.

**[Signature page follows]**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first written above.

**CITY OF DUBLIN, OHIO**  
(Buyer)

**COLUMBUS FIBERNET, LLC**  
(Seller)

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

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

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

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



**Approved As To Form:**

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Law Director, City of Dublin, Ohio.

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**EXHIBIT A**  
**SCHEDULED MAINTENANCE**  
**Page 1 of 1**

**Scheduled Maintenance:**

Routine Maintenance and repair of the Conduit System described in this section (“Scheduled Maintenance”) shall be performed by or under the direction of the Seller, at Sellers reasonable discretion or at Buyers reasonable request. Scheduled Maintenance shall include the following activities:

- Review of all known construction projects for any system conflicts
- Membership to the Ohio Utility Protection Service (OUPS)
- Review of all notifications received from OUPS
- Physically mark each necessary location, as it relates to notifications from OUPS
- Patrol of Conduit System route on a regular basis
- Physical site surveillance when construction projects are in the location of the conduit system
- Coordination and scheduling of any construction projects where the system must be relocated
- General Maintenance of access points (manholes)
- Pumping and venting the manholes when necessary
- Proofing of conduit when necessary

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## **AMENDMENT TO AGREEMENT**

THIS AMENDMENT TO AGREEMENT (the “Amendment”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021, 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 Dublink Development Company L.L.C., an Ohio limited liability company (“Operator”), having an office at 1810 Arlingate Lane, Columbus, Ohio 43228. For the purposes of this Amendment, City and Operator shall be referred to individually as a “Party” and collectively as the “Parties.”

### WITNESSETH:

WHEREAS, City and Operator entered into that certain Agreement dated December 14, 1998 (the “Agreement”), granting Operator the exclusive right and authority to design, construct, install, own, operate, manage, repair, maintain and restore a Conduit System, as such term is defined in the Agreement, within the City at Operator’s sole cost and expense, as more particularly described in the Agreement attached hereto as Exhibit A and incorporated herein;

WHEREAS, as an extension of the Agreement, but not commemorated therein, the Operator locates, builds, and maintains lateral connections to every K-12 public education institution in the City;

WHEREAS, the City is willing to compensate the Operator for such construction in accordance with the terms contained in this Amendment;

WHEREAS, additional changes in the phases of construction of the Conduit System have also necessitated the Parties to amend the Schedule of Charges and Fees provided for in the Agreement in order to accurately reflect such phases of the Conduit System;

WHEREAS, under the Agreement, Operator may amend the Schedule of Charges and Fees applicable to an identified phase of construction by applying to the City Manager for approval of such changes, including changes in the phases of construction themselves;

WHEREAS, as a part of such application, Operator shall provide documentation supporting the reasonableness of any proposed change and shall provide such additional documentation as the City Manager may require;

WHEREAS, upon a determination that the proposed change is reasonable, the City Manager will approve the same by Regulation and Exhibit C of the Agreement shall be amended to reflect any such approved changes;

WHEREAS, Operator has met the aforementioned requirements under the Agreement;  
and

WHEREAS, the City and Operator seek to execute this Amendment in order to amend Section 9, Rights of the City, to reflect the lateral connections constructed by the Operator, and to amend Exhibit C of the Agreement to reflect the revised charges and fees in accordance with the terms of the Agreement and as further set forth and amended below.

NOW, THEREFORE, effective as of the date hereof and in consideration of the mutual agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound City and Operator agree as follows:

1. Section 9 of the Agreement shall be replaced with the following, with additions in boldfaced print:

Rights of the City. As consideration for the right to enter and use the right-of-way, as provided in Paragraph 3.A, and for the covenants made by and other services to be provided by the City hereunder, Operator covenants and agrees to dedicate one - 1 1/4" conduit for City use within the System without charge or fee. **Operator further agrees to continue to locate and maintain lateral connections (collectively "Lateral Services") to every K-12 public education institution located within the City of Dublin and as reflected in Exhibit D. The City shall compensate Operator for the actual costs of providing Lateral Services. Actual costs shall be determined as set forth in the original agreement attached as Exhibit A.**

2. Exhibit C of the Agreement shall be replaced with the following:

**EXHIBIT C**  
**PHASE 1 PRICING**

A. One-time lease payment for initial 25-year term per Section 2

	<u>Price Per Foot</u>
1-1/4" Conduit	\$ 17.56
4" Conduit	\$ 42.67

B. Annual lease payment per duct foot.

- 1) Rate is adjusted every 5 years by 5% or 80% of CPI (whichever is higher)
- 2) 15-yr. initial term with extension per Section 2.
- 3) No subleasing

	<u>Price Per Foot</u>
2" Conduit	\$ 2.86
4" Conduit	\$ 6.94

**EXHIBIT C  
PHASE 2 PRICING**

- A. One-time lease payment for initial 25-year term per Section 2

	<u>Price Per Foot</u>
1-1/4" Conduit	\$ 51.00

- B. Annual lease payment per duct foot.

- 1) Rate is adjusted every 5 years by 5% or 80% of CPI (whichever is higher)
- 2) 15-yr. initial term with extension per Section 2.
- 3) No subleasing

	<u>Price Per Foot</u>
1-1/4" Conduit	\$ 8.31

**EXHIBIT C**  
**PHASE 3 PRICING AND REQUIREMENTS**

- A. One-time lease payment for initial 25-year term per Section 2

	<u>Price Per Foot</u>
1-1/4" Conduit	\$ 10.00
4" Conduit	\$ 24.30

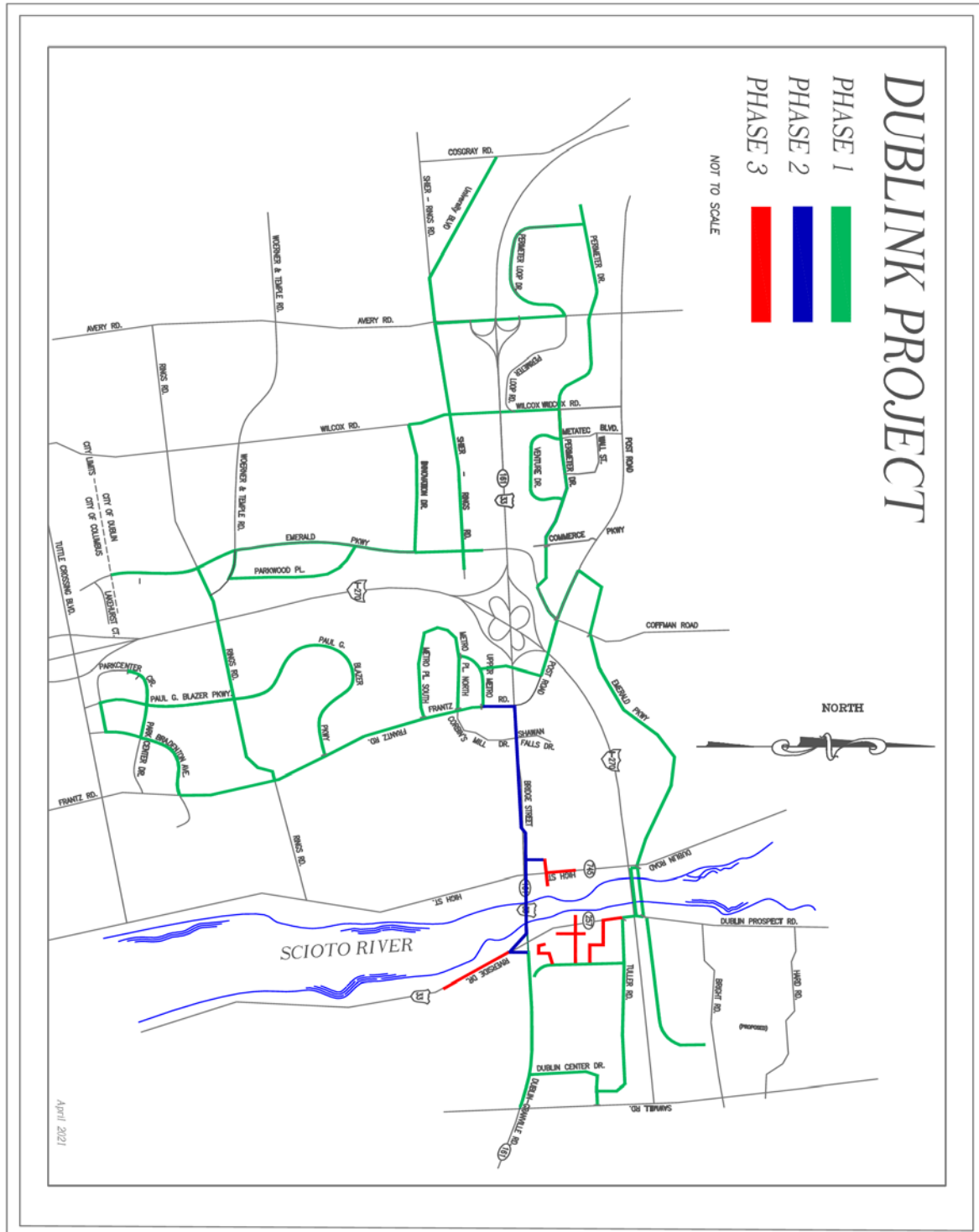
- B. Annual lease payment per duct foot.

- 1) Rate is adjusted every 5 years by 5% or 80% of CPI (whichever is higher)
- 2) 15-yr. initial term with extension per Section 2.

	<u>Price Per Foot</u>
1-1/4" Conduit	\$ 1.63
4" Conduit	\$ 3.96

- C. No subleasing
- D. The City shall select the Indefeasible Right to Use agreement to be executed for use of the Bridge Street conduit. Operator shall maintain a list of the third-party users of the Bridge Street Conduit.
- E. Payment by Phase III leasees shall be remitted directly to the City of Dublin.
- F. Operator shall provide maintenance and management services as determined in the original Agreement attached as Exhibit A.
- G. Operator shall be paid \$15,000.00 per year by the City of Dublin for providing the maintenance and management services set forth above.

## PHASES I, II AND III MAP





3. Exhibit D shall be amended into the Agreement to provide the map contemplated in revised Section 9, as follows:

## **EXHIBIT D**

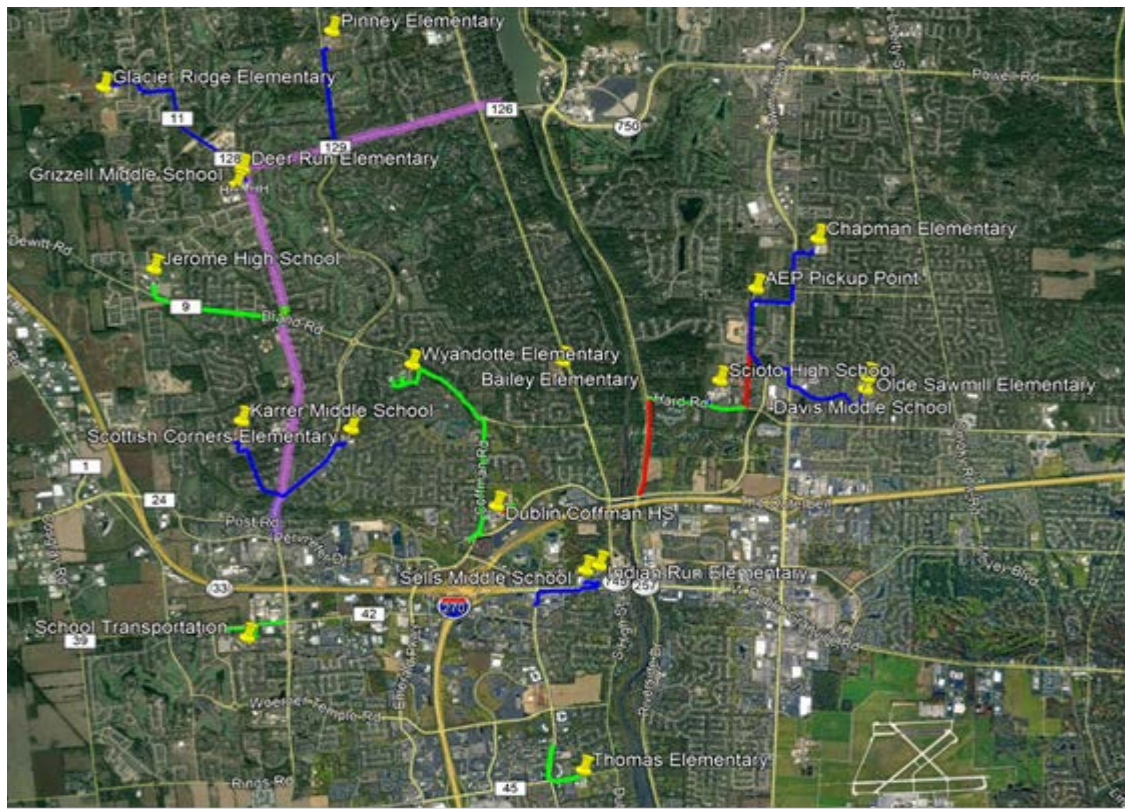
### **MAP OF K-12 LATERAL CONNECTIONS**

Green is School Fiber built in Phase 1 (Fishel locates and maintains)

Blue is School Fiber built in Phase 2 (Fishel locates and maintains)

Violet is Crown Castle Fiber (maintained by others)

Red is AEP Fiber (maintained by others)



**[Signature page follows.]**

IN WITNESS WHEREOF, City and Operator have executed this Amendment to be effective as of the date first written above.

**OWNER:**

**The City of Dublin, Ohio,**  
an Ohio municipal corporation.

**OPERATOR :**

**Dublink Development Company L.L.C.,**  
an Ohio limited liability company.

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**Approved As To Form:**

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

**FISCAL OFFICER'S CERTIFICATE**

The undersigned, Director of Finance for the City of Dublin, Ohio under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City under the foregoing Agreement during Fiscal Year 2021 have been appropriated lawfully for that purpose, and are in the Treasury of the City of Dublin, Ohio or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Director of Finance  
City of Dublin, Ohio

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**EXHIBIT A**  
**Agreement**

**AGREEMENT  
CITY OF DUBLIN, OHIO**

THIS AGREEMENT (the "Agreement"), entered into at Columbus, Ohio, this 14<sup>th</sup> day of ~~DECEMBER~~ 1998, by and between the City of Dublin, Ohio (the "City") 6351 Shier Rings Road, Dublin, Ohio 43017, and Dublink Development Company L.L.C. ("Operator"), an Ohio limited liability company, 1810 Arlingate Lane, Columbus, Ohio 43228.

WHEREAS, the City desires to make available a state of the art underground Conduit System within the municipality for use by PUCO-certified telecommunication companies, cable television providers, other providers of communications, information, and data services, government entities, residents and businesses; and

WHEREAS, the construction and operation of such a Conduit System on a timely basis will facilitate the provision of telecommunications, cable television, and other communications, information, and data services on a competitive and cost-effective basis; bring the benefits of new technological services to residents, businesses, and government agencies; provide increased access to government information and services; promote growth and economic and social development within the City (including the retention and attraction of commerce and businesses); prevent multiple street cuts and damage to right-of-way and thereby reduce the inconvenience to residents associated therewith; and

WHEREAS, Operator engages in the business of designing, constructing, installing, operating, managing, repairing, maintaining, replacing and restoring telecommunication conduits; and

WHEREAS, Operator has proposed to design, construct, install, own, operate, manage, repair, maintain and restore a Conduit System within the City at its sole cost and expense in accordance with the codified Ordinances and regulations of the City and the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms, provisions and conditions herein set forth, the parties agree as follows:

1. Definitions. As used in this Agreement:
  - A. "Conduit System" (the "System") means an organized system of underground multi-conduits planned and constructed system throughout a designated area ("*Dublink* ") within the municipality, access to which will be provided at reasonable rates, fees, and charges on a non-discriminatory basis. The System will be constructed in planned phases subject to exceptions for Special Builds as defined in Paragraph 3.B. of this Agreement.
  - B. "Commencement Date" means the first day of the month following the date on which Operator has filed its acceptance of this Agreement with the City Manager under Paragraph 2 of this Agreement.

- C. "Construction Start Date" means the date on which Operator commences construction and installation of the System.
  - D. "*Dublink*" means the area described in Exhibit A.
  - E. "Term" means and includes the initial term and any renewal term of this Agreement.
  - F. "Regulations" means the Regulations adopted by the City Manager pursuant to the Right of Way Ordinance.
  - G. "Substantial Completion of Construction" means completion of Phase I as described in Exhibit C or as modified by mutual agreement.
  - H. "City Manager" means the City Manager of the City of Dublin and/or his/her designee.
  - I. "Right of Way Ordinance" shall mean Ordinance 152-97 and/or Chapter 98 of the City of Dublin Code of Ordinances and any subsequent amendments.
  - J. "Permittee" means any person issued a Right of Way Permit pursuant to the Right of Way Ordinance.
  - K. "Special Build" means a conduit built pursuant to the procedures set forth in Paragraph 3(B).
  - L. For any term that is undefined in this Agreement the definitions set forth in the Right of Way Ordinance shall apply and be incorporated into this Agreement.
2. Operator Acceptance. Within ninety (90) days of the date of the passage and effective date of legislation of the city approving this Agreement, Operator shall file with the City Manager its written acceptance thereof, and thereupon this Agreement shall be a contract between the City and Operator.
- The City Manager shall send a letter to Operator certifying the Commencement Date, a copy of which letter shall be attached to, and become part of, this Agreement.
3. Permission Granted by City.
- A. Rights of Operator. The City hereby authorizes, approves and grants to Operator the exclusive right and authority to design, construct, install, operate, manage, repair, maintain, replace and restore the System in, on, above, below and through the surface of the ground constituting the rights-of-way, easements, and the public roads and streets (collectively referred to as "right-of-way") within *Dublink* subject to the exception set forth in Paragraph 3.B. Operator shall not be subject to any fees or

permit requirements imposed by the Right of Way Ordinance, any amendments thereto, or any other subsequent ordinance governing the use of such right-of-way.

All permittees desiring to install new facilities in *Dublink* after the effective date of this agreement shall be required to place such facilities in the System, except as provided in Paragraph 3.B.

- B. Special Builds. If a permittee has a bona fide need to install facilities in *Dublink* to serve an end-use customer(s) and there is no, or an insufficient amount of System conduit available or under construction to allow such service to be implemented, Permittee may file an application with the City Manager for a Special Build. Such application shall specify the location of the customer(s) to be served and the date by which the Permittee desires to implement service. The City Manager may grant an exception to Operator's exclusive rights under Paragraph 3.A of this Agreement and allow the Permittee to construct conduit necessary for facilities to provide service to the customer(s) in question, subject to the following requirements. No exception shall be granted unless The City Manager first determines that the proposed Special Build will not result in unnecessary street cuts or damage to the right of way.
- (i) During the initial term of this Agreement and any renewal term thereof, an applicant for a Special Build shall meet with the City Manager and the Operator within thirty (30) days of the filing of its application to discuss its plans for the installation of conduit within *Dublink* and shall provide, as an exhibit to its application, maps and construction drawings reflecting such plans.
  - (ii) If the Special Build application is approved, the applicant shall notify the City and the Operator thirty (30) days prior to opening any trench which is part of the subject of the proposed Special Build and permit the Operator to place such quantity of System conduit and duct in such trench as Operator deems appropriate at the incremental cost incurred by applicant due solely to the placement of the System conduit and duct in the trench. Operator shall construct, utilize, and maintain its own manholes and other underground vaults at its own expense. System conduit and duct shall remain separate and apart from the applicant's conduit and duct, provided, however, that connections between the facilities of applicant and the System conduit and ducts shall be permitted to provide for required interconnections between Permittees and to meet end user requirements.
  - (iii) Within ten (10) working days after meeting with the City and Operator, as described in Subparagraph 3.B(i), Operator shall inform the applicant in writing of the amount of System conduit and duct, if any, it intends to place in the trench. Within ten working days of the receipt of this information, the applicant will provide Operator with a written estimate of the incremental cost to be incurred as a result of the placement of System conduit and duct in the

trench. If Operator accepts this estimate, it shall so notify the City and the applicant within ten (10) working days of the receipt of the above estimate.

Operator shall pay such costs to the applicant upon completion of the Special Build. Disputes as to the reasonableness of the estimate shall be resolved by the City Manager pursuant to such procedures as the City Manager may establish. In the event Permittee does not agree to abide by the City Manager's determination as to reasonableness, then the authority shall be revoked.

- (iv) If an applicant for a Special Build determines, after the completion of construction, that it has conduit capacity which exceeds its own needs in a trench in which System conduit has been constructed by the Operator pursuant to Paragraphs 3.B, it may lease or sell such capacity to another Permittee only if the City Manager determines that the System has no remaining capacity sufficient to meet the requirements of said Permittee.

4. Conditions of System Design, Construction, Maintenance and Operation. Operator agrees to comply with the following conditions, and the City Manager shall be charged specifically with enforcing the provisions of this Paragraph 4.

- A. Operator shall file with the City Manager detailed site and location plans showing the proposed location of all conduit and related and auxiliary structures, together with a written explanation of the purpose of the construction. Such plans shall be considered and evaluated from an engineering standpoint taking into account the use of City property other than the right-of-way and the effect of such construction on City operations, planning and development. The City Manager shall inform Operator of the City's suggested revisions and modifications of such plans within thirty (30) days after submission by Operator, and Operator shall submit revised plans for review and approval by the City Manager as may be appropriate and required. Operator agrees that it shall not commence construction and installation of the System, or any part thereof, without first obtaining the written approval of its detailed site and location plans by the City Manager, which approval shall not be unreasonably withheld.

The City recognizes and agrees that, to expedite the review and approval process, Operator may submit preliminary site and location plans for all or parts of its proposed System for review and comment by the City Manager prior to submitting detailed plans and specifications, but approval of any such preliminary plans shall not constitute the final approval of the City Manager. Operator shall notify the City Manager in writing of the Construction Start Date; provided, however, that the Operator shall have sole discretion in determining when the construction of any portion of the System shall commence.

The City acknowledges and recognizes that the Operator will construct and install the System in phases as set forth in Exhibit C. Such phases are subject to modification



by the Operator upon approval by the City Manager.

- B. Construction and maintenance of the System shall be in accordance with the standards attached as Exhibit B, and such applicable regulations and ordinances of the State of Ohio and the City as may be presently in effect or may become effective in the future.
  - C. All installation of the System shall be of a permanent nature and durable, installed in accordance with accepted good engineering practices; shall be sufficient to comply with all existing State of Ohio and City of Dublin codes, regulations and ordinances, so as not to interfere in any manner with the right of the public or individual property owners; and shall not interfere with the use or enjoyment of public or private property adjacent thereto.
  - D. Operator shall, upon completion of construction and installation of the System, furnish the City Manager with accurate maps and other supporting data showing the location of such installation and a set of "as constructed" drawings in electronic format, if available.
  - E. In the event that any installation should thereafter interfere with a proposed public use of the City's right-of-way or property, Operator shall, upon written request by the City Manager, relocate such installation, at its expense.
  - F. With respect to street openings, Operator shall comply with the provisions of the Codified Ordinances of the City; provided, however, that the construction and installation of the System by Operator shall be treated as a single project and shall not be subject to any permit fees.
  - G. Operator agrees that Operator, or its contractor, shall, prior to commencement of construction and installation of the System, provide the City with a restoration bond in the form and amount generally required of contractors performing construction projects within the City.
  - H. Operator shall provide the City Manager with the name of its chief management employee, so that complaints or comments made to any City office may be referred to that person for proper action.
5. Term. The initial term of this Agreement shall commence on the Commencement Date, and shall end and terminate, unless renewed in the manner herein provided, at midnight, twenty-five (25) years after the Commencement Date.
6. Renewal Term. Operator shall have the option to renew this Agreement for an additional twenty-five (25) year term by providing notice of intent to renew to the City one year prior to the expiration of the initial term.

7. Open Access. Operator agrees that the System shall be operated and managed in a fair and non-discriminatory manner. The System shall be available to all persons, businesses, and public entities having a lawful use therefor, who agree to pay the applicable fees and charges for such use and hold a valid right of way permit pursuant to the Right of Way Ordinance.
8. Schedule of Charges and Fees: Changes and fees to be charged and collected by Operator shall be approved by the City Manager by Regulation consistent with the following:
  - A. The initial schedule of charges and fees which the Operator may charge and collect from the users of the System are as set forth in Exhibit C.
  - B. Operator may amend the schedule of charges and fees applicable to an identified phase of construction by applying to the City Manager for approval of such changes, including changes in the phases of construction themselves. As a part of such application, Operator shall provide documentation supporting the reasonableness of any proposed change and shall provide such additional documentation as the City Manager may require. Upon a determination that the proposed change is reasonable, the City Manager will approve same by Regulation. Exhibit C shall be amended to reflect any such approved changes.
9. Rights of the City. As consideration for the right to enter and use the right-of-way, as provided in Paragraph 3.A, and for the covenants made by and other services to be provided by the City hereunder, Operator covenants and agrees to dedicate one - 1 1/4" conduit for City use within the System without charge or fee.
10. City's Covenant. Subject to the rights of current public utilities under the Right Of Way Ordinance and rights of the operators of community antenna television systems so long as Operator is not in default hereunder, the City covenants and agrees that the City shall not authorize, permit or agree, or grant any franchise or enter into any agreement which authorizes or permits, any person, firm, partnership or corporation to enter the right-of-way of the *Dublink* area for the purpose of installing or constructing conduit, except as set forth in Paragraph 3.B.

11. Insurance. Operator shall, from and after the commencement of the construction and installation of the System, and during the Term hereof, carry and maintain at its sole cost and expense comprehensive general public liability insurance covering the System and Operator's use thereof, against all claims for personal injury or death or property damage, such insurance to afford protection to the limits of Three Million Dollars (\$3,000,000) in respect of injury, death and property damage arising out of any one occurrence. In January, 2000, and at five (5) year intervals thereafter during the Term of the Agreement, Operator shall consult with the City Manager as to the advisability of increasing the amount of such coverage based upon inflation and general economic conditions, and Operator shall thereafter increase such coverage at the next annual renewal date of such policy or policies as it shall determine in accordance with the exercise of reasonable business judgment.

The insurance coverage required under this Paragraph shall, in addition, extend to any liability of Operator arising out of the indemnities provided for in Paragraph 12. All policies of insurance to be provided by Operator shall name Operator and the City as the insured, as their interests may appear.

Operator shall furnish to the City Manager certificates evidencing such coverage which certificates shall provide that such insurance coverage may not be changed, lapsed or canceled without at least thirty (30) days advance written notice from the insurer to the City. At least fifteen (15) days prior to the expiration of any policy of insurance, a certificate for the renewal policy shall be delivered by Operator to the City Manager.

All insurance provided for in this Agreement shall be effective under enforceable policies issued by an insurer licensed and qualified to do business in Ohio.

12. Indemnities. Operator agrees to, and does hereby indemnify and save harmless the City and its officials and employees against and from all claims, liabilities, obligations, damages, penalties, fines, costs and expenses, including reasonable attorneys' fees, paid, suffered or incurred as a result of any breach by Operator, Operator's agents, contractors, employees, invitees or licensees, of any provision of this Agreement, or arising from Operator's use of the right-of-way or the conduct of its business or from any activity, work, or thing done or permitted or suffered by Operator (but not from the negligence or willful acts of the City or its officials, employees, agents or contractors).

Nothing in this Paragraph or in this Agreement shall constitute, or be deemed or construed to constitute, a waiver, release or forfeiture of the City's rights and immunities as a municipality under the Constitution and laws of the State of Ohio, which rights and immunities are expressly reserved by the City.

13. Default by Operator Leading to Termination. If Operator (a) fails to commence construction and installation of the System within one (1) year from the Commencement Date or (b) has completed such construction and installation and having commenced operation thereafter, ceases to operate, or otherwise abandons, the System, or fails to achieve Substantial

Competition of Construction within two (2) years of the Commencement Date, Operator shall be in default under this Agreement and this Agreement shall be terminated.

14. Other Defaults by Operator. Except for the acts or omissions of Operator which may constitute a default under Paragraph 13 of this Agreement, if Operator fails to perform any of its other obligations under this Agreement, then in any one or more of such events, the City shall serve a written notice of such failure to perform or default and Operator shall have thirty (30) days to comply with such obligation or remedy such default; provided that, if Operator's obligation is of such a nature that it cannot, with due diligence, be reasonably performed within such thirty (30) day period, then such default shall be deemed to have been cured and remedied if Operator commences such performance within said thirty (30) day period, and, thereafter, undertake and proceeds with due diligence to complete the same and does complete the same.

If a default, as described in this Paragraph 14 of this Agreement, has occurred, then the City may sue Operator for specific performance of such obligation or for any injunctive or other equitable relief, or for recovery of any loss or damage sustained by the City as a result of Operator's default. In the event of any such default, the City's rights and remedies shall be limited to such equitable relief or damages, and the City shall not be entitled to terminate this Agreement.

The City may elect to treat an act or omission by Operator which may constitute a default by Operator under Paragraph 13 of this Agreement as a default under this Paragraph 14, and, if so, shall so specify in the notice given by the City to Operator.

15. City Assistance. The City covenants and agrees, during the Term of this Agreement to: (a) make available to Operator copies of all maps, site plans, location surveys and other documents filed with, on record with, or otherwise retained by or available to, the City showing the location of pipes, cables, wires or other property or equipment located in the right-of-way by the City, or other governmental agency, by a public utility or the operator of a community antenna television system, or by any other person or entity, and to the extent such records are not kept or retained by the City, to assist Operator in obtaining such information; (b) timely review and act on all applications, submissions and requests submitted by Operator pursuant to this Agreement to facilitate the design, construction, installation, operation, repair, maintenance, replacement and restoration of the System; and (c) assist operator in obtaining the consent and cooperation of other government agencies within the City to obtain licenses, permits or easements for the use of their property for the location, construction and installation of related and auxiliary equipment used in connection with the System.
16. Delays and Inability To Perform. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, failure of power, riots, insurrection, war, fire or other casualty or other reason of a similar nature beyond the reasonable control of the party delayed in performing

its obligations or doing acts required under the terms of this Agreement of such act shall be excused for the period of the delay and the period any such act and this Agreement shall be extended for a period equivalent to such delay.

In the event of any event specified hereinabove threatening or causing perform by either Operator or the City, the affected party shall promptly setting forth in writing the cause or reason for such delay or inability anticipated period of delay that will occur as a result thereof.

17. Settlement of Disputes. In addition to and notwithstanding remedies specified in the Agreement, Operator and the City recognize the mutual interests of the parties that disputes and disagreements that may arise from time to time regarding the interpretation and application of the terms and provisions of this Agreement, and the respective rights and obligations of the parties hereunder, be resolved in a timely, cooperative and cost effective manner. In furtherance of those common and mutual objectives, the parties agree to use, and encourage the other to use, dispute resolution mechanisms and procedures, including binding and non-binding arbitration, other than litigation, to resolve such disputes and disagreements whenever feasible and practical under the circumstances.

Any dispute or disagreement arising under this Agreement shall be settled, if possible, by negotiation and mutual agreement of the parties. In the event of their inability to agree, the City Manager shall reduce his findings to writing and mail or otherwise furnish a copy to Operator. Within ten (10) business days from the date of receipt of such copy, Operator may appeal by mailing or otherwise furnishing to the City, a written request to submit the dispute to binding arbitration, non-binding arbitration or other form of dispute resolution then available in Franklin County, Ohio. If Operator does not request one of the foregoing methods, the decision of the City Manager shall be deemed to be final and Operator shall either comply therewith or pursue the remedies available to it hereunder and under applicable law.

Within ten (10) days of the City's receipt of an arbitration, or alternative dispute resolution, request by Operator, the parties shall schedule a meeting to determine procedure and time schedules for conducting the arbitration or other proceedings. In the event that the parties are unable to agree on applicable procedures and time schedules for an arbitration, the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association with the exception that the American Arbitration Association will not choose the arbitrator nor administer the arbitration proceedings. Unless the parties agree otherwise, the dispute will be heard by a single arbitrator. If the parties agree to submit the dispute to binding arbitration, neither party shall have recourse to any court of law or equity as to any disagreement or difference which is subject to the arbitration under this Paragraph 17, except for the purpose of confirming, vacating, modifying or correcting the award of the arbitrator on the grounds, for the causes and under the provisions

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Page 9 of  
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Agreement.

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its obligations or doing acts required under the terms of this Agreement, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act and this Agreement shall be extended for a period equivalent to the period of such delay.

In the event of any event specified hereinabove threatening or causing a delay or inability to perform by either Operator or the City, the affected party shall promptly notify the other party setting forth in writing the cause or reason for such delay or inability to perform and the anticipated period of delay that will occur as a result thereof.

17. Settlement of Disputes. In addition to and notwithstanding the procedures and remedies specified in the Agreement, Operator and the City recognize and agree that it is in the mutual interests of the parties that disputes and disagreements that may arise from time to time regarding the interpretation and application of the terms and provisions of this Agreement, and the respective rights and obligations of the parties hereunder, be resolved in a timely, cooperative and cost effective manner. In furtherance of those common and mutual objectives, the parties agree to use, and encourage the other to use, dispute resolution mechanisms and procedures, including binding and non-binding arbitration, other than litigation, to resolve such disputes and disagreements whenever feasible and practical under the circumstances.

Any dispute or disagreement arising under this Agreement shall be settled, if possible, by negotiation and mutual agreement of the parties. In the event of their inability to agree, the City Manager shall reduce his findings to writing and mail or otherwise furnish a copy to Operator. Within ten (10) business days from the date of receipt of such copy, Operator may appeal by mailing or otherwise furnishing to the City, a written request to submit the dispute to binding arbitration, non-binding arbitration or other form of dispute resolution then available in Franklin County, Ohio. If Operator does not request one of the foregoing methods, the decision of the City Manager shall be deemed to be final and Operator shall either comply therewith or pursue the remedies available to it hereunder and under applicable law.

Within ten (10) days of the City's receipt of an arbitration, or alternative dispute resolution, request by Operator, the parties shall schedule a meeting to determine procedure and time schedules for conducting the arbitration or other proceedings. In the event that the parties are unable to agree on applicable procedures and time schedules for an arbitration, the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association with the exception that the American Arbitration Association will not choose the arbitrator nor administer the arbitration proceedings. Unless the parties agree otherwise, the dispute will be heard by a single arbitrator. If the parties agree to submit the dispute to binding arbitration, neither party shall have recourse to any court of law or equity as to any disagreement or difference which is subject to the arbitration under this Paragraph 17, except for the purpose of confirming, vacating, modifying or correcting the award of the arbitrator on the grounds, for the causes and under the provisions

of R.C. §2711.01 et seq. If no such appeal is taken within ten (10) days of the arbitrator's decision, it shall be final and binding on the parties.

18. Periodic Performance Reviews. Periodically during the term of this Agreement as the parties may agree, but no less frequently than once every five (5) years, the parties agree to conduct a review of the performance of Operator and the City under this Agreement, affording the public in the City appropriate notice and opportunity for participation.
19. Relationship of Parties. Nothing herein contained shall be deemed or construed as creating the relationship of principal and agent, or of a partnership or joint venture between the parties hereto, it being understood and agreed that neither the provision contained herein, nor any acts of the parties, shall be deemed to create any relationship between the parties hereto other than the relationship of independent parties contracting at arm's length nor cause the City to be responsible in any way for the acts, debts or obligations of Operator.
20. Dublink Name. The City hereby authorizes operator to use the name "Dublink". The name Dublink shall revert back to the City at the expiration or termination.
21. Notices. Any notice, demand, request, approval, consent, or other communications which may be, or is required to be, given under this Agreement shall be in writing and shall be deemed to have been given when personally delivered, when mailed by United States certified mail, return receipt requested, postage prepaid, addressed, or when transmitted by fax or facsimile:

A. if to the City, to:

City of Dublin  
City Manager  
6351 Shier Rings Road  
Dublin, Ohio 43017

or to such other address as the City may designate by notice to Operator in accordance with this Paragraph, and

B. if to Operator to:

Dublink Development Company, L.L.C.  
1810 Arlingate Lane  
Columbus, Ohio 43228

or to such other address as Operator may from time to time designate by notice to the City in accordance with this Paragraph.

22. Mutual Covenant. Operator and the City represent and warrant to the other that: (a) it has

all requisite power and authority to execute, deliver and perform this Agreement; (b) this Agreement has been duly authorized, executed and delivered on behalf of such party and constitutes a legal, valid and binding obligation of such party enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally; (c) there is no action, suit or proceeding pending or, to such party's best knowledge, threatened, against it which could have a material adverse effect on the transactions contemplated hereby; (d) except as herein specifically provided, no consent, approval, order, authorization or filing of or with any governmental authority is required in connection with the valid execution, delivery and performance of this Agreement by such party; and (e) the execution, delivery and performance of this Agreement by such party will not violate, contravene or breach any law, rule, regulation, ordinance or order applicable to such party or any indenture, agreement, contract, instrument or undertaking by which such party is bound.

23. **Applicable Law.** This Agreement shall be construed, governed and enforced in accordance with the laws of the State of Ohio.
24. **Severability.** It is the intention of the parties hereto that if any provision of this Agreement is capable of two (2) constructions; one of which would render the provision invalid and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. If any term or provision, or any portion thereof, of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
25. **Operator's Right to Withdraw.** In the event any court or regulatory body issues a final order which adversely affects Operator's rights under this Agreement as the result of litigation initiated by any third party or parties challenging, in any way, this Agreement or any related City ordinances or regulations, Operator may, in its sole discretion, elect to withdraw from the Agreement. As used in this Paragraph and in Paragraph 26, a final order is a judicial or administrative order from which no further appeal may be taken. Upon notice to the City that Operator has elected to withdraw from the Agreement pursuant to this provision, the City shall purchase the System from the Operator at the net original cost at which the System is maintained on Operator's books. This purchase and sale shall be effectuated within ninety (90) days of such notice. Any dispute as to the appropriate purchase price shall be governed by Paragraph 17 of this Agreement.
26. **Operator Held Harmless.** In the event litigation is initiated by any third party or parties in any judicial or regulatory forum which challenges, in any way, this Agreement or any related City ordinances or regulations which affect Operator's rights and obligations under this Agreement, the City shall hold Operator harmless from any reasonable costs incurred as a



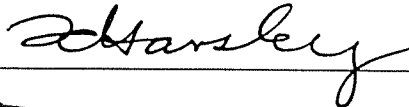
result of such litigation, including carrying costs on Operator's investment in the System from the date the litigation is initiated to the issuance of a final order or, if City purchases the System pursuant to the provisions of Paragraph 25, the date the purchase and sale is effectuated.

27. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Except for the provisions of paragraphs 7 and 8 of this Agreement, nothing contained in this Agreement shall be construed so as to confer upon any person rights of a third party beneficiary.
28. Assignment. This Agreement shall not be assigned without the written consent of the City, which consent shall not be unreasonably withheld.

**IN THE WITNESS WHEREOF**, the City and Operator have duly executed this Agreement as of the day and year first above written.

Signed and acknowledged by the CITY OF DUBLIN, OHIO in the presence of

CITY OF DUBLIN

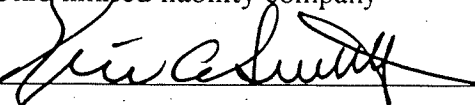
By: 

Name: Timothy C. Hansley

Title: CITY MANAGER  
DUBLIN, OHIO

DUBLINK DEVELOPMENT  
COMPANY, L.L.C.

an Ohio limited liability company

By: 

Name: ERIC C. SMITH

Title: PRESIDENT

APPROVED AS TO FORM:

City Attorney:

City of Dublin, Ohio:

## **EXHIBIT A**

### *Dublink Area*

## **Exhibit B**

### **Construction and Maintenance Standards**

## EXHIBIT B

### "DUBLINK" NETWORK SPECIFICATIONS

- General:** "Dublink" will be a conduit duct system connecting the business district to competitive communication networks of voice, data, and video. The conduit duct system is primarily designed for fiber optics, however, copper-based carriers are also accommodated in the system with anomaly builds
- Engineering:** All field engineering will be the responsibility of the franchising contractor. The franchising contractor will work with the City of Dublin Engineering Office on locating existing water, gas, and sewer systems. All facility locating will be done prior to any construction.
- Trench:** All construction will be trenched with sand encasement or bored. All plastic conduit will follow the contour of the trench once backfill is in place, therefore, the trench should be as straight and level as possible. The trench bottom will be free of rock or other hard material which could puncture or flatten the conduit. All trench work will be done in accordance with ATT Practice 622-020-020.
- Conduit:** All conduit will be Schedule 40 PVC duct. Duct size will be 1-1/4 or 4 inch. Four inch ducts will be subdivided with innerduct where required. 1-1/4" duct will be placed in groups of four utilizing Carlon's IntraGard or Osburn TetraDuct products or suitable substitute. A typical section of "Dublink" will be three groups of four 1-1/4" duct and one 4" subdivided. All construction will be done in accordance with ATT Installation Practice 919-240-400.
- Manholes:** All manholes will be precast complete with racking, ladders, and duct terminators. All manholes will have assigned geography locations for subscriber use. All manholes will be equipped with cast iron lids with the words "Telephone" cast on them. All manhole installation will be done in accordance with ATT Installation Practice 622-500-011, 622-240-300.
- Handholes:** All handholes will be precast or fiberglass 4x4x4 feet with lids, drain, and duct terminators.

## **Exhibit C**

### **Schedule of Charges and Fees**

## EXHIBIT C

### PHASE 1 PROPOSED PRICING

A. One time 25-year lease payment per duct foot.

	<u>Founding Users</u>	<u>After Year 1</u>
1-1/4" innerduct	7.72	8.87
4" PVC duct	18.80	21.62

(No subleasing allowed until entire duct system is full.)

B. Annual lease payment per duct foot.

- 1) Rate is adjusted every 5 years by 5% or 80% of CPI (whichever is higher)
- 2) 15-yr. initial term with 10-yr. extension
- 3) No subleasing

	<u>Founding Users</u>	<u>After Year 1</u>
1-1/4" innerduct	1.15	1.32
4" PVC duct	2.65	3.05

## EXHIBIT C

### PHASE II PROPOSED PRICING\*

#### A. One Time 25-year lease payment per duct foot•

	<u>Founding Users</u>	<u>After 1 Year</u>
1-1/4" innerduct	9.80	11.25
4" PVC duct	23.90	27.50

(No subleasing allowed until entire duct system is full.)

#### B. Annual Lease Payment per Duct Foot

- 1) Rate is adjusted every 5 years by 5% or 80% of CPI (whichever is greater)
- 2) 15 year initial term with 10 year extension
- 3) No subleasing

	<u>Founding Users</u>	<u>After 1 Year</u>
1-1/4" innerduct	1.55	1.80
4" PVC duct	3.60	4.10

\*Final pricing will be determined after initial design is complete.

## EXHIBIT C

### PHASE III PROPOSED PRICING\*

#### A. One Time 25-year lease payment per duct foot

	<u>Founding Users</u>	<u>After 1 Year</u>
1-1/4" innerduct	8.65	9.95
4" PVC duct	21.00	24.15

(No subleasing allowed until entire duct system is full.)

#### B. Annual Lease Payment per Duct Foot •

- 1) Rate is adjusted every 5 years by 5% or 80% of CPI (whichever is greater)
- 2) 15 year initial term with 10 year extension
- 3) No subleasing

	<u>Founding Users</u>	<u>After 1 Year</u>
1-1/4" innerduct	1.40	1.60
4" PVC duct	3.40	3.90

\*Final pricing will be determined after initial design is complete.