

February 28, 2013

Writer's Direct Number: 614 462-2339
Direct Fax: 614 222-3430
Internet: Greg.Dunn@icemiller.com

Delivered Electronically

grcavin@columbus.gov

Mr. Gary Cavin
Director and CIO
City of Columbus
1111 East Broad Street
Columbus, OH 43215

Dear Director Cavin:

Per our ongoing conversations, this letter of engagement is a proposal for services Ice Miller Whiteboard, LLC, an Ohio limited liability company (Whiteboard) can provide to the City of Columbus (Columbus or the City) to assist in implementing the broadband and fiber-optic plan for the City.

This letter outlines our objectives and the scope of the engagement. Also included is our proposed fee arrangement and other related matters. We will of course be willing to discuss any modifications to this proposal you may wish.

1. Proposed Scope of Engagement

At the direction of the designated City Officials, assist them and their staffs in the creation of a Construction and Management Agreement with BlueMile (Agreement) for the purpose of managing and connecting the City of Columbus' fiber optic assets.

Whiteboard in performing this task will consider best practices utilized in the State of Ohio by other communities taking into account the unique characteristics of the City of Columbus' fiber system and the needs of the City.

The creation of the Agreement will act as a foundation for the operation of a City-owned network and will assist the City in the ultimate creation of public private partnerships utilizing NextGen.

2. Payment and Engagement Terms

Provided that there is no change in the current direction of the Project, Ice Miller will be able to finish the Agreement (subject to review by the City Attorney) for a not to exceed amount of \$20,000.00. This engagement shall begin upon issuance of the Purchase Order and conclude two months later. Whiteboard will invoice Columbus \$250.00 per hour for services rendered. Our invoice shall be created monthly.

The General Terms of Service outlined in Addendum A are incorporated herein and made a part of this letter of engagement.

3. Client Responsibilities

Columbus shall provide Whiteboard with all information required by it to perform hereunder and cause its representatives and employees to cooperate and be reasonably available to Whiteboard. Whiteboard may rely upon the accuracy and completeness of all documentation and information provided by Columbus.

4. Warranties; Remedies

Except as expressly provided in this letter, WHITEBOARD DOES NOT MAKE AND EXPRESSLY DISCLAIMS, AND COLUMBUS WAIVES, ANY AND ALL OTHER WARRANTIES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDLESS WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ALLEGEDLY ARISING FROM ANY USAGE OF ANY TRADE OR ANY COURSE OF DEALING. COLUMBUS ACKNOWLEDGES AND AGREES THAT WHITEBOARD SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, including, without limitation, damages for loss of profits, savings or loss of anticipated benefits, even if Whiteboard was advised, had other reason to know, or in fact knew of the possibility of such damages. Columbus' exclusive remedy for a breach by Whiteboard hereunder or otherwise relating to the services or deliverables shall be the replacement or correction of such services or the return of an appropriate portion of the cost of the applicable services/products, as reasonably determined by Whiteboard.

5. Scope of Representation.

The scope of this engagement does not include performance of legal services of any kind, including without limitation, research or any form of legal representation in litigation or otherwise, whether in a courtroom, a formal administrative hearing or other setting. It is understood and agreed that City is neither relying upon Whiteboard for business, investment or accounting advice or decisions, nor to investigate the character or credit of any persons with whom City is or may be dealing with in connection with this matter, nor is City hiring Whiteboard as its law firm. Whiteboard is not a law firm and does not provide legal services or advice.

6. Miscellaneous

This letter contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this letter. If any provision of this letter will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this letter is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited. This letter may be modified or amended in a writing signed by all parties. This letter shall be construed in accordance with the laws of the State of Ohio. The parties hereby consent to the exclusive jurisdiction of the courts of the State of Ohio in Franklin County, and the federal courts located therein and waive any contention that any such court is an improper venue for enforcement or interpretation of this letter.

If you have any questions regarding this engagement, do not hesitate to call. Otherwise, please have the appropriate signatories acknowledge the receipt and acceptance of this engagement letter by signing and dating the enclosed copy of this letter on the spaces provided below and returning a copy to me. We look forward to working with Columbus and assisting you in developing your Agreement.

Ice Miller Whiteboard, LLC,
an Ohio limited liability company

Gregory J. Dunn, Principal

Date_____

The City of Columbus, Ohio

Gary Cavin
Chief Information Officer

Date_____

ADDENDUM A
ICE MILLER WHITEBOARD, LLC
GENERAL TERMS OF SERVICE

These General Terms of Service (“GTS”) are annexed to, incorporated in and made a part of the Engagement Letter between Whiteboard and the Customer identified in the Engagement Letter.

1. **Terms.** The terms defined in the Agreement shall have the same meaning in the GTS unless specified otherwise.
2. **Customer Responsibilities.** Customer agrees to pay our statements for services and expenses as provided herein and in these GTS. In addition, Customer agrees to be candid and cooperative with Whiteboard and will keep Whiteboard informed with complete and accurate factual information, documents and other communications relevant to the subject matter of our engagement or otherwise reasonably requested by Whiteboard. Because it is important that we be able to contact Customer at all times in order to consult with Customer regarding this engagement, Customer will inform Whiteboard, in writing, of any changes in the name, address, telephone number, contact person, email address, state of incorporation or other relevant changes regarding Customer or Customer’s business. Customer’s failure to communicate and cooperate with Whiteboard in these respects could have an adverse effect on our ability to effectively and efficiently deliver services within the scope of work outlined in the Agreement and may require that we suspend the delivery of further services in respect of, or entirely withdraw from, this engagement.
3. **Payment Terms.** Payment is due upon receipt of each statement. In the event Customer disagrees with, disputes or questions the amount stated to be due under any statement, Customer agrees to communicate such disagreement, dispute or question to Whiteboard in writing within 30 days following your receipt of such statement. In the absence of our receipt of such written communication regarding the amount stated to be due under any statement within such time, either of Whiteboard shall be entitled to assume that Customer has agreed to the amount of such statement and that Customer will pay the same amount within 30 days following your receipt of such statement. Any statement which is not paid within 30 days of its date will be considered past due.
4. **Business Advice.** It is understood and agreed that Customer is not relying upon Whiteboard for business, investment or accounting advice or decisions, or to investigate the character or credit of any persons with whom Customer is or may be dealing.
5. **Not Legal Services.** The consulting services contemplated by the Agreement do not include performance of legal research, legal analysis or advice, or any other services which may involve the practice of law. Whiteboard is not a law firm and does not practice law or provide legal services or legal advice. Accordingly, Customer is not hiring Whiteboard as its law firm or any of Whiteboard’s representatives as legal counsel.
6. **Conflicts of Interest.** The parent company of Whiteboard,

the law firm of Ice Miller LLP, represents or may in the future represent a number of clients and customers that may have interests in conflict with Customer. Customer acknowledges that such adverse representations do not breach any obligation of Whiteboard or its parent, Ice Miller LLP, to Customer.

7. **No Attorney-Client Privilege.** Customer is aware that Whiteboard is not a law firm and its representatives are not practicing law. Therefore, Customer acknowledges and agrees communications with Whiteboard and its representatives will not be subject to the attorney-client privilege.

8. **Outcome or Success.** Customer agrees that Whiteboard cannot and does not guarantee the outcome or success of any service contracted for by Customer under the Agreement or this GTS.

9. **Ohio Law.** The parties hereby consent to the exclusive jurisdiction of the courts of the State of Ohio in Franklin County, and the federal courts located therein and waive any contention that any such court is an improper venue for enforcement or interpretation of the Agreement and this GTS.

10. **Entire Agreement.** The Agreement together with the GTS, any exhibits and documents referred to herein or therein constitute the complete understanding of Customer and Whiteboard and merge and supersede any and all other discussions, agreements and understandings either oral or written between Whiteboard and Customer with respect to the subject matter hereof. If any provision of the Agreement or this GTS is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of the Agreement or this GTS is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited. The Agreement or this GTS may be modified or amended only in a writing signed by Customer and an authorized officer of Whiteboard.

11. **Miscellaneous.** Customer agrees to comply with all federal, state and local laws, rules and regulations applicable directly or indirectly to the matters covered by the Agreement. The Agreement and this GTS shall be governed by the laws of the State of Ohio. Customer agrees to indemnify and hold harmless Whiteboard against any and all losses, costs, expenses, claims or liabilities arising out of the Agreement and the GTS which do not result from the negligence of or a breach of the terms of the Agreement or this GTS by Whiteboard. This engagement letter may not be assigned by Customer without the prior written consent of Whiteboard.