

CITY OF GAHANNA, OHIO

PURCHASE AGREEMENT FOR WI-FI SERVICES, VIRTUAL PRIVATE NETWORK AND FIBER CONSTRUCTION

Dated: _____, 2008

BETWEEN

DHB NETWORKS LTD.

AND

THE CITY OF GAHANNA, OHIO.

**PURCHASE AGREEMENT FOR WI-FI SERVICES, VIRTUAL PRIVATE NETWORK
AND FIBER CONSTRUCTION**

THIS SERVICE AGREEMENT and any attachments appended (all referred to as the “Agreement”) are made and entered into by and between DHB NETWORKS LTD. (“DHB”), an Ohio limited liability corporation with a business address of 4338 Bright Road, Dublin, Ohio 43016, and THE CITY OF GAHANNA, OHIO (“City”), an Ohio municipal corporation with a business address of 200 S. Hamilton Road, Gahanna, OH 43230 (collectively referred to as the “Parties” or individually as “Party”) on this _____, 2008 (“Effective Date”).

WHEREAS, DHB agrees to abide by the terms of this Agreement as consideration for City’s decision to have DHB provide Service to City; and

NOW, THEREFORE, in consideration of the foregoing representations, agreements, mutual promises and covenants contained herein, it is agreed as follows:

I. Definitions

- A. The following terms, whether in the singular or in the plural, when used in this Agreement and initially capitalized, shall have the meaning specified:
1. Operational Date: The Operational Date shall mean March 1, 2009.
 2. Service: means WiFi Broadband Internet access (including any V-LAN provided to the City) that is provided by DHB through the System to the Users within the Service Area
 3. Service Level: The Service Level shall be as described in Appendix B, attached hereto.
 4. Equipment: means all 802.11, 2.4 and 4.9 Ghz WiFi infrastructure, access points, antennas, wireless switching gear, authentication hardware and software as well as service monitoring tools required for construction and operation of the System. DHB shall provide City inventory of the above upon completion of the System.
 5. Fiber Use Agreement shall be as described in Appendix C.
 6. Fiber Construction Scope and Specifications Appendix D.

II. Documents Included.

The following documents are incorporated into this Agreement:

DHB Coverage Map, attached as Appendix A.
DHB Service Level, attached as Appendix B.
The City of Gahanna Optical Fiber Use Agreement between the City of Gahanna and
DHB Networks Ltd., attached as Appendix C.
Fiber Construction Scope and Specifications, attached as Appendix D.

Should there be any conflicts or inconsistencies between this Agreement and any attached appendices, the terms and conditions of this Agreement shall prevail and control.

III. Term.

This Service Agreement shall have an Effective Date when fully executed as listed on Page 1 of this Agreement. The initial term shall expire ten (10) years after the 'Operational Date'.

At the end of the first five (5) year Service period, which commences the first day of Service delivery (targeted for March 1, 2008), DHB and the City will conduct a technology and rate review. Such review will consist of determining whether or not the technology and Service levels in place at that time need to be modified or enhanced to support new initiatives or deliver new service objectives. If the City determines that there are new service levels they would like to obtain from DHB, or enhancements to the Services already defined in the purchase agreement, DHB will assess the costs necessary to meet such requirements within thirty (30) days, and respond with a proposal to the City to support the technology refresh as agreed to by both Parties.

If there are no Service enhancements, or need to support new Service objectives, DHB will continue to provide Service to the City at the defined Service levels herein for months 61-120 at a rate of One Hundred Thousand Dollars (\$100,000) prepay or payable as Eight Thousand Five Hundred Dollars (\$8,500) per month to cover annual maintenance expenses of the infrastructure deployed. DHB Networks will continue to maintain responsibility to ensure that the network infrastructure remains in full working order and meets all Service levels defined in this Agreement for the entire One Hundred and Twenty (120) month term.

DHB Success penalty

IV. Service.

DHB's delivery of Service will be made to the City no later than March 1, 2009.

The Service provided by DHB is described in Appendices A & B, attached.

DHB shall also deploy an optical network point-of-presence ("POP") in Gahanna, leveraging the physical transport provided by a combination of the fiber controls in the CFN duct DHB's CFN, as well as the fiber built for City pursuant to this Agreement, to provide high-speed reliable transport Services to the City to any of the locations where DHB has an established point-of-presence. Initially, DHB's network implementation will provide such connectivity to its datacenter facility located at 226 N. 5th Street, Columbus, Ohio a carrier neutral collocation facility, as well as connectivity to the City of Gahanna. Additional points of presence may be

added to the optical backbone thereby providing the City of Gahanna a logical path to new locations as DHB implements them (i.e., New Albany, Westerville, Columbus, etc.). DHB will dedicate a total of one (1) Gigabit Ethernet (1000 Mbps) to the City which can be provisioned in increments (50, 100, 300, 600 or 1,000 Mbps) per local link as part of this Agreement. DHB will provide the City a dedicated physical interface (1GigE) at the end of each connection which will support 801.1Q trunking as necessary, which will be rate limited to the bandwidth increment selected for that specific connection. The optical facility itself will be redundant and self-healing in nature while providing a dedicated path to the City for its future communications needs. The DHB optical network is a closed architecture, fully-owned and operated by DHB and will not be oversubscribed therefore provided the City a clear, dedicated local portion of bandwidth throughout the Central Ohio area as DHB expands.

V. Fiber Construction

DHB agrees to build a conduit system, with One Hundred Forty-Four (144) fibers installed in the conduit, pursuant to the schedule and specifications set out in Appendix D.

City shall provide DHB twelve (12) fibers, pursuant to the City of Gahanna Optical Fiber Agreement, attached as Appendix C. At the termination of this Agreement, DHB shall transfer ownership and City shall then own all the fiber referenced in this Agreement.

VI. Availability/Interruption/Service Standards.

The Service Standards are described in Appendix B. The Service Standards are a material covenant of this Agreement.

VII. Payments/Default/Termination/ Liquidated Damages

- A) First Payment: City shall pay DHB One Million Dollars (\$1,000,000) on or before April 30, 2008.
- B) Second Payment: City shall pay DHB or its assignee/nominee Three Hundred and Fifty Thousand Dollars (\$350,000) payable as follows: Beginning January 31, 2009, City shall pay DHB Seven Thousand Two Hundred Ninety-One and Sixty-Six/100 Dollars (\$7,291.66) per month for forty-eight (48) months.
- C) Third Payment: City shall pay DHB or its assignee/nominee Five Hundred Ninety-Five Thousand Three Hundred Sixty and 00/100 Dollars (\$595,360.00) for construction of the conduit/fiber system described in Appendix D. The Payment shall be made as follows:
 - (1) One Hundred Thousand and 00/100 Dollars (\$100,000.00) within thirty (30) days of an invoice describing, with specificity satisfactory to the City Finance Director, the work performed.
 - (2) The remainder, Four Hundred Ninety-Five Thousand Three Hundred Sixty and 00/100 Dollars (\$495,360.00) shall be paid upon completion of the project.

VIII. Default

A. Default of City/Termination by DHB

If City fails to pay any undisputed amount owed to DHB or an affiliate of DHB's within ninety (90) days after the date of the invoice; or if City has undisputed amounts still owing to DHB from a prior account; or if City breaches any representation to DHB or fails to perform any of the promises City made in this Agreement; or if City is subject to any proceeding under the Bankruptcy Act or similar laws, City will be in default and after City receives at least thirty (30) days notice of any such suspension or termination and has an opportunity to cure such default DHB may suspend Service and/or terminate this Agreement, in addition to all other remedies available. DHB may require reactivation charges to renew Service after termination or suspension. Upon termination, City is responsible for paying all undisputed amounts and charges owing under this Agreement. DHB may at any time during the Initial Term and/or any Extended Term terminate this Agreement and DHB's provision of Service and Equipment (or any portion thereto) as follows: (a) immediately in the event the City fails to remit payment according to the terms of this Agreement; or (b) upon thirty (30) days prior written notice of a material breach, other than nonpayment.

B. Default of DHB/Termination by City.

If DHB shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankruptcy pursuant to proceedings; or if a court shall take jurisdiction of DHB and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for DHB's assets is appointed by a court of competent jurisdiction; or if DHB shall be divested of its rights, powers and privileges under this Agreement by other operation of law; if DHB shall default in the performance of any material covenant required to be performed by it herein, and the failure of DHB to remedy such default, or to take prompt action to remedy such default, within a period of ninety (90) days after receipt from the City of written notice to remedy the same; or if by reason of the nature of such default the same cannot be remedied within said ninety (90) days, then the City shall have the right to terminate this Agreement if DHB shall have failed to commence the remedying of such default within said ninety (90) days following such written demand, or having so commenced, shall fail thereafter to complete such remedy within thirty (30) days. City may terminate this Agreement if DHB repeatedly fails to achieve the Service Level.

Upon termination for any reason, City shall remit payment of all undisputed amounts and charges owing for Service and Equipment provided by DHB to City prior to date of termination.

C. Default of DHB/Liquidated Damages.

In the event DHB defaults and this Agreement is terminated, all DHB Equipment utilized to provide the Service Level shall become the property of the City as liquidated damages.

The Parties agree that the City will need to take possession of the DHB Equipment for the purpose of providing essential governmental services and that this is the only way to adequately compensate the City for loss of the agreed upon Service Level. In the event of the City taking possession of the DHB Equipment because of termination of DHB pursuant to this Agreement, DHB agrees it will sign all necessary documents to transfer a clear title ownership interest to the City. Additionally, DHB will sign all documents giving the City a security interest in the Equipment should the City so request.

IX. Limitations, Indemnification and Warranties.

A. Limitation of Liability.

DHB's sole liability, if any, for any loss or damage (exclusive of property damage, personal injury or death) arising out of mistakes, omissions, interruptions, errors or any other causes, shall be limited to the credit for Service interruption for each separate period of interruption as described in the Section VI on Availability/Interruption/Service Standards. However, in no event shall City be entitled to credits, if any, in excess of an amount equivalent to charges payable by City to DHB for Services under this Agreement for the period such failure, delay or nonperformance occur.

B. INDEMNIFICATION.

DHB SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE ELECTED OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, AND VOLUNTEERS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LIABILITIES, LOSSES AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) ("THE EXPENSES") ARISING IN WHOLE OR IN PART OUT OF ITS NEGLIGENCE OR WILFULL MISCONDUCT OR THAT OF ONE ITS EMPLOYEES OR AGENTS IN CONNECTION WITH THE RESPONSIBILITIES CREATED BY THIS AGREEMENT OR A BREACH OF ANY TERM OR CONDITION OF THIS AGREEMENT, INCLUDING ANY EXPENSES RESULTING FROM ANY THIRD PARTY CLAIM FOR THE INTELLECTUAL PROPERTY INFRINGEMENT, OR A MISAPPROPRIATION OF, SUCH THIRD PARTY'S PROPRIETARY RIGHTS OF INTERESTS. THE FOREGOING INDEMNIFICATION SHALL BE CONTINGENT UPON THE CITY PROVIDING DHB WITH NOTICE OF RECEIPT OF ANY CLAIM RELATING TO THIS AGREEMENT OBLIGATION. ALLOWING DHB TO CONTROL THE DEFENSE, COMPROMISE, OR SETTLEMENT HEREOF AND PROVIDING REASONABLE COOPERATION TO DHB DEFENDING THE CLAIM TO THE EXTENT IT DOES NOT MATERIALLY PREJUDICE DHB'S RIGHTS OR INTERESTS, THE CITY'S FAILURE TO PROVIDE SUCH NOTICE SHALL NOT NEGATE DHB'S INDEMNIFICATION OBLIGATIONS.

X. Limited Warranties.

DHB warrants to the City as follows:

A. Services.

The Service shall be sufficient for its intended purposes and shall be operated in a workmanlike manner and in conformance with reasonable industry standards.

B. Third Party Warranties.

DHB agrees that no item supplied under this Agreement shall be excluded from full warranty coverage on the basis that it was not manufactured by DHB. Furthermore, the City shall have the benefit of any warranties for items manufactured by third parties to the extent such warranties are more extensive than those set forth herein.

C. Conditions and Limitations.

The warranties set forth herein shall not apply to the extent that the defect or malfunction is directly attributable to (i) misuse or abuse of the Service by City, or (ii) the installation, repair or alteration of the Equipment or Service by parties not authorized by DHB.

XI. Disclaimer of Warranties - Service.

DHB MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, NON-INFRINGEMENT OR PERFORMANCE WITH REGARD TO THE SERVICES PROVIDED HEREUNDER OTHER THAN TO MEET THE SERVICE LEVEL SET FORTH HEREIN.

XII. Miscellaneous.

A. Assignment Transfer.

Unless otherwise specified herein, neither party may assign/transfer all or part of this Agreement without obtaining the prior written consent of the other party. Such consent shall not be unreasonably withheld or delayed.

B. Notices.

Any notices permitted or required by this Agreement shall be in writing and shall be given or made by hand delivery, certified mail, return receipt requested or by overnight express with written receipt, addressed to the respective parties as follows:

To DHB:

DHB Networks Ltd.
4338 Bright Road
Dublin, Ohio 43016

To City:

City of Gahanna
Attn: Mayor
200 S. Hamilton Road
Gahanna, OH 43230

And

DHB Networks Ltd.
4338 Bright Road
Dublin, Ohio 43016

City of Gahanna
Attn: Director of Technology/Kevin Marchese
200 S. Hamilton Road
Gahanna, OH 43230

XIII. Force Majeure.

Notwithstanding anything else in this Agreement, no default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of the defaulting party, including but not limited to, causes such as riots, civil disturbances, actions or inactions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy, or nuclear disasters.

XIV. Insurance.

DHB shall maintain in force during the period of performance and warranty one or more policies of "per occurrence" liability insurance naming the City, its elected officials, officers, employees, agents and volunteers as additional insured(s) and containing a requirement that the City be notified thirty (30) days in advance of any termination or diminution of coverage by the insurance carrier. All relevant terms and limits of said policies shall be subject to review and acceptance by the City's Director of Law. Current copies of certificates of insurance showing the essential elements of coverage for each policy required under this provision shall upon request be provided to the City's Director of Law.

Without limiting the generality of the foregoing, DHB, while Services are performed under this Agreement, shall at a minimum maintain insurance in the following types and amounts: (a) Standard workers' compensation as required by law; and (b) Comprehensive general liability insurance (occurrence form), including personal injury liability, broad form property damage, operations liability, contractual liability in the minimum amount of Two Million U.S. Dollars (\$2,000,000.00); and (c) Automobile liability insurance insuring owned, non-owned, hired, leased, or borrowed automobiles in the minimum amount of One Million U.S. Dollars (\$1,000,000.00); and (d) DHB shall require that any designee or subcontractor maintain like insurance as listed in (a), (b), and (c) above. Lesser liability limits for subcontractors shall be submitted to the City for approval on a case by case basis.

XV. Public Safety Agency.

The Parties understand that the Service and Equipment to be provided hereunder are to be used by the City for the purposes of general public service and safety, police communications and criminal investigation. The information and data transmitted by the City over DHB system via the Service and Equipment provided may at times be highly

sensitive, confidential or privileged. Due to the nature of City's usage, DHB shall be required to provide the City with prior written notice of any known monitoring or recordation of the substance of the City's usage of the system or the information carried thereon. DHB, unless otherwise required by law, agrees to protect any information it acquires in providing Service to the City with a level of care not less than the level of care DHB exercises over its own information that it considers highly sensitive, confidential or proprietary.

XVI. Non-Appropriation.

DHB recognizes that this Agreement is at all times subject to City's ability to lawfully appropriate the funds necessary to participate in this Agreement. Should the City be unable to lawfully appropriate the necessary funding required herein, this Agreement shall be terminated as of the date the City's funding expires without further obligation.

XVII. Independent Contractors.

In entering into and complying with this Agreement, DHB is at all times performing as an independent contractor. Nothing in this Agreement shall constitute or be construed as a creation of an employee/employer relationship, a partnership, or a joint venture between DHB and City. No employee, agent, or representative of DHB shall be considered an employee, agent, or representative of the City.

XVIII. Taxes.

City is a tax exempt entity and will provide evidence of such tax exemption to DHB upon request. On this basis, City claims exemption from sales and use taxes imposed by the United States and the State of Ohio with respect to the City's purchases of tangible personal property and selected Services.

XIX. Captions.

The subject headings of the various sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

XX. Counterparts.

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

XXI. Further Acts.

Consistent with the terms and conditions hereof, each Party hereto shall execute and deliver all instruments, certificates and other documents and shall perform all other acts

which the other Party may reasonably request in order to carry out this Agreement and the transactions contemplated hereby.

XXII. Third Party Beneficiaries.

Nothing herein expressed or implied is intended or shall be construed to confer upon or give any person other than the Parties hereto, and their permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

XXIII. Entire Agreement.

This Agreement, together with the Appendices referenced herein, constitutes the entire Agreement and understanding of the Parties and supersedes all prior discussions and agreements relating to the subject matter hereof. This Agreement may be amended or modified only in writing signed by DHB and City.

XXIV. No Waiver.

No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by either party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

XXV. Governing Laws; Limitations.

This Agreement is subject to applicable federal laws, federal or state tariffs, if any, and will be governed by the laws of the State of Ohio. If there is any inconsistency between this Agreement and those regulations, this Agreement shall be deemed amended as necessary to conform to such regulations.

XXVI. Venue.

The Parties hereto hereby consent to the exclusive jurisdiction of the courts of the State of Ohio in Franklin County, and the United States District Court for the Southern District of Ohio and waive any contention that any such court is an improper venue for enforcement of this Agreement.

XXVII. Partial Invalidity.

If any term or provision of this Agreement operates or would prospectively operate to invalidate this Agreement in whole or in part, then such term or provision only will be void to the extent of such invalidity, and the remainder of this Agreement shall remain in full force and effect; provided, however, that if such term or provision constitutes the essence of this Agreement then this Agreement shall be deemed terminated without such termination constituting a breach hereof.

XXVIII. Binding Effect.

This Agreement will be binding upon and inure to the benefit of each party and their respective successors and assigns.

[REST OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties hereto have caused this Service Agreement to be duly executed as of the date first above written.

CITY: City of Gahanna, an Ohio Municipal Corporation.

DHB: DHB Networks Ltd.

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

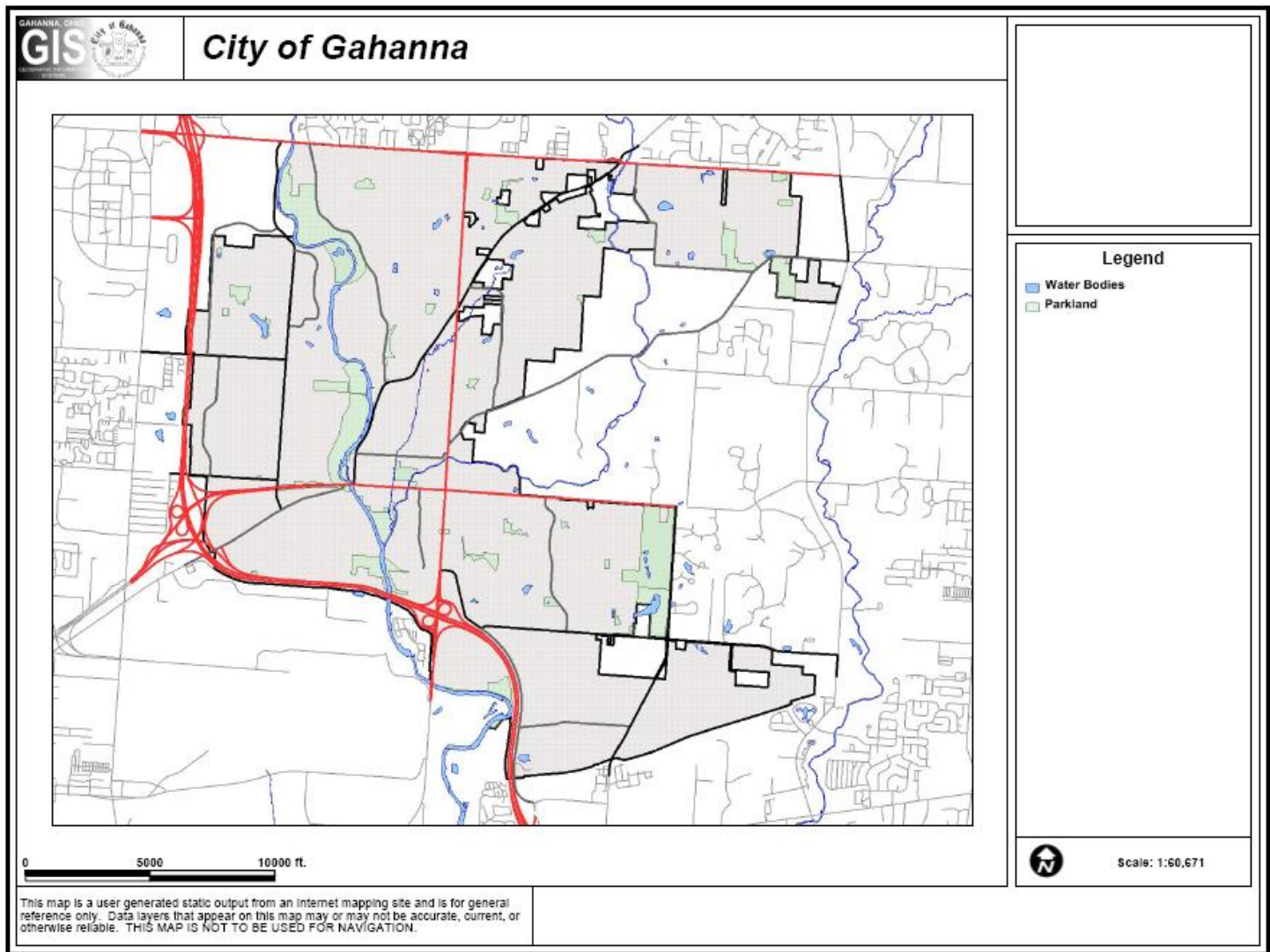
CITY OF GAHANNA LAW DIRECTOR

**APPROVED BY THE GAHANNA
CITY COUNCIL:**

_____, 2008

APPENDIX A

DHB LOCAL AND NATIONAL SERVICE AREA COVERAGE MAPS FOR DATA SERVICES.



APPENDIX B

DHB SERVICE LEVEL

DHB will provide City of Gahanna and its Users access to the Services subject to conditions generally beyond the control of DHB, including, without limitation, the type and condition of the Equipment (personal computer, PDA, etc.) of the City of Gahanna and/or its Users.

NETWORK AVAILABILITY: DHB guarantees that the Service will be available 99% as calculated on a calendar month basis. Service may be temporarily unavailable or curtailed due to planned Equipment modifications, upgrades, relocations, repairs and similar activities necessary for the proper operation of the Services. Notification of planned outages will be provided to City of Gahanna at least seven (7) days in advance. Planned outages are not included in the network availability calculation. If DHB does not achieve the guaranteed network availability level as calculated for a calendar month, DHB will credit the City, upon request, a credit equal to a pro-rata adjustment of the monthly service fee for the time period Service was unavailable, not to exceed the monthly access service fee. No Credit will be given for a Service interruption if evidence of the Service interruption was caused by: (a) City's negligent or willful actions, (b) the failure of Equipment, Software, or Services not provided or maintained by DHB, or (c) Force Majeure.

NETWORK LATENCY: DHB guarantees that when the network is available, the maximum network latency, calculated as the average round trip transmission delay is 150 milliseconds. Network latency measurements are derived from NTP requests sent between routers located within regional network hubs. If DHB does not achieve the guaranteed network latency level as calculated for a calendar month, DHB will credit the City, upon request, 10% of the monthly charge for the affected month.

NETWORK PERFORMANCE: DHB will provide the City supply a logical portion of no less than 25% of the available wireless VPNs on the network, or a total of five (5). If the number of wireless VLAN's increases, the City's number of VLAN's shall increase proportionately. DHB will also guarantee performance ranging from 1.5Mbps to 3Mbps or above based on worst and best conditions. DHB will also give all City traffic the highest "priority" quality of service (QoS) level to ensure continuity during times of network congestion. In the event of an emergency, DHB shall allow City to control the QoS level so as to assure the network is available to public safety forces.

USER ACCESS: DHB will guarantee that all traffic for the City of Gahanna is isolated and not routed outside of the dedicated network allocated for City traffic with a minimum of five (5) VLANs. This will include not having access to general internet access. All traffic shall only have a route to city owned equipment controlled by the city. Also no other networks shall have access to the City's network for any reason without first getting written permission by the City of Gahanna. DHB will not broadcast the S.S.I.D. of the

City network and will set security features based on the City's requirements within the ability of equipment used. This may include but is not limited to WEP, Digital Certificates, SSL, IPSec, Mac address Authentication, LEAP, Mac address filtering, WPA, WPA2, and / or 802.1x.

RESPONSIBILITY: DHB will not be liable for network service(s) that are past or behind said and noted termination and demarcation. The said "Hand off" demarcation will be determined by DHB and agreed upon by City of Gahanna. DHB will not be liable for loss of Intellectual Property, Hardware, or any other loss of properties beyond the point of demarcation.

RESPONSE TIMES: DHB will include the City's network operations team in our notification system so that initial outage notification is received real-time. If it is determined that a piece of DHB equipment has failed, DHB will give an initial report of corrective actions to the City within four (4) hours. The equipment will be repaired or replaced within one (1) business day, unless circumstances beyond the control of DHB have occurred, such as being denied access to equipment locations, or the manufacturer's inability to meet their mean-time to repair guarantee. A support line phone number will be provided to the city for 24/7 support calls, and escalation procedures will be provided to all City staff members who require it. DHB will return service calls within two (2) hours. If DHB fails to meet this service guarantee, DHB shall credit upon request, fifty percent (50%) of the monthly service fee for the period of time the mean-time-to-repair stated herein is not met.

CREDITS: The City will provide DHB written request for credits. However, in no event shall City be entitled to credits, if any, in excess of an amount equivalent to the monthly charges payable by City to DHB for Services under this Agreement.

LIMITATION OF LIABILITY: For purposes of this Section, the term "DHB" shall include subcontractors of DHB. DHB shall not be liable for interruptions caused by failure of Equipment or services not provided by DHB, failure of communications, power outages, atmospheric conditions or other interruptions not within the reasonable control of DHB, except to the extent that DHB acts in a commercially unreasonable manner, or performance deficiencies caused by or contributed to by the City of Gahanna, or any of its Users and/or their Equipment or network. DHB shall not be liable for any claim by or against Subscriber or any of its Users arising out of or related to (i) alteration, theft or destruction of any computer programs, information, data files, procedures or other property of Subscriber or any of its Users; (ii) any losses or damages Subscriber or any of its Users may suffer in connection with the use or inability to use the Services; or (iii) any data, materials or other information transmitted to or received by Subscriber or any of its Users, or the intended recipient of Subscriber or any of its Users that are lost or improperly intercepted via the Internet. DHB shall not be liable if changes in operation, procedures, or services require modification or alteration of the Equipment or network of Subscriber or any of its Users, which renders the same obsolete or otherwise adversely affects its performance.

APPENDIX C

CITY OF GAHANNA OHIO OPTICAL FIBER USE AGREEMENT

THIS OPTICAL FIBER USE AGREEMENT (hereinafter referred to as the "Agreement") made and entered into as of the _____ day of _____, 20__, between the City of Gahanna, Ohio, an Ohio municipal corporation (hereinafter referred to as the "Owner"), having an office at 200 S. Hamilton Road, Gahanna, Ohio 43230, and DHB Networks, an Ohio limited liability company (hereinafter referred to as "USER"), having an office at 4338 Bright Road, Dublin, Ohio 43016, and which are sometimes referred to individually as "Party" and collectively as "Parties."

WITNESSETH:

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

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

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

WHEREAS, User 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 for the long term relationship between the Parties hereto and for each such project; and

WHEREAS, the Parties have agreed to enter into this Agreement(s) which incorporates the covenants and agreements of this Agreement.

NOW, THEREFORE, pursuant to the terms of any Right of Way occupancy requirement and/or Construction Permit required by Chapter 931 of the Codified Ordinances of the City of

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

1. DEFINITIONS:

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

- a. Agreement: This Optical Fiber Use Agreement.
- b. Fiber System: The optical fiber strands, innerduct, conduit, building entrance facilities, associated appurtenances, and capacity owned by the Owner and located throughout the Rights of Way of the City of Gahanna, Ohio that is detailed in Exhibit D appended hereto.
- c. User System: The optical fiber strands, innerduct, conduit, building entrance facilities and associated appurtenances in the Fiber System, to be provided to User under the terms of this Agreement and the associated rights to access such fiber strands at demarcation points.

2. TERM:

2.1. Unless sooner terminated in accordance with the terms of this Agreement, the term of this Agreement is coterminous with the City of Gahanna and DHB "Purchase Agreement for Wi-Fi Services, Virtual Private Network and Fiber Construction" (hereinafter referred to as the "Term").

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

- 3.1. Twelve (12) strands of fiber optic cable in Owners Fiber System which originate at _____ and terminate at _____ as detailed in Exhibit D attached hereto.
- 3.2. These individual Owner Fiber System components collectively shall be the User System for this Agreement. The User System shall be inclusive of the Owner's Fiber System between and including the Owner's sides of the originating and terminating demarcation points.
- 3.3. Owner will construct, install, and/or provide the User System for User's use in accordance with the terms of this Agreement. The Owner shall use reasonable efforts to comply with the project schedule that is mutually agreed by both parties.

4. TERMS OF USE, INTERRUPTION AND THIRD PARTY INVOLVEMENT:

- 4.1. Owner shall provide a User a twenty-four (24) hour a day, three hundred sixty-five (365) days per year, trouble-reporting telephone number. User shall provide to Owner a twenty-four (24) hour a day trouble coordination telephone number.
- 4.2. Any impairment or outage reasonably suspected to be caused by User System components on the Owner's side of the demarcation point shall require a response from the Owner. During User System Impairments or outages affecting User's service, Owner shall keep User advised and updated. The Owner's personnel will be on site no later than six (6) hours from notification by User of an impairment or outage materially affecting service.
- 4.3. User shall be charged with any false maintenance call outs at the standard rate in effect at the time services are performed.
- 4.4. If specific monetary leasing fees are specified and being charged, the Owner will grant a credit allowance on leasing fees for service interruption calculated and credited in one (01) hour increments. A service interruption will be deemed to have occurred only if:
 - a. Service becomes unusable to User as a result of failure of Owner equipment, facilities, or personnel used to provide the service; and
 - b. The interruption is not the result of:
 - 4.4.b.1. The negligence or acts of User or its agents, employees, suppliers or contractors;
 - 4.4.b.2. The failure or malfunction of non-Owner equipment, facilities, or system;
 - 4.4.b.3. Any circumstances or causes beyond the control of the Owner; or
 - 4.4.b.4. A service interruption caused by scheduled maintenance, alteration, or completion of such maintenance or alteration beyond normal time requirements.
- 4.5. Such credits will accumulate during a calendar year and be credited against the User invoiced service charge for the next year and will apply only to those segments experiencing the service interruption.
- 4.6. User agrees not to use the User System to provide services to any non-related party without the prior written consent of the Owner. User agrees not to use the User System to provide services to non-related parties in conjunction with a third party without the prior written consent of the Owner. User agrees that it shall not provide for or allow any non-related party to use the User System or in any way subleased or subdivide the User System and provide services to non-related or third parties without the prior written consent of the Owner. 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.

5. FEES AND TAXES:

5.1. User shall pay annual IRU charges as follows:

- a. If applicable, User shall pay one-time building or external network service connection and disconnection charges for each building service added or deleted after the initial establishment and cutover of a User System fiber segment. One-time User charges also apply 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. The charges and application rules are identified in Exhibit E.
- b. As consideration for and as inducement to Owner granting User the specific rights to use portions of Owners Fiber System (the User System) as described herein, the User hereby agrees to locate, operate and maintain offices for the purpose of business operations within the City of Gahanna, Ohio that occupy at least _____ (__) square feet of space for a period of time corresponding to the Term of the Agreement and also to permanently and continually employ a minimum of _____ (__) persons in their regular professional capacities to perform as full-time employees of User in business operations at such locations within the geographic limits of the City of Gahanna, Ohio for the same period of time in correspondence with the term of the Agreement.

5.2. The Owner shall be responsible for and shall timely pay any and all applicable taxes, franchise, license and/or permit fees that may be required based on the physical location of the Fiber System in, on, across, along or through public or private roads, highways or Rights of Way.

5.3. User shall be responsible for paying all taxes and franchise, license and permit fees (hereinafter collectively referred to as "Taxes") assessed against it (and/or the User System) for the conduct of its business or operations as a telecommunication, video, data, and/or information services provider or user in the City of Gahanna, Ohio and for its use of the User System during the Term of this Agreement. In the event any such Taxes are imposed on or assessed against User (and/or the User System), including, but not limited to, Taxes assessed on the basis of revenue received by User due solely to its use of the User System and/or based solely on the physical location of the User System, User shall have the right to protest, against anyone other than Owner, by appropriate proceedings, the imposition or assessment of any such Taxes. In such event, User shall indemnify and hold the Owner harmless from any expense, legal action or cost, including reasonable attorney's fees, resulting from the exercise of its rights under this Section. In the event of any refund, rebate, reduction or abatement to User of any such Taxes, User shall be entitled to receive the entire benefit of such refund, rebate, reduction or abatement.

6. MAINTENANCE:

- 6.1. All maintenance and repair functions on the Fiber System and all facilities through which the Fiber System passes, including, but not limited to, conduit, innerduct, poles, and equipment shall be performed by or under the direction of the Owner or Owner's appointed agent with reasonable notice to User. Except as otherwise provided for herein, User is prohibited from performing any maintenance or repair on the Fiber System or User System. User shall have the right to have an employee or representative available to assist the Owner in any maintenance or repair of the User System. The Owner shall maintain the User System in accordance with the technical specifications (hereinafter referred to as the "Specifications") attached to as Exhibit A.
- a. Emergency Maintenance: The Owner shall undertake and provide for or pay for Emergency Maintenance and repair activities for the User System at the Owner's sole cost and expense. The Owner shall attempt to respond to any failure, interruption or impairment in the operation of the User System within six (6) 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 Exhibit B attached hereto and made a part hereof
- b. Scheduled Maintenance: The Owner from time to time will 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 at User's request. User may request Scheduled Maintenance by delivering to the Owner a Statement of Work detailing the service User desires to be performed, including the time schedule for such services. Upon receipt of such a Statement of Work, the Owner will provide an estimate of the price and timing of such Scheduled Maintenance. Following User's acceptance of such estimate, the Owner will schedule and have such Scheduled Maintenance performed. The Owner will have such Scheduled Maintenance performed on a time-and-materials basis at the standard rates in then effect at the time services are performed. Rates in effect will be those identified in Exhibit A and such rates are subject to change annually.
- 6.2. In the event the Owner, or others acting in the Owner's behalf, at any time during the Term of this Agreement, discontinues maintenance and/or repair of the User 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 in User's behalf, approval for adequate access to the Rights of Way in, on, across, along or through which the User System is located, for the purpose of

permitting User, or others acting in User's behalf, to undertake such maintenance and repair of the User System provided that User complies with the notification and approval procedure in Section 5.4.

6.3. 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 and provided that User complies with the notification and approval procedure in Section 6.4.

6.4. Any User subcontractors or employees who undertake repair or maintenance work on the User System shall first be approved by the Owner to work on the Owner's Fiber System. Prior to User's undertaking Emergency Maintenance or entering a 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.

7. SAFETY:

7.1. When User assumes maintenance or repair responsibility, the User shall comply with the following safety requirements set forth herein.

7.2. The User shall comply and require that all subcontractors or employees comply with all federal, state, and local regulations pertaining to safety and health.

7.3. The User, employees, and subcontractors shall possess and have available on the job site, at all times, for inspection by the Owner, a written injury and illness prevention plan that conforms to all local, state and federal regulations.

7.4. The User shall furnish and require all subcontractors or employees to furnish all necessary safety equipment including but not limited to personal protective equipment, safety devices, and safeguards at no expense to the Owner.

7.5. The Owner reserves the right to review safety programs and practices and make recommendations to the User. Any such review or recommendation by the Owner shall not increase the Owner's liability or responsibility and shall not relieve the User from providing a safe work environment and complying with legal requirements.

- 7.6. If the Owner confirms that there is a material deviation from any regulatory agency's requirements or the written plan required by Section 7.3 that could result in serious injury, the User may be ordered to stop work. Successive failures by the User to comply with any regulatory agency's requirements or the written plan required by Section 7.3 may result in termination of the work being done.

8. REPRESENTATIONS REGARDING AUTHORIZATIONS:

8.1. The Owner hereby represents, warrants and covenants to User that:

- a. The Owner is a proprietary Owner organized and existing under the Charter and Codified Ordinances of the City of Gahanna, is a municipal corporation in the State of Ohio and has the power and authority to own, operate and lease the Fiber System and the User System and perform the obligations required of the Owner under the terms of this Agreement.

8.2. User hereby represents, warrants and covenants to the Owner that:

- a. User has obtained and will use its best efforts to maintain throughout the Term of the Agreement, each and every authorization necessary for User to offer telecommunications, video, data, and/or information services in the United States of America, the State of Ohio and the City of Gahanna and any other jurisdiction in which the User System shall physically exist.
- b. User has full right and authority under its authorizations to enter into this Agreement and the execution and performance of this Agreement by User shall not conflict with, or constitute a default under, or constitute an event of termination under, any of its authorizations.

9. FREEDOM OF ACTION:

- 9.1. Nothing in this Agreement shall restrict either Party's conduct of its business, and either Party may, without limitation, construct and install additional optical fiber cables systems for any purpose whatsoever.

10. COMPLIANCE WITH LAW:

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

11. RELOCATION OF THE FACILITIES:

- 11.1. User recognizes that, from time to time, the Owner may elect or be required by parties other than the User to relocate the Fiber System and/or the User System, or a portion thereof. The Owner shall be solely responsible for all costs incurred in relocating the Fiber System and/or the Owner's portions of the User System and shall use its best efforts to do so

in a manner that will not cause any material interruption in User's use thereof. When at all reasonably feasible, Owner agrees to give User at least one (1) month prior written notice of any elected relocation. The Owner agrees to give User reasonable notice of any governmental proceedings which might result in a relocation and User shall have the right to participate in any such proceedings.

12. EVENTS OF TERMINATION:

12.1. Condemnation:

- a. If at any time during the Term of this Agreement, all or any significant portion of the Fiber System or the User System shall be taken by anyone other than Owner for any public or quasi public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, either Party may elect to terminate this Agreement upon giving the other party sixty (60) days prior written notice. In the event this Agreement is terminated in accordance with this Section, both Parties shall be entitled to participate in any condemnation proceedings to seek to obtain compensation via separate awards for the economic value of their respective interest in the Fiber System or User System.
- b. Upon its receipt of a formal notice of condemnation or taking by anyone other than the Owner, the Owner shall notify User immediately of any condemnation proceeding filed against the Fiber System, including the User System, or the Authorizations in or upon which the User System shall have been installed. The Owner shall also notify User of any similar threatened condemnation proceeding and agrees not to sell the User System or Authorizations to such acquiring agency, authority or other Party in lieu of condemnation without prior written notice to User.

12.2. Damage or Destruction of User System: If at any time during the term of this Agreement all or any significant portion of the Fiber System or User System shall be made inoperable and beyond feasible repair by anyone other than the Owner, User may terminate the Agreement upon giving thirty (30) days written notice to the other Party. In the event this Agreement is terminated under this section, both Parties shall be entitled to seek to recover the economic value of their respective interest in the Fiber System (i) under any insurance policy carried by either Party or any third Party, or (ii) seek recovery from any third party which may be legally responsible for causing such damage or destruction.

12.3. Catastrophic Outage: If at any time during the term of this Agreement the ability of the Fiber System or User System to transmit telephone, telecommunications, data and video services shall be interrupted or degraded below the specifications in this Agreement (i) in the case of a force majeure event, for thirty (30) consecutive days, or (ii) in the case of a non-force majeure event, for five (5) consecutive days, then either Party may elect to terminate this Agreement upon

giving thirty (30) days written notice to the other Party. In the case of a non-force majeure event caused by anyone other than the Owner, each Party shall be entitled to seek all legal remedies that may be available.

- 12.4. Relocation: If the Owner, in accordance with Section 11.1, after using its best efforts to undertake such relocation, cannot relocate the User System or affected portion thereof, User may terminate this Agreement upon giving at least thirty (30) days written notice to the Owner.
- 12.5. Obsolete Fiber System: If at any time during the term of this Agreement, User can conclusively demonstrate that the entire Fiber System and/or any portions thereof making up the User's Fiber System have become technologically obsolete and that the Owner has no plans to upgrade the Fiber System within a reasonable amount of time, then the User and Owner shall have the right to mutually elect in writing to terminate this Agreement.
- 12.6. Poor Service: If at any time during the term of this Agreement, User determines that the Fiber System and/or any portions thereof, fail to perform in accordance with the Specifications set forth this Agreement over a period of at least three (3) consecutive months, and the Owners efforts during this period have failed to restore the Fiber System to the required Specifications, then the User shall have the right to terminate this Agreement in writing.
- 12.7. Owner Need: Notwithstanding any provision contained in this Agreement to the contrary, the Owner shall have the right to terminate this Agreement upon six (6) months written notice to User if the User System is needed in connection with the Owner's needs related to its operation of the Fiber System. At the time of such notice of termination, the Owner shall, where applicable, waive (or return to User as the case may be) any unused portion of any prepaid compensation or fees. If the Owner terminates, it will use its best efforts to relocate User System within the Fiber System, and if a satisfactory relocation reroute can be identified, User and Owner shall amend this Agreement in writing. In addition, the Owner shall have the right to terminate this Agreement upon thirty (30) days written notice to User if this Agreement creates an adverse impact upon the public health, safety and welfare or the Owner's fiscal standing as an Ohio municipal corporation.
- 12.8. User Sole Discretion: Notwithstanding any provision contained in this Agreement to the contrary, at any time after the Commencement date, User shall have the option, in its sole discretion and for any reason, to terminate this Agreement upon twelve (12) months prior written notice to the Owner.
- 12.9. Termination Settlement:
 - a. No termination by User, as provided for in the Agreement, shall be effective until the User has paid all required sums and/or performed all the required

commitments due hereunder, up to and including those required through the effective date of termination.

13. ADMINISTRATION OF THIS AGREEMENT:

- 13.1. User and Owner hereby designate the following individuals as their respective authorized representative, authorized to act in each respective Party's behalf regarding those matters delegated to the authorized representatives hereunder. Each Party may designate an alternate representative with full authority to act in the absence of the authorized representative. Each Party shall have the right to changes its authorized representative or alternate by written notice.

User:

Phone: _____

FAX: _____

Cell: _____

Pager: _____

Owner:

City of Gahanna, Ohio
200 S. Hamilton Road
Gahanna, OH 43230

Phone: _____

FAX: _____

Cell: _____

Pager: _____

- 13.2. The authorized representatives shall provide liaison between the Parties in order to provide effective cooperation, exchange of information and consultation in a prompt and orderly basis concerning the various matters which may arise, from time to time, in connection with this Agreement.
- 13.3. The authorized representatives shall have the following responsibilities, among others:
- a. Perform those functions and duties assigned to them in this Agreement.

- b. Review and attempt to resolve any disputes between the Parties arising under this Agreement.
 - c. Arrange for the development and completion procedures to implement the provisions of this Agreement.
 - d. Act as the emergency contact for its respective party.
- 13.4. All actions, agreements, resolutions, determinations or reports made by the authorized representatives, shall be in writing and shall become effective when signed by both authorized representatives. In the event that the authorized representative is unable to sign any document contemplated under this Section 11.4, he/she shall obtain the signature of the appropriate individual, official or officer of his/her respective organization.
- 13.5. Any expenses incurred by the authorized representative in connection with his/her duties shall be paid by the Party he/she represents.
- 13.6. The authorized representatives shall have no authority to modify this Agreement.
14. INDEMNIFICATION:
- 14.1. The User undertakes and agrees to indemnify and hold harmless the Owner and all of its elected officials, officers and employees, agents and volunteers, and, at the option of the Owner, defend the Owner, and all of its elected officials, officers and employees, agents, volunteers, assigns and successors in interest, from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines, penalties, costs, expenses or losses of any kind or nature whatsoever (including attorneys fees and costs), for death, bodily injury or personal injury to any person, including User's employees and agents, or damage or destruction to any property of either party hereto, or third persons in any manner arising by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this contract on the part of the User, or the User's officers, agents, employees, or subcontractors, except for the active negligence or willful misconduct of the Owner, and its elected officials, officers, employees, agents and volunteers.
- 14.2. Except for any payment due to the Owner in accordance with Section 29 of this Agreement, neither party shall be liable for any indirect, special, punitive or consequential damages (including, but not limited to, any claim for loss of services) arising under this Agreement or from any breach or partial breach of the provisions of this Agreement or arising out of any act or omission hereto, its employees, servants, contractors and/or agents. The User shall include in any agreement with any third party relating to the use of the Fiber System or the User system a waiver by such third party of any claim for indirect, special, punitive or consequential damages (including, but not limited to, any claim from any User for

loss of services) arising out of or as a result of any act or omission by either Party hereto, its employees, servants contractors and/or agents. The Parties' respective obligations to include such a provision waiving indirect, special, punitive or consequential damages in any agreement with any third party shall be subject to any and all regulatory or other legal limitations, as well as applicable tariffs.

15. INSURANCE:

- 15.1. During the Term of this Agreement, unless otherwise agreed to in writing by the authorized representatives, User shall at its own expense, maintain in effect, insurance coverage with limits not less than those set forth herein.
- 15.2. The User shall furnish the Owner's authorized representative within thirty (30) days after the commencement date of the Agreement, with insurance endorsements on the appropriate Owner endorsement form as found in Exhibit C of this Agreement. The endorsement 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.
- 15.3. 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 (ten (10) days for non-payment of premium) by registered mail to the Owner at the following address:

City of Gahanna
Law Director
200 S. Hamilton Road
Gahanna, Ohio 43230
- 15.4. 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.
- 15.5. 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.
- 15.6. User shall be responsible for all User contractors' or subcontractors' compliance with the insurance requirements.

- 15.7. 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.
- 15.8. 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 One Million Dollars (\$1,000,000.00) 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 on the Owner's additional insured endorsement form of Exhibit C or on an endorsement to the policy acceptable to the Owner's Law Director.
- 15.9. The User shall provide Commercial Automobile Liability insurance which shall include coverages for liability arising out of the use of owned, non-owned, and hired vehicles for performance of the User's work as required to be licensed under the Ohio or any other applicable state vehicle code. The Commercial Automobile Liability insurance shall have not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and shall apply to all operations of the User. Evidence of such coverage shall be on the Owner's additional insured endorsement form of Exhibit C.
- 15.10. The User shall provide Workers' Compensation insurance covering all of the User's employees in accordance with the laws of the state of Ohio.
- 15.11. 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 the form of the Owner's Excess Liability – Additional Insured Endorsement form of Exhibit C. The User shall require the carrier for Excess Liability to properly schedule and to identify the underlying policies as provided for on the Additional Insured Endorsement form including as appropriate, Commercial General Liability, Commercial Automobile Liability, Employer's Liability or other applicable insurance coverage.
- 15.12. 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.

16. DEFAULT:

- 16.1. 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, other than any default in payment which must be cured within ten (10) business days after receipt of notice; provided, however, that where such non-monetary 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.
- 16.2. The Owner shall not be in default under this Agreement or in breach of any provision hereof unless and until User shall have given the Owner written notice of such breach and the Owner shall have failed to cure the same within thirty (30) days after receipt of such notice; provided, however, that where such breach cannot be reasonably be cured within such thirty (30) day period, if the Owner shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such breach shall be extended for a reasonable period of time to complete such curing. Upon the failure by the Owner to timely cure any such breach after notice thereof from User, User shall have the right to take such action as it may determine, in its sole discretion, to be necessary to cure the breach or terminate this Agreement or pursue other remedies as may be provided at law or in equity.
- 16.3. If User, shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent, or shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if any involuntary petition proposing the adjudication of User, as a bankrupt or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law shall be filed in any court and such petition shall not be discharged or denied within ninety (90) days after the filing thereof, or if a receiver, trustee or liquidator of all or substantially all of the assets of User shall be appointed then the Owner may, at its sole option, immediately terminate this Agreement.

17. FORCE MAJEURE:

- 17.1. Neither Party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control (except for the fulfillment of payment obligations as set forth herein), including, but not limited to: acts of God, fire,

flood, earthquake or other catastrophes; adverse weather conditions; material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefor; lack of transportation; the imposition of any governmental codes, ordinances, laws, rules, regulations or restrictions; national emergencies; insurrections; riots, wars; or strikes, lockouts, work stoppages or other labor difficulties (collectively, "force majeure events").

18. ASSIGNMENT:

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

18.2. In the event of any assignment or Transfer by either Party undertaken pursuant to the Section herein, the assigning or transferring Party shall remain liable for all its obligations under this Agreement, unless: (a) the other Party consents to release, by written instrument, the assigning or transferring Party from such obligations, and (b) the assignee or transferee shall have affirmatively assumed in writing all of the obligations of the assigning or transferring Party under this Agreement.

19. WAIVER OF TERMS OR CONSENT TO BREACH:

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

20. RELATIONSHIP NOT A PARTNERSHIP OR AN AGENCY:

20.1. 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.

21. NO THIRD-PARTY BENEFICIARIES:

21.1. This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and assigns, and shall not be construed as granting rights to any person or entity other than the Parties or imposing on either Party obligations to any person or entity other than a Party.

22. EFFECT OF SECTION HEADINGS:

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

23. NOTICES:

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

To DHB:

DHB Networks Ltd.
4338 Bright Road
Dublin, Ohio 43016

To CITY:

City of Gahanna
Attn: City Manager
200 S. Hamilton Road
Gahanna, OH 43230

And

DHB Networks Ltd.
4338 Bright Road
Dublin, Ohio 43016

City of Gahanna
Attn: IT Director/Kevin Marchese.
200 S. Hamilton Road
Gahanna, OH 43230

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

24. SEVERABILITY:

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

25. GOVERNING LAW AND VENUE:

25.1. 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.

26. USE OF THE USER SYSTEM:

- 26.1. User shall have exclusive control over its provision of telecommunications, video, data, and/or information services.
- 26.2. User hereby certifies that it is authorized or will be authorized, where required, on the effective date 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.

27. PLURALS:

- 27.1. In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and or is used in inclusive sense, in all cases where such meanings would be appropriate.

28. COUNTERPARTS:

- 28.1. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the Parties hereto may execute this Agreement by signing any such counterparts.

29. ACCEPTANCE TESTING:

- 29.1. The Owner will submit an Acceptance Testing Plan to User for approval within thirty (30) days of signing this Agreement. User will review and provide comments within thirty (30) days of receipt. The Owner and User will jointly agree on the final Acceptance Testing Plan. User shall accept each deliverable in writing within seven (7) days of successful completion of the final Acceptance Testing Plan.

30. BILLING AND PAYMENT:

- 30.1. Where applicable, the Owner shall invoice User for all fees and charges hereunder as determined by this Agreement as follows:
 - a. Owner shall invoice User upon User acceptance of each deliverable.

- b. User shall submit payment in full within thirty (30) days after receipt of the Owner's invoice.
- c. User agrees to pay the Owner the annual fees set forth in thi Agreement payable in advance by the 1st day of January of each year of the Term of this Agreement.
- d. Notwithstanding any provision contained in this Agreement to the contrary, User shall have the right to properly dispute any fees, charges, costs, expenses or payments for which it is invoiced by the Owner. In the event User disputes any invoice, or portion thereof, received from the Owner, User shall promptly pay that portion of the invoice which is undisputed. User shall have the right to withhold payment of any disputed amount, provided that User gives written notice to the Owner of the amount so disputed and the reason for the dispute on or before the due date of the invoice.

31. TITLE:

- 31.1. User agrees that all right, title, and interest in all the User System provided by the Owner hereunder shall at all times remain exclusively with the Owner. The Owner agrees that all right, title and interest in User System associated equipment provided by User shall at all times remain exclusively with User. The Owner acknowledges that User has contracted for the purchase of an IRU in the User System and agrees that it will not take any action which shall be inconsistent with User's IRU interest.

32. ENTIRE AGREEMENT:

- 32.1. This Agreement entered into by the Parties hereto constitute the entire Agreement between User and the Owner with respect to the subject matter hereof; all prior agreements, representations, statements, negotiations and undertakings are hereby superseded.
- 32.2. Both Parties were represented by a legal counsel during the negotiation and execution of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

USER:

By: _____

Its: _____

OWNER:

City of Gahanna, Ohio, an Ohio municipal corporation.

By: _____

Its: _____

Approved As To Form:

Law Director, City of Gahanna, Ohio.

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EXHIBIT A

MAINTENANCE AND REPAIR

Charges for Time and Material Service

The Owner shall perform maintenance service as the rates established below, which rates are subject to change. Unless specifically authorized by the User, no Scheduled Maintenance will be performed outside of normal working hours, detailed below:

Normal Working Hours _____	Hourly Rate _____
_____ a.m. to _____ p.m., Monday through Friday (Except Owner observed holiday)	\$ _____
Overtime Hours _____	Hourly Rate _____
_____ a.m. to _____ a.m., and _____ p.m. to _____ midnight (Except Owner observed holiday)	\$ _____
Holiday Hours and Special Call Out _____	Hourly Rate _____
_____ Any time during a Owner observed holiday or any time during a Saturday or Sunday, or any time between the hours of _____ p.m. and _____ a.m., Monday through Friday	\$ _____

Charges will be made for travel time to the location where maintenance is to be performed. If maintenance carries over after _____ p.m. or maintenance during holiday hours of special call out, charges will also be made for travel time from the said location. Charges will be for a minimum of ____ (__) hours for normal and overtime hours and for a minimum of ____ (__) hours for holiday hours and special call out.

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Exhibit-A (Continued)

Owner Holiday Schedule:

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

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EXHIBIT B

TROUBLE – REPORTING

ESCALATION PROCEDURE

TROUBLE – REPORTING ESCALATION PROCEDURE

The Owner maintains its fiber optic network (Fiber System) in accordance with industry standards. Should a problem or trouble with the service arise, please call the following number to report trouble:

Owner Telecommunications Trouble Number: _____

The Owner shall within six (6) hours of notification of the trouble reporting be on site and begin investigating and correcting the reported condition. The Owner, at six (6) hour intervals, shall provide the User a report of progress or lack thereof in restoring the system to operation in accordance with the User System/Fiber System Specifications.

If for some reason the Owner's Telecommunications Trouble Number does not answer or respond, the User may report the trouble to:

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EXHIBIT C
INSURANCE ENDORSEMENT FORMS

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EXHIBIT D

FIBER SYSTEM DESCRIPTION AND MAP

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EXHIBIT E

OPTICAL FIBER SYSTEM **ONE-TIME CONNECT / DISCONNECT / REARRANGE CHARGES**

General

This one-time service connection charges shall apply for the initial establishment and cutover of a User's point-to-point Fiber System or distribution Fiber System (ring or segment). The User shall pay for all services added or deleted, or rearranged subsequent to the cutover date and shall pay for all connection services.

Building Service

If applicable, the following one-time charges apply for the addition or deletion of an established building service to/from a User point-to-point or distribution Fiber System and for all building service connections. These are based on the number of building entry fibers involved in the service. Connection is required both in-building and in-street.

Service Addition

Fiber Count	Charge/Fiber
	\$
	\$
	\$

Service Deletion

Fiber Count	Charge/Fiber
	\$
	\$
	\$

Network Service

The User may choose to establish a network connection to the Owner's Fiber System at a demarcation point in a Owner maintenance hole or other off-premises location rather than within

a building or on building grounds. Such network connection may involve either a distribution system or a point-to-point system. The following one-time charges apply to all network service connections and to all additions or deletions of network service after initial implementation and acceptance (including all final service terminations):

Exhibit-E (Continued)

Service Addition

Fiber Count	Charge/Fiber
	\$
	\$
	\$

Service Deletion

Fiber Count	Charge/Fiber
	\$
	\$
	\$

Other

For services such as adding a new ring, adding or changing a concentrator location, rearranging multiple service connections, and rearranging a ring(s), the User shall submit a request and service description to the Owner. The Owner shall return to the User a cost estimate for the necessary work and materials within thirty (30) days of receipt of the service request. The Owner's charge to the User shall be based on time and materials and overhead involved plus a fifteen (15) percent surcharge.

Changes

Rates and charges are subject to change.

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APPENDIX D

Fiber Construction Engineering Scope

Fiber Construction Engineering Scope:

Includes Survey, Outside plant engineering, underground engineering, preparation of construction prints and permitting a buried conduit lateral route commencing at the AEP pole along Tech Center Drive to Morrison Road, then going northwest on Morrison to South Hamilton Rd, then North on South Hamilton to Carpenter Rd.

Includes Survey, outside plant engineering, underground engineering, preparation of construction prints, and permitting for a buried conduit lateral route commencing at Carpenter Rd and N Hamilton Rd, then west down Carpenter to Mill St.

Includes engineering, design and permitting for the aerial build along McCutcheon Rd from Stelzer Rd. to N Stygler Rd. This is based on the assumption that ODOT will permit an aerial crossing across I-270, and AEP will allow a new Cable on the poles.

Construction Scope:

Place one new strand to the existing AEP pole line running down McCutcheon from Stygler rd to Stelzer Rd. This section has one area that will go over I-270, we are assuming ODOT will permit this work.

Total distance of aerial section is approximately 5500'.

Tie into existing CFN manhole on Stelzer Rd with 1 x 1 1/4" Conduit

Tie into existing Gahanna cabinet next to the fire station on McCutcheon and Stygler.

Place approximately 9800' of 4 x 1 1/4" conduits from the intersection of Mill St and Carpenter Rd, down Hamilton Rd and tying into the existing Gahanna conduit on Morrison Rd.

Place approximately 2200' of 4 x 1 1/4" conduits on Tech Center Drive from the intersection with Morrison Rd, tying into the existing Gahanna conduit, ending at the AEP pole.

Place approximately 14 new 30x36x24 Quazite Handholes, spaced at appropriate distances along the new conduit route, for fiber storage and ease of lateral additions.

Proof all new conduit placed throughout project and leave one pull line in each duct.

Provide and place new 144 - count single mode fiber along the new aerial section of the project on McCutcheon Rd.

Provide and Place new 144 – count single mode fiber along the new underground conduit route on Carpenter Rd, Hamilton Rd. and Morrison Rd. Utilize Gahanna’s existing conduit on Morrison Rd, from Waterbury to Tech Center. Place same fiber in new conduit built on Tech center drive and leave at the base of the AEP pole for future connectivity.

The new underground conduit sections will tie into Gahanna’s existing handholes or cabinets, so the conduit system is continuous.

Provide two 144 – count Butt splices (to be determined with the city of Gahanna) from the new Aerial cable into Gahanna’s existing 144 count fiber on McCutcheon and Stygler. And the other from the newly placed underground fiber into Gahanna’s existing 144 fiber at the intersection of Mill St and Carpenter Rd.

