ORDINANCE NO. 2010-19
INTRODUCED BY: Mayor Rinker and Council as a Whole

**AN EMERGENCY ORDINANCE
AUTHORIZING AND DIRECTING THE MAYOR
TO ENTER INTO A SUBSCRIBER SERVICE AGREEMENT
WITH QUALITY ELECTRODYNAMICS, LLC.**

WHEREAS, the Village has found and determined it to be in the best interest of its residents to promote economic development in the Village; and

WHEREAS, in furtherance of promoting economic development in the Village and in coordination with Cuyahoga County, Beta Drive has been designated an Innovation Zone; and

WHEREAS, Mayfield Village in promoting the Innovation Zone for economic development has enhanced the development opportunities on Beta Drive thru the installation, operation, and maintenance of the Mayfield Village Fiber Network ("MVFN") along Beta Drive, Wilson Mills, and SOM Center Roads; and

WHEREAS, Mayfield Village facilitated the installation, operation, and maintenance of the MVFN, in coordination with OneCommunity; and

WHEREAS, ultimate end users of the MVFN, including Mayfield Village, have access to high speed internet services which are unmatched in the marketplace today; and

WHEREAS, pursuant to Ordinance 2008-47, the Village entered into a Fiber Facilities Construction and Provision of Services Agreement with OneCommunity to install, operate and maintain the fiber ring and pursuant to Ordinance 2009-43, the Village entered into a Master Services Agreement and Related Subscriber Service Agreement with OneCommunity to provide services over the MVFN; and

WHEREAS, based upon the above, Mayfield Village wishes to enter into a Subscriber Service Agreement with Quality Electrodynamics, LLC to provide Quality Electrodynamics, LLC with connectivity to the MVFN.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO, THAT:

SECTION 1. That the Mayor and President of Council are hereby and herein authorized and directed to enter into a Subscriber Service Agreement with Quality Electrodynamics, LLC in a form substantially similar to that attached hereto and incorporated herein by reference as Exhibit "A".

SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council;

and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the health, safety and welfare of the residents of Mayfield Village, Ohio. It shall, therefore, take effect immediately upon the passage by the affirmative vote of not less than five (5) members elected to Council and approval by the Mayor or otherwise at the earliest time allowed by law.

WILLIAM BUCKHOLTZ
Council President

First Reading: May 17, 2010

Second Reading: Suspended 2010

Third Reading: Suspended 2010

PASSED: May 17, 2010

BRUCE G. RINKER, Mayor

APPROVED AS TO FORM:

JOSEPH W. DIEMERT, JR., DIRECTOR OF LAW

ATTEST: Mary E. Betsa
MARY E. BETSA, Clerk of Council

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SUBSCRIBER SERVICE AGREEMENT

This Service Agreement ("Agreement"), effective April 1, 2010, for computer network communication services is entered into by and between Mayfield Village, Ohio and **QUALITY ELECTRODYNAMICS, LLC** ("Subscriber")." For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mayfield Village and Subscriber agree as follows:

1. **Definitions.** As used in this Agreement, the following capitalized terms have the meanings given to them below:

   1.1. "Acceptable Use Policy" means the policies of each Internet provider for the use of the Internet and other connected networks. Mayfield Village will post these policies at http://www.OneCommunity.org, and may update these from time to time. Subscriber will ensure that Subscriber's use of each connected network adheres to the Acceptable Use Policy for that network.

   1.2. "Addendum or Addenda" means any and all addenda executed by both parties attached to, and made a part of, this Agreement which sets out terms and conditions pursuant to which Services will be purchased by Subscriber from Mayfield Village.

   1.3. "Demarcation Point" means the connection point on the Subscriber's premises where the Subscriber's network is connected to the Mayfield Village Network.

   1.4. "Effective Date" means the date upon which services are initiated.

   1.5. "Equipment" means the Mayfield Village or OneCommunity equipment installed on the Subscriber's site as updated from time to time which is required for an operational connection to the Mayfield Village Network.

   1.6. "Fiscal Year" means a one-year period of time beginning on the start of January 1st and extending through the end of that same calendar year until December 31st.

   1.7. "Force Majeure" means a condition beyond the reasonable control of a party that delays or prevents performance of the Agreement. Force Majeure includes, without limitation: fire, flood, lightening, explosion, war, act of terrorism, strike, riots, embargo, labor dispute, government requirement, civil or military authority, act of God or nature, acts or failure to act of any governmental authority.

   1.8. "Network Outage" means an unplanned period of time during which (i) Subscriber is unable to connect to all other destinations from Subscriber's location at the guaranteed minimum bandwidth as defined in Addendum B, due to a problem or failure of the Mayfield Village or OneCommunity Network, and (ii) Subscriber's sustained packet loss on the Mayfield Village or OneCommunity Network is greater than seven percent (7%).

   1.9. "Mayfield Village or OneCommunity Network" means all equipment and connections controlled and operated by Mayfield Village or OneCommunity. The Mayfield Village or OneCommunity Network includes the OneCommunity-supplied optronics and electronics to the Subscriber and the Subscriber connection between the Subscriber site and the Mayfield Village or OneCommunity Network up to the relevant Demarcation Point or to any OneCommunity equipment that may be beyond the Demarcation Point. This Network has been established by agreement between Mayfield Village and OneCommunity. The actual services to be provided under this Agreement are provided to Mayfield Village pursuant to a separate Master Services Agreement it entered into with OneCommunity on October 15, 2009 and a separate but mirror Subscriber Service Agreement Mayfield Village entered into with OneCommunity on that same date.

   1.10. "Service Threatening Disruption" means loss of redundancy or any degradation of service on the Mayfield Village or OneCommunity Network or any OneCommunity equipment that (a) is caused in whole or in part by Subscriber or by the interconnection of Subscriber's network or equipment with any OneCommunity equipment or the OneCommunity Network, and (b) in the sole discretion of OneCommunity poses an immediate threat to the continued operation of any affected OneCommunity equipment or any other component part of the Mayfield Village or OneCommunity Network.

Exhibit A

1.11. "Services" means services provided under the Master Services Agreement and additional Service Agreements as executed or amended from time to time.

1.12. "Term" means the term of the Agreement as set out in Section 6 of the Agreement.

2. Rights and Responsibilities

Both parties acknowledge and agree that this Subscriber Service Agreement is governed by the Master Services Agreement dated October 15, 2009 between OneCommunity and Mayfield Village, as it may be amended from time to time.

2.1 OneCommunity under agreement with Mayfield Village:

(a) OneCommunity will manage and monitor all equipment that is part of the Mayfield Village and OneCommunity Network connection up to the point of demarcation.

(b) OneCommunity shall be responsible for insuring the equipment that it owns as part of the OneCommunity Network.

(c) Decisions regarding the technical requirements, implementation process, operational or engineering plans for the OneCommunity Network will be made by OneCommunity at its sole discretion after due consideration of Subscriber input. If changes to Equipment are required, OneCommunity will schedule and make changes in a mutually acceptable maintenance window.

(d) All services provided by OneCommunity hereunder shall be consistent with industry standards for computer network services, shall be rendered in a manner consistent with that level of care and skill ordinarily exercised by the industry, and in compliance with all federal, state, and local laws and regulations.

(e) OneCommunity shall provide services as described in Addendum A.

(f) Additional OneCommunity rights and responsibilities may be identified in any executed Addenda to this Agreement.

2.2. Subscriber.

(a) Subscriber will provide all routers, switches, or other equipment necessary to support its internal network, which conform to the minimum technical requirements as specified by OneCommunity. Subscriber will designate one of Subscriber's routers/switches from which Subscriber fiber will connect to the OneCommunity Network.

(b) Subscriber is responsible for installation, maintenance, and repair of customer-premises fiber between the Demarcation Point for the connection and the Subscriber's switch or router.

(c) Subscriber, solely at its own discretion and expense but consistent with OneCommunity's technical requirements, may at any time elect to provide diverse connections to OneCommunity from its existing sites for added protection (redundancy) at no additional cost other than costs associated with any additional network infrastructure.

(d) Subscriber will assign an operational and technical contact person to coordinate with OneCommunity regarding services being provided under this Agreement..

(e) Subscriber may have a representative on appropriate committees developing operational or engineering plans for the OneCommunity Network.

(f) Subscriber is solely responsible for determining its rules and procedures relating to access and appropriate use of the OneCommunity Network connection.

(g) Subscriber is solely responsible for operation and maintenance of its network and its equipment on the Subscriber side of the Demarcation Point subject to the Fiber Facilities Construction and Provision of Services Agreement. OneCommunity is not responsible for maintaining the security of Subscriber's LAN or for implementing any security protocols or procedures.

(h) Subscriber will provide a secure location for the Demarcation Point and not permit unauthorized access. Subscriber will not adjust, repair or tamper with the Equipment or the OneCommunity Network. From time to time, Subscriber will allow OneCommunity access upon reasonable notice in accordance with institutional security policies and during normal business hours to Subscriber's premises as needed to upgrade the OneCommunity Equipment, if any, due to changes in engineering or networking protocols or for other good cause.

(i) Additional Subscriber rights and responsibilities may be identified in any Addenda to this Service Agreement.

2.3. Third Party.

(a) No person or entity not a party to this Agreement has or is intended to have any rights under this Agreement.

3. Unauthorized Access to Facilities or Use of Connections

3.1. Unauthorized Access. Mayfield Village is not responsible for unauthorized access to Subscriber's transmission facilities or Subscriber's premise equipment by any individual or entity, or for unauthorized access to, or alteration, theft, or destruction of Subscriber's data files, programs or other information through accident, wrongful means or any other cause unless such access and resultant alteration, theft, or destruction is caused solely from the negligence or willful misconduct of Mayfield Village or OneCommunity, its employees, or its agents.

3.2. Use of Connections. Neither party is entitled to use the connections owned or controlled by the other party to transport any data without the prior consent of the owning party.

4. Fees, Expenses and Payment

4.1. Fees. Subject to the provisions of this Agreement, Subscriber will pay OneCommunity the fees and other amounts set forth in Addendum B, in accordance with the provisions of this Section 4 or such other applicable provisions as may be set forth in the Master Services Agreement.

4.2. Expenses. Except to the extent that expenses and costs are identified in an applicable Addendum and expressly required to be paid by Subscriber under that Addendum, the fees set forth in that Addendum will be deemed to be inclusive of all actual net expenses and costs and Subscriber will not be required to pay any amounts in excess of those fees.

4.3. Invoicing and Payment. OneCommunity will invoice Subscriber in accordance with the schedule set forth in attached Addenda. Unless otherwise provided in the applicable Service Agreement, Customer will pay each invoice within thirty (30) days after its receipt by Subscriber. All payments hereunder will be in U.S. dollars by electronic wire transfer to the bank account designated by OneCommunity from time to time or by company check. Amounts not paid when due will bear a finance charge at a rate equal to the lesser of one and one half percent (1 1/2%) per month or the highest rate permitted by law, calculated from the first day a payment is past due. If OneCommunity at any time has reasonable concern about security or timeliness of payments, it may suspend the Services and/or the rights granted hereunder until receipt of payment or establishment of a letter of credit or other arrangement securing payment. If any amount is not paid when due hereunder, OneCommunity will be entitled to recover from Subscriber the costs and expenses incurred in connection with collecting the same (including without limitation costs of investigation and attorneys fees).

4.4. Taxes. Unless otherwise set forth in an applicable Service Agreement, fees do not include sales, use, value added or other excise tax. Subscribers who provide a valid State of Ohio sales tax exemption certificate shall not be charged sales tax. Subscriber will pay or, if paid by OneCommunity, reimburse OneCommunity, for all taxes based on this Agreement or fees payable hereunder (but not any taxes based upon OneCommunity's gross revenues or net income), together with any interest on such taxes if not due to OneCommunity's delay.

5. **Service Disruption or Suspension**

5.1. Network Disruption. If the interconnection of Subscriber equipment results in any observable service disruption (including, without limitation, a measurable reduction of service levels, equipment or network malfunctions or failures, or excessive event alarms) and the disruption is caused by or arises from the Subscriber equipment or acts or omissions of the Subscriber, then the following apply:

(a) **If the disruption is not a Service Threatening Disruption,** then OneCommunity will notify Subscriber promptly of such disruption and Subscriber will have seventy-two (72) hours (or such longer period as may be mutually agreed to by OneCommunity and Subscriber) to eliminate the source of the disruption. If Subscriber is unable to eliminate the source of disruption within the required time period, then OneCommunity may apply any operating procedures then in effect by OneCommunity to eliminate disruptions of similar nature and Subscriber will (a) cooperate with such efforts, and (b) be responsible for all reasonable out-of-pocket expenses as communicated to Subscriber in a timely manner by OneCommunity, caused by Subscriber's negligence or willful misconduct and actually incurred by OneCommunity in eliminating the disruption.

(b) **If the disruption is a Service Threatening Disruption,** then OneCommunity may at any time, without prior notice to Subscriber, take immediate action to eliminate such Service Threatening Disruption. OneCommunity shall notify Subscriber immediately after action is taken, and upon notice, OneCommunity is entitled to immediate access to Subscriber's premises. Subscriber will provide any assistance reasonably requested by OneCommunity. In taking such action, OneCommunity will use its reasonable best efforts to minimize any disruption to Subscriber's operations and will use its reasonable best efforts to restore service to Subscriber promptly. Subscriber will be responsible for all reasonable out-of-pocket expenses actually incurred by OneCommunity to resolve any Service Threatening Disruption.

5.2. Suspension of Service. OneCommunity may temporarily suspend Subscriber's connection or related communication services, if, and so long as is necessary, (a) to prevent network disruptions or interference, violations of Acceptable Use Policy, or fraudulent or illegal activity, whether or not knowingly caused or permitted by Subscriber, (b) with notice and defined cure period to perform necessary maintenance or service, whether by OneCommunity or any other entity maintaining any portion of the Mayfield Village or OneCommunity Network or related communication services, or (c) with notice and defined cure period for other reasonable reasons, including non-compliance with any Addendum to this Agreement or a failure to respond to security breaches or intrusions, whether or not directly relating to Subscriber's connection, or related communication services. Immediately after becoming aware that a planned disruption or suspension of service will occur, OneCommunity will notify Subscriber. In the event of circumstances relating to fraudulent or illegal activity, violations of Acceptable Use Policy, or security breaches or intrusions, OneCommunity shall make all good faith efforts to cooperate with Subscriber to avoid or minimize the level of disruptions or suspensions of service.

5.3. Service Credit. In the event of a Network Outage or disruption that is caused in whole or in part by the negligence or willful misconduct of Subscriber, Subscriber shall not be entitled to receive a credit. In all other cases, excepting maintenance or upgrade services scheduled with Subscriber and those pursuant to Section 9 "Force Majeure," Subscriber is entitled to receive a credit against the amount invoiced for Services provided during the month in which the Network Outage occurred. OneCommunity will actively monitor these outages and automatically credit the Subscriber's account accordingly. Credits are available on a per-outage basis, subject to a maximum credit of 50% of any recurring Basic Service Fees paid to OneCommunity (prorated on a monthly basis) in any given calendar month. These service credits are the sole remedy available to Subscriber for service disruption or suspension of any kind whatsoever.

(a) Service Credit Schedule.

Instance of Network Outage	Credit Against the Appropriate Month's Service Charge
Less than 1 hour	0%
1 hour to 8 hours	5%
8 hours or more	10%

6. **Term**

6.1. The term of this Service Agreement is five (5) years, beginning on the Effective Date.

7. **Termination**

7.1. Termination Due to Non-Performance. If either party fails to perform under any provision of the Agreement except as provided in Section 7.2 (a), then the other party may serve written notice upon the non-performing party specifying the nature of the failure. If, within 60 days of the date notice is served, the non-conforming party has not cured the default or presented a plan acceptable to the other party to cure the default, then upon expiration of the 60-day period, the party giving notice may, at its option, terminate the Agreement. Any liquidated damages with respect to Services having minimum commitments will be set out in the applicable Addendum provided no such minimum commitments will be applicable in any situation in which OneCommunity is in material default for non-performance.

7.2. Termination by Mayfield Village.

(a) If Subscriber has not paid OneCommunity Fees when due and payable, or any fees payable to OneCommunity for additional services that have been performed or any other properly due amounts, and if such failure has continued for thirty (30) days after written notice of non-payment has been provided to Subscriber then Mayfield Village may terminate this Agreement immediately by written notice to Subscriber or suspend the Services.

(b) Mayfield Village may terminate or suspend the Services under this Agreement by providing 90-days written notice. Subscriber may terminate or suspend Services under this Agreement by providing 30-days written notice to Mayfield Village with no penalty beyond monthly charges up to date of termination or suspension. In addition, Subscriber may terminate Services as otherwise provided herein.

7.3. Other Termination Situations. Either party shall have the right to immediately terminate this Agreement, in whole or in part, upon written notice to the other if the other party:

(a) Ceases to do business as a going concern;

(b) Makes an assignment for the benefit of its creditors;

(c) Admits in writing its inability to pay its debts as they become due;

(d) Becomes insolvent, suspends or abandons its business;

(e) Authorizes, applies for, or consents to the appointment of a trustee or receiver of all or a substantial portion of its assets;

(f) Files a voluntary petition under any bankruptcy or insolvency law or files a voluntary petition under the reorganization provision of the laws of the United States; or

(g) A court assumes jurisdiction over the assets of that party.

(h) Is unable to fulfill its obligations under this Agreement due to Force Majeure as referred to in Section 9.1 lasting more than ten (10) days and, upon twenty-four (24) hours written notice from the other.

(i) Subscriber relocates to a new location where direct transfer of services is (I) not commercially viable at the same prices or (ii) not feasible for the Subscriber to continue as defined in this Agreement. This does not prevent OneCommunity and Subscriber from amending the current Agreement or entering into a new one that is acceptable to both parties.

(j) Mayfield Village may terminate or suspend the Services under this Agreement by providing 90 days written notice.

8. **Warranties and Limitation of Liability**

8.1. **WARRANTIES. MAYFIELD VILLAGE MAKES NO WARRANTIES OF ANY KIND, OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE OR PROVISION OF THE MAYFIELD VILLAGE OR ONECOMMUNITY NETWORK CONNECTION OR ANY ADDITIONAL SERVICES. MAYFIELD VILLAGE'S ENTIRE LIABILITY FOR ALL CLAIMS OF WHATEVER NATURE (INCLUDING CLAIMS BASED ON NEGLIGENCE) ARISING OUT OF THE PROVISION BY MAYFIELD VILLAGE OF FACILITIES, TRANSMISSION, DATA, SERVICES OR EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGE TO REAL OR PERSONAL PROPERTY, AND NOT CAUSED IN WHOLE OR PART BY SUBSCRIBER OR ANY THIRD PARTY, SHALL NOT EXCEED THE LIMITS SET FORTH IN SECTION 11, PROVIDED THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY FOR DEATH OR PERSONAL INJURY CAUSED BY ONECOMMUNITY, OR FOR ANY OTHER LIABILITY WHICH MAY NOT BY APPLICABLE LAW BE EXCLUDED OR LIMITED.**

8.2. **LIABILITY. NEITHER MAYFIELD VILLAGE NOR ITS NETWORK SERVICE SUPPLIERS SHALL BE LIABLE TO SUBSCRIBER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, RELIANCE OR OTHER FORM OF MONEY DAMAGES OTHER THAN AMOUNTS COVERED SOLELY BY ONE OR MORE OF THE INSURANCE POLICIES IDENTIFIED IN SECTION 11 OF THIS AGREEMENT. THE SUBSCRIBER SHALL NOT BE ENTITLED TO RECOVERY FOR LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST BUSINESS OPPORTUNITY OR DAMAGES FOR THE LOSS, DELAY, NON-DELIVERY OR MISS-DELIVERY OF DATA OR INFORMATION OR SERVICE INTERRUPTION OF ANY KIND, HOWEVER CAUSED, ARISING OUT OF OR IN CONNECTION WITH THE USE OF PROVISIONING OF THE ONECOMMUNITY NETWORK CONNECTION, OR RELATED COMMUNICATION SERVICES, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY UNLESS SUCH LOSS IS COVERED BY ONE OR MORE OF THE INSURANCE POLICIES IDENTIFIED IN SECTION 11 OF THIS AGREEMENT.**

8.3. **SPECIFIC EXCLUSIONS. IN NO CIRCUMSTANCES SHALL MAYFIELD VILLAGE, ITS SUBCONTRACTORS OR AGENTS BE LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE:**

(a) **THIRD PARTY CLAIMS AGAINST SUBSCRIBER FOR DAMAGES;**

(b) **LOSS OF OR DAMAGE TO SUBSCRIBER'S RECORDS OR DATA OR THOSE OF ANY THIRD PARTY;**

(c) **ANY DELAY, LOSS, DAMAGE OR SERVICE FAILURE ATTRIBUTABLE TO ANY SERVICE, PRODUCT OR ACTIONS OF ANY PERSON OTHER THAN US, OUR EMPLOYEES AND AGENTS, INCLUDING BUT NOT LIMITED TO DELAY, LOSS, DAMAGE OR SERVICE FAILURE ATTRIBUTABLE TO COMPUTER VIRUSES, WORMS, COMPUTER SABOTAGE, "DENIAL OF SERVICE" ATTACKS, DNS SPOOFING ATTACKS AND/OR OTHER HACKING ATTACKS OF A SIMILAR NATURE; OR**

(d) **INTEROPERABILITY OF SUBSCRIBER'S EQUIPMENT OR APPLICATIONS.**

8.4. Unauthorized Access. Except as otherwise provided in Section 3.1 of this Agreement, neither Mayfield Village nor its service suppliers shall be liable for unauthorized access to Subscriber's transmission facilities or premise equipment or for unauthorized access to or alterations, theft or destruction of Subscriber's data files, programs, procedures, or information through accident, fraudulent means or devices, or any other method. Subscriber understands that neither Mayfield Village nor its service suppliers are responsible for the content of the

transmissions that may pass through the Mayfield Village or OneCommunity Network connection, or related communication services. Neither Mayfield Village nor its service suppliers shall be liable for the accuracy or quality of information obtained or data transmitted through use of the OneCommunity Network connection, or related communication services.

8.5. Other Limitations of Liability. Other specific limitations of liability with respect to a service may be set out in applicable Addenda.

9. **Force Majeure**

9.1. Neither party is responsible for delays, interruptions or other failures to perform under this Agreement due to Force Majeure. Subscriber by reason of such cause shall not be relieved of its obligation to make any required payments that are due to OneCommunity or which may become due from Subscriber's continued use of Services.

10. **Compliance with Applicable Law and Other Obligations**

10.1. Subscriber shall comply with all laws and regulations applicable to its use of the Mayfield Village connection, or related communication services, including, without limitation, U.S. export laws concerning the transmission of technical data and other regulated materials by means of the Internet connection, or related communication services.

11. **Insurance**

11.1. Coverage and Limits. Mayfield Village will maintain the following minimum amounts of insurance written by one or more responsible, well-rated insurance companies licensed to do business in the State of Ohio:

(a) General Liability Insurance
- $1,000,000 annual aggregate – products/completed operations
- $2,000,000 annual aggregate other than products and completed operations

(b) Bodily Injury and Property Damage Insurance
- $1,000,000 Bodily Injury and Property Damage Combined Single Limit
- $1,000,000 Personal Injury and Advertising Liability
- $500,000 Fire Legal – Building only
- $15,000 Medical Payments – per person

(c) Umbrella Liability
- $5,000,000 Per Occurrence
- $5,000,000 Aggregate

(d) Automobile Liability Insurance
- $1,000,000 Bodily Injury and Property Damage Combined Single Limit

11.2. Certificate of Insurance. Mayfield Village shall deliver to Subscriber, if so requested, a certificate of insurance for every Fiscal Year that Subscriber receives services of any kind from Mayfield Village.

12. **Notice**

12.1. Notices to Subscriber. Mayfield Village may provide all notices and other communications electronically to Subscriber at:

Name and Title: John Schellenberg, General Manager of Operations

E-mail Address: john.schellenberg@qualedyn.com

Mayfield Village shall provide all notices required in writing as detailed in this Agreement to Subscriber at:

Company Name: Quality Electrodynamcls
Attention: John Schellenberg
Street Address: 700 Beta Drive, Suite 100
City, State, ZIP: Mayfield Village, OH 44143

Non-electronic notices and communications shall be considered effective when received by Subscriber via registered or certified mail, or by any national commercial courier service providing a record of receipt to OneCommunity.

12.2. Notices to Mayfield Village. Subscriber may provide all notices and other communications electronically to OneCommunity at:

Name and Title: Charles Berry, Chief Operating Officer

E-mail Address: charles.berry@onecommunity.org

Subscriber shall provide all notices required in writing as detailed in this Agreement to OneCommunity at:

Company Name: OneCommunity
Attention: Charles Berry
Street Address: 800 West St. Clair Ave, 2nd Floor
City, State, ZIP: Cleveland, OH 44113

Non-electronic notices and communications shall be considered effective when received by OneCommunity via registered or certified mail, or by any national commercial courier service providing a record of receipt to Subscriber.

13. **Assignment, Severability, Survivability, Successors and Assigns**

13.1. Assignment. Neither party may assign any rights or obligations under this Agreement without the other party's prior written consent, except that either party may assign this Agreement, after thirty (30) days prior written notice, to a parent company or controlled affiliate (but only so long as it remains so controlled). Mayfield Village may subcontract any service or obligation to be performed for Subscriber, but Mayfield Village will be responsible under the terms of this Agreement.

13.2. Severability. If any provision of this Agreement is illegal or unenforceable, the Agreement's unaffected provisions will remain in effect.

13.3. Survivability. The terms and conditions of this Agreement regarding confidential information, indemnification, warranties, payment and all others that by their context are intended to survive the expiration date of this Agreement will survive and continue in effect.

13.4. Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties and their respective successors and permitted assigns.

14. **Conflicts**

14.1. If documents referred to in this Agreement conflict with one another (including conflicting contract expiration dates), they will prevail in the following order:

(a) Applicable Addendum or Attachment
(b) Subscriber Service Agreement
(c) Master Services Agreement

15. **Addenda and Attachments**

15.1. This Agreement includes such Addenda and Attachments as the parties shall from time to time agree to include within its terms. Additional Addenda and Attachments may be executed by authorized representatives of the parties and will refer to this Agreement. Additional Addenda and Attachments will be considered as part of this Agreement only if signed by both parties.

16. **Entire Agreement**

16.1. The Master Services Agreement, this Service Agreement and any Attachments, Addenda and referenced herein constitute the entire Agreement between the parties and supersede all prior or contemporaneous negotiations or Agreements, whether oral or written, relating to their subject matter.

ACCEPTED AND AGREED AS OF THE EFFECTIVE DATE:

Quality Electrodynamics, LLC

By: _____
Authorized Signature

_____
Name (Print or Type)

_____
Title

_____
Date

Mayfield Village, Ohio

By: _____
Bruce G. Rinker, Mayor

_____
Date

By: _____
William Buckholtz, President of Council

_____
Date

APPROVED AS TO LEGAL FORM:

By: _____
Joseph W. Diemert, Jr., Law Director

_____
Date

ADDENDUM A

1. **Basic Services.** The basic services provided by OneCommunity to Subscriber are:

1.1. Design and Installation. Assistance in the design, selection and installation of the connection between the Customer network and the OneCommunity Network.

1.2. Equipment Selection and Acquisition. Purchase, installation, maintenance and operation of OneCommunity Network equipment at the Customer site, if required.

1.3. Minimum Guaranteed Bandwidth. A 1.5 Mbps to 10 Gbps connection between the Subscriber site and the OneCommunity Network and the Internet. The interface between this connection and the Subscriber's router consists of a single-mode or multi-mode fiber or copper 100/1000/10000 Mbps Ethernet connection, as agreed between the Parties in Addendum B. The connection value contracted for in Addendum B represents the Minimum Guaranteed Bandwidth to be provided by OneCommunity. Unless otherwise provided for in Addendum B, Subscriber provides the 1 Gbps to 10 Gbps interface on the Subscriber's switch or router.

1.4. IP Transport between each Subscriber site and:

(a) Other Northeast Ohio Subscriber sites connected to the OneCommunity Network;

(b) Other OneCommunity Subscriber sites and services;

(c) The Internet.

- A bandwidth capped service for Internet access where OneCommunity may cap the bandwidth available at each Subscriber site to no less than the maximum of the selected Internet Usage Level from Addendum B. Subscriber may request lower bandwidth caps.

- OneCommunity calculates Internet Usage for each Customer by separately measuring input and output bandwidth usage at 5 minute intervals. The Usage for a Customer is the value of the highest remaining sample after throwing out the top 5% of each category. The Customer's total Usage is the sum of the Usage for all of Customer's sites.

2. **Network Operations Support**

2.1. Network Operations Center (NOC). OneCommunity will provide network operations support on a 7x24x365 basis (seven days a week, 24 hours a day, 365 days per year). Customer will use best efforts to comply with reasonable procedures established from time to time by OneCommunity to best assure the ability of OneCommunity to diagnose, maintain and correct disruptions in network services. A detailed description of OneCommunity's operations support, procedures and related matters is available upon request to the OneCommunity Network Operations Center.

2.2. Core NOC Functions.

(a) Open Service Inquiries and Tickets on all events and alarms;

(b) Open Service Inquiries and Tickets on all reported trouble items;

(c) Conduct fault investigation and identification;

(d) Implement network repair and service restoration, including maintenance and upgrades;

(e) Provision of remote logical service reconfiguration;

(f) Dispatch field technical service to Subscriber location as required;

(g) Monitor and report on network status and Subscriber connectivity status.

2.3. Network Uptime Service Level Agreement. The Service Level Agreement for uptime is defined as the amount of time a Subscriber has service as measured over the course of the year.

(a) Our basic Service Level Agreement for Network uptime for managed Ethernet, MPLS, VPN and Internet Service Delivery is 99.99%.

(b) Our basic Service Level Agreement for hosted VoIP services and SIP trunking services is 99.99%

(c) Our basic Service Level Agreement for Fiber Services (OneCommunity Indefeasible Rights of Use (IRU) and leased fiber optic services) is 99.9%

(d) Custom uptime levels may be negotiated and documented in Addendum B.

(e) Planned or Emergency Maintenance events are not factored into the Service Uptime Calculation

(f) OneCommunity calculates network uptime during a calendar month as follows:

$$\text{Availability (within calendar month)} = \frac{\text{(total minutes in month)-(total minutes of unavailability in month)}}{\text{Total minutes in a month}}$$

2.4. Mean Time to Repair (MTTR) Service Level Agreement is based upon the amount of time it takes to restore services measured from the time the ticket is opened to the time the ticket is closed. MTTR times vary based on whether the problem being addressed physically resides on the OneCommunity Network (On-Net) or on a third party provider/Subscriber network (Off-Net).

TYPE OF SERVICE	MTTR
Internet/VoIP/SIP OneCommunity On-Net services	Four (4) Hours
Internet/VoIP/SIP OneCommunity Off-Net services	Six (6) Hours
Fiber Services (OneCommunity On-Net Only)	Eight (8) Hours

Note: Force Majeure acts are not covered under OneCommunity's MTTR SLA. Force Majeure includes, without limitation: fire, flood, lightening, explosion, war, act of terrorism, strike, riots, embargo, labor dispute, government requirement, civil or military authority, act of God or nature, acts or failure to act of any governmental authority.

2.5. Definition and Classification of Service Outages. The following represent the OneCommunity NOC's standard classification for incoming trouble tickets and network issues:

Priority	Description
0 – Catastrophic Outage	• Priority 0 is defined as an entire network affecting outage that affects a large majority of customers and it caused by complete failure of a device or fiber optics system. • Priority 0 outage also includes a carrier partner network outage where all or most customers connected through a carrier partner is without service
1 – Critical Outage	• Priority 1 is defined as an outage affecting a single customer where service is unavailable for use.
2 – Major Outage	• Priority 2 outage is defined as an outage affecting a single customer where service is intermittent but still usable
3 – Minor Outage	• Priority 3 outage is defined as an outage affecting one customer where service is available but service is slow or minor packet loss

4 - Acknowledgement	• Priority 4 outage is defined as an outage affecting a single customer where service is available but specific applications are slow or not operating properly with customer configuration.
5 - Monitoring	• Priority 5 is defined as a circuit that is monitored due to intermittent problem to assist in looking at a possible future failure • Priority 5 is used for proactive troubleshooting to locate an issue before it becomes a minor, major, or critical issue.

3. Subscriber Connections via Third Party to the OneCommunity Network

3.1 Third Party Connections. At Subscriber's written request, OneCommunity will provide to Subscriber, pricing for the installation and maintenance of a connection from an agreed upon Subscriber site to the OneCommunity Network via a Third Party Provider. Subscriber may elect in writing to have OneCommunity, on Subscriber's behalf, be responsible for procuring a connection between Subscriber's site and the OneCommunity Network. Should Subscriber elect in writing to have OneCommunity procure a Third Party connection, OneCommunity will oversee the installation and maintenance of that connection on Subscriber's behalf, and will provide connection engineering and maintenance support during and after the installation of the connection. OneCommunity will provide routine and reasonable services related to network interface planning, engineering, and consulting support in installing and configuring the Subscriber's Third Party connection to the OneCommunity Network. Based on the Parties' written agreement, Subscriber is directly responsible for the payment of all installation, recurring and non-recurring charges required to be paid to OneCommunity or third parties with respect to each Subscriber connection to the OneCommunity Network. Payments for these services will be due when Subscriber orders the connection.

4. Subscriber Connections via Fiber Build to the OneCommunity Network

4.1 Fiber Builds. At Subscriber's written request, OneCommunity will provide to Subscriber, pricing for the installation and maintenance of a dedicated fiber connection from an agreed upon Subscriber site to the OneCommunity Network. Subscriber may elect in writing to have OneCommunity, on Subscriber's behalf, be responsible for procuring a dedicated fiber connection between Subscriber's site and the OneCommunity Network. Should Subscriber elect in writing to have OneCommunity procure a dedicated fiber connection, OneCommunity will oversee the installation and maintenance of that connection on Subscriber's behalf, and will provide connection engineering and maintenance support during and after the installation of the connection. OneCommunity will provide routine and reasonable services related to network interface planning, engineering, and consulting support in installing and configuring the Subscriber's dedicated fiber connection to the OneCommunity Network. Based on the Parties' written agreement, Subscriber is directly responsible for the payment of all installation, recurring and non-recurring charges required to be paid to OneCommunity or third parties with respect to each Subscriber dedicated fiber connection to the OneCommunity Network. Payments for these services will be due when Subscriber orders the connection.

5. Ownership of Connection

5.1. Any Connection from the OneCommunity Network up to the Demarcation Point becomes part of the OneCommunity Network upon installation and Customer full payment. Customer has no ownership interest in the connection up to the Demarcation Point.

6. Bandwidth Increases and Additional Sites

6.1. Service Upgrades. At any time, Subscriber may elect in writing to increase the bandwidth of its connection to the OneCommunity Network or the number of Subscriber sites connected to the OneCommunity Network. As part of a Service Upgrade, Subscriber will use best efforts to cooperate with OneCommunity in coordinating the engineering, installation, testing and production use of the new connection except as provided elsewhere in this Agreement. If the Service Upgrade imposes different requirements for environmental conditions, supplemental equipment or similar

items, Subscriber will have the option to comply with those requirements and acquire (either directly or through OneCommunity) the necessary equipment and pay any and all OneCommunity Fees due under the respective Addendum B, continue the Agreement according to the original terms, or terminate the Agreement.

7. **EQUIPMENT RECOMMENDATIONS**

7.1 Customer agrees to use best efforts to house OneCommunity-provided equipment in accordance to the "Environmental Recommendations" provided by OneCommunity. This includes the provisioning of power and space for equipment needed to operate connection at Subscriber site to OneCommunity Network.

ACCEPTED AND AGREED AS OF THE EFFECTIVE DATE:

OneCommunity	**Customer**
By: _____	By: _____
Authorized Signature	Authorized Signature
_____	_____
Name (Print or Type)	Name (Print or Type)
_____	_____
Title	Title
_____	_____
Date	Date

ADDENDUM B

Addendum B Site Number: B-4
Client: Mayfield Village
OneCommunity Head End (A-Site): Mayfield Village Fire Department 770 S.O.M. Center Road Mayfield Village, OH 44143
Client Circuit Address (Z-Site): Quality Electrodynamics, 700 Beta Drive, Mayfield Village, OH 44143

SERVICE & EQUIPMENT FEES

Services:	Monthly Site Fees
5 MB service connection	$350.00

Term: 5 years (60 Calendar Months) from Effective Date.

Billing Cycle: Monthly upon Service Start.

ACCEPTED AND AGREED AS OF THE EFFECTIVE DATE:

Mayfield Village

By: _____
Authorized Signature

_____
Name (Print or Type)

_____
Title

_____
Date

Quality Electrodynamics

By: _____
Authorized Signature

Dr. Hiroyuki Fujita
President and CEO, Quality Electrodynamics

31 MAR, 2010
Date