

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

This Maintenance Agreement hereinafter referred to as the "Agreement", entered into this ___ day of _____, 2015, 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 Conduit System (CCS) and the Gahanna Conduit System.

WITNESSETH:

WHEREAS, the City of Columbus desires to occupy conduit in right of way in Gahanna.

WHEREAS, Gahanna will have excess conduit in right of way in Gahanna.

WHEREAS, Columbus and Gahanna have worked together regarding traffic signals and fiber optics and both Gahanna and Columbus will gain the ability to expand their networks beyond their 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 twenty (20) 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 Conduit System – Gahanna's Maintenance Responsibility:
 - Hamilton Road from the southern corporation limit to I-270

3. Right to Use

Gahanna hereby grants Columbus, its successors and assigns, the right to use the conduit described in Exhibit A, hereinafter "Conduit".

4. Operations and Maintenance

- A. Columbus shall obtain a permit from Gahanna for performing work on the Conduit if it is within Gahanna's right of way. The cost for Columbus to obtain a permit for Gahanna shall be waived.
- B. Gahanna is responsible for maintaining the Conduit through its own forces and/or by executing a maintenance contract that will provide product replacement and repairs for the Conduit.
- C. Gahanna shall provide Columbus written notification when disruptions / repairs to the Gahanna Conduit System affecting the conduit infrastructure are scheduled to begin and again when work is complete.
- D. Columbus and Gahanna shall create and maintain document assigning point-of-contact persons and alternates for Conduit questions and repairs. The personnel points-of-contact document shall be updated at a minimum of once a year, by January 31, and/or intermediate updates if there is a change to the contact personnel.
- E. Conduit is to remain in place and usable by Columbus for the term of this agreement. Gahanna must provide Columbus with at least a 12 month notice if Gahanna is to remove Conduit or otherwise make/allow changes that would render Conduit unusable by Columbus.

5. 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 4(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.

6. 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.

7. Compensation

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

8. 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, or sent via email to the parties at the following addresses:

For the City of Gahanna City of Gahanna
Department of Public Service
200 S. Hamilton Road
Gahanna, OH 43230
Attn: Deputy Director of Public Service

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

9. 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.

10. 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.

11. Modifications

This Agreement may be amended as future Columbus and Gahanna 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.

12. 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.

13. Survivorship

All services executed pursuant to the authority of this Agreement shall be bound by all of the terms, conditions, price 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.

14. 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.

15. 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.

16. Assignment and Subcontract

Neither party may assign, subcontract, or otherwise transfer this Agreement to others without the prior written consent of the other party, except that Gahanna may assign this Agreement to an entity created by Gahanna. 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.

17. Authority to Bind

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

18. Attachments Required

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

Exhibit A – Gahanna Conduit Network
Exhibit B - Contact List

DRAFT

Exhibit A

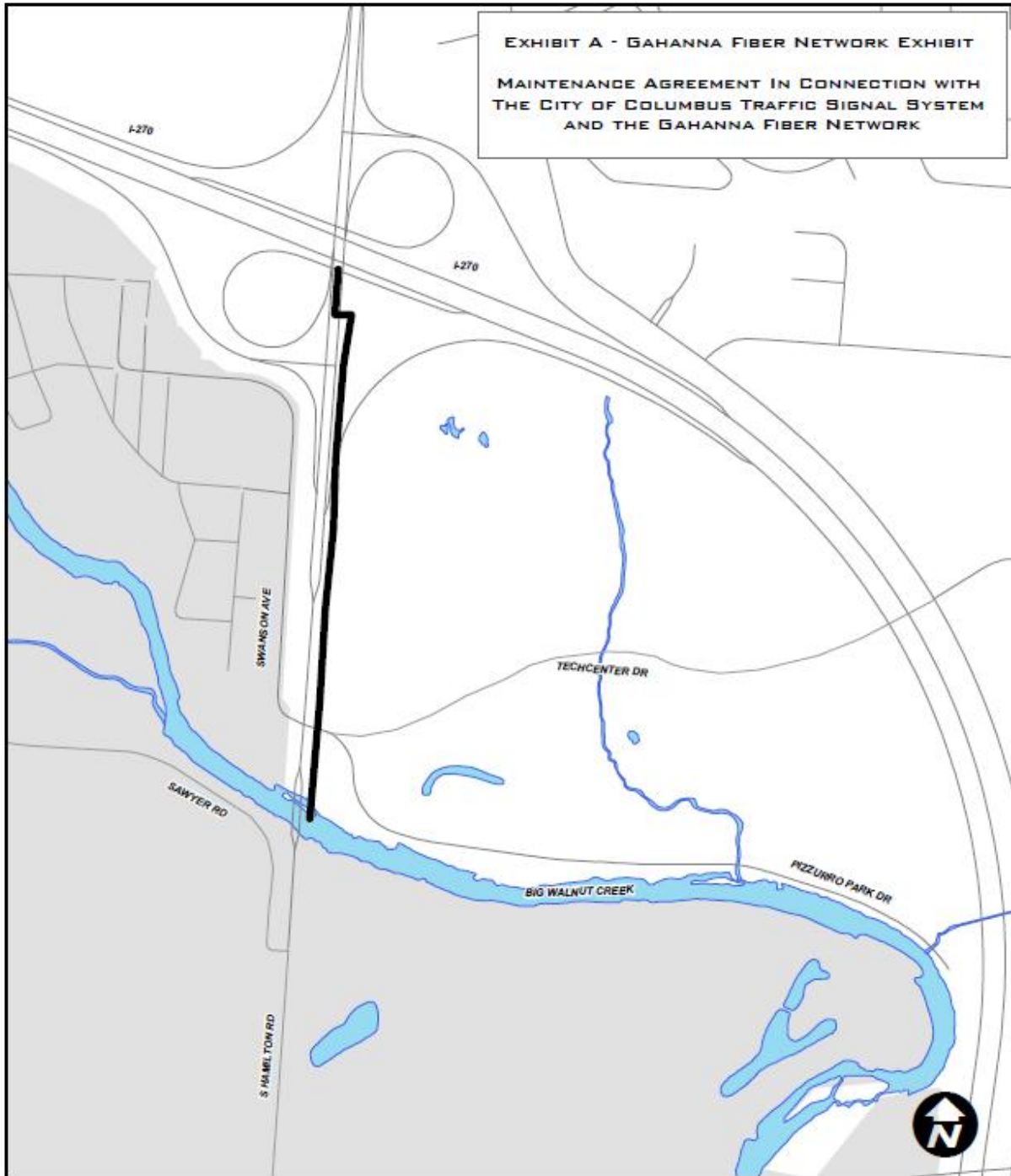


Exhibit B

Construction Projects

Name	Agency	Title	Phone	Email
Ryan Bollo <i>(P)</i>	Columbus	Project Manager	o:645-3946 c:402-1654	rjbollo@columbus.gov
Mark Stephenoff <i>(S)</i>	Columbus	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>	Columbus	Traffic Management Center Supervisor	o:645-8243 c:419-0786	rwmohr@columbus.gov
Bill Rogers <i>(S)</i>	Columbus	DoT Infrastructure Supervisor	o:645-0776 c:216-9658	wfrogers@columbus.gov
Ryan Bollo <i>(S)</i>	Columbus	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