

IRU Update (May 18, 2016) see revisions page for details.

CITY OF GAHANNA,
OHIO OPTICAL FIBER USE
AGREEMENT

IRU for Existing Fibers in Fiber System

THIS OPTICAL FIBER USE AGREEMENT (hereinafter referred to as the "Agreement") made and entered into as of this ____ day of ____, 20__ between the City of Gahanna, an Ohio municipal corporation (hereinafter referred to as the "Owner"), having an office at 200 S. Hamilton Road, Gahanna, Ohio 43230, and the Gahanna-Jefferson City School District (hereinafter referred to as "User"), having an office at 160 S. Hamilton Road, Gahanna, Ohio 43230, and which are sometimes referred to individually as "Party" and collectively as "Parties."

WITNESSETH:

WHEREAS, pursuant to Section 3313.59, Ohio Revised Code, the Parties may cooperate for educational, social, civic and recreational purposes in buildings and upon grounds in the custody and under the management of the Parties; and

WHEREAS, the Owner has an existing optical fiber system (hereinafter referred to as the "Fiber System") throughout the City of Gahanna, Ohio; and

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

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

WHEREAS, User 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 931 of the Codified Ordinances of the City of Gahanna, Ohio); and

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

WHEREAS, the Parties may in the future agree to enter into additional separate agreement(s) for additional and/or separate optical fiber uses which will incorporate the covenants and agreements of this Agreement and which will also set forth the terms and provisions unique to each additional or different specific project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties hereto do hereby agree as follows:

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 Optical Fiber Use Agreement between the Owner and User which identify the specific optical fiber strands and facilities to be as provided to User by Owner and which set forth the associated fees/compensation, terms and conditions for User's use of such optical fiber strands and facilities.
 - b. Fiber System: The optical fiber strands, innerduct, conduit, building entrance facilities, associated appurtenances, and capacity owned by the Owner, described herein in the attached Exhibit A.
 - c. User System: The optical fiber strands, innerduct, conduit, building entrance facilities, and associated appurtenances in the Fiber System, to be provided to User under the terms of this Agreement and the associated rights to access such fiber strands at demarcation points as specified herein.

GRANT.

- 1.2 The Owner hereby grants to User an Indefeasible Right of Use (IRU) the following Owner Fiber System components, totaling 16 fibers:
- a. Trunk 1, fibers 23-24 and fibers 37-40 (6 fibers)
 - b. Trunk 2, fibers 37-44 and fibers 49-50 (10 fibers)
 - c. Trunk 4, fibers 23-24 and fibers 37-38 (4 fibers)
 - d. Trunk 5, fibers 23-24 (2 fibers)
 - e. Distribution 4, fibers 23-24 (2 fibers)
 - f. Distribution 12, fibers 23-24 (2 fibers)
 - g. CTSS Fiber, fibers 5-6 (2 fibers) – see Exhibit D for terms, use

agreement, and map.

TERM.

1.3 This IRU shall have an effective date when fully executed and shall be terminated fifteen (15) years from the anniversary of that effective date. Thereafter, this Agreement shall automatically renew for additional one (1) year periods so long as neither party provides the other with at least ninety (90) days advanced written notice of non-renewal prior to the date whereby the Agreement would renew.

CONSIDERATION.

1.4 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 as described herein, the User hereby agrees that:

- a. User shall compensate Owner for use of the Fiber System on a per strand *I* per trunk basis, as further described in the attached Exhibit B.
- b. 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.

OWNER'S OBLIGATIONS.

1.5 Owner shall:

- a. Owner will provide the User System for User's use in accordance with the terms of this Agreement.
- b. Provide and/or control maintenance and repair functions on the User System and all facilities in the Fiber System through which the User System passes, including, but not limited to, conduit, innerduct, poles and equipment, shall be performed under the direction of the Owner.
- c. Maintain the User System to the User's specifications.

USER OBLIGATIONS.

1.6 User shall:

- a. Provide and pay for all lateral connectivity from all necessary termination points of User's proprietary fiber and equipment to all the necessary demarcation points of Owner's Fiber System if such connectivity is necessary.
- 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 the 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.
- d. Agree not to use the User System provided in this Agreement to provide non-educational or primarily commercial services to any non-related party without the prior written consent of the Owner. User agrees not to use the User System provided in this Agreement to provide non-educational or primarily commercial services to non-related parties in conjunction with a third party without the prior written consent of the Owner. User also agrees that it shall not provide for or allow any non-related party to use the User System or in any way sublease or subdivide the User System and provide services to non-related or third parties without the prior written consent of the 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, the Owner has the right to terminate this Agreement upon giving thirty (30) days written notice to User.
- e. Agree to pay its pro rata share of 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.

JOINT OBLIGATIONS.

1.7 The Owner and User jointly:

- a. Agree that within thirty (30) days of final execution of this Agreement the Parties will agree upon an Acceptance Plan for User's initial activation and the "go-live" of User's System.
- b. Shall provide each other a twenty-four (24) hour a day, three hundred sixty-five (365) days per year, coordination telephone number. MAINTENANCE.

1.8 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 located at Lateral terminus points, shall be performed by or at the direction of the Owner or Owner's appointed agent with reasonable notice to User. Except as otherwise may be agreed to by the parties, User is prohibited from performing any maintenance or repair on the Fiber System or User System. User shall have the right to have employee or representative available to assist the Owner in any maintenance or repair of the User

System. The Owner shall maintain the User System in accordance with the technical specifications (hereinafter referred to as the "Specifications") attached hereto in Exhibit C.

- a. Regular Maintenance: Owner may from time to time undertake and provide for Regular Maintenance activities in an attempt to keep the Fiber System and/or User System in good working order and repair so that it performs to a standard equal to that which is then commonly believed to be acceptable for systems of similar construction, location, use and type. User agrees to pay the reasonable pro rata share of the regular maintenance costs.
- b. Scheduled Maintenance: The Owner from time to time may schedule and perform specific periodic maintenance to protect the integrity of the Fiber System and/or User System and perform changes or modifications to the Fiber System and/or User System (including but not limited to fiber slicing, etc.) at the User's request. Such User requested Scheduled Maintenance shall be performed at the User's sole cost and expense. User may request such Scheduled Maintenance by delivering to the Owner a Statement of Work detailing the service User desires to be performed, including the time schedule for such services. Upon receipt of such a Statement of Work, the Owner will provide an estimate of the price and timing of such Scheduled Maintenance. Following User's acceptance of such estimate, the Owner will schedule and have such Scheduled Maintenance performed. The Owner will have such Scheduled Maintenance performed on a time-and-materials basis at the standard rates then in effect at the time services are performed.
- c. Emergency Maintenance: The Owner may undertake and provide for Emergency Maintenance and repair activities for the Fiber System and/or User System. Where necessary, the Owner shall attempt to respond to any failure, interruption or impairment in the operation of the User System within Twenty-Four (24) hours after receiving a report of any such failure, interruption or impairment. The Owner shall use its best efforts to perform maintenance and repair to correct any failure, interruption or impairment in the operation of the User System when reported by User in accordance with the procedures set forth in this Agreement. The costs and expenses associated with such Emergency Maintenance shall be apportioned between Owner and User in percentages equal to their respective interests of control (based on the terms of this Agreement) over the portions of the User System and/or Fiber System requiring such Emergency Maintenance. The Owner will have such Emergency Maintenance performed on a time and materials basis at the emergency maintenance rates then in effect at the time services are performed.

1.9 In the event the Owner, or others acting on the 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 previously Owner provided maintenance and repair of the User System, at the User's sole cost and expense. Any such discontinuance shall be upon not less than six (6) months prior written notice to User. In the event of such discontinuance, the Owner shall obtain for User, or others acting on 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.

- 1.10 In the event any failure, interruption or impairment adversely affects both the Owner's Fiber System and the User System, restoration of the User System shall at all times be subordinate to restoration of the Owner's Fiber System with special priority for Owner's public safety and municipal infrastructure functions carried over the Fiber System, unless otherwise agreed to in advance by the parties hereto. In such event or in the event the Owner is unable to provide timely repair service to the User System, the Owner may, following written request, permit User to make repairs to restore the User System as long as such restoration efforts do not interfere with the Owner's restoration activities.
- 1.11 Any User subcontractors or employees who undertake repair or maintenance work on the User System shall first be approved by the Owner to work on the Owner's Fiber System. At present, Owner only authorizes User to utilize the services of Fishel to undertake repair or maintenance work on the User System. Prior to User's undertaking Emergency Maintenance or entering an Owner's facility for repair, User shall first notify the Owner of the contemplated action and receive the Owner's concurrence decision, a decision that the Owner shall provide to User no later than twelve (12) hours from User's notification to Owner of contemplated action. When User undertakes Emergency Maintenance of the User System, User shall have an Owner employee or representative available to assist the User in any repair of the User System.

USE OF THE USER SYSTEM.

- 1.12 User shall have exclusive control over its provision of telecommunications, video, data, and/or information services.
- 1.13 User hereby certifies that it is authorized or will be authorized, where required, on the effective date this Agreement to provide telecommunications, video, data, and/or information services within the State of Ohio, the City of Gahanna, Ohio and in such other jurisdictions as the User System may exist, and that such services can be provided on the Fiber optic cable systems such as the Fiber System owned and operated by the Owner.
- 1.14 User understands and acknowledges that its use of the Fiber System and User System are subject to all applicable local, state and federal laws, rules and regulations, as enacted, either currently or in the future, in the jurisdictions in which the Fiber System and User System are located. User represents and warrants that it shall operate on the Fiber System and User System subject to, and in accordance with, all laws, rules and regulations and shall secure all permits, approvals, and authorizations from all such jurisdictional entities as may be necessary.

RELEASE.

- 1.15 To the extent permitted by law, User shall be solely liable for its own actions that result in any obligation, loss, claim (including third party claims asserted against Owner) and damage whatsoever, regardless of cause thereof, and expenses in connection therewith including, without limitation, expenses, penalties and interest (collectively, "Losses") arising out of or resulting from the entering into this Agreement and any payment, transfer or other application of moneys by User in accordance with provisions of this Agreement; provided, however, that User shall not release Owner for Losses arising out of or resulting from Owner's own willful or negligent conduct. The liability arising under this Section shall survive termination of this Agreement.

INSURANCE.

- 1.16 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.
- 1.17 The User shall furnish the Owner's authorized representative within thirty (30) days after the Commencement Date of the Agreement with insurance endorsements acceptable to 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 the User at the User's sole cost and expense.
- 1.18 The User endorsements shall name the Owner and all of its elected officials, officers and employees, agents and volunteers as additional insureds. The endorsements shall also contain a provision that the policy cannot be canceled or reduced in coverage or amount without first giving thirty (30) calendar days written notice thereof by registered mail to the Owner at the following address:
- City of Gahanna
Law Director
200 S. Hamilton Road
Gahanna, Ohio 43230
- 1.19 Such insurance shall not limit or qualify the obligations the User assumed under the Agreement. The Owner shall not by reason of its inclusion under these policies incur liability to the insurance carrier for payment of the premium for these policies.
- 1.20 Any insurance or other liability protection carried or possessed by the Owner, which may be applicable, shall be deemed to be excess insurance and the User's insurance is primary for all purposes despite any conflicting provision in the User's policies to the contrary.
- 1.21 User shall be responsible for all User contractors' or subcontractors' compliance with the insurance requirements.
- 1.22 Failure of the User to maintain such insurance, or to provide such endorsements to the Owner when due, shall be an event of default under the provisions of this Agreement.
- 1.23 The User shall obtain and maintain Commercial General Liability Insurance, including the following coverages: Product liability hazard of User's premises/operations (including

explosion, collapse and underground coverages); independent contractors; products and completed operations (extending for one (1) year after the termination of this Agreement); blanket contractual liability (covering the liability assumed in this Agreement); personal injury (including death); and broad form property damage. Such coverage shall provide coverage for total limits actually arranged by the User but not less than Two Million Dollars and No Cents (US \$2,000,000.00) combined single limit.

Should the policy have an aggregate limit, such aggregate limits should not be less than double the combined single limit and be specific for this Agreement. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be in a form acceptable to the Owner's Director of Law.

- 1.24 The User shall provide Workers' Compensation insurance covering all of the User's employees in accordance with the laws of the state of Ohio.
- 1.25 The User may use an Umbrella or Excess Liability coverage to net coverage limits specified in the Agreement. Evidence of Excess Liability shall be in a form acceptable to Owner's Director of Law.
- 1.26 The foregoing insurance requirements are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the User under this Agreement.

DEFAULT.

- 1.27 Unless otherwise specified in this Agreement, User shall not be in default under this Agreement, or in breach of any provision hereof unless and until the Owner shall have given User written notice of a breach and User shall have failed to cure the same within thirty (30) days after receipt of a notice; provided, however, that where such breach cannot reasonably be cured within such thirty (30) day period, if User shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such breach shall be extended for a reasonable period of time to complete such curing. Upon the failure by User to timely cure any such breach after notice thereof from the Owner, the Owner shall have the right to take such action as it may determine, in its sole discretion, to be necessary to cure the breach or terminate this Agreement or pursue such other remedies as may be provided at law or in equity.
- 1.28 Unless otherwise specified in this Agreement, the Owner shall not be in default under this Agreement or in breach of any provision hereof unless and until User shall have given the Owner written notice of such breach and the Owner shall have failed to cure the same within thirty (30) days after receipt of such notice; provided, however, that where such breach cannot reasonably be cured within such thirty (30) day period, if the Owner shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such breach shall be extended for a

reasonable period of time to complete such curing. Upon the failure by the Owner to timely cure any such breach after notice thereof from User, User shall have the right to take such action as it may determine, in its sole discretion, to be necessary to cure the breach or terminate this Agreement or pursue other remedies as may be provided at law or in equity.

1.29 If User shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent, or shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if any involuntary petition proposing the adjudication of User, as a bankrupt or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law shall be filed in any court and such petition shall not be discharged or denied within ninety (90) days after the filing thereof, or if a receiver, trustee or liquidator of all or substantially all of the assets of User shall be appointed then the Owner may, at its sole option, immediately terminate this Agreement.

FORCE MAJEURE.

1.30 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").

ASSIGNMENT.

1.31 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors or assigns; provided, however, that no assignment hereof or sublease, assignment or licensing (hereinafter collectively referred to as a "Transfer") of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of each Party hereto, not to be unreasonably withheld.

WAIVER OF TERMS OR CONSENT TO BREACH.

1.32 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.

RELATIONSHIP NOT A PARTNERSHIP OR AN AGENCY.

1.33 The relationship between User and the Owner shall not be that of partners or agents for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or agency Agreement between the Parties hereto.

NO THIRD-PARTY BENEFICIARIES.

1.34 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.

EFFECT OF SECTION HEADINGS.

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

NOTICES.

1.36 Any written notice under this Agreement shall be deemed properly given if sent by registered or certified mail, postage prepaid, or by nationally recognized overnight delivery service or by facsimile to the address specified below, unless otherwise provided for in this Agreement:

If to User to:
Superintendent
Gahanna-Jefferson City
School District
160 S. Hamilton Road
Gahanna, Ohio 43230

If to Owner to:
Mayor
City of Gahanna
200 S. Hamilton Road
Gahanna, Ohio 43230

With a Copy to:
Executive Director, Business
and School Improvement
Gahanna-Jefferson City
School District
160 S. Hamilton Road
Gahanna, Ohio 43230

With a Copy to:
Law Director
City of Gahanna
200 S. Hamilton Road
Gahanna, Ohio 43230

1.37 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.

SEVERABILITY.

1.38 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.

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.

GOVERNING LAW AND VENUE.

22.1 This Agreement shall be interpreted in accordance with the Charter and Codified Ordinances of the City of Gahanna, 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

ENTIRE AGREEMENT.

This Agreement, including any Exhibit attached hereto, all constitute the entire agreement between the parties with respect to the subject matter. This Agreement cannot be modified except in writing and signed by both parties.

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

USER:

Gahanna-Jefferson City School District

By:

Its:

OWNER:

City of Gahanna, an Ohio municipal corporation

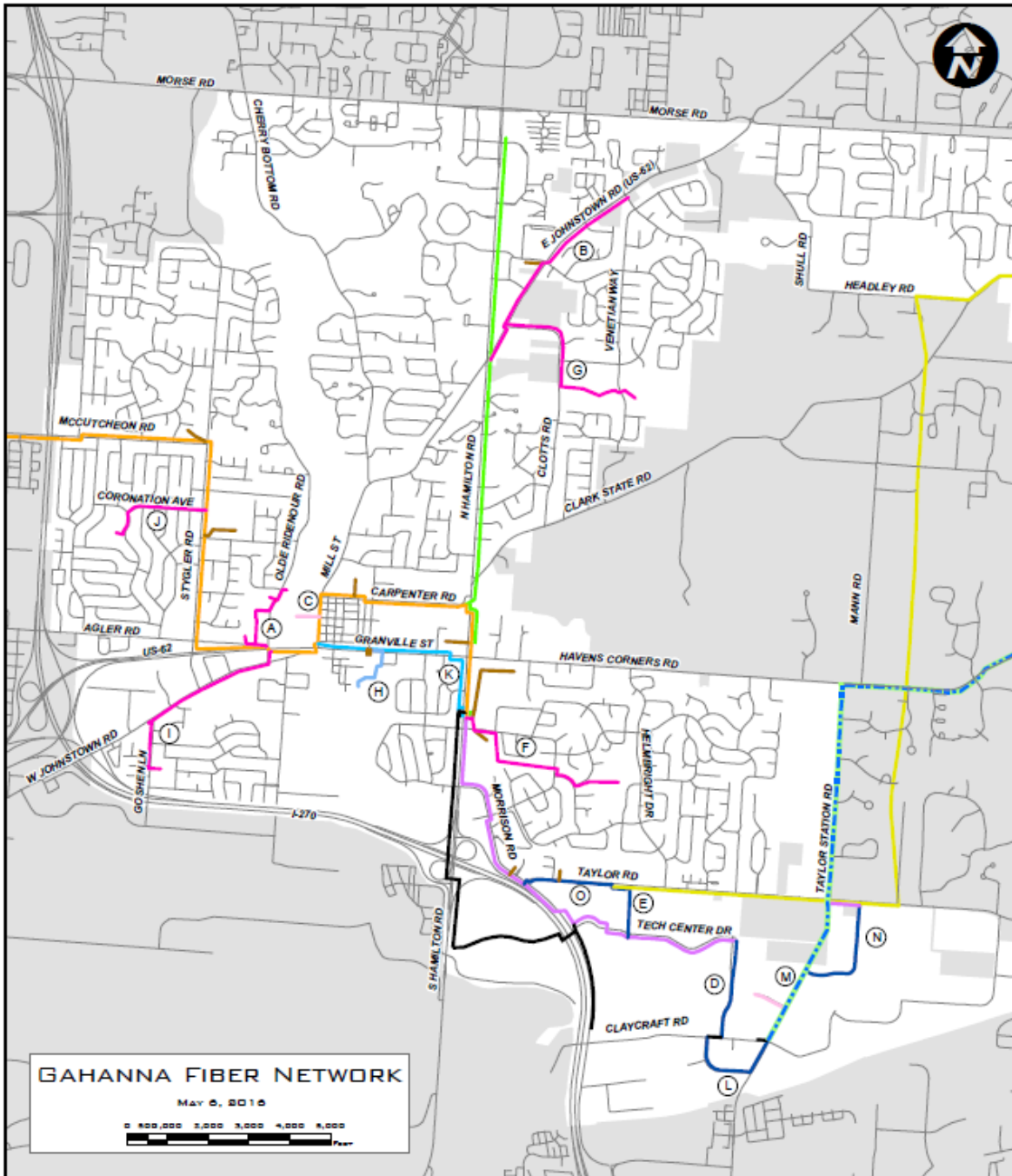
By:

Its:

Approved As To Form:

Law Director, City of Gahanna, Ohio.

EXHIBIT A - FIBER SYSTEM



City Trunks (144 ct)

- Trunk 1 █
- Trunk 2 █
- Trunk 3 █
- Trunk 4 █
- Trunk 5 █

City Distribution Lines

- 12 Strands █
- 24 Strands █
- 48 Strands █
- 72 Strands █
- 144 Strands █

Fiber Laterals

- AEP/New Albany █
- CTSS/Gahanna █
- City Owned Lateral █
- Private Lateral █

- █
- █
- █
- █



CITY OF GAHANNA

CITY OF GAHANNA, OHIO
 200 SOUTH HAMILTON ROAD, GAHANNA, OHIO 43230
 (614) 342-4073 WWW.GAHANNA.OHIO.GOV

EXHIBIT B

PRICING- PER STRAND/PER TRUNK

The following fees will be assessed for fibers defined in this IRU

Maintenance Fee Schedule				
Cable	Strands	Fee Per Strand	Quantity	Total
Trunk 1	23-24 and 37-40	\$ 63.20	6 Fibers	\$ 379.17
Trunk 2	37-44 and 49-50	\$ 63.20	10 Fibers	\$ 631.95
Trunk 4	23-24 and 37-38	\$ 63.20	4 Fibers	\$ 252.78
Trunk 5	23-24	\$ 63.20	2 Fibers	\$ 126.39
Distribution 4	23-24	\$ 63.20	2 Fibers	\$ 126.39
Distribution 12	23-24	\$ 63.20	2 Fibers	\$ 126.39
Total Annual Maintenance Fee				\$ 1,643.07

Table 1. The annual maintenance fees above cover fiber maintenance and emergency restoration services. These fees are considered the pro-rata share for maintenance and management of the number of fiber strands requested by and assigned to the user.

Bond Repayment Fee Schedule				
Cable	Strands	Fee Per Strand	Quantity	Total
Trunk 1	23-24 and 37-40	\$ 437.35	6 Fibers	\$ 2,624.12
Trunk 2	37-44 and 49-50	\$ 437.35	10 Fibers	\$ 4,373.53
Trunk 4	23-24 and 37-38	\$ 437.35	4 Fibers	\$ 1,749.41
Trunk 5	23-24	\$ 437.35	2 Fibers	\$ 874.71
Total Annual Bond Repayment Fee				\$ 9,621.77

Table 2. The fees in table 2 are required to pay the fiber bond repayment service. This fee will sunset in January 2028.

EXHIBIT C

Standard Construction & Fiber Specifications As-Built Drawing Specifications

Fiber Specifications

Fiber Type varies and is dependent upon route, as generally shown in Exhibit A, but all fiber was manufactured by either Alcoa, Coming or other comparable manufacturer.

Maximum Splice Losses (measured on an individual basis, not averaged)

The maximum splice loss for any individual splice measured "bi-directional" shall not exceed
0.15 db.

The maximum splice loss for any individual transition splice (standard single mode fiber spliced to a non zero dispersion shifted fiber) measured bi-directional" shall not exceed
0.25 db.

The maximum loss for "through" office loss including connectors and jumpers shall not exceed 1db.

Average Splice Loss

The average splice loss shall not exceed 0.10 db. (used for total Span loss calculation

only) **Cable Requirements**

1.3 Db/Km attenuation at 1550nm.

1.4 Db/Km attenuation at 1310nm. Drawings:

Detailed As-Built drawings will be supplied within 20 business days after the execution of this contract. As-Built drawings provided to the Customer by the Fiber Owner will contain the following information presented in the format described below.

1. Route Description: The As-Built drawings will contain a geographical depiction of the Segment containing the Customer Strands, provided in the form of a hard copy map. The depiction will identify each POP.
2. Fiber Level Details: The As-Built drawings will provide details on fiber assignment numbers within the cable between each POP and the next contiguous POP, fiber distribution bay, individual fiber assignments, and Fiber Owner circuit ID's to aid in identifying Segments within the cable system
3. Mileage: Mileage will be the fiber distances via OTDR traces between a POP and the next contiguous POP.

4. Site Names: POPs will be identified using the Fiber Owner's names for such sites, whether or not the Customer uses the same names.
5. Owner may require the use of Common Language Location Identifier (CLLI Code).

**MAINTENANCE AGREEMENT
IN CONNECTION WITH THE CITY OF COLUMBUS
TRAFFIC SIGNAL SYSTEM AND THE GAHANNA
FIBER NETWORK**

This Maintenance Agreement, hereinafter referred to as the “Agreement”, entered into this ____ day of _____, 2014, by and between the City of Columbus, Ohio, acting by and through the Director of Public Service, under the authority of Ordinance No. 1537-2014, hereinafter referred to as “Columbus”, and the City of Gahanna, hereinafter referred to as “Gahanna”, sometimes individually referred to as “Party” and collectively referred to as “Parties”, for the responsibilities associated with the Columbus Traffic Signal System (CTSS) and the Gahanna Fiber Network.

WITNESSETH:

WHEREAS, the CTSS program follows the recommendations of the CTSS Assessment and Strategic Plan completed by MORPC in November 2005 and adheres to the regional intelligent transportation system plan by providing inter-jurisdictional communication and coordination of traffic signals with local agencies, public safety, and transit. This will improve the flow of traffic on arterial roads in the region, improve regional air quality, and provide a better tool for incident management during traffic events.

WHEREAS, the Gahanna Fiber Network is a local fiber optic system that has been designed and expanded to provide high speed network connectivity in Gahanna for city services and partnerships.

WHEREAS, the Gahanna Fiber Network will bridge the fiber optic cable gap in connectivity of traffic signals to the CTSS system and Gahanna will gain the ability to expand their network beyond its current infrastructure.

NOW, THEREFORE, in consideration of the mutual promises as hereinafter set forth, the parties herein agree as follows:

1. Term

This Agreement shall have an effective date when fully executed and shall be terminated ten (10) years from the anniversary of that effective date. Thereafter, this Agreement shall automatically renew for two (2) additional ten (10) year periods so long as neither party provides the other with at least twelve (12) months’ advanced written notice of non-renewal prior to the date whereby the Agreement would renew.

2. Limits

A. Limits through the Gahanna Fiber Network – Gahanna’s Maintenance Responsibility:

- Trunk 4, Fibers 7-12 (blue buffer tube)

- Trunk 5, Fibers 7-12 (blue buffer tube)
- Lateral D, Fibers 7-12 (blue buffer tube)
- Lateral L, Fibers 7-12 (blue buffer tube)

B. Limits through the CTSS network – Columbus' Maintenance Responsibility:

- 144-strand cable, Fibers 1-6 (white buffer tube) Taylor Station Road from Claycraft Road to Havens Corners Road
- 144-strand cable, Fibers 1-6 (white buffer tube) Havens Corners Road to Reynoldsburg-New Albany Road

3. Operation and Maintenance

- A. Gahanna downtime for fiber optic cable shall be no more than 24 hours for a fiber cut.
- B. Columbus' downtime for fiber optic cable shall be no more than 24 hours for a fiber cut.
- C. Columbus shall obtain a permit from Gahanna for performing work on CTSS if it is within Gahanna's right of way. The cost for Columbus to obtain a permit for Gahanna shall be waived.
- D. Gahanna shall obtain a permit from Columbus for performing work on the Gahanna Fiber Network if it is within Columbus' right of way. The cost for Gahanna to obtain a permit for Columbus shall be waived.
- E. Gahanna is responsible for maintaining the Gahanna Fiber Network through its own forces and/or by executing a maintenance contract that will provide product replacement and repairs for the Gahanna Fiber Network.
- F. Columbus is responsible for maintain CTSS through its own forces and/or by executing a maintenance contract that will provide product replacement and repairs for the CTSS network.
- G. Gahanna shall provide Columbus written notification when repairs to the Gahanna Fiber Network affecting the CTSS are scheduled to begin and again when work is complete.
- H. Columbus shall provide Gahanna written notification when repairs to the CTSS network affecting the Gahanna network are scheduled to begin and again when work is complete.
- I. Columbus and Gahanna shall create and maintain document assigning point-of-contact persons and alternates for fiber optic and device questions and repairs. The personnel points-of-contact document shall be updated at a minimum of once a year, by January 31st, and/or intermediate updates if there is a change to the contact personnel.

4. Terms and Conditions

- A. Force Majeure: Gahanna and Columbus are not liable for failure to perform the parties' obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm hurricane, tornado, or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service.
- B. If either party asserts Force Majeure as an excuse for failure to perform their obligation, then the nonperforming party must prove that they took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was

timely notified of the likelihood or actual occurrence of an event described in 3(A) (Force Majeure).

- C. In the event of tornado/flood, etc., there would be an impact on timing. If such an event occurred, each respective party would be responsible for replacing what it previously constructed and is responsible for in this document.

5. Termination and Nonperformance

- A. If Columbus is unable to perform any of the obligations set forth in this Agreement, Columbus shall notify Gahanna in writing and will cooperate with Gahanna to rectify nonperformance.
- B. If Gahanna is unable to perform any of the obligations set forth in this Agreement, Gahanna shall notify Columbus in writing and will cooperate with Columbus to rectify nonperformance.
- C. The inability of Columbus or Gahanna to perform its obligations will NOT constitute a breach of contract and the parties shall work together under such conditions.

6. Compensation

There will be no compensation exchanged between the Parties for any of the services provided under this Agreement.

7. Notice

Any notice or demand or other communication required or permitted to be given under this Agreement or applicable law shall only be effective if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Services as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

For the City of Gahanna: City of Gahanna
 Department of Public Service
 200 South Hamilton Road
 Gahanna, Ohio 43230
 Attn: Deputy Director

For the City of Columbus: City of Columbus
 Department of Public Service
 Office of Support Services
 50 W. Gay St. – Ste. 520
 Columbus, Ohio 43215
 Attn: Contract Manager

8. Applicable Law; Remedies

This Agreement shall be construed and interpreted and the rights of the parties governed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between Columbus, its agents and employees, and Gahanna arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County of Franklin, State of Ohio.

9. Entire Agreement

This Agreement and its attachments and referenced manuals sets forth the entire Agreement between the parties with respect to the subject matter hereof. All prior discussion, understandings, agreements, representations, or warranties not contained in this Agreement are superseded by this Agreement and shall not be binding on either party.

10. Modifications

This Agreement may be amended as future Columbus CTSS and Gahanna Fiber Network projects are implemented by the mutual agreement of Columbus and Gahanna. Except as provided herein, no alteration of any terms or conditions of this Agreement shall be binding on either party without the written consent of both parties and approval by the appropriate authorities. All amendment(s) shall be promptly distributed to all known parties of interest.

11. Nonexclusive Remedies

The remedies provided for in this Agreement shall not be exclusive but are in addition to all other remedies available under the law.

12. Survivorship

All services executed pursuant to the authority of this Agreement shall be bound by all of the terms, conditions, prices discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement, or any extension thereof. Further, the terms, conditions, and warranties contained in this Agreement that by their sense in context are intended to survive this completion of the performance, cancellation or termination of this Agreement, shall so survive.

13. Save Harmless

To the extent permitted by law, Gahanna shall protect, indemnify and save Columbus harmless from and against any damage, cost, or liability, including reasonable attorneys' fees, resulting from claims for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of Gahanna, its officers, employees, or agents.

14. Severability

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions for the Agreement are declared severable.

15. Assignment and Subcontract

Neither party may assign, subcontract, or otherwise transfer this Agreement to others without the prior written consent of the other party. If this Agreement is so assigned, it shall inure to the benefit of and be binding upon any respective successors and assigns (including successive, as well as immediate, successors and assignees) of the parties.

16. Authority to Bind

The signatories to this Agreement represent that they have the authority to bind themselves and their respective municipalities to this Agreement.

17. Attachments Required

The following documents are hereby incorporated into and made part of the Agreement:

- A. Map – Gahanna Fiber Network
- B. Map - Columbus Fiber Network
- C. Contact List

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

AGREED:

FOR THE CITY OF GAHANNA:

FOR THE CITY OF COLUMBUS:

Rebecca Stinchcomb Date
Mayor

Tracy Davies Date
Director, Department of Public Service

Approved as to Form:

Approved as to Form:

Shane W. Ewald
City Attorney

Richard C. Pfeiffer, Jr.
City Attorney

Construction Projects

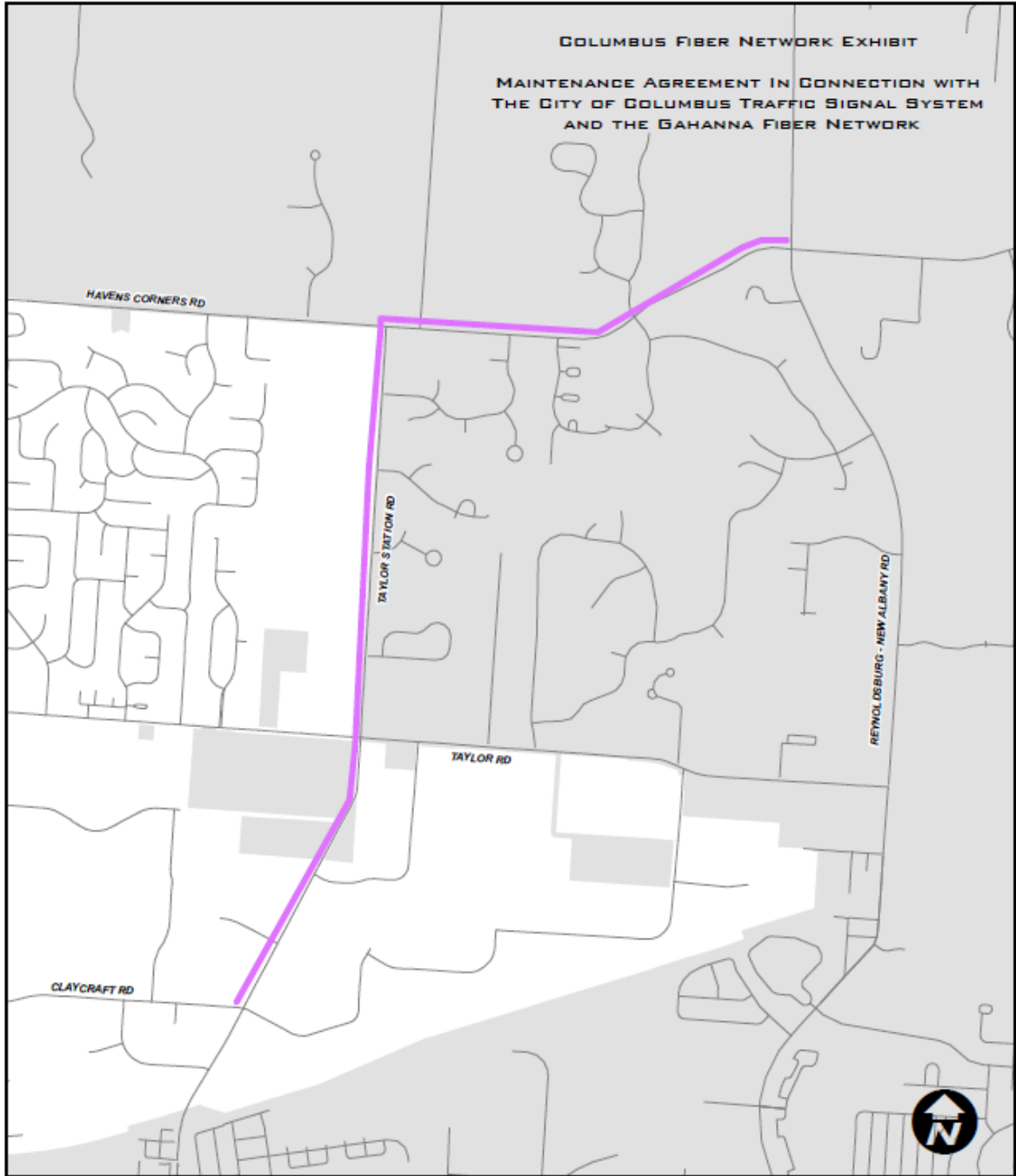
Name	Agency	Title	Phone	Email
Ryan Bollo <i>(P)</i>	City	Project Manager	o:645-3946 c:402-1654	rjbollo@columbus.gov
Mark Stephenoff <i>(S)</i>	City	Traffic Engineer Signal	o:645-7746 c:332-7467	msstephenoff@columbus.gov
Matthew Holdren <i>(P)</i>	Gahanna	Deputy Director of Service	o:342-4005 c:256-4194	Matthew.Holdren@gahanna.gov
Robert Priestas <i>(S)</i>	Gahanna	City Engineer	o:342-4050 c:390-7114	Robert.Priestas@gahanna.gov

Operation and Maintenance

Name	Agency	Title	Phone	Email
Roger Mohr <i>(P)</i>	City	Traffic Management Center Supervisor	o:645-8243 c:419-0786	rwmohr@columbus.gov
Bill Rogers <i>(S)</i>	City	DoT Infrastructure Supervisor	o:645-0776 c:xxx-xxxx	wfrogers@columbus.gov
Ryan Bollo <i>(S)</i>	City	Project Manager	o:645-3946 c:402-1654	rjbollo@columbus.gov
Rory Gaydos <i>(P)</i>	Gahanna	Director of IT	o:342-4070 c:565-5804	Rory.Gaydos@gahanna.gov
Brandon McCorkle <i>(S)</i>	Gahanna	Network Administrator	o:342-4071 c:485-8332	Brandon.McCorkle@gahanna.gov

(P) Denotes Primary Contact

(S) Denotes Secondary Contact



THE CITY OF
COLUMBUS
 MICHAEL B. COLEMAN, MAYOR

DEPARTMENT OF
 PUBLIC SERVICE

50 W BAY ST. - STE. 520, COLUMBUS, OHIO 43215
 (614) 645-3111 WWW.COLUMBUS.OH.GOV

General Fiber Alignment ———