

## AGREEMENT

THIS AGREEMENT (the "Agreement"), is made and entered into as of the 25 day of Sep, 2007 (the "Effective Date"), by and between Smithville Digital, LLC, an Indiana limited liability company ("Smithville Digital") and the City of Columbus, Indiana ("Columbus") (Smithville Digital and Columbus are sometimes referred to as the "Parties" or, individually, as a "Party").

## RECITALS

A. Smithville Digital is in the business of providing and maintaining fiber optic networks for digital data transmission.

B. Columbus has built a conduit system and desires to engage Smithville Digital to create a fiber optic network and to provide fiber optic-based services to the city of Columbus and its business community.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereby covenant and agree as follows:

### 1. DEFINITIONS

The following defined terms used in this Agreement shall have the respective meanings specified below.

- 1.1 An "Affiliate", when used with respect to Smithville Digital, shall mean (i) any other Person, directly or indirectly controlling, controlled by, or under common control with, Smithville Digital. As used herein, the term "control" and any derivatives thereof mean the possession, directly or indirectly, of at least fifty-one percent (51%) of the ownership interest in and the power to direct or cause the direction of the management and policies of Smithville Digital.
- 1.2 "Agreement" shall have the meaning set forth in the preamble.
- 1.3 "Appraiser" shall mean an independent appraiser or investment bank.
- 1.4 "Columbus" shall have the meaning set forth in the preamble.
- 1.5 "Columbus Conduit System" shall mean the Columbus' infrastructure of conduits available for Fiber Optic Network Services, as shown on Exhibit A hereto and as may be modified in the future pursuant to the terms of this Agreement.
- 1.6 The "Effective Date" shall have the meaning set forth in the preamble.
- 1.7 An "Event of Default" shall have the meaning set forth in Section 5.2.
- 1.8 "Fair Market Value" shall mean, with respect to any property, asset or lease rate, the dollar value of the property or asset, or the appropriate lease rate, determined (i) by mutual agreement of the Parties, or (ii) if the Parties cannot so agree within 20 days after one Party first proposes in writing to the other Party that Fair Market Value be determined, by two independent Appraisers, one selected by each Party, provided, that if a Party fails to appoint an Appraiser within 10 days following the

expiration of such 20 day period, Fair Market Value shall be determined by the Appraiser selected by the other Party. If two Appraisers are selected, each Appraiser shall submit to the Parties their respective appraisals within 30 days after their selection. If a discrepancy between the appraisals of the first two Appraisers is less than 10% of the higher appraisal, then the Fair Market Value of the property, asset or lease rate shall be the average of the two appraisals. If a discrepancy between the dollar value of the appraisals exceeds 10% of the higher appraisal and the Parties do not agree on a settlement of the discrepancy within 10 days after receipt of the appraisals, then a third Appraiser shall be mutually selected by the Parties (or if they cannot so select, then a third Appraiser shall be selected by a court of law situated in Bartholomew County, Indiana). The third Appraiser shall submit his or her appraisal within 30 days after his or her selection. In such event, the Fair Market Value of the property, asset or lease rate shall be the dollar value of the appraisal that remains after discarding the highest and lowest appraisals, which determination shall be binding upon the Parties.

- 1.9 “Fiber Optic Cable” shall mean fiber optic cable inserted by Smithville Digital into the Columbus Conduit System and directly connected to a customer within the scope of the Columbus Conduit System service area as shown on Exhibit A.
- 1.10 “Fiber Optic Network Services” means the use of Fiber Optic Cable to deliver metro Ethernet point-to-point connectivity and Internet bandwidth to business customer locations. Ethernet is a transmission protocol that allows networking devices to connect with each other at speeds from 10 Mbps to 10Gbps. Two separate locations can conduct data transmission as if they are a Local Area Network (LAN) and in the same building. Smithville Digital will furnish “dark fiber” which can be lit by customer electronics, as well as “lit fiber” which means that the service will include Smithville Digital equipment at each end that will provide the bandwidth connectivity. For purposes of clarity, Fiber Optic Network Services do not include Internet Service Provider (“ISP”) services or other value-added services that may be offered by Smithville Digital in conjunction with connectivity to the network.
- 1.11 “Gross Business Services Revenue” shall mean Smithville Digital’s gross sales actually received for Fiber Optic Network Services offered to business customers through the Columbus Conduit System. Entities listed on Schedules 2.6(a) and 2.6(b) shall not be regarded as business customers and revenue received from such customers shall not be Gross Business Services Revenue.
- 1.12 “Internet Service Provider (ISP) services” shall mean all services related to connecting to the internet beyond data transport. Examples include services such as web hosting, email, and technical support.
- 1.13 “Insolvency Event” shall have the meaning set forth in Section 6.1
- 1.14 “Nondefaulting Party” shall have the meaning set forth in Section 5.2.
- 1.15 “Partial Conduit Business Services Revenue” shall mean Smithville Digital’s gross sales actually received for Fiber Optic Network Services traveling through a

portion of the Columbus Conduit System but provided to business customers located outside of the Columbus Conduit System.

- 1.16 "Party" shall have the meaning set forth in the Preamble.
- 1.17 "Person" shall mean any individual, partnership, association, corporation, trust or other legal person or entity.
- 1.18 "Primary Conduit" shall mean the conduit within the Columbus Conduit System through which Smithville Digital initially deploys fiber optic cable, as shown on Exhibit A hereto.
- 1.19 "Secondary Conduit" shall mean the conduit within the Columbus Conduit System that is not the Primary Conduit, as shown on Exhibit A hereto.
- 1.20 "Notice of Default" shall have the meaning set forth in Section 5.2.
- 1.21 "Smithville Digital" shall have the meaning set forth in the preamble.
- 1.22 The "Term" shall have the meaning set forth in Section 5.1.

**2. SERVICES TO BE PROVIDED BY SMITHVILLE DIGITAL**

- 2.1 Fiber Optic Network Services. Smithville Digital will install fiber optic cable in the Primary Conduit and will offer Fiber Optic Network Services to businesses located within the city of Columbus and to Columbus. Smithville Digital will use commercially reasonable efforts to provide such services in an efficient manner using appropriate technology.
- 2.2 Maintenance Services. Smithville Digital agrees to maintain the Columbus Conduit System in the manner described in Schedule 2.2 at its sole expense during the Term so long as no other party has been granted rights to use the Secondary Conduit. If another party has been granted rights to use the Secondary Conduit, Smithville Digital shall be entitled to negotiate an appropriate maintenance sharing agreement with such third party, with such maintenance sharing agreement subject to the approval of Columbus, which shall not be unreasonably withheld. Columbus agrees that it will not enter into any agreement with a third party granting such party rights to use the Secondary Conduit (even if such agreement would otherwise be permissible under this Agreement) unless such third party has entered into a maintenance sharing agreement with Smithville Digital.
- 2.3 Metrics. Smithville Digital will track and make available to Columbus the performance metrics described on Schedule 2.3.
- 2.4 Office. Smithville Digital will open an office in Columbus no later than August 1, 2008.
- 2.5 Marketing. Smithville Digital will provide marketing materials (including, but not limited to, materials in written and electronic media) to Columbus for Columbus' use in attracting and retaining businesses and will work with Columbus' Economic Development Board to assist Columbus' economic development efforts. In addition, Smithville Digital agrees to be available (upon reasonable

notice) for meetings with Columbus and businesses considering relocation to Columbus.

- 2.6 Discounts. Smithville Digital will provide service discounts to certain social services organizations as described on Schedule 2.6(a) and to certain Columbus entities as described on Schedule 2.6(b). The parties may review the lists of entities on Schedules 2.6(a) and 2.6(b) at six-month intervals and may agree to revise such schedules after such review.
- 2.7 Disaster Recovery. Smithville Digital will make available to Columbus for Columbus' inspection its disaster recovery plan and will work with Columbus to develop disaster recovery plans specific to the services provided hereunder.

### 3. **CONDUIT EXCLUSIVITY AND THIRD PARTY RIGHTS**

- 3.1 Primary Conduit. Columbus hereby grants to Smithville Digital, for the Term, the exclusive right to use the Primary Conduit.
- 3.2 Secondary Conduit.
- (a) So long as the Secondary Conduit remains available, Columbus agrees that Smithville Digital shall have the right to use the Secondary Conduit on a temporary basis for emergency restoration purposes. Without the consent of Columbus, which shall not be unreasonably withheld, each such temporary use of the Secondary Conduit shall be for a period not to exceed sixty (60) days, and Smithville Digital shall restore the Secondary Conduit to the condition it was in prior to such use. Smithville Digital agrees that within three (3) business days of any date on which Smithville Digital begins using the Secondary Conduit for emergency restoration purposes, it shall provide written notice to Columbus of such use, specifying (i) the date such use began, (ii) the portions of the Secondary Conduit being used, (iii) the purpose of such use and (iv) the date Smithville Digital anticipates such use to end. Within three (3) business days of the date on which Smithville Digital's use of the Secondary Conduit for emergency restoration purposes ends, Smithville Digital shall provide written notice to Columbus of the cessation of such use.
- (b) Columbus agrees that it will not, for the first two years of the Term, grant to any other party the right to use the Secondary Conduit. On the second anniversary of the Effective Date, Columbus shall grant Smithville Digital a right of first refusal to use and occupy the Secondary Conduit upon terms and conditions to be negotiated by the parties. In the event the parties are unable to negotiate such terms and conditions within six months of the second anniversary of the Effective Date, Columbus shall have the right to make the Secondary Conduit available to a third party upon terms and conditions acceptable to Columbus; provided, however, that, so long as Smithville Digital has met the performance goals described on Schedule 2.3, Columbus may not grant to any other party the right to use the Secondary Conduit to provide Fiber Optic Network Services to businesses located within the city of Columbus and to Columbus.

- 3.3 Additional Conduit Builds. Columbus may, from time to time during the Term, expand the Columbus Conduit System by building additional conduits. If Columbus is required to obtain competitive bids for the installation of cable and provision of services using such additional conduits, Columbus will inform Smithville Digital in order that Smithville Digital may bid. If Columbus determines that it is not required to obtain bids for such additional conduits, any such additional conduits shall become, upon completion, part of the Columbus Conduit System for purposes of this Agreement. If, in any new build for which competitive bids are not required, only one conduit is placed, such conduit shall become Primary Conduit for purposes of this Agreement. If, in any new build for which competitive bids are not required, more than one conduit is placed, one conduit shall become Primary Conduit for purposes of this Agreement and the remaining conduit or conduits shall become Secondary Conduit for purposes of this Agreement.
- 3.4 Third Party Rights. In the event Smithville Digital does not meet the performance goals described on Schedule 2.3 and Columbus elects (pursuant to Section 3.2(b)) to grant to a third party the right to use the Secondary Conduit to provide Fiber Optic Network Services to businesses located within the city of Columbus and to Columbus; Columbus may grant such right to any third party on such terms and conditions as Columbus, in its sole discretion, deems appropriate.

#### 4. PAYMENTS TO COLUMBUS

- 4.1 Guaranteed Payments. In consideration of the rights granted herein, Smithville Digital shall pay to Columbus the amount of One Hundred Fourteen Thousand Dollars (\$114,000), payable in sixty equal monthly installments of One Thousand Nine Hundred Dollars (\$1,900).
- 4.2 Percentage of Revenue.
- (a) On the first anniversary of the Effective Date, Smithville Digital shall pay Columbus ten percent (10%) of all Gross Business Service Revenue over and above Two Hundred Twenty-Eight Thousand Dollars (\$228,000) received by Smithville Digital during the first twelve (12) months of the Term.
- (b) After the first anniversary of the Effective Date and until the fifth anniversary of the Effective Date, and at the same time each guaranteed monthly payment is made, Smithville Digital shall pay to Columbus ten percent (10%) of the amount by which the sum of
- (i) all Gross Business Service Revenue received by Smithville Digital during the month to which such payment applies and
- (ii) the percentage described in Section 4.3 below of Partial Conduit Business Service Revenue received by Smithville Digital during the month to which such payment applies
- exceeds Nineteen Thousand Dollars (\$19,000).

(c) After the fifth anniversary of the Effective Date (i.e., after Smithville Digital has made all of the guaranteed payments described in Section 4.1 above), and for the remainder of the Term, Smithville Digital shall pay Columbus ten percent (10%) of all Gross Business Service Revenue and the percentage described in Section 4.3 below of Partial Conduit Business Service Revenue received by Smithville Digital during the month to which such payment applies.

4.3 Calculation of Partial Conduit Business Service Revenue. Partial Conduit Business Service Revenue attributable to Smithville Digital's use of the Columbus Conduit System to provide Fiber Optic Network Services to business customers located outside of the Columbus Conduit System shall be calculated with respect to each such customer by multiplying Smithville Digital's gross revenue from such customer by (i) the ratio of the linear distance of the Columbus Conduit System used by Smithville Digital in providing Fiber Optic Network Services to such customer divided by the total linear distance of cable (including, without limitation, other conduits, buried cable and cable on utility poles), and (ii) multiplying such ratio by ten percent (10%).

[EXAMPLE: The following example is for illustrative purposes only: If Partial Conduit Business Services Revenue for a particular customer is \$10,000 per month, and Smithville Digital provides such customer with Fiber Optic Network Services using 6 miles of the Columbus Conduit System and 4 miles of Smithville Digital fiber located outside of the Columbus Conduit System, then Smithville Digital would pay to Columbus 10% of 6/10 of Partial Conduit Business Services Revenue for such customer, or \$600 per month ( $\$10,000 \times 6/10 \times 10\%$ ).]

4.4 Payments and Due Dates. Payments owed Columbus pursuant to this Article 4 shall be calculated on a monthly calendar basis (each calendar month being a "Payment Period") and shall be payable no later than thirty days after the termination of the preceding calendar month, i.e., the Payment Periods commence on the first (1<sup>st</sup>) day of each month, respectively, except that the first and last Payment Periods may be "short," depending on the effective date and termination date of this Agreement.

4.5 Statements. For each Payment Period, Smithville Digital shall provide Columbus with a written statement, certified as accurate by a duly authorized officer of Smithville Digital, reciting the amount of Gross Business Service Revenue and Partial Conduit Business Service Revenue received by Smithville Digital during such Payment Period. Such statements shall be furnished to Columbus within thirty (30) days of the end of each Payment Period, regardless of whether any payments are owed to Columbus.

4.6 Residential Service. The parties acknowledge and agree that Smithville Digital may in the future desire to provide services using the Columbus Conduit System to individual residences (rather than businesses), and agree to negotiate a separate agreement giving Smithville Digital the right to use the Columbus Conduit System to provide such services.

4.7 Renegotiation of Revenue Sharing. The Parties agree to negotiate in good faith to determine whether the revenue sharing provisions described in this Article shall remain in place for the entire Term or whether such provisions should be revised effective upon the fifth (5<sup>th</sup>) anniversary of the Effective Date. The Parties agree to begin such negotiations no later than six (6) months before the fifth (5<sup>th</sup>) anniversary of the Effective Date.

5. **TERM AND TERMINATION; RIGHTS UPON TERMINATION**

5.1 Term. The Term of this Agreement shall begin on the Effective Date and shall end on the tenth (10<sup>th</sup>) anniversary of the Effective Date.

5.2 Termination for Breach.

- (a) If any Party fails to perform any of its obligations in any material respect or materially breaches any of its representations hereunder (an "Event of Default"), then the other Party (the "Nondefaulting Party") shall have the right to give such party (the "Defaulting Party") a notice of default ("Notice of Default"). The Notice of Default shall set forth the nature of the obligations which the Defaulting Party has not performed.
- (b) If within the 30 day period following receipt of the Notice of Default, the Defaulting Party in good faith commences to perform such obligations and cure such default, and thereafter prosecutes to completion with diligence and continuity the curing thereof and cures such default within a reasonable time, then it shall be deemed that the Notice of Default was not given and the Defaulting Party shall lose no rights hereunder. If, within such 30 day period, the Defaulting Party does not commence in good faith the curing of such default or does not thereafter prosecute to completion with diligence and continuity the curing thereof, then the Nondefaulting Party shall have the rights set forth in Section 5.2(c) below.
- (c) If any default is not cured as set forth in Section 5.2(b), then the Nondefaulting Party shall have the right to terminate this Agreement by giving the Defaulting Party written notice thereof. The right of the Nondefaulting Party to terminate this Agreement shall become exercisable upon the expiration of the 30 day period referred to in Section 5.2(b), and shall be exercised, if at all, within 60 days after the expiration of such 30 day period.
- (d) Failure by a Nondefaulting Party to give any Notice of Default as specified herein, or any failure to insist upon strict performance of any of the terms of this Agreement, shall not constitute a waiver of any such breach or any of the terms of this Agreement. No breach shall be waived and no duty to be performed shall be altered or modified except by written instrument. One or more waivers or failures to give Notice of Default shall not be considered as a waiver of a subsequent or continuing breach of the same covenant.

5.3 Rights Upon Expiration or Termination.

- (a) In the event this Agreement expires and is not renewed or extended by the Parties, or in the event Smithville Digital terminates this Agreement prior to its expiration due to an Event of Default on the part of Columbus, then Smithville Digital shall have the option to lease the space it is using in the Columbus Conduit System immediately prior to the date of such termination for a period of five (5) years from the date of such termination. The lease rate for such space shall be Fair Market Value. In the event of such expiration or termination:
- (i) Smithville Digital shall give notice to the Columbus at least thirty (30) days prior to the end of the Term (in the event this Agreement expires and is not renewed) or no more than thirty (30) days after termination of the Agreement (in the event Smithville Digital terminates this Agreement due to an Event of Default on the part of Columbus) if Smithville Digital desires to determine the Fair Market Value of a lease of space on the Columbus Conduit System;
  - (ii) The Parties will determine the Fair Market Value of such lease and the Fair Market Value of the Fiber Optic Cable; and
  - (iii) Within fifteen (15) days after determination of Fair Market Value of such lease, Smithville Digital will give Columbus notice whether it desires to exercise such option.
  - (iv) If Smithville Digital desires to exercise such option, the Parties shall enter into a lease agreement upon such terms and conditions as are standard for such leases, at the Fair Market Value lease rate. In the event the Parties are unable to agree upon a lease agreement, Smithville Digital may lease the space in the Columbus Conduit System on a month-to-month basis at the Fair Market Value lease rate for a period not to exceed eighteen (18) months.
- (b) In the event Smithville Digital does not exercise the option granted to it in Section 5.3(a), or in the event Columbus terminates this Agreement due to an Event of Default on the part of Smithville Digital, Columbus shall have an option to purchase the Fiber Optic Cable for Fair Market Value.
- (i) In the event Smithville Digital does not exercise the option granted to it in Section 5.3(a), then the Columbus may exercise such option by paying the Fair Market Value of the Fiber Optic Cable to Smithville Digital within fifteen (15) days after the Columbus receives notice from Smithville Digital that it does not desire to exercise the option granted to it in Section 5.3(a) (or, if Smithville Digital does not give notice to Columbus, within fifteen days of the expiration of the notice period described in Section 5.3(a)(iii)).
  - (ii) In the event Columbus has terminated this Agreement due to an Event of Default on the part of Smithville Digital, the parties shall

determine the Fair Market Value of the Fiber Optic Cable within thirty (30) days of such termination, and Columbus may exercise such option by paying the Fair Market Value of the Fiber Optic Cable to Smithville Digital within fifteen (15) days after the date the Fair Market Value of the Fiber Optic Cable is determined.

- (iii) In the event Columbus purchases the Fiber Optic Cable pursuant to Section 5.3(b)(ii) above, Columbus shall allow Smithville Digital to continue to use the Columbus Conduit System and the Fiber Optic Cable to the extent necessary to provide Fiber Optic Network Services traveling through a portion of the Columbus Conduit System to Smithville Digital customers (who are customers as of the date Columbus purchases the Fiber Optic Cable) located outside of the Columbus Conduit System for a period of no more than one hundred eighty (180) days from the date Columbus purchases the Fiber Optic Cable.

5.4 Effect of Termination on Guaranteed Payments. In the event this Agreement is terminated for any reason prior to the date that Smithville Digital has made all of the guaranteed payments described in Section 4.1, Smithville Digital shall have no right to recover any such payments and shall have no obligation to make further monthly guaranteed payments after the date of termination. Any Fair Market Value payments required to be made by Smithville Digital (in the event Columbus leases conduit space to Smithville Digital) or Columbus (in the event Smithville Digital sells Fiber Optic Cable to Columbus) shall continue to be made and shall be unaffected by this Section 5.4.

## 6. **INSOLVENCY OR DISSOLUTION OF SMITHVILLE DIGITAL**

6.1 Insolvency or Dissolution of Smithville Digital. An "Insolvency Event" shall have occurred if:

- (a) a receiver, liquidator, assignee, custodian, trustee, conservator, sequestrator (or other similar official) shall take possession of Smithville Digital or any substantial part of its property without its consent, or a court having jurisdiction in the premises shall enter a decree or order for relief in respect of Smithville Digital in an involuntary case under any applicable bankruptcy, insolvency, moratorium or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, conservator, sequestrator (or other similar official) of such Party or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or
- (b) Smithville Digital shall commence a voluntary case under any applicable bankruptcy, insolvency, moratorium or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee,

custodian, conservator, sequestrator (or other similar official) of such Party or of any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall take any corporate action in furtherance of any of the foregoing; or

- (c) Smithville Digital shall admit in writing its inability to pay its debts as they mature; or
- (d) Smithville Digital shall give notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations.

6.2 Effect of Insolvency Event. Upon the occurrence of an Insolvency Event, Columbus shall (i) have the right to cause the determination of Fair Market Value of the Fiber Optic Cable and purchase the interest of in such Fiber Optic Cable at a price equal to ninety percent (90%) of the Fair Market Value of such cable. The Parties agree that damages resulting from an Insolvency Event are impossible to measure; therefore the Parties further agree that the reduction in the purchase price for the assets of Smithville Digital described above constitutes the Parties' best estimate of any such damages, is not a penalty and shall be Columbus' exclusive remedy. The rights of Columbus shall become exercisable as of the date of any such Insolvency Event and shall be exercised, if at all, within ninety (90) days after the determination of Fair Market Value.

## 7. **BOOKS AND RECORDS; AUDIT**

- 7.1 Books and Accounts. Smithville Digital shall keep accurate, full and complete books and accounts showing Gross Business Revenue and Partial Conduit Business Services Revenue.
- 7.2 Audits. Columbus may, at its option and at its own expense and upon reasonable notice, hire an independent auditor to audit those of Smithville Digital's books and accounts that relate to Gross Business Revenue and Partial Conduit Business Services Revenue. Such audits may not be conducted more often than annually. Smithville Digital agrees to cooperate with and provide all relevant documentation to such independent auditor. The auditor shall sign a confidentiality agreement with Smithville Digital and may share the results of the audit, but not specific customer detail, with Columbus. In the event that such audit reveals an underpayment by Smithville of the actual amounts owed Columbus, Smithville Digital shall pay the difference, plus interest calculated at the rate of one percent (1.0 %) per month from the date such payment was due and payable.

## 8. **ASSIGNMENT**

- 8.1 By Columbus. Columbus may not assign its rights or responsibilities under this Agreement. Any such attempted assignment shall be void.
- 8.2 By Smithville Digital. Smithville Digital may not assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of Columbus; which shall not be unreasonably withheld. Notwithstanding the foregoing, Smithville Digital may assign this Agreement to

an Affiliate of Smithville Digital without the consent of Columbus if such Affiliate either (i) is an Affiliate of Smithville Digital as of the Effective Date of this Agreement; or (ii) if such Affiliate was not an Affiliate as of the Effective Date of this Agreement, such assignee Affiliate is controlled by a Person who was an Affiliate as of the Effective Date of this Agreement.

## 9. REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties by Smithville Digital. Smithville Digital represents and warrants to, and covenants with Columbus, as follows:

- (a) Smithville Digital is a limited liability company duly organized and validly existing under the laws of the State of Indiana.
- (b) Smithville Digital has the full right, power and authority to enter into this Agreement and will at all times have the full power and authority to perform its obligations under this Agreement. This agreement has been duly authorized, executed and delivered by it, and this Agreement constitutes its valid and binding obligation, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, moratorium or other loss affecting creditors' rights generally, or equitable principles, whether applied in a proceeding in equity or law.

9.2 Representations and Warranties by Columbus. Columbus represents and warrants to, and covenants with, Smithville Digital, as follows:

- (a) Columbus is a municipality validly existing under the law of the State of Indiana.
- (b) Columbus has the full right, power and authority to enter into this Agreement and will at all times have the full power and authority to perform its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by it, and this Agreement constitutes its valid and binding obligation, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, moratorium or other loss affecting creditors' rights generally, or equitable principles, whether applied in a proceeding in equity or law.

## 10. MEDIATION

If a disagreement exists between or among the Parties concerning any matter, any Party may require the other Party to submit the reasons for its position, in writing, and to then enter into good faith negotiations to attempt to resolve the disagreement. If such disagreement cannot be settled by good faith negotiation between the Parties, any Party may elect to submit the disagreement to mediation under the Indiana mediation rules as presently found and defined as rules for alternative dispute resolution by the Indiana Supreme Court (the "ADR Rules"). Mediation Rules of the American Arbitration Association. If any Party so elects, the other Party shall submit to mediation. A mediator selected by the parties shall be an Indiana resident and shall be certified, approved or trained in the ADR Rules. The mediator shall not have authority to impose a settlement upon the Parties, but will attempt to help them reach a satisfactory resolution of the

disagreement. The mediator shall end the mediation whenever, in his judgment, further efforts at mediation would not contribute to a resolution of the submitted disagreement.

11. **MISCELLANEOUS**

11.1 Notices. No notice or other communication hereunder shall be sufficient to affect any rights, remedies or obligations of any party hereto unless such notice or communication is in writing and delivered to the person or persons whose rights, remedies or obligations are affected, except that any such written notice or communication which is hand delivered, delivered by prepaid overnight courier service or mailed by prepaid certified mail, return receipt requested, addressed to the respective and appropriate party as follows (or to such other address as the parties may indicate in writing in accordance with this Section):

If to Smithville Digital to:

Smithville Digital, LLC  
1600 W. Temperance St.  
Ellettsville, IN 47429  
Attention: \_\_\_\_\_

copy to:

Sommer Barnard PC  
One Indiana Square, Suite 3500  
Indianapolis, IN 46204  
Attention: Rick Kissel

If to Columbus to:

Office of the Mayor  
City of Columbus  
City Hall  
123 Washington St.  
Columbus, IN 47201

Notice shall be deemed sufficient upon hand delivery, one day after deposit with such overnight courier service, or three days after such mailing, as the case may be.

11.2 Governing Law. The validity, performance, and all matters relating to the interpretation and effect of this Agreement shall be governed by the internal law of the State of Indiana, without regard to principles of conflicts of law.

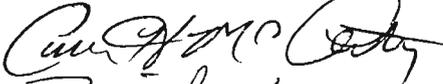
11.3 Additional Documents and Acts. In connection with this Agreement, as well as all transactions contemplated by this Agreement, each Party agrees to execute and deliver such additional documents and instruments, and to perform such additional acts, as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement, and all such transactions. All approvals of either party hereunder shall be in writing.

- 11.4 Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.
- 11.5 Entire Agreement. This instrument contains all of the understandings and agreements of whatsoever kind and nature existing between the parties hereto with respect to this Agreement and the rights, interests, understandings, agreements and obligations of the respective parties pertaining to the Venture.
- 11.6 References of this Agreement. Numbered or lettered articles, sections and subsections herein contained refer to articles, sections and subsections of this Agreement unless otherwise expressly stated.
- 11.7 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.
- 11.8 Binding Effect. Except as herein otherwise expressly stipulated to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties signatory hereto, and their respective successors and permitted assigns.
- 11.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and each of which shall constitute one and the same Agreement.
- 11.10 Amendments. This Agreement may not be amended, altered or modified except by a written instrument signed by each of the Parties.
- 11.11 Appraisal Fees. The fees of any and all Appraisers used to determine Fair Market Value pursuant to this Agreement shall be borne equally by the Parties.

[signature page follows]

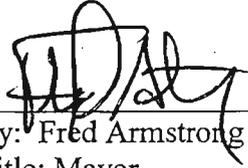
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

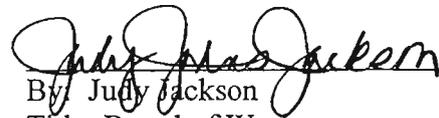
SMITHVILLE DIGITAL, LLC

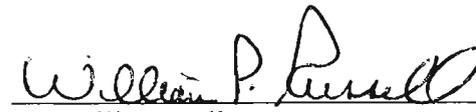
By:   
Title: *President*

Entered into by the Board of Works for the City of Columbus this \_\_\_\_ day of September 2007.

CITY OF COLUMBUS

  
By: Fred Armstrong  
Title: Mayor

  
By: Judy Jackson  
Title: Board of Works

  
By: Bill Russell  
Title: Board of Works

List of Exhibits and Schedules

Exhibit A – Map of Columbus Conduit System

Schedule 2.2	Maintenance Services to be Provided
Schedule 2.3	Performance Metrics
Schedule 2.6(a)	Social Services Organizations to Receive Discounts
Schedule 2.6(b)	Columbus Entities to Receive Discounts

## Schedule 2.2

### Maintenance Services to be Provided

Smithville Digital will maintain the Primary Conduit and the Secondary Conduit in a manner to preserve the availability of both conduits for Fiber Optic Network Services. All repairs shall be conducted in a reasonable time frame. All maintenance conducted will meet the requirements of the Columbus City Engineer's office.

Schedule 2.3  
Performance Metrics

The following terms will be included in Smithville Digital's contracts with end customers:

- Smithville Digital will provide a guaranteed level of internet bandwidth if sold to the customer
- Technical Support Assistance will be available on a 24/7 basis via a toll free number
- Network Monitoring of "lit" service will be done by testing for ping response (every five minutes) 24/7 from the core switches. Any failure to receive a response will alert Network Operations staff via email and cell phones. Failure messages will also be sent via email to any persons specified by the customer. Two consecutive ping failures will result in a response by Smithville Digital Network Operations staff.
- Bandwidth Reports and Charts will be provided via a password protected web site. Statistics will be generated using five-minute input/output averages generated by the network devices.
- Network availability of 99.7%
- 2 hours to notify customer of failure
- Credit for one day's service if failure to notify

The following repair metrics will be measured by Smithville Digital and reported to Columbus on a quarterly basis:

- Number of ping failures resulting in dispatch
- Mean time to respond
- Mean time to repair/network available

In addition, Smithville Digital will provide to Columbus, on a quarterly basis, copies of these generated trouble tickets, if any.

In the event Columbus receives a complaint relating to the services provided by Smithville Digital, Columbus will forward such complaint to Smithville Digital. Smithville Digital will, within two (2) business days of receipt of such complaint, advise Columbus as to what actions Smithville Digital is taking to address such complaint.

Schedule 2.6(a)  
Social Services Organizations to Receive Discounts

**United Way Agencies**

- Aging and Community Services of S. Central IN. (First Call for Help 211)
- Bartholomew / Brown County Chapter, American Red Cross
- Bartholomew Area Legal Aid
- Boy Scouts, Hoosier Trails Council
- Advocates for Children (formerly CASA)
- Child Abuse Prevention Council
- Childhood Connections
- Children, Inc.
- Christole, Inc.
- Developmental Services, Inc.
- Easter Seals of Bartholomew County
- Eastside Community Center
- Epilepsy Foundation
- Family School Partners
- Family Service, Inc., including Healthy Families/Caring Parents)
- Foundation For Youth, including Big Brothers-Big Sisters, Boys& Girls Club, Youth Camp, REPS, Teen Council and Youth as Resources
- Girl Scouts, Tulip Trace Council
- Hope Community Center
- Hospice of So. Central Indiana
- Human Services, Inc., including Head Start and Horizon House
- Lincoln-Central Neighborhood Family Center
- Sans Souci, Inc.
- Senior Center Services, including Just Friends and Senior Products
- Su Casa, Columbus
- Turning Point
- United Cerebral Palsy Assoc. of Greater Indiana, Inc.
- United Service Organization (USO)
- Volunteer Action Center
- Young Mothers Educational Development (Y-MED)
- United Way of Bartholomew County

**Other Social Service Agencies**

- Volunteers in Medicine
- Turning Point
- United Way Center and all tenants who are 501c(3) organizations

Schedule 2.6(b)  
Columbus Entities to Receive Discounts

Any entity of the City of Columbus, included but not limited to the Fire Department, Police Department, Department of Parks and Recreation, city-owned utilities, and other city government entities, will receive a ten percent (10%) discount.

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