

Management Agreement

City of Philadelphia
Wireless Philadelphia Closing
February 21, 2006

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 90th day following City Council Approval and on each March 1st 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 30th 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, 14th 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

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
CORPORATION BUREAU
206 NORTH OFFICE BUILDING
P. O. BOX 8722
HARRISBURG, PA 17105-8722
WWW.DOS.STATE.PA.US/CORPS

WIRELESS PHILADELPHIA

THE CORPORATION BUREAU IS HAPPY TO SEND YOU YOUR FILED DOCUMENT. PLEASE NOTE THE FILE DATE AND THE SIGNATURE OF THE SECRETARY OF THE COMMONWEALTH. THE CORPORATION BUREAU IS HERE TO SERVE YOU AND WANTS TO THANK YOU FOR DOING BUSINESS IN PENNSYLVANIA.

IF YOU HAVE ANY QUESTIONS PERTAINING TO THE CORPORATION BUREAU, PLEASE VISIT OUR WEB SITE LOCATED AT WWW.DOS.STATE.PA.US/CORPS OR PLEASE CALL OUR MAIN INFORMATION TELEPHONE NUMBER (717)787-1087. FOR ADDITIONAL INFORMATION REGARDING BUSINESS AND/OR UCC FILINGS, PLEASE VISIT OUR ONLINE "SEARCHABLE DATABASE" LOCATED ON OUR WEB SITE.

ENTITY NUMBER : 3295426

MICROFILM NUMBER : 2005033

MICROFILM START - END : 446 - 447

MARILYN D ADELMAN
COZEN O'CONNOR ESQS
1900 MARKET ST
PHILA PA 19103 - 3508

Mar-30-06

12:16pm

From: Cozen O'Connor

2005033-446

215-665-2013

T-906 P.003/009 F-419

Microfilm Number _____

Entity Number 3295426

MAR 30 2005

Filed with the Department of State on

Perth C. Conte's
Secretary of the Commonwealth

ARTICLES OF INCORPORATION-DOMESTIC NONPROFIT CORPORATION

DSCA:16-6306 (Rev 90)

In compliance with the requirements of 15 Pa.C.S. § 5306 (relating to articles of incorporation), the undersigned, desiring to incorporate a nonprofit corporation, hereby states that:

1. The name of the corporation is: Wireless Philadelphia

2. The (a) address of this corporation's initial registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is:

(a) 1234 Market Street, Suite 1850 Philadelphia PA 19107 Philadelphia
Number and Street City State Zip County

(b) c/o: _____
Name of Commercial Registered Office Provider County

For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

3. The corporation is incorporated under the Nonprofit Corporation Law of 1988 for the following purpose or purposes:

The Corporation is formed exclusively for charitable, scientific, religious or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, and any subsequent amendments thereto (the "Code"), organized and operated for the benefit of, to perform the functions of, or to carry out the purposes of (within the meaning of section 509(a)(3) of the Code) the City of Philadelphia, and particularly:

- a) To lessen the burdens of government by developing, implementing and operating a network to provide wireless internet access throughout the City of Philadelphia; by providing low-cost high-speed internet access to households, businesses and outdoor areas in the City of Philadelphia; by providing wireless internet services to the City of Philadelphia; by providing schools, nonprofit organizations and other community organizations with internet access; and by increasing economic development in the City of Philadelphia through availability of wireless internet access.
- b) To enter into and perform mutual and other agreements, leases, guarantees or other arrangements as its Board of Directors may deem proper for the exercise of any of the foregoing powers.
- c) To borrow money from time to time for any of its purposes and secure the same by pledge or mortgage and expend from time to time such part of its funds and investments not expressly restricted to other purposes as the Board of Directors may deem proper for any such purpose.
- d) To pursue any other lawful purpose other than for pecuniary profit.

4. The corporation does not contemplate pecuniary gain or profit, incidental or otherwise. No part of the Corporation's net earnings shall inure to the benefit of, or be distributable to, any contributor, director, officer or other private individual or person except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered; no substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, except to the extent permitted by Section 501(h) of the Code; the Corporation shall not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office; and upon any dissolution or winding-up of the Corporation, its assets remaining after all debts and expenses have been paid or provided for shall be distributed by the Board of Directors to the City of Philadelphia, a political subdivision of the Commonwealth of Pennsylvania. Notwithstanding any other provision of law, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization which is described in Section 501(c)(3) of the Code or by a corporation contributions to which are deductible under Section 170(a)(2) of the Code.

2005 MAR 30 PM 12:20

- 5. The corporation is organized upon a nonstock basis.
- 6. The corporation shall have no members.
- 7. The name and address, including street and number, if any, of each incorporator is:

Name	Address
<u>John F. Street</u>	<u>Room 215, City Hall, Philadelphia, PA 19107</u>

- 8. The specified effective date, if any, is: None
month day year hour, if any
- 9. The term for which the corporation is to exist is perpetual.
- 10. Additional provisions of the articles, if any, attach on 8 1/2 x 11 sheet: None

IN TESTIMONY WHEREOF, the incorporator has signed these Articles of Incorporation this 29th day of March, 2005.



 (Signature)

AMENDED & RESTATED BYLAWS

OF

WIRELESS PHILADELPHIA™

A Pennsylvania Nonprofit Corporation

Adopted by the Board of Directors as of February 17, 2006

ARTICLE I -- TITLE, PURPOSE AND OFFICES

The name of the Corporation shall be WIRELESS PHILADELPHIA. The purpose of the Corporation shall be as set forth in its Articles of Incorporation (the “*Articles*”). The registered principal office of the Corporation is currently located and the Corporation shall maintain such an office and a registered agent at such office in the City of Philadelphia (the “*City*”), Commonwealth of Pennsylvania (the “*Commonwealth*”) and may have other offices within or without the Commonwealth. The registered agent shall be as initially designated in the Articles or as subsequently designated from time to time by the Board of Directors (the “*Board*”). Any change of office or registered agent shall not require, and shall not be deemed as, an amendment to these Bylaws.

ARTICLE II -- NON PROFIT PURPOSE

The purpose of the Corporation shall be as initially designated in the Articles, and as subsequently designated from time to time by an Amendment to these Bylaws by the Board; *provided* that in no event shall the purpose of the Corporation fail to satisfy one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code.

ARTICLE III -- MEMBERS

There shall be no members of the Corporation.

ARTICLE IV -- BOARD OF DIRECTORS

SECTION 1. GENERAL POWERS. The affairs of the Corporation shall be managed by its Board, which shall have all powers designated under 15 Pa.C.S. §5502, as from time to time amended.

SECTION 2. NUMBER, TENURE AND QUALIFICATIONS. The number of Directors of the Corporation may vary from time to time but shall be no more than eleven (11). The Directors shall consist of the Appointed Directors, the Elected Directors and the chief information officer of the City (“*CIO*”), as provided in Article IV, Section 5. No Appointed Director shall be an elected or appointed public official.

Seven (7) Appointed Directors shall serve for four-year terms; *provided* that the initial Appointed Directors appointed by the Mayor shall serve for staggered terms as follows: (i) one

with a term ending on December 31, 2006; (ii) one with a term ending on December 31, 2007; (iii) one with a term ending on December 31, 2008; and (iv) one with a term ending on December 31, 2009, and the initial Appointed Directors appointed by the President of City Council of the City shall serve for staggered terms as follows: (i) one with a term ending on December 31, 2007; (ii) one with a term ending on December 31, 2008; and (iii) one with a term ending on December 31, 2009.

Four (4) Elected Directors shall serve for four-year terms; *provided* that the initial Elected Directors shall serve for staggered terms as follows: (i) one with a term ending on December 31, 2006; (ii) one with a term ending on December 31, 2007; (iii) one with a term ending on December 31, 2008; and (iv) one with a term ending on December 31, 2009.

Unless otherwise designated by the appointing authority, the Board shall determine which Appointed Directors and initial Elected Directors will serve in each staggered term where such designation is not clear from the nature of the appointment.

SECTION 3. POWERS. Subject to the provisions of the laws of the Commonwealth and any limitations in the Articles and these Bylaws, the activities and affairs of this Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board.

SECTION 4. DUTIES. It shall be the duty of the Board to:

a. Perform any and all duties imposed on them collectively or individually by law, the Articles or these Bylaws;

b. Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe the duties and fix the compensation, if any, of the Chief Executive Officer of the Corporation, and approve or deny the compensation for any officer or employee who enters into an employment agreement with a term of more than one (1) year or whose annual compensation exceeds \$175,000;

c. Supervise all officers, agents and employees of the Corporation to assure that their duties are performed properly;

d. Meet at such times and places, and in such manner, as required by these Bylaws; and

e. Register their addresses with the Secretary of the Corporation, it being understood that notices of meetings mailed or otherwise transmitted or delivered to them at such addresses shall be valid notices thereof.

SECTION 5. NOMINATIONS; ELECTIONS.

a. Appointed Directors. Four (4) of the Directors of the Corporation shall be appointed to the Board by the Mayor and three (3) of the Directors of the Corporation shall be

appointed to the Board by the President of City Council of the City (each, an “**Appointed Director**” and collectively, the “**Appointed Directors**”). Except where such designation is made by the appointing authority, the Board shall notify the relevant appointing authority of the terms of service of each Appointed Director, as determined pursuant to Article IV, Section 2. At the end of an Appointed Director’s term of service, the appointing authority shall either extend such Appointed Director’s term or appoint a new Director, in the appointing authority’s sole discretion; *provided* that such Appointed Director shall remain on the Board as an “Acting Director” (with all of the voting and other rights of a Director) until such time as the appointing authority reappoints or replaces such director. At all times, each Appointed Director shall have a duty (not inconsistent with his/her fiduciary duty) to report regularly on the activities of the Board to his/her appointing authority, including, at a minimum, a quarterly written report addressing the activities of WP with respect to bridging the digital divide.

b. Elected Directors. Four (4) of the Directors of the Corporation shall be elected by the existing Board (each, an “**Elected Director**” and collectively, the “**Elected Directors**”). Candidates to fill vacancies among the Elected Directors may be nominated by any Director or, if the Board has designated a committee to identify, consider and nominate persons to fill vacancies of the Board, by such committee. Each Director may cast one vote with respect to one position or vacancy.

c. Ex Officio Director. The CIO shall serve *Ex Officio* as a Director of the Corporation. In the event no such officer exists, the Mayor shall designate such other official of the City to serve as a Director of the Corporation. The *Ex Officio* Director shall have all powers and privileges of an Appointed or Elected Director except that (i) the term and removability of the *Ex Officio* Director is determined by the Mayor, and (ii) notwithstanding the conflicts of interest policy of the Corporation or Article IV, Section 13, the *Ex Officio* Director need not recuse himself or herself from voting solely because the City has an interest in the outcome of such vote.

SECTION 6. EXECUTIVE COMMITTEE. The Board shall elect an Executive Committee consisting of a Chair, Vice-Chair, Secretary, and Treasurer from the Directors then serving (other than the *Ex Officio* Director).

a. Actions of the Executive Committee shall have the same force and effect as actions of the Board; except that (1) the Executive Committee shall not override and shall otherwise abide by decisions made by the Board, and (2) any action of the Executive Committee shall be subject to override by a majority vote of the Board.

b. A majority of the entire Executive Committee shall constitute a quorum, and the act of a majority of such quorum of the Executive Committee shall be the act of the Committee.

c. In the absence of the Chief Executive Officer, or in the event of the inability or refusal of the Chief Executive Officer to act, the Chair shall perform the duties of the Chief Executive Officer and, when so acting, shall have all the powers of and be subject to all of the restrictions upon the Chief Executive Officer that are provided in these Bylaws and at law. In the absence of the Chair, or in the event of the inability or refusal of the Chairman to act, the

Vice-Chair shall perform the duties of the Chair. Upon the approval of the Board, two (2) Directors may serve as co-Chairs of the Executive Committee.

d. If at any time during the existence of the Corporation, an Executive Committee position has not been filled, the Board shall select a Director to serve in a temporary "Acting" capacity for the applicable position for a specified tenure or until the position can be filled permanently, as determined by the Board and as agreed to by the selected Director.

SECTION 7. REGULAR MEETINGS. Unless otherwise resolved by the Board, a regular annual meeting of the Board shall be held without other notice than these Bylaws, on the first Monday in June, at the offices of the Corporation or such place as the Board shall select. The Board may provide by resolution the time and place for the holding of additional regular meetings of the board without notice other than such resolution. The Board shall meet at least four times annually.

SECTION 8. SPECIAL MEETINGS. Special meetings of the Board may be called by or at the request of the Chair of the Board, the Chief Executive Officer, or any three Directors. The person or persons authorized to call special meetings of the Board may fix any place in the City as the place for holding any special meeting of the Board called by them. Meetings may be held outside the City only upon the vote or written agreement of two-thirds of all Directors.

SECTION 9. NOTICE. Notice of any special meeting of the Board and notice of regular meetings other than the regular annual meeting shall be given at least two days prior thereto by written notice delivered to each Director at his or her address as shown by the records of the Corporation. Notice may be delivered by mail, electronic mail, or facsimile. If mailed, such notice shall be given seven days prior to such meeting and shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. Notice of any special meeting of the Board may be waived in writing signed by the person or persons entitled to the notice either before or after the time of the meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these Bylaws.

SECTION 10. QUORUM. A majority of the Board, present in person or by conference call, shall constitute a quorum for the transaction of business at any meeting of the Board; *provided* that if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting to another time without further notice.

SECTION 11. MANNER OF ACTING.

a. General. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by statute, these Bylaws, or the Articles.

b. Special Voting Provisions. The following actions shall require the approval of not less than two-thirds of the Directors: (i) the incurrence of debt over \$100,000 in principal amount; (ii) the sale of any property of the Corporation with a fair market value over \$100,000; (iii) the entry into any contract under which the Corporation will be obligated to make payments over \$250,000 in any year; (iv) the amendment of the Articles or the Bylaws; and (v) the removal of any Director pursuant to Article IV, Section 12.

c. Actions in Lieu of a Meeting. Any action required or permitted to be taken by the Board or by any committee thereof may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consent thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee. Execution of such consent in writing may be by electronic means to the extent permitted by the law.

d. Participation in Meetings. One or more Directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment so long as all persons participating in the meeting can hear and communicate with each other and take part in real-time communications. Participation in a meeting pursuant to this section shall constitute presence in person at the meeting.

SECTION 12. REMOVAL. Any Director other than the *Ex Officio* Director may be removed at any time for cause by a vote of two-thirds of the Directors.

SECTION 13. RESIGNATION. Any Director may resign from office at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and if no time is specified, at the time of its receipt by the Corporation or its Chief Executive Officer. The acceptance of a resignation by the Board shall not be necessary to make it effective, but no resignations shall discharge any accrued obligation or duty of a Director.

SECTION 14. VACANCIES. Any vacancy occurring in the Elected Directors shall be filled by the Board unless the Articles, a statute, or these Bylaws provide that a vacancy or a directorship so created shall be filled in some other manner, in which case such provision shall control. Any vacancy occurring in the Appointed Directors shall be filled by appointment by the appointing authority. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his or her predecessor.

SECTION 15. COMPENSATION. Directors shall not receive any stated salaries for their services. By resolution of the Board, expenses of attendance, if any, may be allowed for each regular or special meeting of the Board or other business of the Corporation; *provided* that nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving reasonable compensation therefor.

SECTION 16. TRANSACTIONS WITH DIRECTORS. In any instance where the Corporation proposes to enter into a contract or other transaction with one or more of the Directors or with a corporation, firm, association or other entity in which one or more of the Directors have a substantial financial interest or are officers or directors (an "*interested party*")

transaction”), the Director or Directors interested in the transaction shall: (a) make true and complete disclosure of the material facts relating to his or her interest to the Board prior to any vote on the transaction; (b) other than as compliance with (a) above requires, absent himself/herself from discussions, deliberations, or votes concerning the transaction; (c) not be counted in determining the existence of a quorum.

In considering any interested party transaction, the Board shall satisfy itself that the transaction is fair and reasonable to the Corporation and does not constitute an “excess benefit” to the Director interested in the transaction. Whenever feasible, the Board shall approve an interested party transaction only after obtaining appropriate data as to the cost of comparable goods or services. In any instance where the Corporation approves an interested party transaction, the minutes of the meeting where such transaction is approved shall note: (a) the terms of the transaction; (b) the date it was approved and those who voted on it; (c) the comparability data obtained and relied upon and how such data was obtained; and (d) the basis for the Corporation’s decision to approve the transaction.

SECTION 17. CONFLICT OF INTEREST. Each Director and officer of the Corporation shall, upon his or her election, appointment or hire, as the case may be, complete and submit to the Board a Conflict of Interest Disclosure Statement, the form of which is appended to these Bylaws as Exhibit A. Nothing herein shall prohibit the Board from adopting additional disclosure, restriction, or other ethics policies, which the Board may resolve to amend from time to time.

ARTICLE V -- OFFICERS AND EMPLOYEES

SECTION 1. OFFICERS. The officers of the Corporation shall be a Chief Executive Officer, a Chief Financial Officer, and such other officers as may be elected by the Board. Officers whose authority and duties are not prescribed in these Bylaws shall have the authority and perform the duties prescribed, from time to time, by the Board. Any two or more offices may be held by the same person, except the offices of Chief Executive Officer and Secretary. Any member of the Board may also hold any office of the Corporation.

SECTION 2. ELECTION AND TERM OF OFFICE. The officers of the Corporation shall be elected annually by the Board at its regular annual meeting. If the election of officers shall not be held at such meeting, such election shall be held as soon as practicable thereafter. Vacancies may be filled or new offices created and filled at any meeting of the Board. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided. Election of an officer shall not of itself create contract rights.

SECTION 3. REMOVAL. Any officer elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

SECTION 4. CHIEF EXECUTIVE OFFICER. Subject to the direction and control of the Board, the Chief Executive Officer shall be in charge of the business and affairs of the Corporation; shall see that the resolutions and directives of the Board are carried into effect except in those instances in which that responsibility is assigned to some other person by the Board or the Board itself; and, in general, shall discharge all duties incident to the office of Chief Executive Officer and such other duties as may be prescribed by the Board. Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the Corporation or a different mode of execution is expressly prescribed by the Board or these Bylaws, the Chief Executive Officer may execute for the Corporation any contracts, deeds, mortgages, bonds, or other instruments which the Board has authorized to be executed, and he or she may accomplish such execution either under or without the seal of the Corporation and either individually or with the Secretary or any other officer thereunto authorized by the Board, according to the requirements of the form of the instrument. The Chief Executive Officer may vote all securities which the Corporation is entitled to vote except as and to the extent such authority shall be vested in a different officer or agent of the Corporation by the Board.

SECTION 5. CHIEF FINANCIAL OFFICER. The Chief Financial Officer shall: work with the Executive Committee Treasurer and shall (a) have charge of and be responsible for the maintenance of adequate books of account for the Corporation; (b) have charge and custody of all funds and securities of the Corporation, and be responsible therefor, and for the receipt and disbursement thereof; and (c) perform all the duties incident to the office of Chief Financial Officer and such other duties as from time to time may be assigned to him or her by Treasurer, upon the review and approval of the Board.

SECTION 6. SECRETARY. The Secretary shall attend all meetings of the Board and of the Executive Committee and record all votes and the minutes of all meetings in a book to be kept for that purpose. The Secretary shall keep in safe custody the seal of the Corporation, and, when authorized by the Board, affix the seal to any instrument requiring it, and, when so affixed, it shall be attested by his or her signature or the signature of the Treasurer. In the absence of the Secretary his or her duties shall be performed by an Assistant Secretary.

SECTION 7. OTHER OFFICERS. Other officers shall be elected by the Board as it may determine and shall perform such duties as shall be assigned to them by the Chief Executive Officer or the Board, or by other officers so designated by the same.

SECTION 8. EMPLOYEES OF THE CORPORATION.

The Corporation may also employ, either as regular employees or independent contractors, consultants, accountants, attorneys, financial experts and such other personnel as EMPLOYE C529

ARTICLE VI -- COMMITTEES

SECTION 1. COMMITTEES OF DIRECTORS. In addition to the Executive Committee described in Article III, Section 5, the Board may designate one or more committees, each of which shall consist of at least one (1) Director and such other persons as designated by the Board, which committees, to the extent provided in said resolution and not restricted by law, shall have and exercise the authority of the Board in the management of the Corporation. The designation of such committees and the delegation thereto of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed thereupon by law. No committee so appointed shall have any authority as to the following matters: (i) the filling of vacancies on the Board or on any committee; (ii) the amendment or repeal of the Bylaws or the adoption of new Bylaws; (iii) the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable; (iv) the fixing of compensation of the Directors for serving on the Board or any committee; (v) the approval of the Corporation's annual budget; or (vi) removal of any Director.

SECTION 2. AUDIT COMMITTEE.

a. Membership. The Audit Committee shall consist of a maximum of seven (7) and a minimum of three (3) members, as determined by the Board, one of which shall be the Treasurer then serving. At least two (2) members of the Audit Committee must be Directors. No member of the Audit Committee shall: (i) be an *ex officio* member of the Board; or (ii) have any recent material financial dealings with the Corporation; or (iii) during his or her term on the Audit Committee, have any material financial dealings with the Corporation; or (iv) be in a position whereby such member may have a conflict or duality of interest or the appearance of a conflict or duality of interest with the Corporation. Any question relating to the qualifications of an Audit Committee member or proposed Audit Committee member shall be referred to and reviewed by the Board or nominating committee created by the Board, if any.

b. Duties and Responsibilities.

(1) The Audit Committee shall have supervision over all internal and external audit functions; receive, review and approve all corporate audits, management letters and management responses thereto; recommend to the Board the appointment of external and internal auditors; and supervise and approve recruitment and employment of internal audit staff and internal compliance officers; determine the scope of all audits; and recommend to the Board such other functions as the Audit Committee should undertake. The Audit Committee has the responsibility of assuring that there is in place a system of accounting control sufficient to assure that the assets of the Corporation are suitably safeguarded.

(2) The duties and responsibilities of the Audit Committee shall, additionally, include: (i) discussing the Corporation's annual audited statements with management and its independent auditor, separately and together; (ii) discussing the Corporation's critical accounting policies and mediate disputes between its independent auditor and management; (iii) discussing with management policies regarding risk assessment and risk management; (iv) establishing procedures for the receipt, retention, and treatment of complaints received by the Corporation regarding accounting, internal accounting controls, or auditing

matters; (v) establishing procedures for the confidential anonymous submission by employees of concerns regarding questionable accounting or auditing matters; (vi) pre-approving all audit and non-audit services to be provided by an accounting firm; and (vii) regularly reporting its activities to the full Board.

(3) The Audit Committee shall annually review the Disclosure Statements filed by members of the Board to be in compliance with the Conflict of Interest Policy adopted by the Board, and shall advise the Board of their status. The Audit Committee shall also, as needed, serve in an advisory capacity to the Board with respect to potential conflicts, and shall make recommendations to the Board with respect to appropriate action to be taken in the event of conflicts or potential conflicts, including removal of Directors.

SECTION 3. CONTRACT-RELATED COMMITTEES. To the extent that any of the Corporation's officers and Directors are serving on committees and other governing bodies required under contracts to which the Corporation is a party, such officers and Directors will, to the extent practicable, (i) keep the Board reasonably informed of the matters being considered by such committees and (ii) give other Directors the opportunity to discuss and have input into the Corporation's positions on such matters.

SECTION 4. OTHER COMMITTEES. Other committees not having and exercising the authority of the Board may be designated by a resolution adopted by the Directors. Such resolution shall provide for the method of appointment of the members of such committee and may provide that members of any such committee need not be Directors of the Corporation. Any member of such a committee may be removed by the person or persons authorized to appoint such member by the resolution establishing such committee whenever in their judgment the best interests of the Corporation shall be served by such removal.

SECTION 5. TERM OF OFFICE. Each member of a committee shall continue as such until the next annual meeting of the Board of the Corporation and until his or her successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof. A member in good standing at the end of his or her term of office may be retained for such additional terms as are designated by the Board.

SECTION 6. CHAIR. One member of each committee shall be appointed chair.

SECTION 7. VACANCIES. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

SECTION 8. QUORUM. Unless otherwise provided in the resolution of the Board designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

SECTION 9. RULES. Each committee may adopt rules for its own governance not inconsistent with these Bylaws or with rules adopted by the Board.

ARTICLE VII -- CONTRACTS, CHECKS, DEPOSITS, INSURANCE AND FUNDS

SECTION 1. CONTRACTS. The Board may authorize any officer or officers, agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances; *provided* that the approval of two-thirds or more of the Board is required for those contracts and transactions specified in Section 11b of Article IV.

SECTION 2. CHECKS, DRAFTS, ETC. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Treasurer or an assistant treasurer and countersigned by the Chief Executive Officer; *provided* that, in the absence of a contrary determination by the Board, such instruments in amounts less than \$2,000 may be signed by only the Treasurer or the Chief Executive Officer.

SECTION 3. DEPOSITS. All funds of the Corporation shall be promptly deposited to the credit of the Corporation in such banks, trust companies, or other depositories as the Chief Executive Officer or Board may select.

SECTION 4. GIFTS. The Board may accept on behalf of the Corporation any contribution, gift, bequest or, devise for the general purposes or for any special purpose of the Corporation; *provided* such action would not jeopardize the 501(c)(3) status of the Corporation. Such acceptance may be pursuant to a policy determined by resolution of the Board.

SECTION 5. INSURANCE. The Corporation may purchase insurance in types and amounts and in such manner as shall from time to time be determined by resolution of the Board to be in the best interests of the Corporation, the Board and the officers and employees of the Corporation.

ARTICLE VIII -- INDEMNIFICATION OF OFFICERS, DIRECTORS, & EMPLOYEES

SECTION 1. SCOPE OF INDEMNIFICATION.

a. The Corporation shall indemnify an Indemnified Representative against any Liability incurred in connection with any Proceeding in which the Indemnified Representative may be involved as a party or otherwise, by reason of the fact that such person is or was serving in an Indemnified Capacity, including, without limitation, Liabilities resulting from any actual or alleged breach or neglect of duty, error, misstatement or misleading statement, negligence, gross negligence or act giving rise to strict or products liability, except:

(1) where such indemnification is expressly prohibited by applicable law;

(2) where the conduct of the Indemnified Representative has been finally determined pursuant to a Proceeding: (i) to constitute willful misconduct or recklessness

within the meaning of 15 Pa.C.S. §5713 or any superseding provision of law sufficient in the circumstances to bar indemnification against Liabilities arising from the conduct; or (ii) to be based upon or attributable to the receipt by the Indemnified Representative from the Corporation of a personal benefit to which the Indemnified Representative is not legally entitled; or

(3) to the extent such indemnification has been finally determined in a final adjudication pursuant to a Proceeding to be otherwise unlawful.

b. If an Indemnified Representative is entitled to indemnification in respect of a portion, but not all, of any Liabilities to which such person may be subject, the Corporation shall indemnify such Indemnified Representative to the maximum extent for such portion of the Liabilities.

c. The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the Indemnified Representative is not entitled to indemnification.

d. For purposes of this Article:

(1) “**Indemnified Capacity**” means any and all past, present and future service by an Indemnified Representative in one or more capacities as a director, officer, employee or agent of the Corporation, or, at the request of the Corporation, as a director, officer, employee, agent, fiduciary or director of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust, employee benefit plan or other entity or enterprise.

(2) “**Indemnified Representative**” means any and all directors and officers of the Corporation and any other person designated as an Indemnified Representative by the Board (which may, but need not, include any person serving at the request of the Corporation, as a director, officer, employee, agent, fiduciary or director of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust, employee benefit plan or other entity or enterprise).

(3) “**Liability**” means any damage, judgment, amount paid in settlement, fine, penalty, punitive damages, excise tax assessed with respect to an employee benefit plan, or cost or expense of any nature (including, without limitation, reasonable attorneys’ fees and disbursements).

(4) “**Proceeding**” means any threatened, pending or completed action, suit, appeal or other proceeding of any nature, whether civil, criminal, administrative or investigative, whether formal or informal, and whether brought by or in the right of the Corporation, a class of its security holders, if any, or otherwise.

SECTION 2. PROCEEDINGS INITIATED BY INDEMNIFIED REPRESENTATIVES.
Notwithstanding any other provision of this Article, the Corporation shall not indemnify under this Article VIII an Indemnified Representative for any liability incurred in a proceeding initiated (which shall not be deemed to include counterclaims or affirmative defenses) or participated in as an intervenor or *amicus curiae* by the person seeking indemnification unless such initiation of

or participation in the proceeding is authorized, either before or after its commencement, by the Board. This section does not apply to reimbursement of expenses incurred in successfully prosecuting or defending a Proceeding related to the right to indemnification, contribution or advancement of expenses.

SECTION 3. ADVANCING EXPENSES. The Corporation shall pay the expenses (including reasonable attorneys' fees and disbursements) incurred in good faith by an Indemnified Representative in advance of the final disposition of a proceeding described in Article VIII, Sections 1 or 2 upon receipt of an undertaking by or on behalf of the Indemnified Representative to repay such amount if it shall ultimately be determined pursuant to a Proceeding related to the right to indemnification, contribution or advancement of expenses that such person is not entitled to be indemnified by the Corporation pursuant to this Article VIII. The financial ability of an Indemnified Representative to repay an advance shall not be a prerequisite to the making of such advance.

SECTION 4. PAYMENT OF INDEMNIFICATION. An Indemnified Representative shall be entitled to indemnification within 30 days after a written request for indemnification has been delivered to the Secretary of the Corporation.

SECTION 5. ARBITRATION. Any dispute related to the right to indemnification, contribution or advancement of expenses as provided under this Article VIII shall be decided only by binding arbitration in Philadelphia, Pennsylvania, in accordance with the commercial arbitration rules then in effect of the American Arbitration Association, before a panel of three arbitrators, one of whom shall be selected by the Corporation, the second of whom shall be selected by the Indemnified Representative, and the third of whom shall be selected by the other two arbitrators. Each arbitrator so selected is required to be or have been a director or executive officer of a corporation whose shares of common stock were listed during at least one year of such service on the New York Stock Exchange or the American Stock Exchange, or quoted on the National Association of Securities Dealers Automated Quotations System. The party or parties challenging the right of an Indemnified Representative to the benefits of this Article VIII shall have the burden of proof. The Corporation shall reimburse an Indemnified Representative for the expenses (including reasonable attorneys' fees and disbursements) incurred in successfully prosecuting or defending such arbitration. This arbitration provision shall be specifically enforceable.

SECTION 6. CONTRIBUTION. If the indemnification provided for in this Article VIII or otherwise is unavailable for any reason in respect of any Liability or portion thereof, the Corporation shall contribute to the Liabilities to which the Indemnified Representative may be subject in such proportion as is appropriate to reflect the intent of this Article VIII or otherwise.

SECTION 7. DISCHARGE OF DUTY. An Indemnified Representative shall be deemed to have discharged such person's duty to the Corporation if he or she has relied in good faith on information, advice or an opinion, report or statement prepared by: (a) one or more officers or employees of the Corporation whom the Indemnified Representative reasonably believes to be reliable and competent with respect to the matter presented; (b) legal counsel, public accountants or other persons as to matters that the Indemnified Representative reasonably believes are within the person's professional or expert competence; or (c) a committee of the Board on which he or

she does not serve as to matters within its area of designated authority, which committee he or she reasonably believes to merit confidence.

SECTION 8. MANDATORY INDEMNIFICATION OF DIRECTORS, OFFICERS, ETC. In accordance with 15 Pa. C.S. §5743, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in 15 Pa.C.S. §5741 or §5742 or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses actually and reasonably incurred by such person in connection therewith.

SECTION 9. CONTRACT RIGHTS; AMENDMENT OR REPEAL. All rights under this Article VIII shall be deemed a contract between the Corporation and the Indemnified Representative pursuant to which the Corporation and each Indemnified Representative intend to be legally bound. Any repeal, amendment or modification hereof shall be prospective only and shall not affect any rights or obligations then existing.

SECTION 10. SCOPE OF ARTICLE. The rights granted by this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification, contribution or advancement of expenses may be entitled under any statute, agreement, vote of disinterested directors or otherwise, both as to action in an official capacity and as to action in any other capacity. The indemnification, contribution and advancement of expenses provided by or granted pursuant to this Article VIII shall continue as to a person who has ceased to be an Indemnified Representative in respect of matters arising prior to such time, and shall inure to the benefit of the heirs, executors, administrators and personal representatives of such a person.

SECTION 11. RELIANCE UPON PROVISIONS. Each person who shall act as an Indemnified Representative of the Corporation shall be deemed to be doing so in reliance upon the rights of indemnification, contribution and advancement of expenses provided by this Article VIII.

SECTION 12. INTERPRETATION. The provisions of this Article are intended to constitute bylaws authorized by 15 Pa.C.S. §5746(a).

ARTICLE IX -- BOOKS AND RECORDS

The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board, officers, and committees having any of the authority of the Board. All books and records of the Corporation may be inspected by any Director or officers (or his or her agent or attorney) for any proper purpose at any reasonable time.

ARTICLE X -- FISCAL YEAR

The fiscal year of the Corporation shall end June 30 of each year, or as otherwise fixed by resolution of the Board.

ARTICLE XI -- SEAL

The corporate seal shall have inscribed thereon the name of the Corporation and the words "Corporate Seal, Pennsylvania."

ARTICLE XII -- WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the Non-Profit Corporation Act of Pennsylvania or under the provisions of the Articles or these Bylaws of the Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XIII -- AMENDMENTS

Subject to any right of the City to consent to and/or approve amendments to the Bylaws under any contractual arrangement with the Corporation, the power to alter, amend, or repeal the Bylaws or adopt new Bylaws shall be vested in the Board pursuant to the Articles. Such action may be taken at a regular or special meeting for which written notice of the purpose shall be given. The Bylaws may contain any provisions for the regulation and management of the affairs of the Corporation not inconsistent with law or the Articles. Any alteration, amendment or repeal of these Bylaws, and the adoption of new Bylaws, shall require the approval of two-thirds or more of the Board.

ARTICLE XIV -- REPORTS

Within 90 days following the end of each fiscal year, the Board shall prepare its annual financial report, and a progress report. A firm of certified public accountants shall certify the financial information contained in the annual report.

EXHIBIT A

CONFLICTS OF INTEREST POLICY

It is the policy of Wireless Philadelphia (the “*Corporation*”) that the Directors, officers and other persons engaged in the management of the Corporation occupy positions of fiduciary trust to the Corporation and are bound to discharge their duties in good faith and with undivided loyalty to the interests of the Corporation. Therefore, it is incumbent upon each to:

- 1 – Act in the course of their duties solely in the best interests of the Corporation without consideration to the interests of any other agency, organization or association with which they are associated, or refrain from taking part in any transaction where such persons do not believe in good faith that they can act with undivided loyalty to the Corporation.
- 2 – Disclose any financial interest in any entity engaged in or that may become engaged in the delivery of goods or services to the Corporation, and any relationship with or investment in an organization competing with the Corporation.
- 3 – Disclose any transaction with the Corporation that would result in any benefit to themselves, their immediate families, or any entity in which they hold a financial interest, and refrain from participation in any action on such matters except upon approval of the Board of the Corporation after full and frank disclosure.
- 4 – Disclose any opportunity that is within the scope of the activities of the Corporation and refrain from exploiting such opportunity except upon written approval of the Corporation.
- 5 – Refrain from utilizing any inside information as to the business activities of the Corporation for the benefit of themselves, their families, or any entity with which they may be associated.

“*Financial interest*” for this purpose shall mean any contractual relationship or position as owner, officer, board member, partner, employee or beneficiary. A possible conflict of interest arises when a Director, officer or other person engaged in the management of the Corporation holds a financial interest in or will receive any personal or other benefit from a business firm furnishing services, materials or supplies to the Corporation. “Financial interest” shall not include the ownership of less than five percent (5%) of the outstanding voting securities in a publicly-held company.

All Directors, officers and other persons engaged in the management of the Corporation shall execute an Annual Conflict of Interest Certification and Disclosure Statement in the form attached as Exhibit B.

This policy is intended to supplement, but not replace any applicable laws of the Commonwealth of Pennsylvania governing conflicts of interest applicable to nonprofit and charitable corporations.

EXHIBIT B

Wireless Philadelphia – Annual Conflict of Interest Certification and Disclosure Statement

I hereby certify that I:

1. have read and understand the Wireless Philadelphia Conflict of Interest Policy (the “*Policy*”), a copy of which was distributed with this certificate;
2. have complied with the Policy; and
3. will continue to comply with the Policy.

I hereby further certify that set forth below are possible conflicts of interest under the Policy of which I am aware as of the date hereof:

Signature: _____

Name: _____
(please print)

Department or Title: _____

Date: _____