ORDINANCE NO. C-118-05

AN ORDINANCE TO AUTHORIZE THE CITY ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH HARBORLINK NETWORK, LLC

WHEREAS, the City is interested in finding ways to make the latest communications technology available to its citizens and businesses in the City; and

WHEREAS, HarborLink has requested to locate a small amount of its 802.11 WiFi Infrastructure Equipment within the City's Right-of-Way in and on specific City owned Municipal Facilities to operate its WiFi system in the City; and

WHEREAS, HarborLink has proposed a WiFi meshed architecture methodology that would make the 802.11 WiFi technology and connectivity openly available at no cost to the City, its citizens and businesses in the streets, sidewalks and greenspace of the city within the Service Area; and

WHEREAS, the City believes that the information and experience to be realized by the City and the no cost Service to be made available to Users, is an appropriate justification for entering into an Agreement and providing HarborLink with such limited opportunities.

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

SECTION 1. The City Administrator is hereby authorized to enter into the attached Agreement with HarborLink Network, LLC.

SECION 2. This resolution shall take effect at the earliest opportunity allowed by law.

William E. Saxton, President of Council

Cheryl L. Grossman, Mayor

Passed: 12-05-05
Effective: 01-04-06

Attest:

Tami K. Kelly, MMC, Clerk of Council

I Certify that this resolution is correct as to form.

Thomas R. Clark, Director of Law

C-118-05

CITY OF GROVE CITY, OHIO

SERVICE AGREEMENT

Dated November ____, 2005

Between:
The City of Grove City, and
HarborLink Network, LLC

HarborLink™

LAND • SEA • AIR

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SERVICE AGREEMENT

THIS SERVICE AGREEMENT ("**Agreement**") is executed this ___ day of November 2005, between the **City of Grove City, Ohio** ("**City**"), an Ohio Municipal corporation with a principal place of business located at 4035 Broadway, Grove City, Ohio 43123 and **HarborLink Network LLC,** an Ohio Corporation ("**HarborLink**") with a principal place of business located at 3131 South Dixie Drive, Dayton, Ohio 45439, (collectively, the "**Parties**").

WITNESSETH THAT:

WHEREAS, the City is interested in finding ways to make the latest communications technology available to its citizens and businesses in the City; and

WHEREAS, the City owns certain Right of Way and Municipal Facilities within the geographic limits of the City; and

WHEREAS, the City approached HarborLink and expressed a desire to have certain wireless communications technology installed in the City that may ultimately benefit its citizens and businesses; and

WHEREAS, after reviewing the City's Right of Way and Municipal Facilities, HarborLink has requested to locate a small amount of its 802.11 WiFi Infrastructure Equipment within the City's Right of Way in and on specific City owned Municipal Facilities to operate its WiFi system in the City; and

WHEREAS, the City, in the interest of advancing the technology available to its citizens, desires to allow HarborLink to locate a limited amount of WiFi infrastructure in the Right of Way and on certain City owned Municipal Facilities in certain areas of the City ("Service Area"); and

WHEREAS, HarborLink has proposed a WiFi meshed architecture methodology that would make 802.11 WiFi technology and connectivity openly available at no cost to the City, its citizens and businesses in the streets, sidewalks and greenspace of the City within the Service Area; and

WHEREAS, the model that HarborLink has proposed to use in order to provide Service at no cost to Users in the Service Area including advertisements and other promotional material that is to be delivered to and viewed by Users of the System as a condition of the no cost use; and

WHEREAS, for use of the City's property HarborLink agrees to enter in this Agreement, which, among other things, requires HarborLink to indemnify, protect and defend the City against any costs or expense associated with the Service, agree to act in accordance with all local, state and federal laws, rules and regulations ("Laws"), and make Service openly available at no cost to anyone who may desire to use it within the Service Area; and

WHEREAS, the City believes that the information and experience to be realized by the City and the no cost Service to be made available to Users, is an appropriate justification for providing HarborLink with such limited opportunities.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

I. DEFINITIONS

A. For the purposes of this Agreement, the following words and phrases shall have the following meanings ascribed to them respectively, regardless of whether or not the words and phrases are capitalized:

B. Agreement means this Service Agreement.

C. Service Area means that area described in Section II herein and as illustrated in Exhibit A attached hereto.

D. Broadband means a high speed connection of greater than 512Kbps.

E. Disclaimer means the informational disclaimer, waiver page and text that automatically appears on the monitor or screen of a User and requires active approval and review of that User, each and every time the System is accessed and the User attempts to use the Service.

F. Equipment means all 802.11 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 as is more generally described in Exhibit B attached hereto.

G. Internet means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol (IP) or its subsequent extensions/follow-ons; is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite or its subsequent extensions/follow-ons, and/or other IP compatible protocols; and provides, uses or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure.

H. Law means any local, state and/or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff or other requirement, specifically including the Revised Code of the City of Grove City, Ohio.

I. Municipal Facilities means property, either real or personal owned by the City including poles, streetlights, traffic signals, signs, buildings, structures, parks, or other City owned property or easements that have not been dedicated for use as Right of Way.

J. Ordinance means the Codified Ordinances of the City of Grove City.

K. Right of Way means the surface and space in, above, within, over below, under or through any real property in which the City has an interest in Law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, conduit, or any other place, area, or real property owned by or under the legal or equitable control of the City that, consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing, or replacing a System. Right of Way shall not include buildings, parks, or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a permit or by Law.

L. Service means WiFi Broadband Internet access (including any V-LAN provided to the City) that is provided by HarborLink through the System at no cost to the Users within the Service Area.

M. Splash Page means the promotional and advertising page and text that automatically appears on the monitor or screen of a User each time the System is accessed in the Service Area and thereafter every additional twelve (12) minutes following a User's initial logging on the System.

N. System means the highly scalable, secure and reliable meshed WiFi network, infrastructure and Equipment installed and operated by HarborLink in the Service Area.

O. User(s) means the City and its employees, a citizen, a business, or a visitor who uses the Service provided over the System in the Service Area.

P. V-LAN means the virtual local area network provided to the City by HarborLink as a condition of this Agreement.

Q. WiFi means a wireless local area network operating under a 802.11 standard.

II. SCOPE

HarborLink shall build a System that provides Service at no cost to Users in the streets, sidewalks and greenspaces of the City in the Service Area as specified in this Agreement for the benefit of the City, its citizens, businesses and visitors. HarborLink will perform the Service with reasonable diligence in a professional and workmanlike manner, consistent with the generally accepted standards in the industry and in compliance with any and all Laws.

It is understood and agreed that the System and Service to be provided by HarborLink during the Service shall incorporate and blanket, with meshed WiFi connectivity, cost free to the User, the central business district area of downtown Grove City, Ohio known as the Service Area and described immediately below and further detailed and mapped in Exhibit A attached hereto.

Generally, the Service Area may be described as follows: _____

_____

HarborLink shall begin installing the Equipment and System architecture in accordance with the terms herein at anytime following the execution of this Agreement. The Equipment shall be deployed in such a manner as to create a robust and technologically appropriate System that provides the City and Users with performance parameters that meet or exceed industry standards for comparable municipal deployments of WiFi mesh architecture.

The System shall be completely installed and Service shall be fully available to Users in the entire Service Area by _____.

HarborLink agrees that it shall provide Service in the entire Service Area for a minimum of a 365 consecutive days following the completion of installation of the System.

Any and all rights expressly granted to HarborLink under this Agreement, which shall be exercised at HarborLink's sole cost and expense, shall be subject to the prior and continuing right of the City under applicable Laws to use any and all parts of the Municipal Facilities and Right of Way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Municipal Facilities or Right of Way. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in HarborLink a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Agreement shall be subject to the reasonable prior review and approval of the City in accordance with all Laws.

HarborLink in the performance and exercise of its rights and obligations under this Agreement shall not interfere in any manner with the placement of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications equipment, utility facilities, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Agreement.

HarborLink's construction of the System and provision of the Service at no cost is made economically feasible by its use of a business model that includes the dissemination over the System of promotional and advertising information that is distributed to each User and must be actively viewed and clicked through by the User. Because HarborLink will be employing such a business model, the City, as a condition of this Agreement, requires that HarborLink provide a

Disclaimer at the beginning of each User connection to the System and Service that informs the User that the City has no involvement in, input on, or knowledge of, the promotional and advertising material HarborLink is providing over the System via the Service. Further, the Disclaimer shall state that HarborLink and its advertisers take complete responsibility for the content of such promotional and advertising material and have agreed to fully protect, indemnify and defend the City against any claim that might be made regarding that promotional and advertising material.

III. TERM

This Agreement shall commence upon execution by the City and HarborLink, and it shall terminate on _____. The City and HarborLink may renew this Agreement for additional one (1) year extensions. Any such renewals shall be reduced to a writing, which must be executed by the City Manager on behalf of the City and a duly authorized representative HarborLink.

IV. HARBORLINK'S OBLIGATION

HarborLink, with coordinated site approvals from the City, will install a highly scalable, secure System in the Service Area that will allow the Users to experience no cost access to the Internet and related services with no hourly, daily, monthly or annual subscription fees.

HarborLink, at no cost to the City, will provide all Equipment necessary for the Service to be available within the scope described herein. Equipment updates, maintenance and expansion of the System will all be responsibilities of HarborLink.

HarborLink will properly maintain and operate the System, its Equipment and the Service in the Service Area.

The Service shall operate in the following manner: When a User connects to the System in the Service Area and opens their Internet browser, a site-specific Splash Page will appear. All Users must view the Splash Page and Disclaimer before other information or sites can be accessed on the Internet. After agreeing to the Disclaimer (by clicking the "I Agree" icon), the User will pass to a welcome page that includes advertising from the vendors and merchants offering services within the City of Grove City. Approximately every twelve (12) minutes as the User clicks through the Internet, they will be directed to the System's welcome page to again showcase sponsors that have made the Service available and to reintroduce HarborLink's partner venue specific information.

The initial proposed locations of HarborLink's planned installation of the System and Equipment shall be provided to the City promptly after HarborLink's review of available maps and prior to deployment of the System. Upon the completion of installation of Equipment, HarborLink promptly shall furnish to the City a pole list showing the exact location of the Equipment on Municipal Facilities and in the Right of Way.

HarborLink will, for the term of this Agreement and at no cost, make available to the City a minimum of _____ on the System in the Service Area for enhanced municipal requirements and services. Examples of reference for such enhanced municipal requirements and services are: water-meter reading (future), photographs and fingerprints to and/or from public safety forces, housing/zoning and code enforcement applications, global information system access, etc. The VLAN's shall not be subject to the Disclaimer or the Splash Page distributions that occur on the rest of the System. HarborLink guarantees that the City will be able to use the VLAN's without experiencing the Disclaimer or any Splash Pages.

HarborLink will provide a Disclaimer at the beginning of each User connection to the System and Service that informs the User that the City has no involvement in, input on, or knowledge of, the promotional and advertising material HarborLink is providing over the System via the Service. Further, the Disclaimer shall state that HarborLink and its advertisers take complete responsibility for the content of such promotional and advertising material and have agreed to fully protect, indemnify and defend the City against any claim that might be made regarding that promotional and advertising material. HarborLink agrees that it will only allow promotional and advertising content on the Service System that is both socially responsible and generally appropriate for family audiences. HarborLink acknowledges that while the City shall not review or approve any promotional or advertising material before it is distributed by HarborLink over the System, should the City find for any reason that there has been promotional and advertising material distributed over the System that the City believes to be unacceptable or problematic, the City has the right to unilaterally terminate this Agreement immediately, without penalty.

In addition, HarborLink shall for the term of this Agreement provide:

A. All fixed network access point (AP) hardware necessary to operate the System; and

B. Customized, site specific, "Welcome" page; and

C. Maintenance and updates to "Welcome" page; and

D. Network Operations – user authentication, network monitoring and management; and

E. Advertising sales and billing; and

F. Appropriate promotion of the Service; and

G. Listing of all System WiFi sites on international "hot spot" locator web pages; and

H. All customer support necessary to properly operate the System and provide the Service required by this Agreement in the Service Area.

V. CITY'S OBLIGATION

City will for the term of this Agreement:

A. Upon HarborLink's prior written request, authorize and permit HarborLink to enter upon or in Right of Way and/or Municipal Facilities within the Service Area and use Municipal Facilities where such Municipal Facilities are reasonably, technically and legally accessible and available, to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Equipment for the purposes of operating and providing Service; and

B. Subject to obtaining the permission of the owner(s) of the affected property, the City hereby authorizes and permits HarborLink to enter upon the Right of Way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such Equipment in or on poles or other structures owned by public utility companies or other property owners located within the Right of Way as may be permitted by the public utility company or property owner, as the case may be. Upon request, HarborLink shall furnish to the City documentation of such permission from the individual utility or property owner responsible. City agrees to cooperate with HarborLink, at no cost or expense to City, in obtaining, where necessary, the consents of third-party owners of property located in Right of Way; and

C. Provide the necessary electrical supply for HarborLink's approved wireless access points located within the Service Area in the Right of Way and/or on Municipal Facilities; and

D. Provide backhaul connectivity to the Internet for HarborLink's wireless access points located in the Right of Way and/or on Municipal Facilities within the Service Area with a bandwidth availability equivalent to T1 performance; and

VI. RELOCATION/REMOVAL OF EQUIPMENT

HarborLink understands and hereby acknowledges that City may require HarborLink to relocate one or more pieces of its Equipment, and HarborLink shall at City's discretion relocate such Equipment at HarborLink's sole cost and expense, whenever City reasonably determines that the relocation is needed for any of the following purposes: if required for the construction, completion, repair, relocation, or maintenance of a City project; because the Equipment is interfering with or adversely affecting proper operation of Municipal Facilities; or to protect or preserve the public health or safety. In any such case, City shall use its best efforts to afford HarborLink a reasonably equivalent alternate location. If HarborLink shall fail to relocate any Equipment as requested by the City within ten (10) days, City shall be entitled to relocate the Equipment at HarborLink's sole cost and expense, without further notice to HarborLink. To the extent the City has actual knowledge thereof, the City will attempt promptly to inform HarborLink of the displacement or removal of any Municipal Facility on which any Equipment is located.

In the event HarborLink desires to relocate any Equipment from one Municipal Facility to another, HarborLink shall so advise City. City will use its best efforts to accommodate HarborLink by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

Whenever the removal or relocation of Equipment is required or permitted under this Agreement, and such removal or relocation shall cause the Municipal Facility or Right of Way to be damaged, HarborLink, at its sole cost and expense, shall promptly repair and return the Municipal Facilities or Right of Way in which the Equipment are located to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If HarborLink does not repair the site as just described, then the City shall have the option, upon ten (10) days prior written notice to HarborLink, to perform or cause to be performed such reasonable and necessary work on behalf of HarborLink and to charge HarborLink for the proposed costs to be incurred or the actual costs incurred by the City. Upon the receipt of a demand for payment by the City, HarborLink shall promptly reimburse the City for such costs.

Upon termination or expiration of this Agreement, HarborLink shall remove, at its own expense, all portions of its System and all Equipment from all the Service Area and restore same to a condition reasonably satisfactory to the City within sixty (60) days from the date of termination. A reasonable extension of such deadline for removal and restoration may be granted to HarborLink by the City following the receipt of a written request by HarborLink for such extension, if said request is received by the City within thirty (30) days of the date of termination. If HarborLink does not remove Equipment as described, then the City shall have the option, upon ten (10) days prior written notice to HarborLink, to perform or cause to be performed such reasonable and necessary work on behalf of HarborLink for Equipment removal and to charge HarborLink for the proposed costs to be incurred or the actual costs incurred by the City. Upon the receipt of a demand for payment by the City, HarborLink shall promptly reimburse the City for such costs. The removal and restoration requirements of this Article shall survive termination and/or expiration of this Agreement.

VII. RIGHTS IN MATERIALS

HarborLink shall maintain ownership to all Equipment and the System, unless HarborLink fails to remove the Equipment as required in Section VI above. In that event, all Equipment remaining or residing in the streets and green areas of the City (the Rights of Way) and upon Municipal Facilities shall immediately become the property of the City.

VIII. INSURANCE AND INDEMNIFICATION

HarborLink agrees to defend, indemnify, protect and hold harmless the City, its elected officials, officers, employees, agents, and volunteers from and against any liability for all actions, claims, losses, damages, costs and/or expenses (including reasonable attorney's fees) to the extent that such actions, claims, losses, damages, costs and/or expenses arise out or are in any way caused by the performance or non-performance of this Agreement, either directly or indirectly, irrespective of whether such actions, claims, losses, damages, costs and/or expenses are caused by the acts, omissions or conduct of HarborLink or its employees, agents and representatives. Such indemnity shall specifically include, but in no way be limited to, any violation or alleged violation of an intellectual property right of the City or any third party, or claims made regarding the substance or control of data, information or content that is distributed over the System.

During the term of this Agreement and the period of any performance hereunder, HarborLink shall maintain, at its sole cost, with an insurance company authorized to do business in the State of Ohio and having at least an "A" rating from A.M. Best (or its equivalent successor), the following levels of insurance written on an occurrence basis:

A. Professional Liability Insurance, having the minimum annual aggregate of one million dollars (US $1,000,000.00) each occurrence; and,

B. Comprehensive General Liability Insurance, to cover liability, bodily injury, and property damage, having the minimum of one million dollars (US $1,000,000.00) each occurrence and an annual aggregate of three million dollars (US $3,000,000.00).

HarborLink shall also maintain Workers' Compensation Insurance in such amounts as prescribed by law for each of its employees involved in the performance of work required pursuant to this Agreement, and shall require all contractors, subcontractors and other engaged by HarborLink to perform services hereunder to maintain same.

All policies of insurance required herein, excluding Workers' Compensation Insurance, shall name the City, its elected officials, officers, agents, employees, and volunteers as additional insured(s) and shall contain the requirement that City be notified thirty (30) days in advance of any termination or diminution of coverage.

Upon execution of this Agreement, HarborLink shall furnish the City with a copy of such certificate(s) of insurance demonstrating compliance with this Article that are satisfactory to the City's Director of Law, and at the City's request, HarborLink shall permit the inspection of a complete copy of the policy or policies of insurance. It is agreed that all premiums and costs of the insurance required hereunder is not reimbursable or otherwise chargeable to the City. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

If applicable, HarborLink shall maintain any additional insurance that may be required by the Codified Ordinances of the City of Grove City.

IX. TERMINATION

In addition to all other remedies available to the Parties, this Agreement shall be subject to termination should any one or more of the following events occur or for the following reasons:

A. Unilaterally, by either party without cause, with thirty (30) days prior written notice to the other party;

B. Immediately, if the City should find for any reason that there has been promotional and advertising material distributed over the System that the City believes to be unacceptable or problematic;

C. If HarborLink 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 HarborLink and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for HarborLink's assets is appointed by a court of competent jurisdiction; or if HarborLink shall be divested of its rights, powers and privileges under this Agreement by other operation of law;

D. If HarborLink shall default in the performance of any material covenant required to be performed by it herein, and the failure of HarborLink to remedy such default, or to take prompt action to remedy such default, within a period of fifteen (15) 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 fifteen (15) days, then the City shall have the right to terminate this Agreement if HarborLink shall have failed to commence the remedying of such default within said fifteen (15) days following such written demand, or having so commenced, shall fail thereafter to complete such remedy within thirty (30) days.

E. Violations by HarborLink, its agents or employees, of applicable Laws, or revocations of permits or licenses required in the performance of this Agreement, if the same shall not be corrected or action taken to correct, within fifteen (15) days after HarborLink's receipt of written notice, which shall state in detail the violation.

X. CONFIDENTIAL INFORMATION

The Parties agree, that unless otherwise required by Law, any information concerning the other's price quotes, preliminary concepts, marketing proposals, branding strategies, marks, creative designs and concepts technical data, web designs, trade secrets and know-how, research, product plans, products, customer technical requirements, software, programming techniques, algorithms, services, suppliers, supplier lists, customers, employee lists, customer lists, markets, developments, inventions, processes, technology, designs, drawings, engineering, apparatus, techniques, hardware configuration, information, marketing, forecasts, business strategy, finances or other business information disclosed by the other party as confidential ("Confidential Information") shall not without the disclosing party's authorization be disclosed to any other

party or used by the receiving party for its own benefit except as contemplated by this Agreement. The Parties shall protect the confidential information of the other in the same manner that it protects its own confidential information of a similar nature.

XI. GENERAL PROVISIONS

A. Amendment or Modification: The Parties may amend or modify this Agreement, at any time, provided that such amendment or modification makes specific reference to this Agreement, is executed in writing with a full knowledge and understanding of all facts available and is properly executed by a duly authorized representative of each Party.

B. Entire Agreement/Integration: This Agreement represents the entire Agreement between the Parties. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, or contracts, whether oral or written, relating to the subject matter of this Agreement.

C. Severability: The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void, unenforceable, invalid, or illegal provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if the Agreement did not contain this particular portion or provision.

D. Waiver: No waiver by either party of any breach of any provision of this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such breach or as a waiver of any breach of any other provision of this Agreement. The failure of either party at any time or times to require performance of any provision of this Agreement shall in no manner affect such party's right to enforce the same at a later time.

E. Governing Law/Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. All disputes between the Parties shall exclusively attorn to the jurisdiction of the courts of Franklin County, Ohio.

F. Relationship of the Parties: The City and HarborLink are separate, independent and non-affiliated entities. HarborLink shall perform under this Agreement as an independent entity and not as an agent, joint venturer or employee of the City. Accordingly, HarborLink's employees and any persons retained or hired by HarborLink to perform any of the services described herein are also not City employees and not entitled to, nor make a claim for, any of the emoluments of employment with the City of Grove City. Further, HarborLink shall be responsible to withhold and pay, or cause such agents, contractors and sub-contractors to withhold and pay, all applicable local, state and federal taxes.

G. Meetings and Evaluation: HarborLink shall meet with the City's designees at such times designated by the City to review and discuss performance of this Agreement. HarborLink shall allow the City to conduct on-site inspections, tests, monitoring and shall cooperate with the City in all respects concerning the review and monitoring of HarborLink's performance pursuant to this Agreement.

H. Notices: Any written notice or other communication required or permitted by this Agreement shall be made in writing and shall be delivered personally, sent by express delivery, certified mail or first class U.S. mail, postage pre-paid, to the address specified herein. Such written communication or notice shall be addressed to:

HarborLink: HarborLink Network, LLC
3131 S. Dixie Drive
Dayton, Ohio 45439
Attention: Mr. Richard F. Tangeman

City: City of Grove City, Ohio
Cheryl Grossman, Mayor
City Hall
4035 Broadway
Grove City, Ohio 43123

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the City and HarborLink.

I. Emergency Contact: The Parties each shall each appoint an emergency contact representative who will be available on a 24/7 basis for emergency and crisis management associated with the Service or System. Each Party shall provide its emergency contact information to the other at the time of execution of this Agreement. The emergency contact information provided shall include, at a minimum, a land line telephone contact number, a facsimile (fax) telephone contact number, a wireless telephone contact number, an e-mail contact number, and if available a pager contact number. Each Party shall update emergency contact information with the other should the then currently listed emergency contact representative change or be unavailable.

J. Assignment: HarborLink shall not assign any rights or duties under this Agreement without the prior written consent of the City. Unless otherwise stated in the City's written consent to an assignment, no assignment will release or discharge HarborLink from any obligation under this Agreement. Nothing contained in this section shall prevent HarborLink from employing independent consultants, associates, and subconsultants to assist in the performance of the work required under this Agreement.

K. Taxes: By execution hereof, the City represents that it is a tax-exempt entity. Upon HarborLink's prior written request, the City will furnish documentation on such tax-exempt status. HarborLink acknowledges and guarantees that any taxes that are required by any local, state or federal taxing authority to be paid on the Service or Equipment provided or used by HarborLink under this Agreement, or HarborLink's use of the City's property (either real or personal) or Right of Way, shall be the sole responsibility of HarborLink and shall be satisfied in their entirety in a timely manner.

L. Force Majeure: Neither party shall be liable for any delays or failures in performance due to circumstances beyond its control which could not be avoided by the exercise of due care. A party will not be deemed to be in default or in breach of this Agreement if the party is prevented from performing any of the obligations hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of the public enemy, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which are not within its control.

M. Titles/Headings: Titles and headings to paragraphs, sections, exhibits and appendices are used merely for convenience and shall not be taken as an interpretation of the contents of those passages or as an attempt to enlarge, limit or define terms covered by this Agreement.

N. Laws: HarborLink agrees, without limitation, to comply, and to cause its agents, employees and subcontractors to comply, with all applicable requirements of each and every Law pertaining to HarborLink's activities in connection with this Agreement.

O. Promotional Activities: HarborLink and the City shall work together during the term of this Agreement to publicize and make public disclosure of the details of the Service and the availability of the Services to Users. Any such disclosure shall be jointly approved by the Parties and be of a nature and format that is mutually beneficial to both. Additionally, HarborLink acknowledges and hereby agrees, due to the unique nature of the City's needs in regards to any public disclosure and/or announcement of terms of this Agreement or the details or content of the Service to be provided, that the City has the right to unilaterally cancel or withdraw any promotional material or public disclosure/marketing material of either Party regarding the details of the Service if the City finds for any reason to be unacceptable or problematic.

P. Waiver of Claims. HarborLink waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Service as a result of any event or occurrence.

Q. Nonexclusive Agreement. HarborLink understands that this Agreement does not provide HarborLink with exclusive use of the Municipal Right of Way or any Municipal Facility and that City shall have the right to permit other providers of communications services to install equipment or devices in the Municipal Right of Way and on Municipal Facilities.

R. Equal Opportunity/Affirmative Action. HarborLink shall not discriminate against any employee or applicant for employment because of race, color, religion, sex ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off determination, rates of pay, or other forms of compensation, or selection for training, including apprenticeship. It is expressly agreed and understood that Section _____ of the Codified Ordinances of the City of Grove City constitutes a material condition of the Agreement as fully as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to immediately terminate this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the City and HarborLink, each by a duly authorized representative, have executed this Agreement as of the day and date first set forth above.

WITNESSED BY:

_____

HARBORLINK NETWORK, LLC

By: _____
Richard F. Tangeman as
President of HarborLink Network, LLC

WITNESSED BY:

_____

CITY OF GROVE CITY, OHIO

_____
Cheryl Grossman, Mayor

APPROVED AS TO FORM:

_____
Thomas R. Clark, Director of Law

APPROVED BY THE GROVE CITY CITY COUNCIL:

_____, 2005

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