

ORDINANCE C-78-13

AN ORDINANCE TO AUTHORIZE THE CITY ADMINISTRATOR TO ENTER INTO A DS1 SERVICE AGREEMENT WITH AT&T AND DECLARE AN EMERGENCY

WHEREAS, the City currently utilizes AT&T for a DS1 Local Distribution Channel under a month to month pricing schedule; and

WHEREAS, the current month to month pricing is subject to change; and

WHEREAS, to obtain the best pricing, the City needs to enter into a contract with a term of twenty four (24) months; and

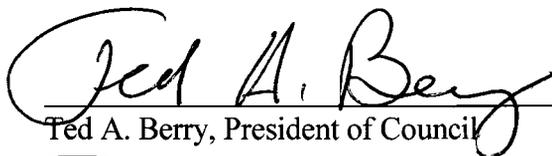
WHEREAS, it is estimated that a twenty-four (24) month contract will save the City approximately Four Thousand Dollars (\$4,000) a year; and

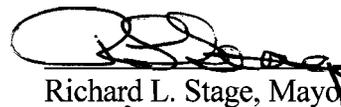
WHEREAS, an emergency exists for the health safety and general welfare of the community due to the expiration of the existing Agreement and the immediate need for Safety Division Communication Services.

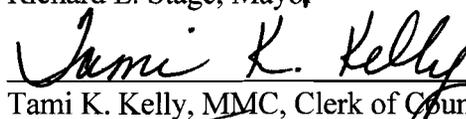
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GROVE CITY, STATE OF OHIO, THAT:

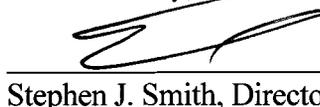
SECTION 1. The City Council hereby authorizes the City Administrator to execute the Agreement with AT&T more fully described in Exhibit A, attached hereto.

SECTION 2. This ordinance is hereby declared an emergency measure for the reasons stated in the preamble and shall therefore go into immediate effect.


Ted A. Berry, President of Council


Richard L. Stage, Mayor


Tami K. Kelly, MMC, Clerk of Council


Stephen J. Smith, Director of Law

Passed: 12-02-13

Effective: 12-02-13

Attest:

I certify that this ordinance is correct as to form.



C-78-13
Exhibit A

AT&T INTRASTATE PRIVATE LINE DS1 SERVICE
METRO BLITZ OFFER

ILEC Service Agreement Provided Pursuant To Custom Rates and Terms

Customer	AT&T
City of Grove City Street Address: 3360 Park Street City: Grove City State/Province: OH Zip Code: 44309 Country: USA	AT&T ILEC Service-Providing Affiliate
Customer Contact (for Notices)	AT&T Contact (for Notices)
Name: Mike Turner Title: I.T. Street Address: 3360 Park Street City: Grove City State/Province: OH Zip Code: 44309 Country: USA Telephone: 614-277-3000 Fax: Email: mturner@grovecityohio.gov Customer Account Number or Master Account Number: 614 R02-0173 671	Name: Robbie Ernst Street Address: 3120 Wall Street, Suite 200 City: Lexington State/Province: KY Zip Code: 40513 Country: USA Telephone: 859-229-9740 Fax: 314-242-1232 Email: re215e@att.com Sales/Branch Manager: Mike Frendt SCVP Name: Debra Harrison Sales Strata: NGEM Sales Region: Midwest <u>With a copy (for Notices) to:</u> AT&T Corp. One AT&T Way Bedminster, NJ 07921-0752 ATTN: Master Agreement Support Team Email: mast@att.com
AT&T Solution Provider or Representative Information (if applicable) <input type="checkbox"/>	
Name: Company Name: Agent Street Address: City: State: Zip Code: Telephone: Fax: Email: Agent Code	

This Service Agreement ("Agreement") includes the attached Pricing Schedule and General Terms ("Pricing Schedule"), and incorporates the rates, terms and conditions in applicable Tariffs and/or Guidebooks (each a "Service Publication") identified in Section 1 of the Pricing Schedule.

Customer requests that its identity be kept confidential and not be publicly disclosed by AT&T or by any regulatory commission, unless required by law.

Except when Service is used solely as transport for AT&T switched local or access service(s), Customer acknowledges and certifies that the interstate traffic (including Internet and international traffic) constitutes ten percent (10%) or less of the total traffic on any Service.

The Effective Date of this Service Agreement is the date signed by the last party, unless a later date is required by law or regulation.

Customer (by its authorized representative)	AT&T (by its authorized representative)
By:	By:
Printed or Typed Name:	Printed or Typed Name:
Title:	Title:
Date:	Date:

**AT&T INTRASTATE PRIVATE LINE DS1 SERVICE
METRO BLITZ OFFER
ILEC Service Agreement Provided Pursuant To Custom Rates and Terms**

Pricing Schedule and General Terms

1. SERVICE, SERVICE PROVIDER and SERVICE PUBLICATION

Service	AT&T DS1 Service
----------------	------------------

Service Provider (Select one option, only.)	Service Publication (incorporated by reference)	Service Publication Location
<input type="checkbox"/> AT&T Illinois	AT&T Illinois Tariffs, including Tariff No. 19, Part 15, Section 3	http://cpr.att.com/illinois.htm
<input type="checkbox"/> AT&T Indiana	AT&T Indiana Guidebook, including Part 15, Section 3	http://cpr.att.com/guidebook/in/index.html
<input type="checkbox"/> AT&T Michigan	AT&T Michigan Guidebook, including Part 15, Section 3	http://cpr.att.com/guidebook/mu/index.html
<input checked="" type="checkbox"/> AT&T Ohio	AT&T Ohio Guidebook, including Part 15, Section 3	http://cpr.att.com/guidebook/oh/index.html
<input type="checkbox"/> AT&T Wisconsin	AT&T Wisconsin Guidebook, Part 15, Section 3	http://cpr.att.com/guidebook/wg/index.html

2. PRICING SCHEDULE TERM and EFFECTIVE DATES

Pricing Schedule Term ("Term")	(Select one) <input checked="" type="checkbox"/> 24 Months <input type="checkbox"/> 36 Months Months (min. 24, max. 36 mos.)
Pricing Schedule Term Start Date	on the Effective Date
Start Date of Minimum Payment Period, per Service Component	later of the Effective Date or installation of the Service Component
Rate Stabilization per Service Component	Rates as specified in this Pricing Schedule for each Service Component are stabilized until the end of its Minimum Payment Period.
Pricing following the end of Minimum Payment Period	non-stabilized prices as modified from time to time in applicable Service Publication

3. MINIMUM PAYMENT PERIOD

Service Components	Percentage of Monthly Fee Applicable to Calculation of Early Termination Charges	Minimum Payment Period# per Service Component
All Service Components	50%	Until the end of the Pricing Schedule Term
# the minimum period for which Customer is required to pay recurring charges for the applicable Service component and is subject to early termination liability		

**AT&T INTRASTATE PRIVATE LINE DS1 SERVICE
METRO BLITZ OFFER
ILEC Service Agreement Provided Pursuant To Custom Rates and Terms**

For EXISTING SERVICE, complete the table below.

Complete a line for each existing Circuit ID.

Existing Circuit ID	Existing Billing Account	Existing Circuit ID	Existing Billing Account
DHZA.268344..OB	614 R02-0173 671		

(If additional circuits apply, please attach on a separate page.)

5. GENERAL TERMS

- a. Service Publications: AT&T may revise Tariffs and Guidebooks (collectively "Service Publications") at any time and may redirect the websites listed above. The order of priority of the documents is: this Service Agreement, then the applicable Service Publication; except Tariffs will be first wherever contract terms may not take precedence over inconsistent Tariff terms. This Agreement continues after the Pricing Schedule Term until Services no longer are provided, at which point the Agreement is terminated.
- b. Services: AT&T will provide or arrange to have its affiliate provide Services to Customer, subject to the availability and operational limitations of systems, facilities and equipment. Where required, an AT&T affiliate authorized by the appropriate regulatory authority will be the service provider. Customer may not resell the Services or rebrand the Services for resale to third parties. Customer will cause Users (anyone who uses or accesses any Service provided to Customer) to comply with this Agreement and is responsible for their use of any Service.
- c. Access: Customer will allow AT&T timely access or will at Customer's expense obtain timely access to property (other than public property) and to equipment reasonably required for the Services. Access includes information, the right to construct, install, repair, maintain, replace and remove access lines and network facilities and the right to use ancillary equipment space within the building for Customer's connection to AT&T's network. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities and other items reasonably required for the Services and will obtain any necessary licenses, permits and consents (including easements and rights-of-way).
- d. Safe Environment: Customer will ensure that the location where AT&T installs, maintains or provides Services ("Site") is a suitable and safe working environment, free of any substance or material that poses an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, to protection of air, water or soil or to health and safety. If AT&T encounters hazardous materials, AT&T may terminate any affected component of a Service ("Service Component") or suspend performance.
- e. AT&T Equipment: Services may be provided using AT&T-owned equipment located at the Site ("AT&T Equipment"). Title to AT&T Equipment remains with AT&T. Customer must provide electric power for and keep all AT&T Equipment physically secure and free from liens and encumbrances. Customer bears the risk of loss or damage (other than ordinary wear and tear) to all AT&T Equipment.
- f. Pricing Schedule Term: Except as stated in the Pricing Schedule, the prices listed in this Service Agreement are stabilized for the Pricing Schedule Term and apply in lieu of the corresponding prices set forth in the applicable Service Publication, and no promotion, credit, discount or waiver set forth in a Service Publication applies. After the Pricing Schedule Term, Customer may continue Service (subject to any applicable notice or other requirements in a Service Publication for Customer to discontinue a Service Component) under a month-to-month service arrangement.
- g. Taxes: Prices are exclusive of and Customer will pay all taxes, regulatory surcharges, recovery fees, customs clearances, duties, levies, shipping charges and other similar charges relating to the sale, transfer of ownership, installation, license, use or provision of the Services.
- h. Billing, Payments, Deposits and MARC: Unless a Service Publication specifies otherwise, Customer's obligation to pay for a Service Component begins upon availability of the Service Component to Customer ("Cutover"). Payment is due 30 days after the invoice date (unless another date is specified in an applicable Service Publication) and must refer to the invoice number. Restrictive endorsements or other statements on checks are void. If Customer does not dispute a charge in writing within 6 months after the invoice date, Customer waives the right to dispute the charge. AT&T may recover all costs (including attorney fees) of collecting delinquent or dishonored payments and may charge late payment fees at the lowest of 1.5% per month (18% per annum), the rate specified in the Service Publication or the maximum rate allowed by law. If the Pricing Schedule includes a Minimum Annual Revenue Commitment ("MARC") and Customer's MARC-Eligible recurring and usage charges (after deducting discounts and credits) in any applicable 12-month period are less than the MARC, Customer will pay the shortfall, and AT&T may withhold contractual credits until Customer pays the shortfall charge.

**AT&T INTRASTATE PRIVATE LINE DS1 SERVICE
METRO BLITZ OFFER
ILEC Service Agreement Provided Pursuant To Custom Rates and Terms**

i. Termination and Suspension: Either party may terminate this Agreement immediately upon notice if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition or makes an assignment for the benefit of its creditors. AT&T may terminate or suspend an affected Service or Service Component and, if the activity implicates the entire Agreement, terminate or suspend the entire Agreement, immediately upon notice if Customer: (i) commits a fraud upon AT&T; (ii) uses the Service to commit a fraud upon another party; (iii) unlawfully uses the Service; (iv) abuses or misuses AT&T's network or Service; or (v) interferes with another customer's use of AT&T's network or services. Customer may terminate an affected Service Component for material breach by AT&T if such breach is not cured within 30 days of notice. AT&T may terminate or suspend (and later terminate) an affected Service Component for material breach by Customer if such breach is not cured within 30 days of notice.

j. Termination Charges: If prior to Cutover Customer terminates a Service Component other than for cause or AT&T terminates a Service Component for cause, Customer will reimburse AT&T for time and materials, including any third-party charges, incurred prior to the effective date of termination. Thereafter, if Customer terminates a Service Component for Customer's convenience or AT&T terminates a Service Component for cause, Customer must pay: (i) 50% (unless a different percentage is specified in the Pricing Schedule) of the monthly recurring charges for the terminated Service Component multiplied by the months remaining in an applicable Minimum Payment Period specified in the Pricing Schedule or Service Publication, and (ii) any access facilities cancellation charges and other third-party charges incurred by AT&T due to the termination. If the Pricing Schedule includes a MARC and Customer terminates other than for cause or AT&T terminates for cause, Customer must pay an amount equal to 50% of the unsatisfied MARC for the balance of the Pricing Schedule Term. In addition, Customer may terminate an affected Service Component without incurring termination charges if (i) AT&T revises a Service Publication and the revision has a materially adverse impact upon Customer; (ii) Customer gives 30 days' notice of termination to AT&T within 90 days of the date of the revision; and (iii) AT&T does not remedy the materially adverse impact prior to the effective date of termination. "Materially adverse impacts" do not include changes to non-stabilized pricing, changes required by governmental authority or assessment of or changes to recovery fees, surcharges or taxes.

k. Limitations of liability and Disclaimers:

(1) AT&T MAKES NO EXPRESS OR IMPLIED WARRANTY; DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT; AND DISCLAIMS ANY WARRANTIES ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING. AT&T ALSO MAKES NO WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING 911 CALLS). AT&T MAKES NO WARRANTY REGARDING: NETWORK SECURITY; ENCRYPTION EMPLOYED BY ANY SERVICE; INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR LOAD BALANCED; THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S DATA AND INFORMATION; OR THAT SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. AT&T IS NOT LIABLE FOR ANY DAMAGES RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, DATA, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY CUSTOMER OR OTHERS; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, SERVICE ERRORS OR INTERRUPTIONS, INCLUDING INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 CALLS OR ANY OTHER CALLS OR TRANSMISSIONS (EXCEPT FOR LIABILITY EXPLICITLY SET FORTH HEREIN); LOST OR ALTERED TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S OR OTHERS' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS.

(2) AT&T'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR DAMAGES ARISING OUT OF AT&T'S BREACH OF THIS AGREEMENT AND NOT DISCLAIMED UNDER THIS AGREEMENT SHALL NOT EXCEED THE APPLICABLE CREDITS SPECIFIED IN THE SERVICE PUBLICATION OR, IF NO CREDITS ARE SPECIFIED, AN AMOUNT EQUAL TO THE TOTAL NET CHARGES TO CUSTOMER FOR SERVICE TO WHICH SUCH BREACH RELATES DURING THE PERIOD IN WHICH SUCH BREACH OCCURS AND CONTINUES. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO AT&T. THIS LIMITATION WILL NOT APPLY TO BODILY INJURY, DEATH OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY AT&T'S NEGLIGENCE OR INTENTIONAL MISCONDUCT. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY UNDER ANY CIRCUMSTANCES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES.

(3) These disclaimers and limitations will apply regardless of the form of action, whether in contract, tort, strict liability or otherwise, of whether damages were foreseeable and of whether a party was advised of the possibility of such damages. These disclaimers and limitations of liability will survive failure of any exclusive remedies provided in this Agreement.

l. Infringement: AT&T agrees at its expense to defend and either to settle any claim against Customer, its corporate affiliates and its and their employees and directors or to pay all damages finally awarded against such parties if the claim alleges that a Service infringes any patent, trademark, copyright or trade secret, except if the claim arises out of: (i) Customer's or a User's content; (ii) modifications to the Service by Customer or third parties or combinations of the Service with any non-AT&T services or products; (iii) AT&T's adherence to Customer's written requirements; or (iv) use of the Service in violation of this Agreement. AT&T at its option may either procure the right for Customer to continue using the Service or may replace or modify the Service so that it is non-infringing or may terminate the Service without liability to Customer. Customer agrees at its expense to defend and either to settle any claim against AT&T, its affiliates and its and their employees, directors, subcontractors and suppliers or to pay all damages finally awarded against such parties if: (i) the claim alleges that a Service infringes any patent, trademark, copyright or trade secret and falls within the exceptions under (i)-(iv) of the preceding paragraph; or (ii) the claim alleges a breach by Customer, its affiliates or Users of a software license agreement governing software provided with the Services.

**AT&T INTRASTATE PRIVATE LINE DS1 SERVICE
METRO BLITZ OFFER
ILEC Service Agreement Provided Pursuant To Custom Rates and Terms**

m. ARBITRATION: ALL CLAIMS AND DISPUTES ARISING FROM THIS AGREEMENT SHALL BE SETTLED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES (SUBJECT TO THE REQUIREMENTS OF THE FEDERAL ARBITRATION ACT). ANY JUDGMENT ON ANY AWARD RENDERED MAY BE ENTERED AND ENFORCED IN A COURT HAVING JURISDICTION. THE ARBITRATOR SHALL NOT HAVE THE AUTHORITY TO AWARD ANY DAMAGES DISCLAIMED BY THIS AGREEMENT OR IN EXCESS OF THE LIABILITY LIMITATIONS IN THIS AGREEMENT, SHALL NOT HAVE THE AUTHORITY TO ORDER PRE-HEARING DEPOSITIONS OR DOCUMENT DISCOVERY, BUT MAY COMPEL ATTENDANCE OF WITNESSES AND PRODUCTION OF DOCUMENTS AT THE HEARING. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY AND WAIVE ANY RIGHT TO PARTICIPATE IN OR INITIATE CLASS ACTIONS; IF THE PARTIES CANNOT WAIVE THESE RIGHTS, THIS ENTIRE SECTION IS VOID.

n. General Provisions: This Agreement and any pricing or other proposals are confidential to AT&T. Neither party may publicly disclose any confidential information of the other party without the prior written consent of the other, unless authorized by applicable law, regulation or court order. Until directed otherwise by Customer in writing, if AT&T designates a dedicated account representative as Customer's primary contact with AT&T, Customer authorizes that representative to discuss and disclose Customer's customer proprietary network information to any employee or agent of Customer without a need for further authentication or authorization. Each party will comply with all applicable laws and regulations and with all applicable orders issued by courts or other governmental bodies of competent jurisdiction. This Agreement may not be assigned by either party without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed, except that AT&T may: (i) assign in whole or relevant part its rights and obligations under this Agreement to an AT&T affiliate, or (ii) subcontract work to be performed under this Agreement, but AT&T will in each such case remain financially responsible for the performance of such obligations. Any claim or dispute arising out of this Agreement must be filed within two (2) years after the cause of action arises. This Agreement does not provide any third party (including Users) the right to enforce it or to any remedy, claim, liability, cause of action or other right or privilege. Unless a regulatory agency with jurisdiction over the applicable Service applies a different law, this Agreement will be governed by the law and regulations of the State set forth above for Customer's address, without regard to its conflict of law principles. This Agreement is limited to Services to be provided in the United States. The United Nations Convention on Contracts for International Sale of Goods will not apply. Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to causes beyond such party's reasonable control, including strikes and labor disputes. Customer must send any notice required or permitted under this Agreement in writing to the AT&T address set forth above. This Agreement constitutes the entire agreement between the parties concerning its subject matter and supersedes all previous agreements, whether written or oral. This Agreement may not be modified or supplemented without a writing signed by authorized representatives of both parties.

6. NOTICE OF WITHDRAWAL

Service and Service Component Withdrawals during Service Agreement Term	
Prior Notice Required from AT&T to Withdraw and Terminate a Service	12 months
Prior Notice Required from AT&T to Withdraw and Terminate a Service Component	120 days

For AT&T internal use only	
Billing Telephone Number for Existing service, if applicable:	614 R02-0173 671
SDA Code:	<input checked="" type="checkbox"/> MB24 <input type="checkbox"/> MB36

End of Document