

## MANAGEMENT AND SERVICES AGREEMENT

This MANAGEMENT AND SERVICES AGREEMENT (the “*Management Agreement*”) dated as of February 21, 2006 is made by and between the CITY OF PHILADELPHIA, a city of the first class of the Commonwealth of Pennsylvania (the “*City*”), and WIRELESS PHILADELPHIA, a Pennsylvania non-profit corporation (“*WP*”). The City and WP may be referred to individually as a “*Party*” and collectively as the “*Parties*”. Capitalized terms used in this Agreement shall have the meaning defined herein or, if not defined herein, then the meaning ascribed to such terms in that certain Wireless Philadelphia Broadband Network Agreement of even date herewith (the “*Network Agreement*”) between WP and EarthLink, Inc., a Delaware corporation (“*EarthLink*”).

### BACKGROUND

- A. WP was incorporated by Mayor John F. Street on March 30, 2005 to develop the vision of a metropolitan wireless broadband internet access system (the “*System*”) in the City in order:
- To spur economic development;
  - To enhance community neighborhoods;
  - To help overcome the digital divide; and
  - To reduce the cost of government.
- B. The City recognizes that elimination of the digital divide is an important public mission shared by both the City and WP.
- C. The City and WP have each determined that a wireless network alone will be insufficient to afford full computing technology accessibility to low income residents, but that programs focusing on making hardware and software available as well as education and training are also necessary.
- D. WP determined that the achievement of these shared goals could best be realized through private-public cooperation with EarthLink.
- E. WP has chosen and authorized EarthLink to install and operate the System during the term of, and pursuant to the terms of, the Network Agreement.
- F. Concurrently with the execution and delivery of this Management Agreement, EarthLink and WP have entered into the Network Agreement in order for EarthLink to own and deploy the System in the City.
- G. Concurrently with the execution and delivery of this Management Agreement, the City is entering into a Street Light Use Agreement (the “*City Street Light Use Agreement*”) with the Philadelphia Authority for Industrial Development (“*PAID*”), granting the rights to

PAID to allow EarthLink or its agent to use the Street Lights (as defined therein) for the operation of the System in the City.

- H. Concurrently with the execution and delivery of this Management Agreement, PAID is entering into a Street Light Use Agreement (“**PAID Street Light Use Agreement**”) with EarthLink, granting EarthLink the right to use the Street Lights for installation, maintenance and operation of the System in the City.
- I. Under the PAID Street Light Use Agreement and the City Street Light Use Agreement, the City is to receive significant compensation. Such compensation shall include \$2 million paid in three installments during an approximately 24-month period following the date hereof (each an “**Initial Installment Payment**”). Additionally, under the PAID Street Light Use Agreement and the City Street Light Use Agreement, EarthLink has agreed to pay to WP, commencing two years after System Acceptance, a portion of the revenue generated by the System, as more fully described in the Network Agreement (“**Revenue Share**”), to be used for the operation of WP’s programs to lower the cost of internet access and to provide citizens of the City with the knowledge, training, and equipment to benefit from the System and to otherwise manage WP’s operations.
- J. The City is entering into this Management Agreement with WP to set forth the terms and conditions of the City’s involvement in the System and its operation, and to provide for WP’s performance of services related to the management of the System and the development and implementation of programs to fulfill WP’s purposes described in Recital Clause A, all as set forth below.
- K. This Management Agreement is also intended to document WP’s status as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”), and as a supporting organization to the City under Section 509(a)(3) of the Code.
- L. The effectiveness of the Management Agreement, Network Agreement, City Street Light Use Agreement and PAID Street Light Use Agreement is conditioned upon the approval and adoption by the Philadelphia City Council of the Management Agreement, the City Street Light Use Agreement and the ordinance related thereto (“**City Council Approval**”).

NOW, THEREFORE, in consideration of the above referenced recitals and the following mutual covenants, agreements, and obligations of the Parties, which constitute good and valuable consideration, and with the intention to be legally bound hereby, the City and WP agree as set forth above and as follows:

Section 1. SERVICES TO BE PROVIDED

1.1 Management of Network Agreement. In order to deploy and maintain operation of the System within the City, WP shall manage the relationship with EarthLink under the Network Agreement, including enforcing all agreements of EarthLink therein, giving and receiving all required notices, reviewing all required reporting from EarthLink and monitoring all financial aspects of the relationship with EarthLink (including invoices payable by EarthLink and

statements produced by EarthLink relating to installation of the System and payments due to the City, PAID and WP under the Network Agreement, the City Street Light Use Agreement and the PAID Street Light Use Agreement).

1.2 Programs. WP shall manage and implement the Digital Divide Programs and other programs described in Section 2.2, in accordance with the terms thereof.

1.3 Account Management. WP will provide the account management services as described in Section 6.1, subject to the provisions thereof.

1.4 Future Products. WP shall coordinate with the City on the analysis of future products proposed by EarthLink to be offered through or in connection with the System, and in developing future products to be recommend to EarthLink.

1.5 Insurance. In performing services under this Management Agreement, WP shall obtain and maintain at its expense insurance required by Section 10.4.

## Section 2. DEVELOPMENT AND IMPLEMENTATION OF PROGRAMS

2.1 Program Management. WP shall expend all funds paid to it by the City under this Management Agreement, and all of its revenues, for uses consistent with its mission and in a manner consistent with the principles of sound financial management, including, but not limited to, the Digital Divide Programs described below:

2.2 Digital Divide Programs. WP shall implement programs to reduce the digital divide in the City consistent with the mission of WP (the “*Digital Divide Programs*”), which programs shall encompass some or all of the following:

- a) Supplying personal computers equipped to access the System to low income and disadvantaged individuals and nonprofit organizations and community groups in the City.
- b) Conducting computer training programs:
  - (i) For low income and disadvantaged individuals in the City to allow them to access and use the System.
  - (ii) For minority, woman-owned, disabled and other small businesses in the City to allow them to access the System and use the System in their businesses, including website development and effective online marketing.
  - (iii) For nonprofit organizations and other community groups in the City to allow them to access the System and use the System to further their missions.
- c) Providing broader access to online training and educational content on the internet.

- d) Improving parental involvement in student education.
- e) Conducting outreach to nonprofit organizations including: (i) distributing a periodic newsletter to appropriate nonprofit organizations; (ii) working with content providers to develop local community portals; and/or (iii) working with nonprofit organizations to develop and deliver additional computer training.
- f) Identifying the City's key community newspapers, fliers, newsletters and block or neighborhood meetings as a means to deliver key messages relating to WP and its mission.
- g) Identifying neighborhood organizations to assist through WP's digital divide programs.
- h) Seeking corporate contributions, grants or other sources of additional funding to further WP's digital divide programs.
- i) Developing and implementing other programs and initiatives to address the digital divide in the City.

2.3 Economic Development and Other Programs. WP shall further develop and implement programs and initiatives to fulfill the purposes set forth in Section A of the Recital Clauses and in its Articles of Incorporation, of using the System to (i) spur economic development in the City, (ii) enhance community neighborhoods, and (iii) reduce the cost of government.

2.4 Annual Plan and Budget.

- a) Annual Plan. WP shall deliver to the City not later than the 90<sup>th</sup> day following City Council Approval and on each March 1<sup>st</sup> thereafter, an annual budget and plan (the "**Annual Plan**") for the upcoming fiscal year implementing the Digital Divide Programs and other programs outlined in Sections 2.1, 2.2 and 2.3 hereof. The Annual Plan shall include specific programs which address various aspects of reducing the digital divide and fulfilling its other purposes set forth in Recital Clause A and its Articles of Incorporation, a budget setting forth the funding for each such program, key personnel responsible for implementing each such program, goals for each such program and specific metrics for measuring its success in achieving such goals.
- b) City Input. During the Launch Period, the City shall, within 30 days of receipt of the Annual Plan from WP, meet with WP, at which time WP will receive and review proposals as to the contents of the Annual Plan. As used herein, the term "**Launch Period**" shall mean the period commencing as of the execution and delivery of this Management Agreement by the Parties and ending on the first anniversary of the Proof of Concept Acceptance.
- c) Meeting with City. Upon reasonable notice to WP, the City may request a meeting at any time to discuss the Annual Plan and its implementation.

2.5 Annual Report.

- a) Annual Report. WP shall deliver to the City by September 30<sup>th</sup> of each year, beginning September 30, 2007, an annual report as to its activities in addressing the digital divide and its other purposes set forth in Recital Clause A and its Articles of Incorporation (the “**Annual Report**”), including, for the prior fiscal year, amounts spent on each of the programs outlined in the Annual Plan, a narrative description of the activities of each such program, the specific metrics outlined in the Annual Plan for each such program and, to the extent that any of such programs did not achieve their goals stated in the Annual Plan, a discussion of the factors which caused such failure.
- b) Failure to Deliver Annual Report. If the City does not receive the Annual Report within 60 days after the date due, it shall give WP written notice of such failure and a 30-day period during which to cure same. If WP fails to deliver the Annual Report prior to the expiration of such cure period, the City may, at the expense of WP, retain an appropriate consultant to review the financial and other records of WP with respect to the programs outlined in the Annual Plan and to produce an Annual Report on behalf of WP.

2.6 501(c)(3) Election. To further the fulfillment of its mission, WP shall file its application with the Internal Revenue Service to qualify as an organization under Section 501(c)(3) of the Code not later than 90 days after City Council Approval.

2.7 Filing of Reports. All filings by WP of reports with the City pursuant to Sections 2.4 and 2.5 shall be filed with the Managing Director and the Chief Clerk of Council.

2.8 Advisory Committee. In order to protect the interests of the citizens with respect to the development and implementation of programs set forth in this Section 2, including in particular programs intended to bridge the digital divide, and otherwise with respect to the operation of WP, WP agrees to establish and maintain an Advisory Committee, the members of which shall be appointed one each by the seventeen members of City Council, the Mayor, the Controller, the District Attorney, the Register of Wills, the Sheriff, and the Clerk of Quarter Sessions, plus such members of the community as the Chair of the WP Board shall select so long as the total number of members does not exceed twenty-five (25). The Advisory Committee shall annually review WP’s budget and meet quarterly with the Chief Executive Officer of WP to discuss community concerns and possible solutions thereto, all as they may relate to protection of the community’s interests. The Committee shall also serve as the communications nexus for community concerns, will act as the liaison between City elected officials and WP, and shall perform such other services as the Chair of WP and the Committee shall from time to time agree upon.

Section 3. CITY APPROVAL REQUIRED

3.1 Approval Required. WP and/or the WP Members (as hereinafter defined) of the Steering Committee may not give its/their approval under the Network Agreement with respect to the

following elements of the design, installation, testing, acceptance and operation of the System without receipt of written approval from the City:

- a) Payments required from EarthLink described in Section 1 of the Network Agreement;
- b) The Design Control Documents described in Section 3.1(b) of the Network Agreement;
- c) The Proof of Concept Acceptance described in Section 3.2(c) of the Network Agreement;
- d) The Implementation Conditions described in Section 3.4 of the Network Agreement;
- e) Zone Acceptance described in Section 3.4(b) of the Network Agreement;
- f) System Acceptance described in Section 3.4(e) of the Network Agreement;
- g) Waiver of conditions permitted under Section 4 of the Network Agreement;
- h) Termination of the Network Agreement pursuant to Sections 4.4, 4.5 and 16.3 of the Network Agreement;
- i) Renewal or extension of the Network Agreement pursuant to Section 16.2 of the Network Agreement;
- j) Amendment or assignment of the Network Agreement pursuant to the Network Agreement; and
- k) Declaration of a Termination Default pursuant to the Network Agreement.

Notwithstanding anything to the contrary contained in this Management Agreement, in the event that WP and/or the WP Members of the Steering Committee request an approval of the City required under this Management Agreement (including without limitation pursuant to this Section 3.1), the City shall respond within thirty days after receipt of such request (or if a shorter period to respond is required by an applicable provision of the Network Agreement and such request by WP expressly discloses such shorter response period and such notice is promptly provided, then within such shorter period) either affirmatively, negatively or by certifying that additional time is needed, in which case the City shall have an additional thirty days (or such shorter period as may be provided by an applicable provision of the Network Agreement) to respond, and in the absence of any of the foregoing, the City shall be deemed to have granted its approval and WP and/or the WP Members of the Steering Committee shall be permitted in such instance to make such decision or grant such approval or consent under the Network Agreement. In addition to submitting any requests for approval under this Section to the Managing Director, WP shall submit copies of any request for approvals under Section 3.1(b), (d), (i) or (j) to the Chief Clerk of City Council within three days thereafter.

3.2 Steering Committee. Pursuant to the Network Agreement certain critical decisions related to the Network will be made by the Steering Committee, which will have equal representation of EarthLink and WP.

- a) During the Launch Period, all WP appointees to the Steering Committee (the “**WP Members**”) shall be appointed by WP with the consent of the City (which consent shall not be unreasonably withheld or delayed) and shall be removable by the City for good cause.
- b) WP hereby appoints, and the City hereby consents to the appointment of, the following persons to serve as the initial WP Members: WP’s Chief Executive Officer, WP’s Ex-Officio Director, and Greg Richardson (President of Civitium, LLC, WP’s technical consultant).

3.3 Designated Contacts. Any consents or approvals required to be given by a Party hereto shall be provided by such Party’s designated contact; *provided* that for purposes of the City approvals required under Sections 3.1(a) through 3.1(f), the City’s approvals shall be given by the director of the Mayor’s Office of Information Services, unless the City provides notice of an alternate designated contact for such purpose. Each Party may change its designated contact by notifying the other Party of such change in writing pursuant to Section 10.2. The initial designated contacts are, for the City, the Managing Director, and for WP, the Interim Chief Executive Officer.

Section 4. REPORTING BY WP.

4.1 Monthly Reports. Monthly reports from EarthLink to WP required under Section 9.7 of the Network Agreement shall be provided to the City by WP as soon as practicable.

4.2 Minority, Woman and Disabled Owned Business Participation Reports. Any reports from EarthLink with respect to use of qualifying Subcontractors pursuant to Section 12.2 of the Network Agreement shall be provided to the City and to the Diversity Oversight Committee by WP as soon as practicable. The Diversity Oversight Committee shall consist of five members, appointed as follows: One each by the Mayor, the Director of the Minority Business Enterprise Council, the Chair of the WP Board, EarthLink Inc., and City Council. The Committee shall be authorized to review and report on EarthLink’s diversity outreach activities, including but not limited to those set forth in Section 12.2 of the Network Agreement.

4.3 Insurance. An insurance certificate or notice of cancellation or non-renewal of insurance delivered by WP shall be provided to the City by WP as soon as practicable.

4.4 Network Agreement Notices. Upon written request to WP, the City shall receive a written copy of any notice received or given by WP under the Network Agreement as soon as practicable.

4.5 Additional Reports. The City may request any additional reports it deems appropriate from WP, provided the City agrees to pay any direct costs incurred by WP in the preparation of such reports and takes into account WP’s personnel and other available resources at the time of

such request.

Section 5. WP GOVERNANCE

5.1 Articles and Bylaws. The Articles of Incorporation and Bylaws of WP shall be in the forms attached as Exhibit B hereto, except as amended pursuant to Section 5.2 of this Management Agreement.

5.2 Changes to Articles and Bylaws. Any changes to the Articles of Incorporation or Bylaws of WP shall require the written consent of the City (which consent shall not be unreasonably withheld or delayed), except that any change to the manner of selection of the Board of Directors of WP shall require the approval of City Council by ordinance.

5.3 Changes in Status. Any change in the federal tax status (other than submission of an application for and acceptance of 501(c)(3) status) of WP requires the written approval of the City.

5.4 Transfer of Assets. During the Launch Period, any sale, transfer or other disposition by WP of assets outside of the ordinary course of business with a fair market value greater than \$10,000 requires the written approval of the City.

5.5 Incurrence of Indebtedness. During the Launch Period, any incurrence of long-term indebtedness (as such term is defined by United States generally accepted accounting principles) by WP in principal amount greater than \$10,000 (other than financing received from PAID, advances of funds from the City, or amounts owed to EarthLink for electricity under the Network Agreement) requires the written approval of the City.

5.6 CEO. During the Launch Period, WP, prior to appointing a Chief Executive Officer or any replacement for same, shall provide the City with seven days' prior written notice of the prospective appointment and will, if requested by the City during such time, meet with the City to discuss the candidate and the selection process.



Section 6. NETWORK ACCOUNTS

6.1 Municipal Accounts. WP agrees that it will, if requested by the City, manage the City's relationship with EarthLink with respect to the discounted Network municipal Wi-Fi Product and T1 Alternate Product accounts provided by EarthLink pursuant to Section 7 of the PAID Street Light Use Agreement and City Street Light Use Agreements. Notwithstanding any such request by the City, the parties acknowledge and agree that the City shall be responsible for the day-to-day technical, operational and financial management of such accounts.

6.2 Revocable License. The City hereby grants a revocable license to WP to use, for its programs set forth in Section 2, all of the discounted Network municipal Wi-Fi accounts, *provided* that: (1) such license may be revoked or modified at any time by the City upon sixty (60) days written notice to WP, upon which notice WP shall make the accounts available to the City within the notice period; (2) WP shall pay any costs (including, without limitation, charges by EarthLink and any sales and use taxes) associated with the transfer or use of such accounts; and (3) all use by WP shall be consistent with the City's rights to such accounts as described in the Network Agreement.

Section 7. PAYMENT FOR SERVICES

7.1 Payment. In consideration of the services provided by WP under Sections 1 and 2 of this Management Agreement and the mutual promises otherwise contained herein, the City agrees to pay to WP, within 30 days of receipt, the amount of such Initial Installment Payment (as defined in Recital Clause I) actually received by City. The City shall notify WP in writing within five business days after the City's receipt of each Initial Installment Payment.

7.2 Negotiations of Savings. The City will cooperate with WP in negotiating the applicable rate and other charges that will be charged by PECO for electricity needed to power the Communication Equipment (as defined in the Network Agreement).

7.3 WP's Payment of Obligations. WP hereby covenants to pay all of its obligations, including any loans from the City, on a timely basis consistent with the terms thereof.

Section 8. STEP-IN RIGHTS

8.1 Dissolution/Bankruptcy.

- a) If WP shall take any steps to dissolve itself as a corporation, or if a Bankruptcy Event (as defined below) shall occur with respect to WP, the City may, at its option: (i) take an assignment of WP's rights and obligations under the Network Agreement; or (ii) assign WP's rights and obligations under the Network Agreement to a third party; *provided* that any such third party assignee shall be (A) a City-controlled authority or quasi-governmental entity or (B) a recognized organization qualified or capable of being qualified under Section 501(c)(3) of the Code.

- b) “**Bankruptcy Event**” means that WP (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian or the like of itself or of its property, (ii) admits in writing its inability to pay its debts generally as they become due, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the United States Bankruptcy Code, or files a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief, or seeking to take advantage of any insolvency law or files an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization, or insolvency proceeding, or action shall be taken by it for the purpose of effecting any of the foregoing, or (vi) has instituted against it, without its application, approval or consent, a proceeding in any court of competent jurisdiction, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking in respect of WP an order for relief or an adjudication in bankruptcy, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of WP or of all or any substantial part of its assets, or other like relief in respect thereof under any bankruptcy or insolvency law, and, if such proceeding is being contested by WP in good faith, the same shall (y) result in the entry of an order for relief or any such adjudication or appointment or (z) remain unvacated, undismissed and undischarged for a period of 90 days.

8.2 Default/Termination under Network Agreement. Upon any default by WP under the Network Agreement or any purported termination of the Network Agreement, the City shall have the right to cure any default under the Network Agreement on WP’s behalf.

8.3 Direction of Litigation. The City and WP shall mutually cooperate in the event there is litigation commenced by a third party with respect to this Management Agreement, the PAID Street Light Use Agreement and/or City Street Light Use Agreements, or the Network Agreement. Neither Party may settle such litigation without the other Party’s prior written consent, which shall not be unreasonably withheld or delayed.

Section 9. ADDITIONAL REQUIREMENTS FOR WP AND ITS SUBCONTRACTORS.

9.1 WP and Subcontractor Compliance. WP covenants that it and its subcontractors shall comply with the provisions set forth in this Section 9.

9.2 Business Privilege License. WP shall obtain, and shall require its subcontractors to obtain, a valid business privilege license (issued by the City’s Department of Licenses and Inspections) as required by the Philadelphia Code.

9.3 Non-discrimination. In performing this Management Agreement, WP shall not discriminate or permit discrimination against any person because of race, color religion national origin, gender, or sexual orientation, and shall not discriminate or permit discrimination against any person who has AIDS or is HIV-positive. In the event of such discrimination, the City may,

in addition to any other rights or remedies available under this Management Agreement, at law or in equity, terminate this Management Agreement.

- a) WP agrees, in performing this Management Agreement, to comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100). WP agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of this Management Agreement entitling the City to all rights and remedies provided herein or otherwise available at law or equity.
- b) In accordance with Chapter 17-400 of The Philadelphia Code, as it may be amended from time to time, WP agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes an event of default under this Management Agreement entitling the City to all rights and remedies provided in this Management Agreement or otherwise available at law or equity. WP agrees to include the immediately preceding subsection, with appropriate adjustments for the identity of the Parties, in all subcontracts which are entered into for work to be performed pursuant to this Management Agreement. WP further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute an event of default under this Management Agreement entitling the City to all rights and remedies provided therein or otherwise available at law or equity.
- c) WP shall comply with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. Section 794), The Age Discrimination Act of 1975, (42 U.S.C. Section 6101 et seq.), Title IX of the Education Amendments of 1972, (20 U.S.C. Section 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.
- d) WP understands and agrees that in the performance of this Management Agreement, no individual with a disability shall, on the basis of the disability, be excluded from participation in this Management Agreement or from activities or services provided under this Management Agreement. As a condition of accepting and executing this Management Agreement, WP shall comply with all provisions of the Americans With Disabilities Act, 42 U.S.C. §§12101 et seq., and all regulations promulgated there under, as the Act and regulations may be

amended from time to time, which are applicable (i) to WP, (ii) to the benefits, services, activities, facilities and programs provided in connection with this Management Agreement, (iii) to the City, or the Commonwealth of Pennsylvania, and (iv) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, if any funds under this Management Agreement are provided by the federal government, which are applicable to the federal government and its benefits, services, activities, facilities and programs. Without limiting the generality of the preceding sentence, WP shall comply with the “General Prohibitions Against Discrimination”, 28 C.F.R. §35.130, and all other regulations promulgated under Title II of “The Americans With Disabilities Act”, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outsider contractors.

9.4 MacBride Principles. In accordance with Section 17-104 of The Philadelphia Code, WP by execution of this Management Agreement certifies and represents that unless WP has implemented the fair employment principles embodied in the MacBride Principles, (a) WP (including any parent company, subsidiary, exclusive distributor or company affiliated with WP) does not have, and will not have at any time during the term of this Management Agreement (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (b) no product to be provided to the City under this Management Agreement will originate in Northern Ireland. In the performance of this Management Agreement, WP agrees that it will not utilize any suppliers, subcontractors or subconsultants at any tier (y) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (z) who will provide products originating in Northern Ireland unless said supplier, subconsultant or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. WP further agrees to include the provisions of this Section 9.4, with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements which are entered into in connection with the performance of this Management Agreement. WP agrees to cooperate with the City’s Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director’s responsibilities under Section 17-104 of The Philadelphia Code.

9.5 Certification of Non-Indebtedness. WP hereby certifies and represents that WP and WP’s subcontractors are not currently indebted to the City, and will not at any time during the term of this Management Agreement (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, WP acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to WP and, if such breach or failure is not resolved to the City’s satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments and/or the termination of this Management Agreement for default (in which case WP shall also be liable for all further excess costs and other damages resulting from the termination).

9.6 Prevailing Wages. Contracts resulting from this Management Agreement shall require the payment of prevailing wages. Accordingly, employees of WP and its contractors performing work that would be subject to Section 17-107 of the Philadelphia Code, if performed for the City, shall be paid at least the applicable prevailing wages for the respective occupational classifications designated in Section 17-107, in accordance with its requirements.

9.7 Sales and Use Tax. The City is not subject to federal, state, or local sales or use taxes or to federal excise tax. WP hereby assigns to the City all of its right, title and interest in any sales or use tax which may be refunded to WP as a result of any sale of services or materials to the City, and unless directed by the City, WP shall not file a claim for any such sales or use tax refund subject to this assignment. WP authorizes the City, in its own name or the name of WP, to file a claim for a refund of any sales or use tax subject to this assignment.

9.8 Slavery Affidavit. In accordance with Section 17-104(2) of the Philadelphia Code, WP, after execution of this Management Agreement, will complete an affidavit certifying and representing that WP (including any parent company, subsidiary, exclusive distributor or company affiliated with WP) has searched any and all records of WP or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit. WP expressly understands and agrees that any false certification or representation in connection with this Section and/or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Management Agreement entitling City to all rights and remedies provided in this Management Agreement or otherwise available in law or equity and the Management Agreement will be deemed voidable.

9.9 Duties and Covenants Pursuant to 17-1400.

a) WP shall abide by the provisions of Philadelphia Code Chapter 17-1400 in awarding any contract(s) pursuant to this Agreement as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Subsection 17-1406(8) shall apply to WP as if WP were listed in that subsection.

b) Unless approved by the City to the contrary, any approvals required by the Philadelphia Code Chapter 17-1400 to be performed by the City Solicitor shall be performed by WP by such counsel as may be appointed by the Board of Directors of WP; any approvals required to be performed by the Director of Finance shall be performed by WP by its Treasurer; and any approvals required to be performed by the Mayor shall be performed by WP by its Chief Executive Officer.

## Section 10. MISCELLANEOUS

10.1 Term; Termination by City. This Management Agreement shall become binding and legally effective and its term shall commence upon City Council Approval. The term of this Management Agreement shall then be coterminous with the terms of the City Street Light Use Agreement, the PAID Street Light Use Agreements and the Network Agreement, or if the terms

of such agreements are different, the longest of such terms. Notwithstanding the foregoing, pursuant to Section 8-200(3) of the Philadelphia Home Rule Charter, the Parties hereby acknowledge and agree that upon the expiration of four (4) years after the commencement of this Management Agreement, the City may terminate this Management Agreement at any time, at its sole option, without any liability to WP for damages or loss of profits which would have been realized had the Management Agreement not been terminated.

10.2 Address for Notices. Except as otherwise set forth herein, all notices given or which may be given pursuant to this Management Agreement must be in writing and delivered (i) in person against receipt or (ii) by nationally-recognized overnight delivery service postage pre-paid as follows:

To WP at:	Wireless Philadelphia c/o Chief Executive Officer P.O. Box 36666 Philadelphia, PA 19107
With a copy to:	Thomas H. Speranza, Esquire Kleinbard Bell & Brecker LLP 1900 Market Street, Suite 700 Philadelphia, PA 19103
To the City at:	Managing Director The City of Philadelphia Municipal Services Building 1401 JFK Boulevard, Room 1430 Philadelphia, PA 19102
With a copy to:	City Solicitor City of Philadelphia Law Department 1515 Arch Street, 17th Floor Philadelphia, PA 19102-1595

Notice may also be provided to such other address as either Party may from time to time designate in writing. Notice shall be deemed received on the date of delivery or refusal of delivery. Notice may be given by counsel for a Party.

10.3 Assignment. The City may assign this Management Agreement to a City-controlled authority or a quasi-governmental entity without the consent of WP by providing WP with reasonable notice of such assignment and the reasons therefor (a “*Permitted Assignment*”). Notwithstanding the foregoing, any such assignment by the City that would reasonably be expected to cause WP to fail to meet the supporting organization rules under Section 509(a)(3) of the Code, or the regulations promulgated thereunder, shall be null and void. Other than a Permitted Assignment, neither Party shall assign this Management Agreement, or any portion of it, without the prior written permission of the other Party, which permission may be withheld in such Party’s discretion, and any such assignment made without such consent shall be void and

shall not operate to relieve the assigning Party from any of its obligations or liabilities under this Management Agreement.

10.4 Insurance. Unless otherwise approved by the City's Risk Manager in writing, WP must, at its sole cost and expense, procure and maintain in full force and effect, covering the performance of its obligations under this Management Agreement, the types and minimum limits of insurance specified in Exhibit A attached hereto. All insurance shall be procured from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to the City. All insurance herein, except the Directors & Officers Liability Insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall work be performed until the required evidence of insurance has been furnished. The insurance shall provide for at least thirty days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or non-renewed. The City and its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance policy.

10.5 Amendment. This Management Agreement may be amended from time to time by a written amendment executed by both Parties to this Management Agreement.

10.6 Waivers and Remedies. Failure of either Party to enforce any provision of this Management Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect. The remedies expressly provided in this Management Agreement shall be in addition to any other remedies available at law or in equity.

10.7 Applicable Law and Venue. This Management Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflict of law provisions thereof. Any action brought relating to the interpretation or enforcement of this Management Agreement may be brought in state and federal courts of the Commonwealth of Pennsylvania located in Philadelphia, Pennsylvania. The parties hereby submit to the jurisdiction of such courts.

10.8 No Partnership. Nothing contained herein shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent, partnership, joint venture or any association between the Parties.

10.9 Approvals. If the approval or consent of any Party is required under this Management Agreement, such approval or consent may only be given in writing, and shall not be unreasonably withheld or delayed.

10.10 Headings. The heading references herein are for convenience purposes only, do not constitute a part of this Management Agreement and shall not be deemed to limit or affect any of the provisions hereof.

10.11 Integrated Document. This Management Agreement together with its Exhibits is intended as the complete integration of all understandings between the parties as to the subject matter of this Management Agreement. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing.

No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the parties on paper. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Management Agreement or any written amendment to this Management Agreement shall have any force or effect or bind either party hereto. Amendments to this Management Agreement will become effective when approved by both parties and executed in the same manner as this Management Agreement. This Management Agreement and any amendments shall be binding upon the parties, their successors and assigns. Electronic communications and documents will not be sufficient to modify this Management Agreement, however a facsimile transmission of a signed paper writing is sufficient and shall be deemed to be a signed writing on paper.

10.12 Limitation of Liability. THE PARTIES EXPRESSLY AGREE THAT THE CITY AND WP SHALL NOT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, REGARDLESS OF WHETHER ADVISED OF, OR OTHERWISE SHOULD HAVE BEEN AWARE OF, THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE LEGAL THEORY OR BASIS FOR SUCH CLAIM.

10.13 Counterparts. This Management Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Management Agreement but collectively shall constitute a single document.

IN WITNESS WHEREOF, the Parties grant, acknowledge and accept the terms, conditions and obligations of this Management Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Management Agreement shall become operative on the date of City Council Approval.

THE CITY OF PHILADELPHIA,  
PENNSYLVANIA

WIRELESS PHILADELPHIA

BY: \_\_\_\_\_

By: \_\_\_\_\_

Pedro Ramos, Esquire  
Managing Director

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM BY:

BY: \_\_\_\_\_

Romulo L. Diaz, Jr.  
City Solicitor



**EXHIBIT A**  
**INSURANCE REQUIREMENTS**

The following coverages shall be required:

- 1) Workers' Compensation and Employers' Liability.
  - a) Workers' Compensation: Statutory Limits
  - b) Employers' Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.
  - c) Other states' insurance including Pennsylvania.
  
- 2) General Liability Insurance.
  - a) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$1,000,000 aggregate for products and completed operations.
  - b) Coverage: Premises operations; blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).
  
- 3) Directors & Officers Liability Insurance
  - a) Limit of Liability: \$1,000,000 with a deductible not to exceed \$10,000.
  - b) Coverage: Wrongful acts of the directors and/or officers.
  - c) Coverage may be written on a claims-made basis provided that coverage for occurrences happening during the performance of Services required under this Management Agreement shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two years after completion of the Services.
  
- 4) Automobile Liability Insurance
  - a) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
  - b) Coverage: Owned, non-owned, and hired vehicles.

Evidence of Insurance Coverage Certificates of insurance evidencing the required coverage shall be submitted to the City's Risk Manager (at 1515 Arch Street, 14<sup>th</sup> Floor, Philadelphia, PA 19102) within ten days of City Council Approval and at least ten days before the commencement of each renewal term. The ten-day requirement for advance documentation of coverage may be waived in such situations where such waiver will benefit the City, but under no circumstances shall Provider actually begin work (or continue work, in the case of insurance renewal) without providing the required evidence of insurance. The City reserves the right to require Provider to furnish certified copies of the original policies of all insurance required under the Contract at any time upon ten days written notice to Provider.

**EXHIBIT B**

ARTICLES OF INCORPORATION AND  
BYLAWS OF WIRELESS PHILADELPHIA