

# Network Agreement

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City of Philadelphia  
Wireless Philadelphia Closing  
February 21, 2006

## WIRELESS PHILADELPHIA BROADBAND NETWORK AGREEMENT

This Wireless Service Agreement ("Agreement") is made and entered into on this 21<sup>st</sup> day of February, 2006 ("Effective Date"), by and between Wireless Philadelphia, a Pennsylvania not-for-profit corporation ("WP"), and EarthLink, Inc., a Delaware corporation ("EarthLink"). EarthLink and WP may be referred to individually as a "Party" and collectively as the "Parties." Capitalized words in this Agreement shall have the meaning defined herein and if not defined herein then the meaning defined in the attached Exhibit A.

### BACKGROUND

- A. Wireless Philadelphia was created by Mayor John F. Street to develop a metropolitan wireless broadband Internet access System (as defined herein) in the City of Philadelphia ("City") in order:
  - To spur economic development
  - To enhance community neighborhoods
  - To help overcome the digital divide
  - To reduce the cost of government
- B. WP issued an RFP to build the System and selected EarthLink from among the twelve proposals received.
- C. EarthLink and WP have entered into this Agreement in order for EarthLink to own and deploy the System in the City.
- D. The City is entering into a Street Light Use Agreement ("City Pole Attachment Agreement") between the City and the Philadelphia Authority for Industrial Development ("PAID") effective on or about the Effective Date, granting the rights to PAID to allow EarthLink or its agent to use the Street Lights (as defined herein) for the operation of the System in the City.
- E. PAID is entering into a Street Light Use Agreement ("PAID Pole Attachment Agreement") between PAID and EarthLink effective on or about the Effective Date, granting EarthLink the right to use the Street Lights for installation, maintenance and operation of a System in the City.
- F. WP has chosen and hereby authorizes EarthLink to install and operate the System during the Term of, and pursuant to the terms of, this Agreement.
- G. From time to time, upon the request of either Party, the Steering Committee (as defined herein) will review the product offerings of EarthLink that are described on the attached Exhibit I.

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, WP and EarthLink agree as set forth above and as follows:

## 1. PAYMENTS

EarthLink will make the following payments during the Term:

1.1 Execution. Within twenty (20) days after the execution of this Agreement and satisfaction of the First Payment Conditions, EarthLink will pay to PAID, for the account of the City, Two Hundred and Fifty Thousand Dollars (\$250,000) as a non-refundable use fee for the Street Lights used by EarthLink in operating the System during the initial 10 year term of the PAID Pole Attachment Agreement.

1.2 Acceptance of Trial. Within twenty (20) days after Proof of Concept Acceptance (as defined in Section 3.2(c)) EarthLink shall pay to PAID, for the account of the City, Seven Hundred and Fifty Thousand Dollars (\$750,000) as a non-refundable use fee for the Street Lights used by EarthLink in operating the System during the initial 10 year term of the PAID Pole Attachment Agreement.

1.3 2<sup>nd</sup> Year Payment. One (1) year after Proof of Concept Acceptance EarthLink shall pay to PAID, for the account of the City, One Million Dollars (\$1,000,000) as a non-refundable use fee for the Street Lights used by EarthLink in operating the System during the initial 10 year term of the PAID Pole Attachment Agreement. Collectively the payments describes in this sub-section and as described in sub-sections 1.1 and 1.2 above and the same payments described also in the PAID Pole Attachment Agreement shall be referred to herein as the "\$2,000,000 Payments".

1.4 Annual Pole Use Fee. A Use Fee of \$24.00 per year per Street Light on which EarthLink installs and maintains Communications Equipment as described in the PAID Pole Attachment Agreement will be paid to PAID, for the account of the City, ("Additional \$2 Pole Fee").

1.5 Revenue Sharing. Beginning two (2) years after the Proof of Concept Acceptance, EarthLink shall pay to WP on a monthly basis the revenue share income set forth in Exhibit I within sixty (60) days after the end of the month in which the revenue share income was actually received by EarthLink. This revenue sharing must be used by WP, PAID and the City only for expenses incurred in the course of fulfilling the WP Mission set forth in the Articles of Incorporation of WP ("WP Mission"), including operational expenses and overhead of WP.

The above payments, which are also described in the PAID Pole Attachment Agreement, are not intended to be separate payments because they are the same payments.

WP will make the following payments:

1.6 Electricity. WP will pay to PECO the costs and charges for electricity for operation of the System during the term of the PAID Pole Attachment Agreement as

described below. WP will cooperate with the City to continue the manner of paying for electricity usage of the Communications Equipment that WP and the City have mutually agreed upon.

(a) WP will be responsible for arranging and establishing an account with PECO for the purchase, supply and use of electricity by EarthLink during the Term of the PAID Pole Attachment Agreement for all of the Communication Equipment (as defined in the PAID Pole Attachment Agreement) mounted on City Street Lights. The charges due for such electricity will be paid by WP and EarthLink as provided below.

(b) During the two (2) year period beginning with start of installation of the Proof of Concept Trial ("2 Year Period"), WP shall forward all invoices for electricity for the Communication Equipment mounted on City Street Lights to EarthLink and EarthLink will pay such invoices in a timely manner, provided that if the electricity for the Communications Equipment is not separately invoiced by the utility then the parties shall calculate the portion of the combined invoice that is attributable in the manner described in Exhibit P. The sum of such amounts paid by EarthLink during the 2 Year Period shall be referred to as the "EL Electricity Payment". During the remaining initial term of this Agreement WP shall reimburse EarthLink for EL Electricity Payment each month ("Reimbursement Payment") to the extent that the sum of such monthly reimbursement payment and the monthly payment in the next paragraph (c) ("Current Monthly Payment") is less than 50% of the Revenue Share payable by EarthLink to WP that month. Payments in the previous sentence shall be applied to EL Electricity Payment balance until it has been paid in full. EarthLink will not charge interest on the EL Electricity Payment and WP shall have no other obligation to repay the EL Electricity Payment except as provided herein. (For example purposes only: (i) If a given month had a Revenue Share of \$100,000 and the electricity bill for that month was \$30,000, the Current Monthly Payment under the below paragraph (c) would be \$30,000 for that month, and the Reimbursement Payment under this paragraph (b) would be \$20,000 for that month; (ii) If a given month had a Revenue Share of \$100,000 and the electricity bill for that month was \$60,000, the Current Monthly Payment under the below paragraph (c) would be \$50,000 for that month, and the Reimbursement Payment under this paragraph (b) would be \$0 for that month.)

(c) During the remaining Term of the Agreement after the 2 Year Period WP will pay for all of the electricity charges for the Communication Equipment mounted on City Street Lights as provided below. However, EarthLink shall pay each month for such electricity if and to the extent that such electricity cost in a month exceeds 50% of the Revenue Share payable by EarthLink to WP in that month. If and as long as EarthLink so elects by notice to WP, WP shall forward all invoices for electricity for the Communication Equipment mounted on City Street Lights to EarthLink and EarthLink will be entitled to pay such invoices directly in a timely manner. If the electricity for the Communications Equipment is not separately invoiced by the utility then the parties shall calculate the portion of the combined invoice that is attributable in the manner described in Exhibit P.

(d) EarthLink may offset amounts payable by WP to EarthLink pursuant to 1.6(b) and 1.6(c) against amounts payable for Revenue Share that month. Any amounts payable by EarthLink to WP pursuant to 1.6(c) shall be paid along with the Revenue Share each month. The reports provided by EarthLink to WP shall also report the amounts offset as provided in this Section.

(c) EarthLink shall arrange for and pay the costs of electricity for operating the System other than for Communication Equipment mounted on City Street Lights.

## **2. THE SYSTEM**

EarthLink will design, build, install, test, operate, maintain and upgrade a City wide wireless broadband Internet access system (the "System"), at its own cost, according to the specifications set forth in Exhibit G (as may be amended, "Specification") that meets the requirements set forth in Exhibit F (as may be amended, "Requirements") according to the schedule set forth in Exhibit H (as may be amended, "Schedule") in order to provide the services and product offerings set forth in Exhibit I. EarthLink will be the owner of the System.

## **3. DESIGN, INSTALLATION, TEST & ACCEPTANCE OF THE SYSTEM**

### **3.1 Design.**

3.1(a) In accordance with the Schedule, prior to beginning the Proof of Concept Trial, EarthLink will prepare a detailed design document ("Design Control Documents") for the System which will be submitted to WP at least one week in advance of a detailed design review meeting including EarthLink, WP and principal Subcontractors ("Preliminary Design Review"). The Design Control Documents will incorporate and comply with the Specifications and Requirements, as amended, and will also include detailed testing plans for the Proof of Concept Trial and detailed acceptance criteria for the System ("Acceptance Criteria"), as well as a detailed schedule for the Proof of Concept Trial and System deployments. The Design Control Documents shall further include a matrix showing how each of the Requirements are met through the Acceptance Criteria.

3.1(b) At the design review meeting EarthLink will receive and consider design comments from WP and shall provide updated Design Control Documents if necessary to create and amend Design Control Documents that are mutually acceptable to both parties. In the event that WP believes that the design does not comply with the Specification or cannot meet the Requirements, it may provide EarthLink with written notice within two weeks of the meeting ("Design Concern Notice"), in which case EarthLink may not proceed with the Proof of Concept Trial until WP withdraws the Design Concern Notice. The Design Control Documents, that are prepared and amended by EarthLink pursuant to the Preliminary Design Review and that are either (i) approved by WP or (ii) to which WP does not send a Design Concern Notice, will be the only specifications, requirements and schedule governing the installation services in the Proof of Concept Trial.

### **3.2 Proof of Concept Trial.**

3.2(a) Upon successful completion and satisfaction of the Proof of Concept Conditions, but no sooner than two weeks after the later of (i) the Preliminary Design Review and (ii) EarthLink delivering updated Design Control Documents after the Preliminary Design Review, EarthLink shall install, implement and test the Proof of Concept Trial as provided in the test procedures and Acceptance Criteria set forth in the Design Control Documents.

3.2(b) EarthLink shall send WP notice when the results of the Proof of Concept Trial are available, as well as updated Design Control Documents including an updated Schedule

for deployment of the System, test plans for the Zones and the System, and any proposed changes suggested to the approved Design Control Documents (which may include proposed changes to the Acceptance Criteria). WP and EarthLink shall meet to review the test results as well as the updated Design Control Documents. If one of the Parties believes that the Proof of Concept Trial does not successfully meet the Acceptance Criteria then EarthLink shall not proceed to Implementation of the System and will use good faith commercially reasonable efforts to resolve any problems and/or provide alternatives or changes to the Design Control Documents, so that the Proof of Concept Trial can be mutually accepted.

3.2(c) EarthLink shall use commercially reasonable efforts to design the configuration and order of the installation of the Zones so that Digital Inclusion Areas are deployed at least at the same rate as the rest of the City. When the parties agree to proceed and agree on any requested changes to the Design Control Documents (including the configuration and order of installation of the Zones, Acceptance Criteria and Schedule) and agree that the Proof of Concept Trial has met the Acceptance Criteria (as may be amended) they and the City shall execute a written paper document acknowledging acceptance of Proof of Concept Trial and the revised Design Control Documents ("Proof of Concept Acceptance"). At such time the revised Design Control Documents (including Acceptance Criteria and Schedule) shall replace and supersede all previous versions of such documents and the Specifications and Requirements. The Design Control Documents, as amended and approved by the Proof of Concept Acceptance will be the only specifications, requirements and schedule governing the installation services in the Implementation.

3.2(d) In the event that Proof of Concept Acceptance cannot be achieved within ninety (90) days of the beginning of acceptance testing, WP or EarthLink may terminate this Agreement and the Pole Attachment Agreements, in which case neither EarthLink nor WP will have any further obligations or liabilities hereunder or under the Pole Attachment Agreements, except EarthLink's obligation to remove the Communications Equipment. Notwithstanding the above, EarthLink shall in good faith begin preparation for the Proof of Concept Trial prior to successful completion of the Proof of Concept Conditions. Such preparation shall be at the sole discretion of EarthLink and nothing herein shall obligate EarthLink to purchase Equipment, to create binding agreements or to utilize subcontractors or to begin any of the work outlined in this Agreement prior to successful completion of the Proof of Concept Conditions. When used herein, "Proof of Concept Trial" shall mean a fifteen (15) square mile test of the System with live users as further described in the Specification and to be further described in the applicable Design Control Document.

3.3 Effect of Design Concern Notice. The delivery of, failure to deliver, or withdrawal of a Design Concern Notice, WP's participation in the design review process, and WP's, and delivery of the Proof of Concept Acceptance, shall in no way alleviate EarthLink from its obligations to meet the Design Control Documents as amended pursuant to the above-described procedures, unless EarthLink has received an express written amendment to the relevant Design Control Documents.

3.4 Implementation. Upon successful completion and satisfaction of the Implementation Conditions EarthLink shall install, implement and test the System ("Implementation").

3.4(a) The System shall be implemented in zones specified by EarthLink and set forth in the Schedule and Design Control Documents ("Zones"). Each Zone shall be accepted by WP separately from the other Zones prior to EarthLink beginning the final System acceptance testing, except that the testing of the final Zone shall happen at the same time as the final System testing. EarthLink may deploy multiple Zones simultaneously.

3.4(b) Acceptance of each Zone, shall be determined in accordance with the Acceptance Criteria and test procedures set forth in the Design Control Documents. When EarthLink believes a Zone is accepted it shall deliver notice, along with test data, to WP, and such Zone shall be deemed accepted unless WP objects in writing providing details of the basis for its objection, within two weeks or receiving such notice. If it is determined by such testing that the Zone does satisfy the Acceptance Criteria then that Zone will be "Accepted." If it is determined by such testing that the Zone does not satisfy the Acceptance Criteria then EarthLink shall use best efforts to correct any defects and resubmit the Zone for acceptance testing within a reasonable period of time taking into account the work to be accomplished, at which point the procedure set forth in this sub-section shall be repeated.

3.4(c) After each Zone is Accepted EarthLink shall bring that Zone into operation handling customers at speeds and functionality in accordance with the Design Control Documents ("Operational"). EarthLink shall keep each Zone Operational as it implements and tests each successive Zone.

3.4(d) System Acceptance. When all Zones of the System has been Accepted and are still Operational, EarthLink shall perform System acceptance testing in accordance with test procedures set forth in the Design Control Document. System acceptance testing shall be conducted for at least two (2) months from its starts. When EarthLink believes the System is accepted it shall deliver notice, along with test data, to WP, and the System shall be deemed accepted unless WP objects in writing providing details of the basis for its objection, within one month of such notice ("System Acceptance" and "Final Acceptance"). If, after such notice has been sent, it is determined by such testing that the System does satisfy the Acceptance Criteria then that will constitute System Acceptance, If, after such notice has been sent, it is determined by such testing that the System does not satisfy the Acceptance Criteria then EarthLink shall use best efforts to correct any defects and resubmit the System for acceptance testing within a reasonable period of time taking into account the work to be accomplished, at which point the procedure set forth in this sub-section shall be repeated. In the alternative, WP may provide written notice to EarthLink of System Acceptance.

#### **4. CONDITIONS TO PERFORMANCE**

The obligations to pay the sums pursuant to Section 1.1 shall be conditioned upon the timely successful completion and satisfaction of the First Payment Conditions. The obligations and authority of EarthLink to implement the Proof of Concept shall be conditioned upon the timely successful completion and satisfaction of the Proof of Concept Conditions. The obligations and authority of EarthLink to implement the Implementation phase shall be conditioned upon the timely successful completion and satisfaction of the Implementation Conditions. WP and EarthLink shall be entitled, but not obligated, to waive any of these conditions if they both agree to such waiver.

4.1 When used herein, "First Payment Conditions shall mean that all of the following has occurred and been satisfied:

4.1(a) This Agreement has been signed by both Parties through fully authorized representatives;

4.1(b) EarthLink shall secure from the City and PAID all necessary approvals to operate the System and the Services and WP shall secure the City Council's approval or authorization for execution of the City Pole Attachment Agreement and PAID Pole Attachment Agreement. The City Pole Attachment Agreement and PAID Pole Attachment Agreement have both been fully authorized and executed by the appropriate entities and governing bodies;

4.1(c) PECO has opened an account for WP, PAID, EarthLink or the City to use the electricity for the operation of the System Communications Devices on the Street Lights using PECO provided electricity in a manner that complies with applicable laws and regulations;

4.1(d) There are not any court actions or civil actions, that have resulted in EarthLink not having substantially all of the rights to perform as described in this Agreement;

4.1(e) There are not any laws, statutes, or regulations or any City Council ordinances that have the effect of EarthLink not having substantially all of the rights to perform as described in this Agreement; and

4.2 When used herein, "Proof of Concept Conditions" shall mean the following:

4.2(a) The First Payment Conditions have all been successfully completed and satisfied and continue to be accurate and satisfied;

4.2(b) All necessary and appropriate permits, licenses and authorizations of the City, County, State and Federal governments for the Proof of Concept Trial ("Proof of Concept Permits") have been issued and have not been terminated or revoked (excepting those Permits that the City and EarthLink have otherwise agreed will be issued on a rolling basis); and

4.2(c) A Design Concern Notice has not been delivered or, if any have been delivered, they have all been withdrawn.

4.3 When used herein, "Implementation Conditions" shall mean the following:

4.3(a)(i) All of the Proof of Concept Conditions have all been successfully completed and satisfied and continue to be accurate and satisfied;

4.3(a)(ii) The Proof of Concept Acceptance has occurred; and

4.3(a)(iii) All appropriate permits, licenses and authorizations of the City, County, State and Federal governments for the implementation of the entire System ("Permits") have been issued and have not been terminated or revoked (excepting those Permits that the City and EarthLink have otherwise agreed will be issued on a rolling basis).

4.4 EarthLink's willingness to enter into this Agreement and ability to perform is dependent upon the completion and continued effectiveness of the conditions set forth in



this Section. If by the day that is one hundred and eighty (180) days after the later of: (i) the date of City Council Approval; (ii) the date on which the Agreement is fully executed; or (iii) the Effective Date, the Implementation Conditions are not successfully completed and satisfied or have not continued to be successfully completed and satisfied, and such failure to complete and satisfy was not caused by EarthLink, then EarthLink shall be entitled to terminate all of its obligations hereunder by sending a notice of termination within ninety (90) days after the end of such 180 day period; the Agreement shall remain in full force and effect throughout the ninety (90) day notice period and shall terminate on the last day of the notice period unless such conditions are completed and satisfied by the end of the ninety (90) day notice period, or the Agreement is sooner terminated by the written agreement of both parties or in accordance with its terms. Notwithstanding anything to the contrary, if the City Council's approval of the City Pole Attachment Agreement and PAID Pole Attachment Agreement (each in the form executed by all parties and dated on the Effective Date of this Agreement without addition, modification or condition) by ordinance and the ordinance becoming law ("City Council Approval") has not occurred prior to the earlier of: (a) July 1, 2006; or (b) the end of the Spring 2006 City Council term, then either Party shall be entitled to terminate this Agreement upon ten (10) days prior written notice of termination unless prior to the time of termination the City Council Approval has occurred. The fact that both parties wait and do not terminate this Agreement as provided in the immediately preceding sentence shall not be a waiver of such termination right and each shall continue to have the right thereafter to terminate this Agreement as provided in the immediately preceding sentence at any time until City Council Approval has occurred.

4.5 Pole Rights. EarthLink's rights, during the Term of this Agreement to mount, install, operate, repair and maintain at EarthLink's sole cost and expense, the equipment, radios and antennas, or such other comparable equipment on Street Lights are set forth in the PAID Pole Attachment Agreement ("Communications Equipment" as defined in the PAID Pole Attachment Agreement). EarthLink's obligation to provide wireless broadband data communication services to persons located within the boundaries of the City in accordance with the mutually agreed upon coverage area as defined in the Acceptance Testing Criteria and Design Control Documents, as amended ("Coverage Area") are dependent upon access rights being granted on poles in sufficient number and location. If the necessary rights to City assets in any location are not provided, without providing a reasonable alternative, then EarthLink will not be responsible to include coverage for such affected location. If EarthLink is unable to obtain the Street Lights from the City pursuant to the PAID Pole Attachment Agreement, then EarthLink's performance obligations will be reduced to the extent the Coverage Area cannot be obtained for a given location and EarthLink will not be in default for any failure to provide the Coverage Area originally set forth in the Design Control Documents. If EarthLink is unable to obtain the Street Lights for installation of any assets in locations EarthLink determines necessary to provide the agreed upon Coverage Area for at least Fifty (50%) percent of the City locations in which EarthLink and WP had proposed coverage pursuant to the Design Documents within nine (9) months after the later of: (i) the date of City Council Approval; (ii) ) the date on which the Agreement is fully executed; or (iii) the Effective Date, then EarthLink may terminate this Agreement upon written notice to WP without penalty or further liability or obligation to perform, provided the termination notice is sent to WP within ninety (90) days after such nine (9) month period.

**5. USE OF POLES AND UPGRADES.** At all times during the test, construction and maintenance of the System EarthLink shall comply with such permitting, inspection and notice requirements required by the City and/or the Streets Department of the City ("City Guidelines").

EarthLink commits that it will keep the System updated with industry standard equipment, provided that this obligation will not apply during the last three (3) years of the term unless the terms of the PAID Pole Attachment Agreement and this Agreement have been renewed by WP, the City and PAID so that the end of the Term is more than three (3) years away.

## **6. PROGRAM MANAGEMENT**

EarthLink will at all times during the term of this Agreement maintain a full time program manager located in the City responsible for implementing and operating the System. During the Implementation Phase EarthLink will provide WP with weekly status reports and updated schedules and the Parties will meet every two (2) weeks to review progress and resolve issues. After Acceptance of all of the Zones of the System the Parties shall meet at least once a month to discuss ongoing operation of the System including ongoing compliance with Requirements, market penetration, and success in reaching low income subscribers. EarthLink shall maintain and update a list of all open issues and resolutions throughout the term of this Agreement. WP or EarthLink may require additional meetings on reasonable cause.

## **7. INVOICE, BILLING AND PAYMENT**

7.1 EarthLink will pay WP or PAID the fees as set forth in Section 1 as payable to WP or PAID and the fees set forth in Exhibit I. WP will pay the sums as set forth in Section 1, if any. EarthLink will make payments to WP monthly, without invoice, for Revenue Share for the immediate preceding month within sixty (60) days after the end of the month in which the revenue was actually received by EarthLink. Along with each such payment EarthLink will provide reasonable reports detailing the calculation of the payment. WP will be entitled to become an ISP on the System and to use the System only if WP first executes the appropriate ISP agreement of EarthLink and makes the payments as required therein, subject to the restrictions in Section 4 (k) of Exhibit I. In the event of any dispute regarding a portion of a payment, the undisputed portion shall be paid as provided herein. EarthLink shall only have the right to offset amounts owed by WP to EarthLink for fees expressly agreed to by WP (in this or another agreement) or for damages that have been liquidated by the Parties or otherwise reduced to monetary judgment.

7.2 EarthLink shall invoice each Subscriber and each individual Approved ISP providing Wireless Access Service to its customers through the System the fees set forth in the applicable Subscriber Fee Schedule and ISP Fee Schedule, which EarthLink shall be entitled to change from time to time, on a periodic basis as described in the applicable Subscriber Access Agreement and ISP Wholesale Agreement. EarthLink shall be solely responsible for collections of such amounts. EarthLink shall not separately attribute, break out or identify on subscriber bills or otherwise notify subscribers of any payments made to WP and shall ensure in its contracts with any third party ISPs that such ISPs are obligated not to do so. WP takes no position as to whether EarthLink may charge interest on late payments to Subscribers or Approved ISPs.

7.3 WP shall have the right to audit and verify the accurate payment of all fees due under this Agreement, including, without limitation, (i) the number of Street Lights in use by EarthLink for the System, and (ii) accurate reporting and payment of WP's share of Subscriber and ISP fees. If WP's audit determines any underpayment or overpayment, then EarthLink shall promptly (within thirty (30) days) adjust the fees for the current installment of the fees to the extent the underpayment or overpayment findings of the audit are correct. If amount of the underpayment is greater than ten (10%) percent, then EarthLink shall also pay the actual cost of WP for such audit.

7.4 In the event that WP owes EarthLink any payments that are based upon facts held by WP and not otherwise held by EarthLink, such as electrical charges, EarthLink shall have the right to audit and verify such facts. If EarthLink's audit determines that the actual amount of use and the fees due for such use of the System exceeds the sum paid by WP to EarthLink then WP shall promptly (within thirty (30) days) adjust the fees for the current installment of the fees. If the underpayment is greater than ten (10%) percent of the sums actually owed by WP to EarthLink, then WP shall also pay the actual cost of EarthLink for such audit.

## **8. OWNERSHIP OF SYSTEM**

Except as otherwise set forth in this Agreement, as between WP and EarthLink, EarthLink shall retain title to the System and each device and component thereof. No portion of the System shall become a fixture unless EarthLink expressly agrees otherwise in a signed paper writing. WP may access and use the System as described in the Subscriber Access Agreement and/or ISP Wholesale Agreement executed by WP and EarthLink. WP shall not gain any ownership rights in or to the System, in whole or in part. Without EarthLink's prior approval, WP will not translate, modify, disassemble, or reverse engineer the System or create derivative works based on any portion of the System or the Design Control Documents or authorize or permit others to do so. EarthLink will retain ownership of all intellectual property rights and ownership of all documents, data, studies, surveys, maps, models, photographs, designs, diagrams, Equipment, software, reports or other materials prepared by EarthLink or its subcontractors resulting from this Agreement.

## **9. OPERATION OF SYSTEM**

9.1 EarthLink will operate the System and initially offer the products and Services to Service Subscribers directly and through Approved ISPs (which can include WP to the extent WP complies with the restrictions in Section 2 of Exhibit N) as described on the attached Exhibit I. EarthLink may alter these products and Services for Subscribers and Approved ISPs as described on Exhibit I. In addition, EarthLink may expand and upgrade the Services in any way that improves or enhances the Services and EarthLink shall be entitled to include upgrades and new technology in the System it operates under this Agreement if EarthLink so elects subject to any limitations in the PAID Pole Attachment Agreement and Exhibit I, if any.

9.2 EarthLink will provide support for the Base Service as described in the attached Exhibit M. EarthLink will provide Tier 3 NOC support for the System 24 hours a day 7 days a week. Otherwise EarthLink and Approved ISPs may provide the type of support they elect.

9.3 Any Approved ISP that has been approved, qualified and certified as provided herein shall have the right to market, advertise and sell Services to Subscribers over the System as provided in the attached Exhibit N.

9.4 Because of the significant investment by EarthLink in the present wireless System, EarthLink wants to continue its relationship with WP for all upgrades and new networks. Therefore, if during the Term of this Agreement WP desires from time to time to install one or more new or upgraded Internet Protocol (IP) data based network(s) in the City ("New Network") for any reason including the availability of new technology then before WP enters into a binding agreement for the installation of the New Network with any other potential provider and if WP is not prohibited by the exclusivity provision set forth in Section 20 herein from participating in the New Network with another party, then WP shall: (1) give EarthLink written notice of such desire to implement a New Network and provide all relevant details and answer all reasonable questions of EarthLink not otherwise governed by a WP duty of confidentiality; and (2) attempt to negotiate with EarthLink for a reasonable period of time, not to exceed ninety (90) days, an amendment to this Agreement that will provide for the addition of the New Network by EarthLink on terms and conditions mutually acceptable to WP and EarthLink.

9.5 Notwithstanding anything to the contrary, the service levels and Coverage Area obligations of EarthLink are subject to PECO providing adequate electricity.

9.6 EarthLink will be responsible for marketing and administering the operations of the System. WP will cooperate in marketing, advertising and promotional plans, schedules and materials regarding the System in accordance with a mutually agreed upon marketing plan, including those described on the attached Exhibit L. EarthLink and WP shall work jointly in cooperation to market services enabled by the System and WP will require that the City cooperate to market services to the extent the applicable contracts between the City and WP require such cooperation from the City. The foregoing shall not obligate WP to spend any specific sum on marketing or training.

9.7 Trademark Licenses. EarthLink grants to WP a license during the term of this Agreement to use the marks of EarthLink in a manner consistent with the reasonable trademark guidelines of EarthLink, provided that each type of use of the EarthLink marks must be first approve in writing by EarthLink before its use, which approval will not be unreasonably withheld or delayed. WP shall use the EarthLink marks only with products and services that are related to the System and having a quality that is satisfactory to EarthLink using the exercise of reasonable judgment. WP grants to EarthLink a license during the term of this Agreement to use the marks of WP in a manner consistent with the reasonable trademark guidelines of WP, provided that each type of use of the WP marks must be first approve in writing by WP before its use, which approval will not be unreasonably withheld or delayed. EarthLink shall use the WP marks only with products and services that are related to the System and having a quality that is satisfactory to WP using the exercise of reasonable judgment. Either Party may terminate the use of its marks by the other Party if it is not using their marks as required herein. EarthLink can terminate the use of the WP marks on some or all locations of the System and advertisements if WP is no longer operating or in existence or if WP is not acting in good faith to accomplish the WP Mission for a period of two (2) months and WP does not commence operating and/or acting

in good faith to accomplish the WP Mission within a period of two (2) months after EarthLink gives notice to WP of its intent to terminate as provided above.

9.8 EarthLink will provide WP with monthly reports in a mutually agreeable form regarding system performance, subscriber satisfaction, market penetration and low income subscriber penetration rates.

## 10. WARRANTIES

10.1 System Warranty. EarthLink warrants that the System will operate in material compliance with the Design Control Documents and continue to meet the Design Control Documents throughout the Term of this Agreement.

10.2 Authority. Each party warrants that it has the authority to enter into this Agreement and that doing so does not violate any other right, duties, or obligations, contractual or otherwise, it has to a third party.

10.3 Non-Indebtedness. EarthLink hereby certifies and represents that EarthLink, EarthLink's parent company(ies), subsidiary(ies) and subcontractors are not currently indebted to the City of Philadelphia (the "City"), and will not at any time during the term of this 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, EarthLink 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 EarthLink 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 Agreement for default (in which case EarthLink shall be liable for all excess costs and other damages resulting from the termination in accordance with Section 16; provided, however, that if the breach or failure to conform is by a subcontractor of EarthLink (at any tier), the Agreement shall not be terminated if EarthLink pays to the City the amount of the taxes, liens, judgments, fees or other debts owed to the City by the subcontractor and constituting the basis for the breach or failure to conform.

10.4 Date Management. EarthLink represents and warrants that the System and all software and equipment furnished under the Agreement shall properly handle all dates, including, but not limited to, properly processing dates from before 2000, including, but not limited to the following: (1) No value for current date will cause interruptions in the operation of software, firmware, or equipment and software, firmware and equipment will operate without any date-related faults or failures and without producing inaccurate data, including any calculation involving a span of time, which crosses a century; (2) All manipulations of time-related data (including, without limitation, dates, durations, days of week, month, and year) will produce results that conform to the manufacturer's specifications for the software or equipment for all valid date values within the application domain.

## 11. SUBCONTRACTORS

11.1 Subcontractors. EarthLink shall inform WP of all subcontractors selected by EarthLink (a selected subcontractor, a "Subcontractor") and any changes thereto. The term "Subcontractor" includes any lower tier subcontractors that EarthLink does not have direct contracts with. Knowledge of a Subcontractor by WP shall not limit or absolve Earthlink's duties, obligations or warranties under this Agreement for any part of the System, and WP shall have no liability for any action or inaction by any Subcontractor that results in any damage or loss whatsoever to EarthLink.

11.2 Subcontractor Relationship. Nothing contained herein or in any agreement between EarthLink and a Subcontractor or vendor shall create (a) any contractual relationship between WP and any Subcontractor at any tier, or (b) any third-party beneficiary rights in any Subcontractor at any tier. EarthLink shall at all times be responsible for the work and conduct of its Subcontractors at any tier while performing services pursuant to this Agreement and shall ensure that its Subcontractors comply with all applicable terms and conditions of this Agreement. Nothing herein shall negate any rights of WP based upon a separate agreement with any Subcontractors.

11.3 Contract Requirements. All agreements with Subcontractors, including agreements between lower tier subcontractors that EarthLink, shall include the following:

11.3(a) A provision acknowledging that all claims are between the contracting parties and waiving any claim against WP or City arising from such contracts.

11.3(b) The provisions of Sections 12.1 (Non-Discrimination), 26 (Ethics/Taxes/Wages), 25 (Confidentiality) and 27.1 (Law and Venue).

11.3(c) Requirement for Insurance, such policies to name WP as an additional insured and to conform with the insurance requirements of Section 13 hereof. Insurance amounts for each Subcontractor shall be determined by EarthLink in its reasonable discretion.

11.3(d) The listing of specific contractual provisions herein shall not relieve or limit EarthLink's obligation under this Section above to ensure compliance with this Agreement by Subcontractors.

## 12. NON-DISCRIMINATION AND MINORITY, WOMAN AND DISABLED OWNED BUSINESS PARTICIPATION

12.1 Non-Discrimination. In performing this Agreement, EarthLink 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, in material violation of the provisions of the Philadelphia Code referenced in this Section 12.1, WP may, in addition to any other rights or remedies available under this Agreement, at law or in equity, terminate the Agreement if EarthLink has not complied with this Section 12.1 within thirty (30) days following written notice of a violation. EarthLink agrees, in performing this Agreement, to comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100). EarthLink 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 Agreement entitling WP to all rights and remedies provided herein or otherwise available at law or equity.

12.2 Minority, Woman and Disabled Owned Business Participation. EarthLink shall in good faith, meet, and will strive to exceed the Minority, Woman and Disabled Owned Business participation ranges as outlined by the guidelines set forth by WP on the attached **Exhibit O** in the installation of the Equipment in Philadelphia, provided this participation shall not extend to any other operations of EarthLink. The participation levels shall be based on the labor costs of deployment and ongoing operations and shall be exclusive of the cost of the System hardware, equipment, site acquisition and leasing costs. EarthLink shall provide periodic (as reasonably requested by WP) reports of use of qualifying Subcontractors and actual payments made to Subcontractors.

### 13. INSURANCE.

13.1 EarthLink shall, at its sole cost and expense, procure and maintain in full force and effect, covering risks associated with the construction, installation, placement, operation, maintenance, use, renewal, replacement, relocation, repair and removal of Communications Equipment placed or to be placed on Street Lights or otherwise on City property or in the Right-of-Way, the types and minimum limits of liability insurance specified below. All insurance shall be procured from insurers (i) licensed and authorized to write insurance in Pennsylvania, (ii) acceptable to WP's Risk Manager and to WP, which acceptance will not be unreasonably withheld or delayed, and (iii) with an A.M. Best rating of A-VIII or higher, unless agreed otherwise in writing by WP's Risk Manager and WP. All insurance required herein shall be written on an "occurrence" basis, or if any policy is written on a claims made basis, the retroactive date may not be advanced beyond the date of this agreement and coverage shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the parties. The certificate of insurance shall provide for at least thirty (30) days prior written notice to be given to Chief Executive Officer, Wireless Philadelphia, PO Box 36666, Philadelphia PA 19107 in the event coverage is cancelled or non-renewed. In the event coverage is materially changed, EarthLink or its insurer shall provide at least thirty (30) days prior written notice to the WP.

13.2 EarthLink shall require that WP, and its respective officers, directors, and employees, shall be named as additional insureds on each insurance policy required of EarthLink by this Agreement, except policies for Workers' Compensation, and on any insurance EarthLink requires of any Person, agent, or employee engaged or employed in, about or upon the work by, at the instance of, or with the approval or consent of EarthLink, as respects the acts, omissions, operations and activities of, or on behalf of, the named insured, in regard to products supplied, or work or services performed for, or under an agreement with WP.

13.3 A certificate of insurance shall be provided to WP's Risk Manager, as set forth below, that evidences the coverage afforded WP and their officers and employees, as

additional insureds. The certificate of insurance shall state that such coverage will be primary to any coverage available to them and will be noncontributory.

#### 13.4 Types and Minimum Limits of Insurance.

EarthLink shall furnish the following types and minimum limits of insurance:

##### 13.4.1 Workers' Compensation and Employers' Liability insurance.

- (1) Workers' Compensation: To meet Pennsylvania statutory requirements.
- (2) Employers' Liability: \$500,000 each Accident - Bodily Injury by Accident; \$500,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit Bodily Injury by Disease.

##### 13.4.2 Commercial General Liability insurance.

- (1) Limit of liability: The Commercial General Liability Insurance Policy in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, Twenty Million Dollars (\$20,000,000) annual aggregate, written on an occurrence form, provided this coverage may be maintained by EarthLink combining primary and excess policies to meet these requirements.
- (2) Types of insurance: Applicable dollar limit, as set forth in (1), per occurrence combined single limit for bodily injury (including death) and property damage liability; applicable dollar limit, as set forth in (1), for personal and advertising injury; applicable dollar limit, as set forth in (1), general aggregate; and applicable dollar limit, as set forth in (1), for products and completed operations.
- (3) 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; broad form property damage (including completed operations); and explosion, collapse, underground hazards (XCU).

##### 13.4.3 Commercial Automobile liability insurance.

- (1) Limit of liability: Five Million Dollars (\$5,000,000) per occurrence combined single limit for bodily injury (including death) and property damage liability, provided this coverage may be maintained by EarthLink combining primary and excess policies to meet these requirements.
- (2) Coverage: Owned, non-owned and hired vehicles.

13.4.4 WP's Risk Manager is hereby authorized to reduce the requirements set forth herein in the event he determines that such reduction is in WP's best interest.

##### 13.4.5 Evidence of Insurance Coverage.



Prior to commencing any work under an agreement with WP or accessing or using any Street Light, EarthLink shall deliver to WP certificates of insurance evidencing the required coverages and additional insureds, which must specifically reference in the description sections of the certificates such agreement between WP and EarthLink and this Agreement. Original certificates of insurance must be submitted to WP at the following address:

Wireless Philadelphia  
c/o Chief Executive Officer  
PO Box 36666  
Philadelphia PA 19107

WP reserves the right to inspect on the site of EarthLink copies of policies of all insurance required in this Section 13, and to require EarthLink to demand that its authorized insurance representatives furnish written responses to all inquiries made by the WP pertaining to the insurance required under the Agreement at any time upon ten (10) days written notice by WP to such insurance representatives. Also, in the event that (i) a claim is filed against WP, or its officers, employees, agents, or representatives, for which WP believes, in good faith, there may be coverage under an insurance policy required by this Agreement, and (ii) WP has tendered such claim to the insurer that issued such policy, and (iii) such insurer has not agreed, within ninety (90) days, to cover such claim, including defense and indemnity, without reservation, then WP has the right to demand of EarthLink, and to receive within thirty (30) days, a copy of such insurance policy.

#### 13.4.6 Self-Insurance

WP's Risk Manager may accept a plan of self-insurance as a substitute for such insurance, if the Risk Manager determines that such self-insurance adequately protects WP and the public. In the event that EarthLink desires to self-insure any of the coverages listed above, it shall submit to the Risk Manager a certified copy of EarthLink's most recent audited financial statement, and such other evidence of its qualifications to act as a self-insurer (e.g., state approval of self-insurance for workers compensation and automobile liability or, for self-insurance of general liability, a confirming letter from a corporate risk manager or other corporate officer) as may be requested by the Commissioner. In the event such approval is granted, it is understood and agreed that WP, its officers, and employees shall be entitled to receive the same coverages and benefits under EarthLink's self-insurance program that they would have received had the insurance requirements been satisfied by an insurance carrier with an A.M. Best rating of A-VIII which is authorized to do business on a direct basis in the Commonwealth of Pennsylvania or which is otherwise acceptable to WP. If EarthLink self-insures its workers' compensation coverage, EarthLink may, in lieu of the foregoing, furnish to the Risk Manager a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit, or reduce the indemnifications made by EarthLink to WP pursuant to any agreement (including, without

limitation, this Agreement) entered into by EarthLink and WP, or to limit EarthLink's liability under such indemnification to the limits of the policies of insurance (or self-insurance) required to be maintained by EarthLink thereunder.

#### 14. HOLD HARMLESS/INDEMNIFICATION

14.1 **Intellectual Property Indemnification.** EarthLink will indemnify WP, its officers, employees, contractors, consultants, and agents, but not any customers or third parties ("Indemnitees"), from losses, costs and damages and defend any suit or proceeding brought against the Indemnitees to the extent that the suit or proceeding is based on a claim that the System Operations constitute infringement of any United States patent, mask work, trade secret or copyright and EarthLink will pay, or EarthLink will cause the supplier of the infringing System Operations to pay, all damages awarded by final judgment (from which no appeal may be taken) against the Indemnitees, but not any customers or third parties, holding that the System Operations do so infringe, on condition that EarthLink (i) is promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement, (ii) is given authority, information and assistance necessary to defend or settle the suit or proceeding in a manner as EarthLink may determine and (iii) is given sole control of the defense (including the right to select counsel and to require and allow the supplier of the infringing System Operations to pay damages and defend as provided herein), and the sole right to compromise and settle the suit or proceeding. If any System Operations are held to infringe any valid United States patent, mask work, trade secret or copyright as set forth above, and an injunction from a court of competent jurisdiction permanently prohibits the use of the same in the System, or if EarthLink believes infringement is likely, then EarthLink will (a) procure the right to use the System Operations in the System free of any liability for infringement, (b) replace or modify the System Operations in the System with a non-infringing substitute otherwise complying substantially with the specifications for the System; or (c) comply with the subsequent sentence. In the event that (i) a court of competent jurisdiction determines that the System Operations infringe the above-defined rights of another party, (ii) all right of appeal or stay is exhausted as to such order, and (iii) EarthLink is unable to replace or modify such infringing System Operations in the System or otherwise procure the right to continue using the System Operations in the System then EarthLink will be entitled to remove the infringing System Operations from the System and obtain substitutes that will result in the System performing substantially as required herein. "System Operations" means (i) the System or any portion thereof (ii) products and services as described in Exhibit I (including Future Products) offered for sale and provided directly by EarthLink, its parents and subsidiaries of EarthLink and companies commonly owned with EarthLink ("Affiliates") or Subcontractors through the System, and (iii) operation and design (including attaching devices to Street Lights) of the System.

14.2 **Limitation of Intellectual Property Indemnification.** In no event will EarthLink or its suppliers be liable for an infringement that: (i) would not have existed but for the use of products or services in the System that were not provided by EarthLink or its Affiliates or Subcontractors; or (ii) would not have existed but for modification of, or additions to, the System Operations by WP or the City or its contractors or agents. Prior to a final determination that the infringement arose from subsection (i) or (ii) in the preceding sentence, EarthLink shall remain fully responsible, at its expense, for the defense and indemnification of any infringement claim in accordance with this Section: provided, that if it is finally determined that the infringement arose from subsection (i) or (ii) in the preceding sentences, then WP will reimburse EarthLink for its reasonable expenses (including reasonable litigation costs and attorneys fees) incurred therein.

**14.3 Limitation of Liability.** *THE FOREGOING CONTAINS THE SOLE AND EXCLUSIVE LIABILITY FOR EARTHLINK'S AND ITS SUPPLIERS' INDEMNITY AGAINST INFRINGEMENT IN THIS SECTION 14 OF THIS AGREEMENT, WHETHER DIRECT OR CONTRIBUTORY, AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY IN REGARD THERETO, INCLUDING, WITHOUT LIMITATION, THE WARRANTY AGAINST INFRINGEMENT SPECIFIED IN THE UNIFORM COMMERCIAL CODE.*

**14.4 Indemnity.** EarthLink shall indemnify, defend and hold harmless WP, and its officers, employees, contractors, consultants, and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liability and expenses, caused by EarthLink's act or omission or negligence or fault, or the act or omission or negligence or fault of EarthLink's agents, subcontractors, suppliers, or employees in connection with this Agreement, use of the Street Lights by EarthLink or its agents, subcontractors, suppliers, or employees, and the installation, repair, replacement, operation, maintenance, and/or use of Communications Equipment on Street Lights, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to pay such Subcontractors or suppliers.

## **15. DISPUTE ESCALATION PROCEDURE**

Any dispute between EarthLink and WP which arises during the Term of this Agreement and which the parties to the dispute cannot then resolve, shall be subject to the following dispute resolution procedure.

15.1 The parties shall attempt to resolve any controversy claim, problem or dispute (a "Dispute") arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. In the event that the Dispute is not resolved by the project managers of the parties to the Dispute, any party to the Dispute may upon written notice to the other party or parties to the Dispute request that the matter be referred to senior management officials within each respective organization with express authority to resolve the Dispute ("Request for Internal Resolution"). A written Request for Internal Resolution shall be given by any party to the Dispute within thirty (30) calendar days of the party's knowledge of the unresolved Dispute. Senior management officials shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within thirty (30) days of the Request for Internal Resolution ("Dispute Resolution Period"). For the purposes of this paragraph, the designated project manager or senior management official for WP shall be the Chief Executive Officer of WP; and for Earthlink, shall be the President of EarthLink Municipal Networks. The project managers and senior management may be changed by notice given by the party changing its personnel.

15.2 Project managers and senior management officials are required to meet only once but may mutually agree to meet more than once if it appears that further meetings may successfully resolve the Dispute.

15.3 The provisions of this Section 15 shall not apply to a Termination Default as set forth in Section 16.3, *Termination and Default*, though the executives of each party

shall make themselves available to each other upon request during the cure periods set forth therein.

## **16. TERM, RENEWAL, DEFAULT AND REMEDIES**

16.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect for ten (10) years after the date of Proof of Concept Acceptance. The initial term and all renewal terms described below shall be referred to as the "Term."

16.2 Renewal. This Agreement may be renewed for additional five (5) year terms upon the mutual written consent of the parties.

16.3 Termination for Termination Default. Notwithstanding anything to the contrary, WP shall not terminate this Agreement unless one of the following defaults described below in this Section 16.3 has occurred and continued uncured until after the end of all applicable cure periods set forth herein ("Termination Default") and only as set forth below, provided Sections 3.2(d), 4.4, 4.5, 10.3, 12.1, 16.6 and 16.7 ("Other Termination Provisions") shall also permit termination strictly as set forth therein. Any other default of failure of EarthLink to comply with this Agreement shall not permit termination of this Agreement, the Term of any rights of EarthLink and this provision shall control and govern in the event of a conflict with any other provision of this Agreement.

16.3(a) Failure to Accomplish System Implementation. In the event that deployment of the System in substantially all of the Coverage Area (as described in the Design Control Documents) is not accomplished within twelve (12) months after the date set forth on the Schedule for completion of the System implementation, such time to be extended by any delays caused by WP, PAID, the City, providers of telecommunications, electricity, or third parties (other than Subcontractors of EarthLink) not under the control of EarthLink and for Force Majeure Events. Provided that System elements in the Design Control Document have been deployed and activated, the parties agree that System performance problems, System configuration problems and the inability of computers to receive wireless internet from the System will not constitute a default under this subsection.

16.3(b) Failure to Pay the Additional \$2 Payments or the \$2,000,000 Payments. In the event that EarthLink fails to pay any of the \$2,000,000 Payments or undisputed Additional \$2 Payments within sixty (60) days after written notice of failure to pay when due is delivered to EarthLink, provided that such notice must state that such failure if not cured will constitute a Termination Default under this Agreement.

16.3(c) System Outage. In the event that less than 20% of the receiving/transmitting nodes in the System are capable of connecting Subscribers to the Internet for an entire calendar day, the System will be considered "Dark" and that day will be considered a "Dark Day" provided that such day will not be considered a Dark Day if the failure to satisfy the above test was caused by WP, PAID, the City, providers of telecommunications, electricity, or third parties (other than Subcontractors of EarthLink) not under the control of EarthLink or by Force Majeure Events. If the System is continuously Dark for a period of thirty (30) or more days, WP may send a notice of termination, which shall be effective upon ninety (90) days from receipt by EarthLink if such default has not been cured by the System operating without any Dark Days for thirty (30) days continuously. If EarthLink does cure the default by the System

operating without any Dark Days for thirty (30) days continuously prior to the end of such ninety (90) day period then the termination shall not be effective and the defaults shall be cured. If EarthLink is unable to cure the default within said ninety (90) days by the System operating without any Dark Days for thirty (30) days continuously, then the Term of this Agreement shall terminate twelve (12) months after the end of said ninety (90) day cure period and during such twelve (12) months EarthLink will be entitled to continue operating the System and EarthLink's equipment on the Street Lights will not be removed, except as provided in Section 12.1.4 of the PAID Pole Attachment Agreement. In addition, during such twelve (12) months EarthLink shall be entitled to sell the Communications Equipment, and to the extent the City, PAID and WP approve of the purchaser, to also transfer the System and its ongoing operations and the rights hereunder to a third party.

#### 16.4 Non-Termination Defaults.

16.4(a) In the event that EarthLink's System fails in a material manner to comply with the same one (1) of the mutually agreed upon Three Important SLAs for a period of at least three (3) months, provided that it will not be considered a failure if the failure to comply with that same one (1) of the Three Important SLAs was caused by WP, PAID, the City, providers of telecommunications, electricity, or third parties (other than Subcontractors of EarthLink) not under the control of EarthLink or by Force Majeure Events. Then if WP gives notice of such a failure to comply with the same one (1) of the Three Important SLAs ("Three Important SLAs Failure Notice"), the parties shall use the Dispute Escalation Procedure to attempt to resolve the problems in good faith for a period of one (1) month. If the System continues to not comply with the same one (1) of the applicable Three Important SLAs in a material manner at the end of three (3) months after the delivery of the Three Important SLAs Failure Notice, then the WP shall be entitled to terminate: (i) the trademark license of WP trademarks set forth in Section 9.7 above; and (ii) the exclusivity provision set forth in Section 20 herein, but not any other rights of EarthLink hereunder. If WP so terminates the trademark license for EarthLink to use WP trademarks then the license for WP to use EarthLink trademarks shall also terminate. This Agreement may not be terminated by WP, PAID or the City for failure to meet the Three Important SLAs as described above or for any other failure or default except as provided in the Termination Defaults in Section 16.3 above. However the City, PAID and WP shall be entitled to exercise all other remedies for breach of the Agreement if the failure is a material failure to comply with the mutually agreed upon Three Important SLAs, including the right to obtain specific performance, injunctive relief and money damages, provided that none of these remedies shall prohibit the continued use of the Street Lights for the System radios or order the removal of the System radios or other equipment, except as provided in Section 12.1.4 of the PAID Pole Attachment Agreement.

16.4(b) In the event that EarthLink's System fails to comply with a material portion of the mutually agreed upon SLAs for a period of at least three (3) months, provided that it will not be considered a failure if the failure to comply with the SLAs was caused by WP, PAID, the City, providers of telecommunications, electricity, or third parties (other than Subcontractors of EarthLink) not under the control of EarthLink or by Force Majeure Events, then the parties shall use the Dispute Escalation Procedure to attempt to resolve the problems in good faith for a period of one (1) months. If the System continues to not comply with the applicable SLAs in a material manner, then the parties will select and retain an independent third party technical expert (to be paid by EarthLink) to review the operation of the System

and make reasonable recommendations to cure the failure of the performance of the System to comply with the Three Important SLAs, which recommendations EarthLink shall implement. If the parties cannot agree on an independent third party technical expert, then such expert will be selected by the director of the AAA office in Philadelphia. This Agreement may not be terminated by WP, PAID or the City for failure to meet the SLAs as described above or for any other failure or default except as provided in the Termination Defaults in Section 16.3 above. However the City, PAID and WP shall be entitled to exercise all other remedies for breach of the Agreement if the failure is a material failure to comply with the mutually agreed upon SLAs, including the right to obtain specific performance, injunctive relief and money damages, provided that none of these remedies shall prohibit the continued use of the Street Lights for the System Communications Equipment or order the removal of the System Communications Equipment or other equipment, except as provided in Section 12.1.4 of the PAID Pole Attachment Agreement. EarthLink agrees that WP, PAID and the City would be irreparably harmed and that money damages would not be sufficient if EarthLink failed to implement the above-described recommendations of the technical expert for a material failure to comply with the mutually agreed upon SLAs.

16.5 Removal. Upon termination for a Termination Default only, or pursuant to one of the Other Termination Provisions or upon expiration of the Term, EarthLink, at its own expense, shall remove its Communications Equipment from the Street Lights within one (1) year of said date of termination in compliance with the PAID Pole Attachment Agreement.

16.6 In addition to any termination rights granted hereunder, EarthLink may terminate this Agreement if a law, rule, regulation, ordinance or directive of any governmental agency prohibits or otherwise restricts the use of all of such Street Light(s) for the purposes contemplated in this Agreement.

16.7 Either party shall be entitled to terminate this Agreement if the PAID Pole Attachment Agreement or the City Pole Attachment Agreement is terminated and is not renewed within thirty (30) days thereafter.

16.8 Default Caused by Rapid Growth. If a default (except for a Termination Default) is caused in whole or in part by rapid growth of the number of ISPs and/or subscribing users then all of the applicable cure periods shall be twice as long as is set forth above herein in order to allow EarthLink to increase the capabilities of the System to serve the increased load.

16.9 The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, WP's and EarthLink's obligations for the provision of insurance and indemnity shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.



stock of EarthLink or a transfer or assignment pursuant to a reorganization or merger or assignment to a subsidiary that is wholly or majority owned and controlled by EarthLink, so long as EarthLink remains responsible for defaults or damages caused by such entity. Communications Equipment may be subject to security interests of vendors or of lenders, and WP shall have no rights in or to Communications Equipment, except as expressly set forth herein. In the event that EarthLink transfers all or substantially all of the assets or stock of EarthLink to a third party, EarthLink will transfer this Agreement to such third party as well.

## **19. AMENDMENT**

This Agreement may be amended from time to time. Any amendments shall be written on paper and executed by both Parties to this Agreement. WP, in recognition of the investment EarthLink will make in the System, agrees that WP will not agree to or allow any amendment or termination of the City Pole Attachment Agreement, the PAID Pole Attachment Agreement or the PECO Agreement, and any violation of this obligation shall be void and not effective, unless EarthLink signs a paper agreement consenting to the amendment or termination.

**20. EXCLUSIVE MARKETING.** Subject to termination pursuant to Section 16.3 or 16.4(a) above, during the Term of this Agreement WP shall not market or promote an internet service that competes with the System or allow any other party to use the trademarks of WP or EarthLink for marketing or selling internet services (except where WP is marketing the System's Services pursuant to Section 4(k) in Exhibit I.

## **21. WAIVER AND REMEDIES**

Failure of either Party to enforce any provision of this 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 Agreement shall be in addition to any other remedies available at law or in equity.

## **22. FORCE MAJEURE**

The time for performance by EarthLink, the City, PAID, or WP of any term, provision, or covenant of this Agreement, except for the payment of fees, shall be deemed extended by time lost due to delays resulting from acts of God, acts of third parties, acts of terrorism, strikes, civil riots, floods, material or labor restrictions by governmental authority, failures by providers of telecommunications, electricity or other essential services, and any other cause not within the reasonable control of WP or EarthLink, as the case may be (collectively, "Force Majeure Events").

EarthLink shall not be responsible for any of its obligations under this Agreement prevented or delayed by Force Majeure Events. If a Force Majeure Event delays performance of EarthLink, then the time within which such performance must be performed under the terms of this Agreement shall be extended for a reasonable time that is at least equal to the duration of the delay so caused. EarthLink shall be entitled to a reasonable extension of the time for performing any action required of EarthLink under this Agreement if its failure to perform such action is caused by a WP delay or a City delay; provided, however, that no such extension shall be granted unless a written request, setting forth in reasonable detail the grounds therefor, is received by WP



within five (5) days prior to the expiration of the time for performance. EarthLink's sole and exclusive remedy for costs or damages arising from any delay to its performance of actions required under this Agreement or under the PAID Pole Attachment Agreement that is caused by any act or omission of WP or the City (including its officers, employees, contractors and agents) shall be an extension of the time of performance, as provided in this Section (and in the PAID Pole Attachment Agreement for actions required under the PAID Pole Attachment Agreement). In no event shall EarthLink be entitled to monetary payment or compensation of any kind from WP or the City for any costs or damages incurred as a result of delay in its performance of any obligation of EarthLink to the City, WP, EarthLink's contractors, or any other party that is caused by any act or omission of WP or the City (including its officers, employees, contractors and agents), including, without limitation, such delay to the construction of the System and/or delay in the performance of any other obligation of EarthLink under the PAID Pole Attachment Agreement or under this Agreement.

### **23. EQUITABLE RELIEF**

Each party agrees that any threatened or actual breach of the confidentiality obligations of either party or the obligations of any party as described herein may cause immediate irreparable harm to the non-breaching party for which there is no adequate remedy at law. Accordingly, each party agrees that the non-breaching party will be entitled to seek injunctive relief from a court of competent jurisdiction in the event of any such breach or threatened breach by the other party. Except the limitations on termination and injunctive relief that are stated herein nothing contained herein will limit either party's right to any other remedies at law, including the recovery of damages from the other party for breach of this Agreement in accordance with the Agreement. Nothing herein or in the liability limitations in Section 27.6 will prevent or prohibit either party from obtaining an order of specific performance and an injunction from a court of competent jurisdiction requiring the defaulting Party to perform in compliance with the provisions of this Agreement and not to take actions that violate the obligations of the Party hereunder, provided such order shall not prevent EarthLink from operating the System and maintaining the Communications Equipment on the Street Lights, except in the event of termination for Termination Default, or pursuant to one of the Other Termination Provisions or expiration of the Term or as provided in Section 12.1 of the PAID Pole Attachment Agreement. Nonetheless, this specific performance and injunction shall not require either party to pay to the other party any sums in excess of the liability limitation amount set forth in Section 27.6.

### **24. ORDER OF PRECEDENCE**

In the event of conflicting or inconsistent provisions, the following precedence shall prevail: the terms and conditions of any amendments, read most recent to earliest document, the terms and conditions of this Agreement, provisions set forth in the referenced documents; provided that any conflicting or inconsistent provisions in the referenced or attached documents shall be governed by the most recent document to the earliest document.

### **25. CONFIDENTIALITY**

Except as permitted by this Agreement, neither party will use the Confidential Information of the other. Each party will use reasonable efforts, to the extent it does for its own proprietary and confidential information of like nature, to prevent any Confidential Information of the other party from being disclosed to third parties except as set forth in this Agreement or as authorized by a

party in writing. "Confidential Information" will mean a party's trades secrets under applicable law and also the proprietary and confidential information disclosed to the other party. WP acknowledges that all information concerning EarthLink, its business plans, pricing, proprietary rights, Subscribers, customers and suppliers will be deemed Confidential Information of EarthLink, whether or not marked "CONFIDENTIAL", and will not be used or disclosed by WP except in the proper performance of its obligations imposed by law or under this Agreement. Any obligation contained herein that requires the disclosure of information of a third party shall not be required if it would violate an applicable agreement of a Party with that third party. Each party agrees that this Section is intended to protect the Confidential Information of the providers and Subcontractors Links of EarthLink. This paragraph will not apply to any information which: (A) is or becomes public knowledge through no wrongful act of the receiving party; (B) is already known to the receiving party without obligation of confidentiality; (C) is rightfully obtained by the receiving party from any third party without similar restriction and without breach of any obligation owed to the disclosing party; (D) is independently developed by the receiving party; (E) is furnished to a third party by the disclosing party without a similar restriction on the third party's rights; (F) is disclosed pursuant to a lawful requirement or request of a governmental agency; (G) is approved for release by written authorization of the disclosing party; or (H) is disclosed in an enforcement or defense in a court of law pursuant to this Agreement or as is appropriate to assert and protect the rights of either party. Despite the restrictions of this paragraph, EarthLink will be entitled to provide WP's Confidential Information to third party Subcontractors of EarthLink who have executed a written confidentiality agreement. The provisions of this Section shall survive for any trade secret for so long as such information qualifies as a trade secret under applicable law and for three (3) years following the termination of this Agreement for Confidential Information that does not rise to the level of a trade secret. Upon any termination or expiration of this Agreement or as otherwise requested in writing by the disclosing party, to the extent permitted by the law, the receiving party will return or destroy (as requested by the disclosing party) all copies of the Confidential Information provided by the other Party and certify in writing that all copies of such Confidential Information have been returned or destroyed. Each party shall be responsible for any use or disclosures by its employees or agents. This Agreement and its Exhibits is not considered Confidential Information of either party.

25.1 Subscriber Privacy. EarthLink and WP shall divulge, individually or in the aggregate, information about system Subscribers only in compliance at all times with the privacy requirements set forth in Exhibit J.

## 26. ETHICS/TAXES/WAGES

26.1 Ethics Requirements. EarthLink and WP shall comply with PAID's and the City's ethics policies to the extent that they apply to WP.

26.2 Tax Requirements. EarthLink is subject to Philadelphia's business tax and Ordinances and regulations. EarthLink, if not already paying the aforesaid taxes, shall apply to the Department of Revenue, 1401 John F. Kennedy Blvd., Public Service Concourse, Municipal Services Building, Philadelphia, PA 19102, for a tax identification number and to file appropriate business tax returns as provided by law. Questions should be directed to the City of Philadelphia Department of Revenue, Business Earnings Unit at (215) 686-6600. WP shall pay any sales tax or other taxes applicable to the free and for fee services offered

to WP under this Agreement or the PAID Pole Attachment Agreement, that is not based on income or gross receipts, whether actual or imputed.

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

## 27. MISCELLANEOUS

27.1 Applicable Law and Forum; Consent to Jurisdiction. This 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. The parties agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania ("EDPA") or in a Pennsylvania state court sitting in Philadelphia County. It is the express intent of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in one of these forums. The Parties further agree not to raise any objection, as to forum or venue, to any lawsuit, action, claim, or legal proceeding which is brought in one of these forums, and the parties expressly consent to the jurisdiction and venue of these forums. Nothing in this Section 27.1 shall be construed to waive the right of either Party to remove any action brought in a Pennsylvania state court to the EDPA if otherwise permitted by law

27.2 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.

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

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

27.5 Integrated Document. This Agreement is intended as the complete integration of all understandings between the parties as to the subject matter of this 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 Agreement or any written amendment to this Agreement shall have any force or effect or bind either party hereto. Amendments to this Agreement will become effective when approved by both parties and executed in the same

manner as this Agreement. This 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 Agreement however a facsimile transmission of a signed paper writing is sufficient and shall be deemed to be a signed writing on paper.

27.6 LIMITATION OF LIABILITY - THE PARTIES EXPRESSLY AGREE THAT EARTHLINK 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. The Parties expressly agree that EarthLink and WP shall not be liable for direct damages in an amount in the aggregate in excess of One Million (\$1,000,000.00) Dollars, except for personal injury and property damages and intellectual property infringement indemnification as provided in Sections 14.1, 14.2 and 14.3.

27.7 NO WARRANTIES. THE ONLY WARRANTIES CONCERNING THE SERVICES, NETWORK, SYSTEM AND OTHER DELIVERABLES PROVIDED UNDER THIS AGREEMENT ARE THOSE EXPRESSLY CONTAINED HEREIN, AND ARE MADE FOR THE BENEFIT OF WP ONLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. EARTHLINK ALSO SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS RELATED TO THE INTERNET SECURITY-RELATED FEATURES OF THE SYSTEM AND/OR SERVICES. EARTHLINK CANNOT GUARANTEE SECURITY VIA THE INTERNET OR WIRELESS SERVICES AND EARTHLINK SHALL NOT BE LIABLE FOR BREACHES OF SUCH SECURITY OR ANY OTHER RELATED WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, INTERNET FUNCTION AND/OR PERFORMANCE WARRANTIES. EARTHLINK SHALL HAVE NO LIABILITY TO WP FOR THE CONDUCT OF SUBSCRIBERS USING OR ACCESSING THE NETWORK, SYSTEM OR SERVICES.

27.8 Counterparts Of This Agreement. This Agreement may be executed in counterparts, each of which shall be on paper and each of which shall be deemed an original, and all of which shall constitute one instrument; provided, that the Agreement shall be effective and binding on the parties upon, but only upon, the execution by each party of one paper copy hereof.

27.9 Third Party Beneficiaries. Provided that the City is bound by the terms and conditions of this Agreement as WP is bound, EarthLink and WP expressly agree that the City is an intended third party beneficiary of this Agreement and shall be entitled to enforce the terms and conditions of the Agreement (subject to and in accordance therewith) in the City's own name and on its own behalf against either or both of EarthLink and WP. Such rights of the City as third party beneficiary shall vest immediately upon execution of this Agreement and may not be modified or diminished except with the written consent of the City. Except as expressly provided otherwise in this Section 27.9 and elsewhere in the Agreement, nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation, or legal entity, other than EarthLink, WP and the City, any rights, remedies, or other benefits under or by reason of the Agreement.

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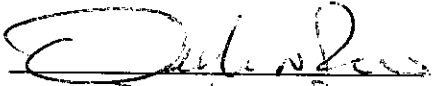
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**IN WITNESS WHEREOF**, the Parties grant, acknowledge and accept the terms, conditions and obligations of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the later of: (i) the date of City Council Approval; (ii) the date on which the Agreement is fully executed; or (iii) the Effective Date but the obligations of EarthLink shall not commence until all of the Implementation Conditions have been fully satisfied.

EARTHLINK, INC.

WIRELESS PHILADELPHIA

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

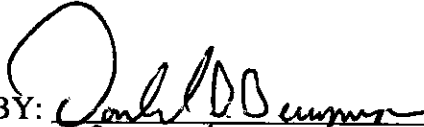
By:   
Name: Derek A. Dew  
Title: Chief Executive Officer

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EARTHLINK, INC.

WIRELESS PHILADELPHIA

BY:   
Name: Donald D. Berryman  
Title: President - Municipal Affairs

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

## LIST OF EXHIBITS

Exhibit A	Definitions
Exhibit B	Deleted
Exhibit C	Deleted
Exhibit D	Parks and Public Spaces
Exhibit E	Digital Inclusion Areas
Exhibit F	Requirements
Exhibit G	Specification
Exhibit H	Schedule
Exhibit I	Products /Pricing/Revenue Share
Exhibit J	Core Product Description – EI Assisted Wi-Fi
Exhibit K	Portal Capture Page
Exhibit L	Marketing
Exhibit M	Customer Care
Exhibit N	Open Access Provisions
Exhibit O	Minority, Woman and Disabled Owned Business Participation
Exhibit P	Electricity Allocation
Exhibit Q	Deleted
Exhibit R	Privacy Requirements

**EXHIBIT A**  
**DEFINITIONS**

1. "2 Year Period" is defined in Section 1.6(b).
2. "\$2,000,000 Payments" is defined in Section 1.3
3. "Accepted" is acceptance of a Zone as defined in Section 3.4(b).
4. "Acceptance Criteria" is defined in Section 3.1(a).
5. "Additional \$2 Pole Fee" is defined in Section 1.4.
6. "Affiliates" is defined in Section 14.1.
7. "Agreement" is this Wireless Philadelphia Broadband Network Agreement between WP and EarthLink, unless specific reference to a different agreement is made.
8. "Alternative Service" is defined in Exhibit I - Section 16.
9. "Approved ISP" means any firm, partnership, joint venture, entity, society, organization, club, association, trustee, trust, corporation, company or organization of any kind that is qualified and approved as provided herein and purchases the wholesale services from EarthLink for purposes of resale or offering to a Service Subscriber.
10. "Base Service" means Internet access to 802.11 b/g devices featuring an average upload/download speed between .75 and 1.25 Mbps upstream/downstream data transmission rate and a dynamic IP address, or an alternative replacement product provided by EL pursuant to Exhibit I – Section 16. This definition shall not supersede the SLAs set forth in the Design Control Documents.
11. "City" means The City of Philadelphia, Pennsylvania.
12. "City Guidelines" is defined in Section 4.6.
13. "City Pole Attachment Agreement" is defined in the Background of the Agreement, paragraph D.
14. "Communications Equipment" is defined in Section 4.5.
15. "Confidential Information" is defined in Section 25.
16. "Coverage Area" is defined in Section 4.5.



17. "Core ISP Services" are the Services set forth in Exhibit J.
18. "City Council" means the City Council of Philadelphia.
19. "Dark" and "Dark Day" are defined in Section 16.3(c).
20. "Design Concern Notice" is defined in Section 3.1(b)
21. "Design Control Documents" is defined in Section 3.1(a).
22. "Digital Inclusion Areas" are those portions of the City identified on Exhibit E.
23. "Dispute" and "Dispute Resolution Period" are defined in Section 15.1.
24. "EarthLink" means EarthLink, Inc.
25. "Effective Date" means the effective date of this Agreement as set forth in the first paragraph.
26. "EL Assisted Wi-Fi" is defined in Exhibit I – Section 3.
27. "EL Retail Wi-Fi" is defined in Exhibit I – Section 2.
28. "EL Roaming Wi-Fi" is defined ins Exhibit I – Section 4(d).
29. "Final Acceptance" in defined in Section 3.4(d).
30. "First Payment Conditions" is defined in Section 4.1.
31. "Fixed Payment Period" means the period beginning with the Effective Date of this Agreement and ending two (2) years after Proof of Concept Acceptance.
32. "Force Majeure Events" is defined in Section 22.
33. "Future Products" are any access product offerings, in which the primary functionality shall be wireless broadband connectivity made available via the System, that are not set forth in Exhibit I (not including the reference to Future Products in Exhibit I).
34. "High Profile Areas" is defined in Section 6.
35. "Implementation" is defined in Section 3.4.
36. "Implementation Conditions" is defined is Section 4.3.

37. "Net Access Revenue" means the gross revenue collected and received by EarthLink for the applicable access retail or wholesale product, (i) less any applicable sales taxes or government required fees, and (ii) less refunds, credits and charge-backs. Net Access Revenue does not include fees for add-on products, CPE, installation, advertising, content, bounties and referral fees, fees for sales through Internet commerce sites, VoIP or other voice capabilities (provided that if some of the charge for VoIP or voice is attributable to obtaining access to the Internet then such sums will be part of Net Access Revenue).
38. "Network" means the System.
39. "New Network" is defined in Section 9.4.
40. "OA Wi-Fi" is defined in Exhibit I -- Section 4.
41. "PAID" means the Philadelphia Authority for Industrial Development.
42. "PAID Pole Attachment Agreement" is defined in the Background of the Agreement, paragraph E.
43. "Party" means either of WP or EarthLink.
44. "Parties" means both WP and EarthLink.
45. "Permits" is defined in Section 4.3(a)(iii)
46. "Person" means any individual natural person, firm, partnership, joint venture, entity, society, organization, club, association, trustee, trust, corporation, company or organization of any kind.
47. "Pole Attachment Agreements" shall mean, together, the City Pole Attachment Agreement and the PAID Pole Attachment Agreement.
48. "Preliminary Design Review" is defined in Section 3.1(a)
49. "Proof of Concept Acceptance" is defined in Section 3.2 (c).
50. "Proof of Concept Conditions" is defined in Section 4.2.
51. "Proof of Concept Trial" is defined in Section 3.2(d).
52. "Proof of Concept Permits" is defined in Section 4.2(b).
53. "Request for Internal Resolution" is defined in Section 15.1.
54. "Requirements" is defined in Section 2 and set forth in Exhibit G.

55. Revenue Share means the payments made to WP based on accounts or Net Access Revenue.
56. "Schedule" is defined in Section 2 and set forth in Exhibit H.
57. "Services" includes the products and services provided pursuant to this Agreement, including without limitation the Services made available to Subscribers, and the consulting, design, installation, implementation and maintenance services.
58. "Service Provider" means an Approved ISP.
59. "Specification" is defined in Section 2 and set forth in Exhibit F.
60. "Street Lights" is defined in the definition section of the PAID Pole Attachment Agreement.
61. "Subcontractor" is defined in Section 11.1.
62. "Subscribers" means any Person, including without limitation the City, that subscribes for the Services provided pursuant to the System from EarthLink or any Approved ISP.
63. "Subscriber Access Agreement" means the agreement, if any, EarthLink requires Subscribers, including the Subscribers of Approved ISPs, to accept or agree to in order to access and utilize the Services via the System
64. "System" is defined in Section 2.
65. "System Acceptance" is defined in Section 3.4(e).
66. "Term" is defined in Section 16.1.
67. "Termination Default" is defined in Section 16.3.
68. "Three Important SLAs" are items 1, 2 and 5 set forth in Exhibit F under "Performance Requirements."
69. "Three Important SLAs Failure Notice" is defined in Section 16.4(a).
70. "Wireless Network" means the System.
71. "WP" means Wireless Philadelphia.
72. "WP Mission" is defined in Section 1.5.
73. "Zones" is defined in Section 3.4(a).

## **EXHIBIT D**

### **PARKS AND PUBLIC SPACES**

Areas of Citywide Significance (shown on attached map)

1. Benjamin Franklin Parkway - Boathouse row to reviewing stands
2. Belmont Parkway including the Horticulture Gardens
3. Independence Mall/ Historic District
4. Penn's Landing

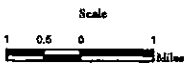
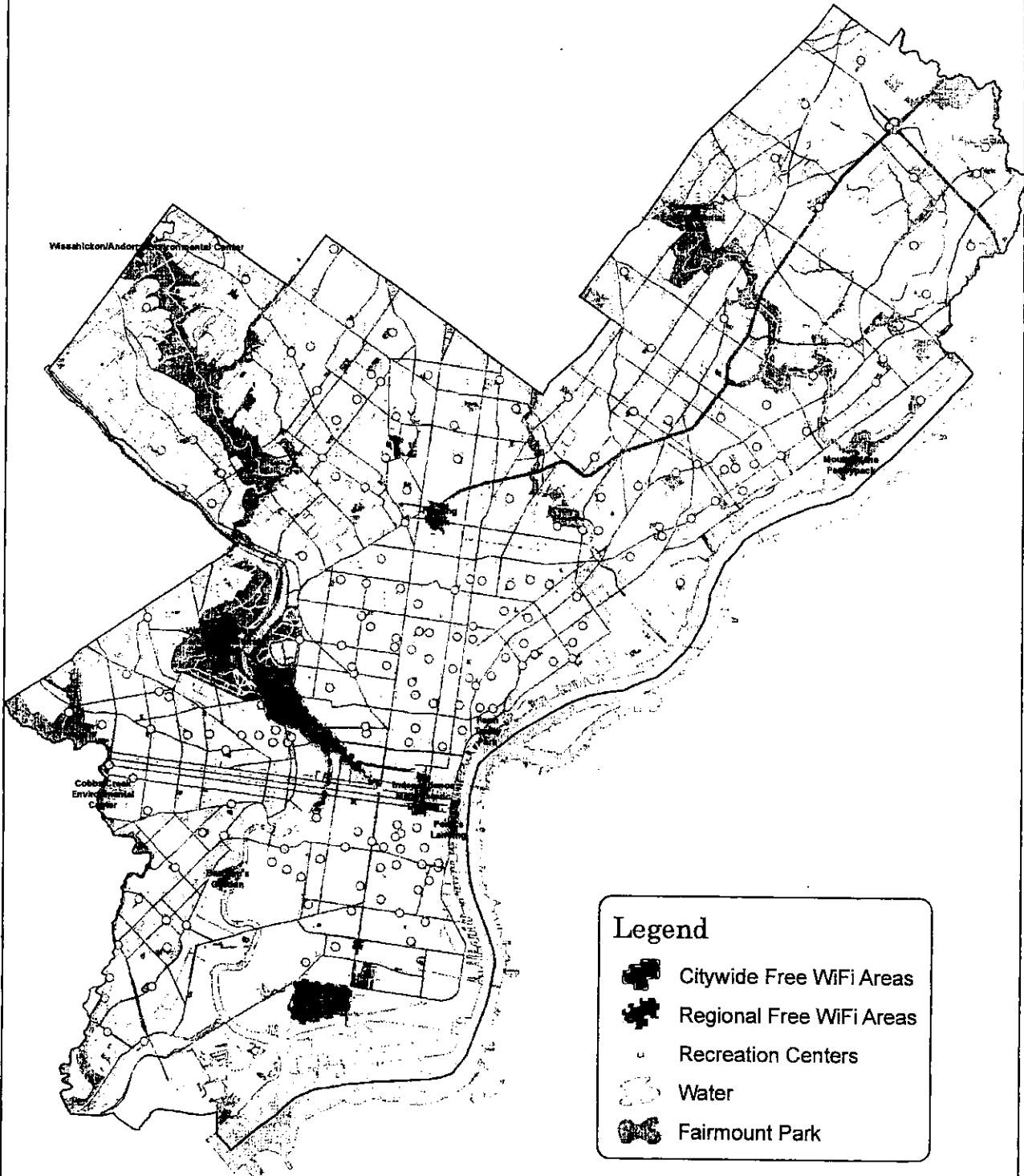
Regional Parks (shown on attached map)

1. Cobbs Creek Environmental Center
2. Wissahickon/ Andorra Environmental Center
3. Pennypack Environmental Center (sic)
4. Mouth of the Pennypack
5. Bartram's Garden
6. FDR Park
7. Hunting Park
8. Penn Treaty Park

Neighborhood Parks/ Recreational Centers (many shown on attached map from which ten will be selected)

One in each Councilmanic District

# City of Philadelphia Free WiFi Access Areas

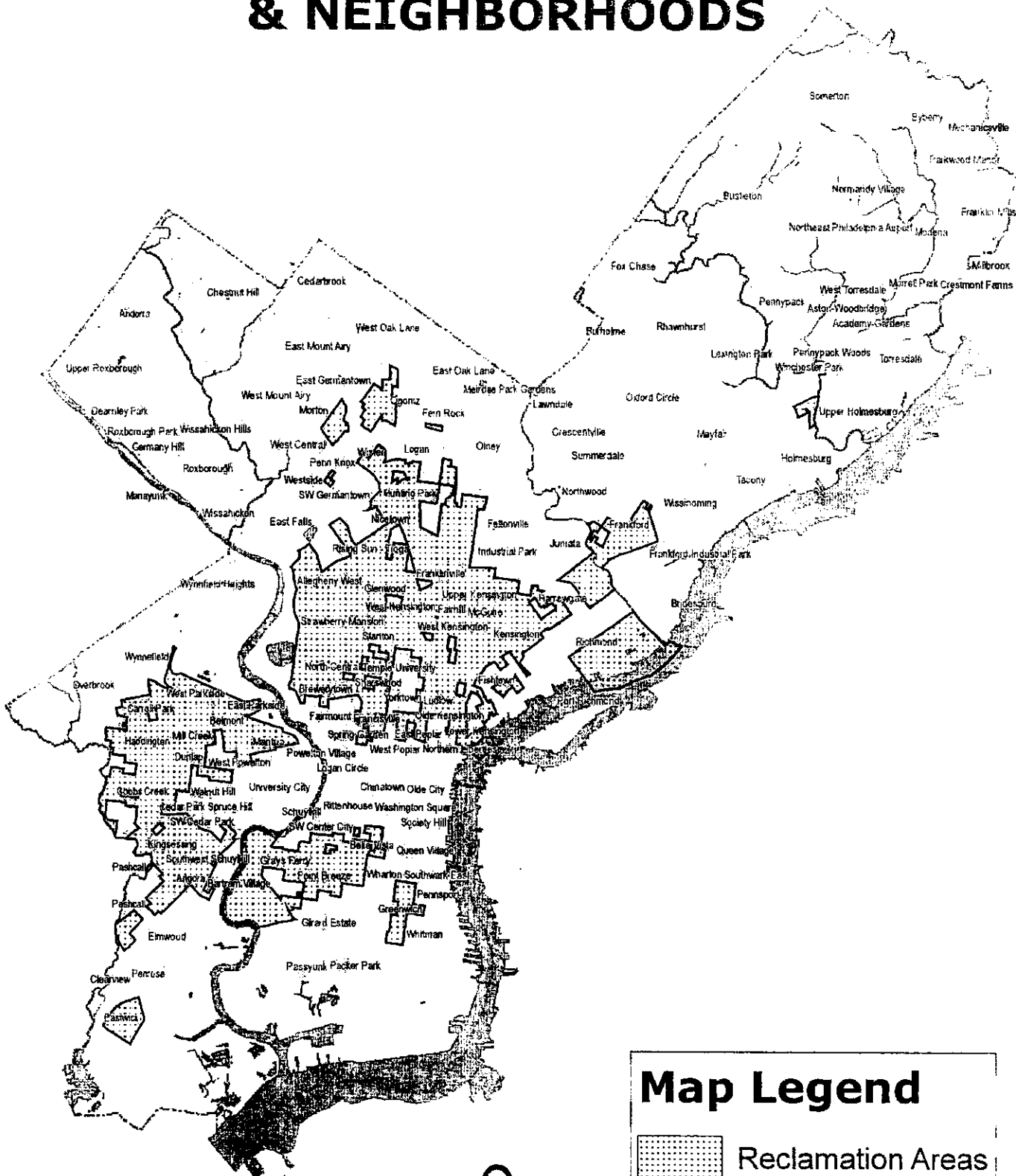


## **EXHIBIT E**

### **Digital Inclusion Areas**

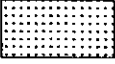

Digital Inclusion Areas are the areas shown on the attached map as Reclamation Areas.

# NTI RECLAMATION MARKET AREAS & NEIGHBORHOODS



0 4 Miles

### Map Legend

-  Reclamation Areas
-  Neighborhoods

**EXHIBIT F**  
**REQUIREMENTS**

Nothing within Exhibit F shall create any binding performance obligation on EarthLink or WP. Exhibit F is intended to summarize the desired features of a proposed wireless broadband system in the City of Philadelphia. The specifications for the System in Exhibit G have been created to meet as many of the Requirements as possible. A Proof of Concept Trial must be executed to validate that such Requirements can be met by the proposed Specification. A Proof of Concept Test Plan shall be created as part of the Proof of Concept Design Control Document in order to validate the Performance Requirements. Any performance obligations or SLAs shall be appended to this agreement as an addendum following the Proof of Concept Trial.

**Network Infrastructure Requirements**

The System must consist of a wireless network throughout the City of Philadelphia (“the Coverage Area”). Specifically, the System must meet the following requirements.

- Support throughout the Coverage Area for wireless Internet access from personal computers, laptop computers, handheld devices, mobile phones and other devices equipped with a Wi-Fi wireless interface.
- Support throughout the Coverage Area for “best-effort” Wi-Fi service with an average net throughput per subscriber of one (1) megabit per second (Mbps) upstream (client device to network) and downstream (network to client device) transmission.
- 95% outdoor Wi-Fi coverage within the Coverage Area. An area is considered covered under this Requirement if the devices referenced above can access the System at the provisioned service level with no additional hardware required beyond the device’s standard wireless interface.
- 90% indoor, Perimeter Room Wi-Fi coverage for buildings within the Coverage Area. A building is assumed covered under this Requirement if a device located in each Perimeter Room on the ground and second floor of the building can access the System at the provisioned service level. This coverage requirement may be met using a Wi-Fi interface built into a device, a signal amplifier, a high-gain antenna or a dedicated Wi-Fi bridge or other type of Customer Premise Equipment (“CPE”).
- A wireless backhaul solution to aggregate Wi-Fi network traffic from multiple Wi-Fi access points back to an Internet point of presence (“PoP”).



- Support for the use of structural assets, such as street light poles, traffic light poles, utility poles or other assets which the City will provide access to.
- Support for pole, roof and wall mount options for wireless equipment.
- Compliance to IP56/NEMA4 dust and water ingress ratings for all outdoor-mounted equipment.
- Support for ambient temperature ranges of –40 C to +50 C for all outdoor-mounted equipment.
- Support for all outdoor-mounted equipment to withstand wind loads consistent with any codes and/or regulations that may exist within the City of Philadelphia, with no impact to operation of the Network.
- Protection against power surges - including from lightning - for all electrical and network connections.
- Support for the logical segmentation of the System to support different “domains” of users (e.g. secure access by government agency personnel, secure and/or open access for public users, residential users, business users, etc.). This must include the ability to define and manage different profiles for authentication, encryption and other service characteristics based on the requirements of each user domain.
- Support for having certain parks, common areas and other public spaces within the City defined and managed to allow any user with a Wi-Fi-equipped device to gain free and open access to the System while in these areas.
- Support for seamless, in-motion connectivity throughout the Coverage Area by Wi-Fi Subscribers. This includes the ability for Subscribers to maintain “session-level” persistence while the Subscriber’s device is in motion at speeds up to sixty (60) miles per hour. This capability must be supported with no interruption to applications running on the device.
- Support for unilateral, inbound roaming relationships whereby Subscribers to other national roaming Wi-Fi services may gain access to the System.
- Support for unilateral, outbound roaming relationships whereby Subscribers to the System may gain access to other approved national roaming Wi-Fi services.
- Sufficient capacity throughout the System to support all provisioned commercial and municipal users.
- Scalable to support additional users, capacity, and functions.

- Support for the prioritization of communications traffic for specific applications, users, devices, domains, etc.
- Fault tolerance mechanisms to mitigate and/or eliminate single points of failure for all components of the System.
- Support for the creation of multiple network “peering points” whereby the designated PoP for the System can be inter-connected with other ISPs as required over time to improve and maintain service levels.
- Support within the fixed wireless backhaul solution to also provide advanced subscriber services beyond the level(s) of service available through the Wi-Fi tier of the System.
- Support for state-of-the-art security standards, including:
  - Physical security for all critical network equipment and other components of the System via secured facilities.
  - Support for Media Access Control (“MAC”) address filtering.
  - Support for Wired Equivalent Privacy (“WEP”) encryption, including both 64 and 128 bit keys.
  - Support for Temporal Key Integrity Protocol (“TKIP”) encryption.
  - Support for Advanced Encryption Standard (“AES”) encryption.
  - Support for Wi-Fi Protected Access (“WPA”).
  - Support for 802.1x authentication using Extensible Authentication Protocol (“EAP”) and “Remote Authentication Dial-In User Service” (“RADIUS”).
  - Support for the suppression of Extended Service Set Identifier (“ESSID”) broadcasts.
  - Support for multiple ESSIDs and the ability to map ESSIDs individually to Virtual LANs (“VLANs”).
  - Support for filtering of traffic based on Internet Protocol (“IP”) addresses, subnets and Transmission Control Protocol (“TCP”) ports.
  - Support for Virtual Private Network (“VPN”) tunneling.
  - Support for encryption of all control and network management traffic transmitted within the System.

### **Architecture and Design Requirements**

- The development of an overall architecture for the System, to include all network equipment, hardware, software and other components required to meet the defined Requirements.
- A detailed design for the System, which takes into account the City’s unique land area, geography, terrain, foliage, morphology (land use), structural mounting assets

and other factors that may impact the performance, reliability or scalability of the System.

- A detailed plan describing the tools and processes to be used for all pre-installation site acquisition, site survey, propagation modeling and other work required to determine the configuration for all infrastructure components in the System.

### **Installation Requirements**

- The installation and configuration of all network equipment, access points, routers, bridges and other components of the System.
- Coordination with WP and the City and any other parties required for access to any structural assets, facilities or permits required for the installation of the System.
- The ramp-up and activation of all services, to include but not be limited to customer service, technical support, hosting, network management systems, processes and personnel.
- The configuration and integration of all components in the System required to meet the defined Requirements.
- Adherence to any Federal Communications Commission (“FCC”) rules and guidelines for the configuration and installation of any wireless equipment using licensed or unlicensed spectrum, with specific emphasis on Part 15 of Title 47 of the Code of Federal Regulations for unlicensed operation.

### **Telecommunications Provisioning Requirements**

- Any leased telecommunications service required to route network traffic from Wi-Fi Subscribers back to the Internet.
- Any provisions for interconnecting the proposed System over time with alternate peering points to support ISPs who market services over the network.

### **Network Monitoring and Management Requirements**

- Performance management features to measure and makes available various aspects of network performance so that inter-network performance can be maintained at an acceptable level.

- Configuration management features to monitor network and system configuration information so that the effect of configuration changes (intentional or non-intentional) can be tracked and managed.
- Accounting management features to measure utilization parameters so that individual or group uses on the System can be regulated appropriately. Such regulation should minimize network problems and maximize the fairness of network access across all domains and users.
- Fault management features to detect, log, notify support organizations and users (where appropriate) of, and (to the extent possible) automatically fix problems to keep the Network running effectively. This should include proactive determination of symptoms, isolation of problems and rapid resolution.
- Security management features to control access to System resources according to defined policies so that the System cannot be sabotaged and those without appropriate authorization cannot access sensitive information.

### **Network Maintenance and Upgrade Requirements**

- The risk of obsolescence of the System must be mitigated through a network maintenance and upgrade plan.

### **Operations Support Systems (OSS) Requirements**

A solution for an Operations Support System (“OSS”) that integrates all billing, settlement, customer service, technical support, provisioning, network element and network management components as seamlessly as possible. Specific requirements include, but are not limited to the following, which must all allow for reasonable integration with ISP systems:

- The ability to support multiple Approved ISPs.
- The ability to define flexible wholesale service plans, pricing and rating based on usage or flat rates.
- The ability to support flexible service policies for time and for quality of service.
- The design, development, management and hosting of a Capture Portal for the System. The Capture Portal must also support multi-lingual usage.
- The ability to support co-branding of the Capture Page with Approved ISPs.
- The ability to support wholesale billing, receivables, collections and settlement with Approved ISPs and roaming partners based on service and rate plans, subscribers provisioned, and other service characteristics.
- The ability to support roaming partnerships
- Authentication, clearing house, settlement, and similar functions.
- The ability to define a variety of service plans.

- The ability to perform usage tracking, customer reporting and usage policy enforcement.
- Interoperability with RADIUS-based public access points and gateways.

### **Customer Service and Technical Support Requirements**

- A multi-tier customer service and technical support solution via a call center or other mechanism.
- Support hours are expected to be 24x7x365.
- Response and resolution of issues from Subscribers and Approved ISP agents related to typical Subscriber support and technical issues.
- A dedicated technical expert, with knowledge of all aspects of the System, available to WP and Tier 3 Approved ISPs on a telephone or pager basis, 24x7x365.
- Proactive notification to WP and Approved ISPs for network problems, outages and other issues affecting the System.
- The creation of pre-defined and ad-hoc reports on issues, wait times, abandoned calls, resolution times and other standard customer service and technical support metrics.

### **Software Hosting and Facilities Requirements**

The facilities needed for all hardware, software and personnel. The proposed hosting solution must meet the following requirements:

- Secure facilities with controlled entry only by authorized personnel
- Climate controlled to meet all equipment specifications
- Backup power adequate to maintain System availability during power outages
- 24x7x365 monitoring and management
- Backup and recovery tools and processes
- Proactive capacity planning
- Problem avoidance and change management tools and processes

### **Performance Requirements**

1. Network Coverage – The Service shall be available throughout the City according to the Coverage Level defined in the Network Infrastructure Requirements section above.

2. Network Availability – The network elements shall be available to allow successful connections and data transit upstream and downstream within the following parameters:
  - Mesh Access Layer – 99.9% availability
  - Capacity Injection Layer – 99.99% availability
  - Backhaul Layer – 99.99% availability
  - POP and Backbone Layer – 99.999% availability
3. Network Reliability - Service outages for any part of the Network shall not exceed four (4) continuous hours or eight (8) total hours in any month.
4. Session Level Connectivity – Subscribers shall have the ability to move throughout the defined Coverage Area without disruption to their connection and login.
5. Network Throughput - The Service shall provide best efforts Internet access for 802.11 b/g devices at an average 1 megabit per second (“Mbps”) downstream and 1 Mbps upstream data transmission rate as measured on a daily basis.
6. The average network latency of data transmission between end user devices and the EarthLink facilities shall not exceed an average of 100 milliseconds (“ms”) within any one-month period in which it is measured.
7. The mean time to repair and resolve any issues affecting usage of the Service shall be within the following parameters as measured on a monthly basis.

See Performance Requirements Matrix

8. At least 80% of all customer service calls made to EarthLink or Open Access Service Providers in connection with use of the Service will be answered within 180 seconds.

<b>PERFORMANCE REQUIREMENTS MATRIX</b>			
<b>CATEGORY</b>	<b>DEFINITION</b>	<b>REQUIREMENT</b>	<b>MEASUREMENT</b>
Coverage	The geographic areas in the City of Philadelphia where wireless broadband Internet access will be available.	95% outdoor coverage 90% indoor, Perimeter Room coverage	Detailed testing and measurement process to be defined in Design Control Documents
Reliability	The reliability of the System	Mesh Access Layer -- 99.9% availability Capacity Injection Layer -- 99.99% availability Backhaul Layer -- 99.99% availability POP and Backbone Layer -- 99.999% availability Service outages for any part of the Network not to exceed four (4) continuous hours or eight (8) total hours in any month.	Detailed testing and measurement process to be defined in Design Control Documents Tool: Remedy
Performance	The performance characteristics of data communications between a Wi-Fi device and a Wi-Fi node	Average 1 Mbps upstream / 1 Mbps downstream. Minimum 100 millisecond (ms) latency from client device to EarthLink facilities.	Detailed testing and measurement process to be defined in Design Control Documents

Maintenance	Mean time to repair	<p>Tropos Wi-Fi Router element or Canopy Gateway Module - 8 business hours</p> <p>Access Point or Backhaul Layer element will be 24 clockhours</p> <p>Both measured on a monthly basis</p>	Detailed testing and measurement process to be defined in Design Control Documents
Customer Service	Average time to answer	At least 80% of customer service calls answered within 180 seconds.	Measure daily and report monthly. Tool: ACD



# EXHIBIT G

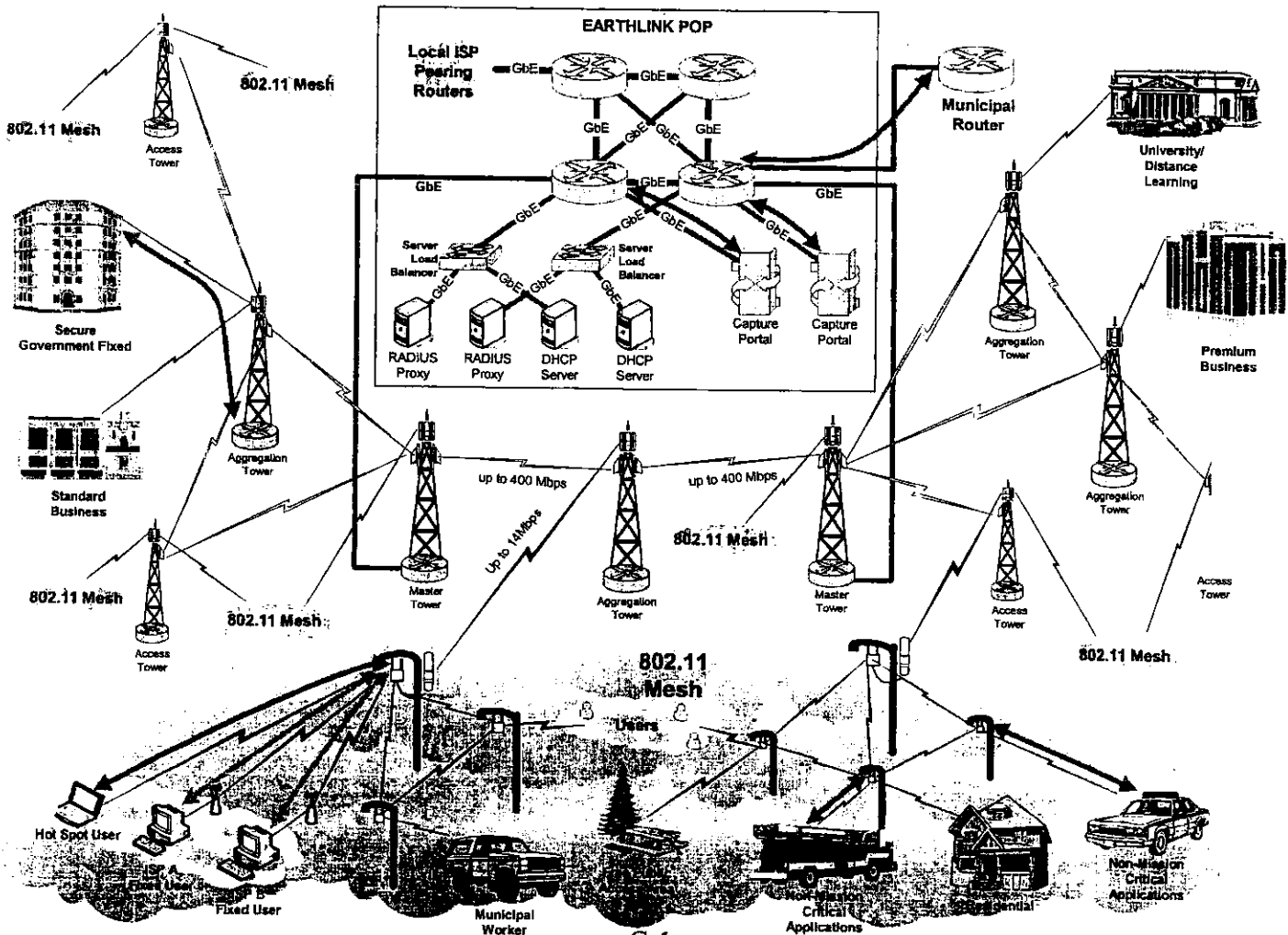
## SPECIFICATION SUMMARY

### Network Architecture

EarthLink will leverage best-of-breed technological solutions to develop the Wireless Philadelphia network. This will include the use of the Tropos 5210 802.11 Wi-Fi router to deliver Wi-Fi connectivity to end users, and the Motorola Canopy platform using license free spectrum in 5.7 GHz, 5.2 GHz and 900 MHz bands for backhaul from the Wi-Fi nodes to Access Towers. From the Access Towers, EarthLink will use a mix of high capacity point-to-point backhaul radios (14 Mbps to 400 Mbps) in various "leased" microwave bands (various bands between 6 GHz and 28 GHz) and in unlicensed spectrum bands, as well as fiber, to transport data to the EarthLink Philadelphia Backbone POP.

EarthLink has designed the Wireless Philadelphia using a layered approach, each layer

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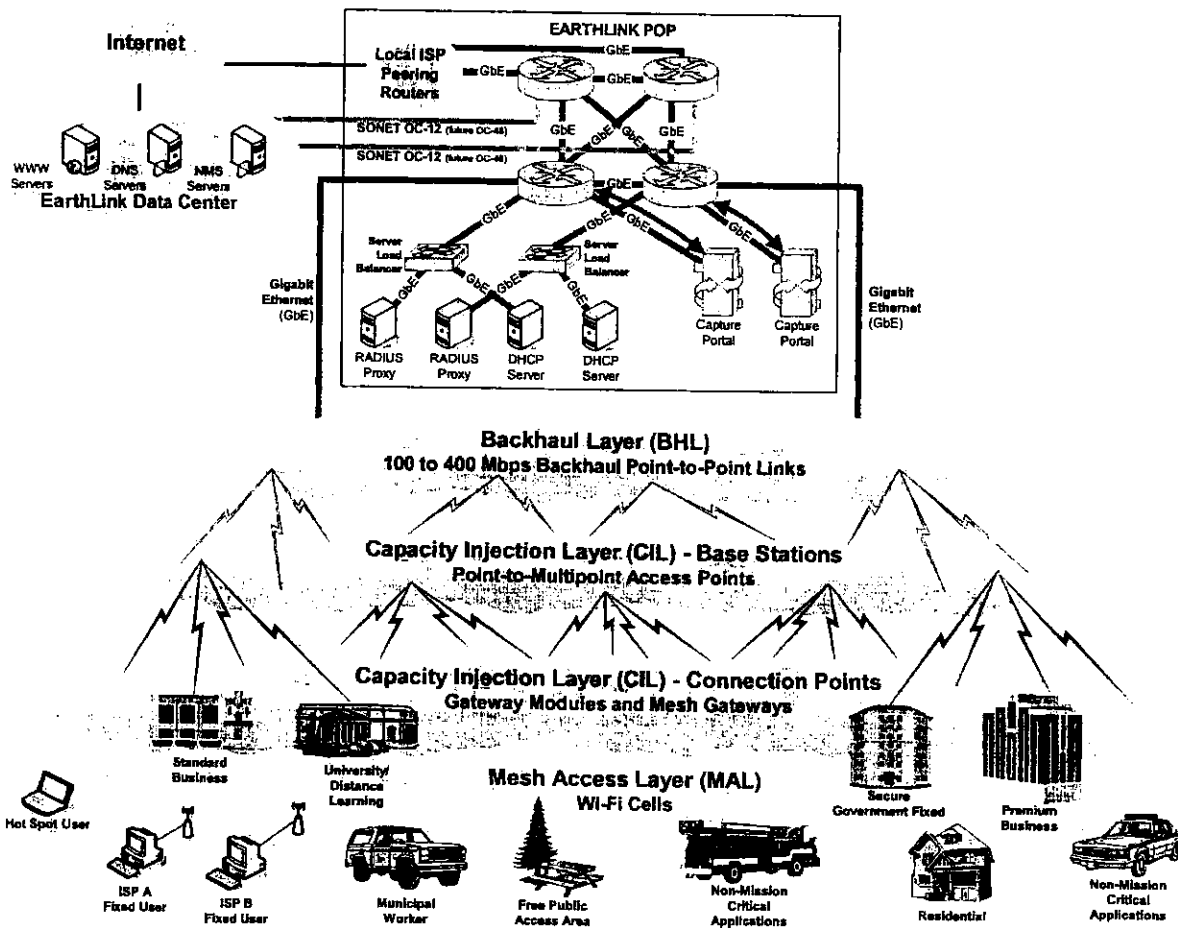


complimenting the next layer. There are three major layers:

- Backhaul Layer – includes wireless backhaul towers and fiber backhaul facilities
- Capacity Injection Layer – includes Canopy Access Points and Canopy Gateway modules which may be used to provide capacity to the Tropos nodes at lamp posts, and may also be used to provide T1 type services to government, commercial and institutional subscribers.
- Mesh Access Layer – includes the Tropos nodes and end user Wi-Fi CPE.

Layered Network Approach

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Backhaul Layer

It is estimated that 24 towers will be utilized to provide backhaul coverage throughout the network. These towers have been categorized into three different tower types, Access, Aggregation and Master towers.

The Access Towers will be equipped with two Canopy Access Point clusters and two 45 Mbps backhaul radios. The backhaul radios will interconnect the Canopy Access Point clusters to two separate Aggregation or Master Towers for path diversified redundancy.

Access Towers supporting only traffic aggregated directly from Canopy Gateway Modules and Wi-Fi nodes will have two 45 Mbps backhaul links. In case of a complete failure of an Access Tower, Wi-Fi traffic will route through the underlying wireless mesh to the nearest working tower. In order to maintain high capacity for services, Access Towers on which Fixed Wireless services are provisioned (such as the Secure Government Fixed data T1 replacement product) will be configured with appropriately sized point-to-point wireless backhaul links (up to 400 Mbps).

Aggregation Towers will aggregate the traffic from the Access Towers. Aggregation Towers will be equipped with two or more line-of-sight microwave links providing up to 400 Mbps of throughput to the Master Towers. Each Aggregation Tower is limited to 3 backhaul radios due to required channel separation. These links will be configured in rings for full network path redundancy, with path selection performed by an external router at each Aggregation Tower.

Master Towers will connect directly to the EarthLink Philadelphia Backbone POP via terrestrial fiber links.

### Capacity Injection Layer

The Capacity Injection Layer is comprised of Motorola Canopy Access Point clusters and Canopy Gateway Modules. The Canopy Gateway Modules feed the Mesh Access Layer nodes. The Gateway Modules will be collocated with a Tropos 5210 Wi-Fi node at specific points throughout the network. The Capacity Injection Layer will make use of three different frequencies in the unlicensed RF bands.

- 900 MHz: 902 MHz – 928 MHz
- 5.2 GHz: 5.250 GHz – 5.350 GHz
- 5.7 GHz: 5.725 – 5.850 GHz

The 5.2 GHz frequency band will be leveraged to the maximum extent possible for the Wireless Philadelphia network. The 5.7 GHz band will be used as a compliment to the 5.2 GHz backhaul equipment. Since the Canopy 5.7 GHz Access Points use the same frequency range as some of the high capacity backhaul modules, the use of 5.7 GHz on the Capacity Injection Layer will be determined by the Backhaul Layer requirements in the final design phase to ensure that there is no interference between the Backhaul Layer and the Capacity Injection Layer.

The City of Philadelphia represents a large cross section of terrain challenges. To accommodate for these challenges and to provide the level of coverage required, EarthLink will also employ wide scale use of the Motorola Canopy 900 MHz product line. Since 900 MHz provides non-line

of sight coverage, the network will be able to reach areas that might otherwise remain unreachable with wireless links at 5.2 GHz or 5.7 GHz.

### Mesh Access Layer

The Mesh Access Layer will be equipped with outdoor high performance Tropos 5210 Wi-Fi nodes. All of these nodes can be easily configured as nodes or Gateway Hosts depending on the needs of the network. A node configured as a Gateway Host is attached to a data cable connected to the Canopy Gateway Module, while a stand alone node operates completely wirelessly, sending and receiving packets to end user CPE as well as forwarding packets to other Wi-Fi nodes.

The design for the Wireless Philadelphia network will utilize as low as a 3:1 ratio of nodes to Gateway Modules. In other words, there will be much as one gateway to every three nodes. This 3:1 ratio will result in an estimated 4,050 Tropos radios and 1,350 Canopy Gateway Modules that will be deployed throughout the network.

For connectivity, every Tropos Gateway Host will be collocated with a Canopy Gateway Module. These units will leverage the existing City of Philadelphia street light and pole infrastructure.

### Network Design

To achieve outdoor and indoor coverage requirements, EarthLink will deploy up to 30 Tropos 5210 802.11 b/g Wi-Fi radios per square mile.

EarthLink will implement one Motorola Canopy Gateway Module to backhaul data for as little as every three Tropos Wi-Fi nodes, which will reduce the network's reliance on the Wi-Fi mesh to provide as much backhaul between the nodes. It is expected to allow traffic to be transported as quickly as possible onto the high capacity backhaul network, reducing latency and mitigating the decreases in bandwidth typically observed by end users as more node-to-node hops are required to reach the gateway.

EarthLink has specified the use of powerful 200mW CPE with high gain +12 dBi directional antennae. The use of this equipment will help to assure indoor coverage and the bandwidth requirements as specified by the requirements.

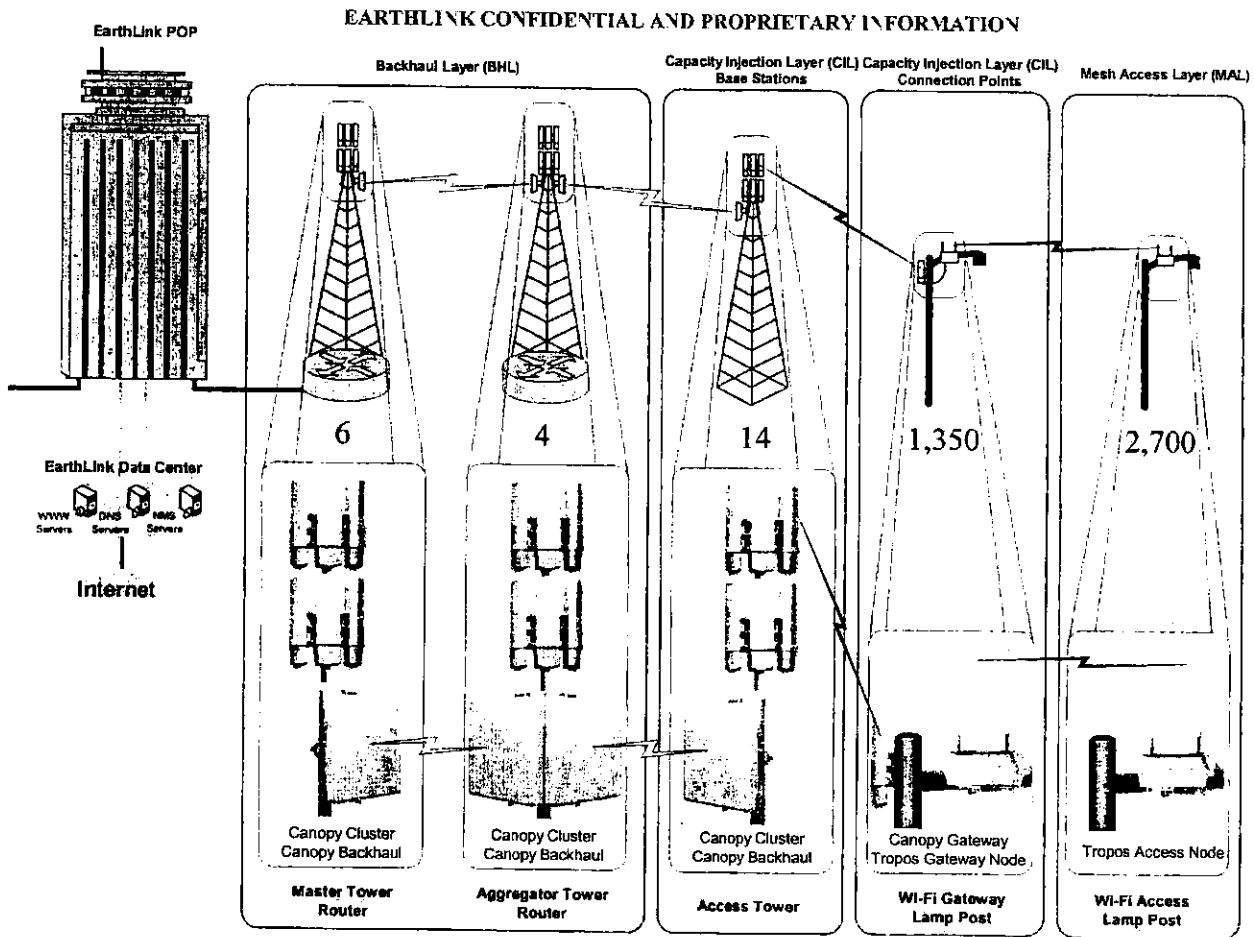
### Network Assumptions Used in Preliminary Design

The following represent the network assumptions taken into consideration for the preliminary design. EarthLink retains the right to modify the network designs with approval of the Steering Committee and exact equipment volumes and ratios may be less than stated, if the required SLAs are still able to be achieved. Listed below are the assumptions used for this analysis.

- Coverage area is 135 square miles
- 90% indoor coverage target

- 95% outdoor coverage target
- Up to 30 Tropos radios per square mile
- One Motorola Canopy Gateway Module for every 3 Tropos nodes
- Up to 4,050 Tropos nodes required for the network deployment
- Up to 1,350 Gateway Modules required for the network deployment
- 24 towers required for deployment based on visual inspection
  - 14 Access Towers
  - 4 Aggregation Towers
  - 6 Master Towers
- Each tower will be equipped with 2 full Access Point clusters
- 312 total Access Points will be deployed
- 3.25 Gateway Modules will be associated to every Access Point
- Each cluster requires the use of a Cluster Management Module (CMM)
- Access Towers will have two 45 Mbps backhaul units
- A high capacity (up to 400 Mbps) backhaul radio will be added to Access Towers
- Aggregation Towers have one (up to 400Mbps) line-of-sight radio for backhaul
- Aggregation Towers will be equipped with an external device such as a router or switch to aggregate traffic between the radios
- Master Towers will have terrestrial fiber connectivity to the POP
- A mix of 900 MHz, 5.2 GHz and 5.7 GHz equipment will be used in the network

Overview of Network Infrastructure Elements



Motorola Canopy Hardware Solution

The Canopy system, Motorola's wireless broadband solution, will be used to extend connectivity to the Mesh Access Layer in EarthLink's network design. The Canopy products utilized will include those in the 900 MHz, 2.4 GHz, 5.2 GHz and 5.7 GHz frequency bands.

EarthLink's design for the Wireless Philadelphia network makes use of products in the 5.2 GHz and 5.7 GHz frequency bands to provide backhaul capacity for the Wi-Fi mesh layer of the network and augments the system with products in the 900 MHz frequency bands to extend coverage in difficult to reach areas.

The Canopy system represents a hardened, outdoor, high-speed wireless solution. Canopy is designed to be reliable in operation; there are no moving parts, a single unit and no odd connectors. The Canopy system has a mean time between failures of 45 years. Significant features include:

- GPS synchronization that ensures that Canopy does not “interfere with itself”.
- Carrier to Interference (C/I) ratio as low as 2dB, compared to other solutions C/I ratios of typically 7 to 25dB. Canopy is extremely tolerant to interference from other sources as well as from other Canopy radios in the network.
- The Canopy system is highly scalable and requires no elaborate frequency planning and coordination.
- The Canopy system uses industry proven authentication and encryption technologies including DES and optional AES solutions providing the most secure wireless network available in the industry.
- The Canopy hardware draws little power and its packaging is unobtrusive.
- The installation of the equipment is straightforward with the 60-degree antennas being easily aligned, aided by the built-in visual feedback installation indicators.

These characteristics will facilitate the initial deployment and subsequent network expansions. The Canopy system’s low cost also makes it suitable for serving Secure Government Fixed as well as Premium Residential and Small Business consumers with data rates in excess of today’s DSL and cable data networks. It is also an excellent system for serving enterprise properties, such as schools, hospitals and small business campuses.

The Canopy Advantage platform is based on software defined radio technology that removes the constraints imposed by traditional hardware designs or chip sets. The Canopy Advantage platform can support new functionality and enhancements via software upgrades. EarthLink also selected the Canopy Advantage platform because it provides the industry’s highest level of interference tolerance, security, scalability, signal reliability and ease of installation.

- **High Performance:** Effectively reduces latency by one-third (from approximately 20 milliseconds to 5 to 7 milliseconds).
- **Speeds:** Delivers data rates in excess of today’s DSL and cable networks of 7 Mbps. In addition, when Advantage Gateway Modules and Access Points are used together, throughput actually doubles yet again and can reach up to 14 Mbps to a single device.
- **Quality of Service:** Enables the Wireless Philadelphia network to provide differentiated levels of service using Committed Information Rate (CIR) and Maximum Information Rate (MIR).

- Multi-Services Platform: An ATM frame structure uses small frame sizes which reduces retransmission times and provides for low latency, a critical component supporting the vision of future high quality services such as VoIP and online gaming over the Wireless Philadelphia network.
- Seamless Integration: Any legacy Canopy Modules can be upgraded, via software download, to take advantage of the benefits of the Canopy Advantage platform.



## Motorola Canopy 5.7 GHz Advantage Gateway Module Specifications

Description	5.7 GHz Advantage Gateway Module
Canopy Part Number	5750SM
Market Availability	North America, Latin America, Asia
Signaling Rate	20 Mbps Maximum
Typical LOS Range	2 Mile (3.2 km) max
Typical Aggregate Useful Throughput	14 Mbps to 1 Mi (1.6
Frequency range of band	ISM 5725-5850 MHz
Non-overlapping Channels	6
Channel Width	20 Mhz
Channel Spacing	every 5 MHz
Modulation Type	High Index 2-level Frequency Shift Keying (FSK) optimized for interference rejection
Encryption	DES capable
Latency	5 - 7 msec
Carrier to Interference ratio (C/I)	~3dB @ 10 Mbps, ~10dB @ 20 Mbps at -65dBm
Nominal Receiver Sensitivity (dbm typical)	-86 dB
Antenna Gain (dB)	7 dB
EIRP (dB)	30 dB
Equivalent Isotropic Radiated Power (EIRP)	1W
DC Power (typical)	0.3 A @ 24 VDC = 7.2 W
Antenna Beam Width	3 dB antenna beam width 60 degrees, Azimuth and Elevation
Temperature	-40° C to +55° C (-40° F to +131° F)
Wind Survival	190 km/hr (118 miles/hr)
Dimensions	11.75 in H x 3.4 in W x 3.4 in D (29.9 cm H x 8.6 cm W x 8.6 cm D)
Weight	.45 kg (1 lb)
Access Method	Time Division Duplexing/Time Division Multiple Access (TDD/TDMA)
Interface	10/100 Base T, half/full duplex. Rate auto negotiated (802.3 compliant)
Protocols Used	IPV4, UDP, TCP, ICMP, Telnet, HTTP, FTP, SNMP
Network Management	HTTP, TELNET, FTP, SNMP Version 2c
FCC ID	ABZ89FC5804
Industry Canada Certification Number	109W-5700
NYCE	0202CE08128

## Motorola Canopy 5.2 GHz Advantage Gateway Module Specifications

Description	5.2 GHz Advantage Gateway Module
Canopy Part Number	5250SM
Market Availability	North America
Signaling Rate	20 Mbps Maximum
Typical LOS Range	2 Mi Max
Typical Aggregate Useful Throughput	14 Mbps Maximum
Frequency range of band	U-NII 5250-5350 MHz
Non-overlapping Channels	3
Channel Width	20 MHz
Channel Spacing	every 5 MHz
Modulation Type	High Index 2-level Frequency Shift Keying (FSK) optimized for interference rejection
Encryption	DES capable
Latency	5 - 7 msec
Carrier to Interference ratio (C/I)	~3dB @ 10 Mbps, ~10dB @ 20 Mbps at -65dBm
Nominal Receiver Sensitivity (dbm typical)	-86 dBm
Antenna Gain (dB)	7 dB
EIRP (dB)	30 dBm
Equivalent Isotropic Radiated Power (EIRP)	1 W
DC Power (typical)	0.3 A @ 24 VDC = 7.2 W
Antenna Beam Width	3 dB antenna beam width 60 degrees, Azimuth and Elevation
Temperature	-40° C to +55° C (-40° F to +131° F)
Wind Survival	190 km/hr (118 miles/hr)
Dimensions	11.75 in H x 3.4 in W x 3.4 in D (29.9 cm H x 8.6 cm W x 8.6 cm D)
Weight	.45 kg (1 lb)
Access Method	Time Division Duplexing/Time Division Multiple Access (TDD/TDMA)
Interface	10/100 Base T, half/full duplex. Rate auto negotiated (802.3 compliant)
Protocols Used	IPV4, UDP, TCP, ICMP, Telnet, HTTP, FTP, SNMP
Network Management	HTTP, TELNET, FTP, SNMP Version 2c
FCC ID	ABZ89FC3789
Industry Canada Certification Number	109W-5200
NYCE	0202CE08128

## Motorola Canopy 900 MHz Gateway Module Specifications

Description	900 MHz SM Connectorized (External antenna)
Canopy Part Number	9000SMC
Market Availability	North America, South America, Asia
Signaling Rate	6 Mbps maximum
Typical LOS Range	40 Miles (64 km)
Typical Aggregate Useful Throughput	4 Mbps maximum
Frequency range of band	ISM 902-928 MHz
Non-overlapping Channels	3
Channel Width	8 MHz
Channel Spacing	1 MHz
Modulation Type	High Index 2-level Frequency Shift Keying (FSK) optimized for interference rejection
Encryption	DES capable
Latency	< 15 msec
Carrier to Interference ratio (C/I)	~3dB @ 3 Mbps, ~10dB @ 6 Mbps at -70dBm
Nominal Receiver Sensitivity (dbm typical)	-90 dB
Antenna Gain (dB)	varies
EIRP (dB)	36 dB
Equivalent Isotropic Radiated Power (EIRP)	4 W
DC Power (typical)	0.3 A @ 24 VDC = 7.2 W
Antenna Beam Width	Connectorized 60 degree beam width azimuth and 35 degree elevation ~12.5 dBi
Mean Time Between Failure (MTBF)	40 yr
Temperature	-40° C to +55° C (-40° F to +131° F)
Wind Survival	190 km/hr (118 miles/hr)
Dimensions	11.75 in H x 3.4 in W x 3.4 in D (29.9 cm H x 8.6 cm W x 8.6 cm D) Antenna Varies
Weight	.45 kg (1 lb), antenna varies.
Access Method	Time Division Duplexing/Time Division Multiple Access (TDD/TDMA)
Interface	10/100 Base T, half/full duplex. Rate auto negotiated (802.3 compliant)
Protocols Used	IPV4, UDP, TCP, ICMP, Telnet, HTTP, FTP, SNMP
Network Management	HTTP, TELNET, FTP, SNMP Version 2c
FCC ID	ABZ89FC5809

## Tropos Mesh Wi-Fi Hardware and Software Solution

In the Mesh Wi-Fi layer, EarthLink will utilize the Tropos 5210 Outdoor MetroMesh Router node. The Tropos platform combines sophisticated mesh routing intelligence to optimize throughput in a metro-scale Wi-Fi mesh environment, with carrier-grade centralized element management and a hardware platform with top grade Wi-Fi link budgets.

The Tropos MetroMesh OS, including the Tropos Predictive Wireless Routing Protocol (PWRP), is a scalable mesh routing algorithm. The Tropos 5210 node, utilizing the embedded PWRP, creates a self-organizing and self-healing wireless mesh, and intelligently selects the optimum data path to the wired network. Because the MetroMesh OS and PWRP never require more overhead than 5% of available bandwidth, EarthLink can easily scale the Wireless Philadelphia network to many thousands of nodes without any client throughput or network capacity degradation.

The Tropos software, management tools and hardware combine to enable the operation of multiple independent networks on a single infrastructure. EarthLink can enable individual user communities to operate independently, segregating information access, billing and access levels.

The rugged and weatherized Tropos 5210 is NRTL certified for outdoor installation. The 5210 node requires only power and can be deployed anywhere power is available, including buildings or lamp posts. Each Tropos node provides wireless connectivity to standard 802.11 b/g clients.

Tropos solution features include:

- Standard IEEE approved and supported Wi-Fi (802.11 b and 802.11 g): Support for industry standard 802.11 CPE devices including laptops and PDAs without any proprietary hardware required. Standard components are utilized in all aspects of the system.
- Carrier-Class Reliability: The proposed solution will deliver 99.9% uptime. The network design includes mesh technology supporting optimized routing, self-organizing mesh routers, automatic failure recovery and an SNMP-based element manager.
- Scalability: The Tropos 5210 is a 1 Watt mesh Wi-Fi router with very high receive sensitivity at -98 dBm.
- Coverage: Initial estimates of coverage, based on commercially available map source information and density analysis, suggest that the equipment should provide over 90% indoor coverage.
- Quality of Service (QoS): To guarantee complete, carrier-class coverage, Tropos nodes will be installed with overlapping coverage areas, providing resiliency from interference, wired or wireless network failure and other environmental disruptions.
- High Performance: The network proposed will support end user bandwidth over 1 Mbps.
- Security: The system proposed supports WEP (not recommended), WPA, AES, MAC Address Filtering and Virtual Private Network (VPN) Security.

## ropos 5210 MetroMesh Router Technical Specifications

Wireless	<ul style="list-style-type: none"> <li>• IEEE 802.11b/g</li> <li>• Frequency band: 2.4-2.483 GHz</li> <li>• Modulation: 802.11g - OFDM (64-QAM, 16-QAM, QPSK, BPSK)</li> <li>• 802.11b - DSSS (DBPSK, DQPSK, CCK)</li>   <li>• TX Power: <ul style="list-style-type: none"> <li>- Standard 14dBm-24dBm (EIRP) factory-set in 1dB units</li> <li>- High-Power 26dBm-36dBm (EIRP) factory-set in 1dB units</li> </ul> </li>   <li>• 7.4dBi Omni directional antennas</li> <li>• Media Access Protocol: CSMA/CA with ACK</li> <li>• Transmit and Receive diversity</li>   <li>• RX Sensitivity: <ul style="list-style-type: none"> <li>- -100dBm @ 1 Mbps</li> <li>- -94dBm @ 5.5 Mbps</li> <li>- -92dBm @ 11 Mbps</li> <li>- -95dBm @ 6 Mbps</li> <li>- -93dBm @ 12 Mbps</li> <li>- -90dBm @ 18 Mbps</li> <li>- -87dBm @ 24 Mbps</li> <li>- -84dBm @ 36 Mbps</li> <li>- -79dBm @ 48 Mbps</li> <li>- -77dBm @ 54 Mbps</li> </ul> </li> </ul>
Networking	<ul style="list-style-type: none"> <li>• TCP and VPN session persistent roaming</li> <li>• Full 802.11b/g client compatibility</li> <li>• NAT support</li> <li>• Layer 2 and Layer 3 support</li> <li>• DHCP Server and Relay</li> <li>• Sub-interface support</li> <li>• Ethernet port</li> </ul>
Management	<ul style="list-style-type: none"> <li>• HTTPS to on-board configuration management tools</li> <li>• Secure local and remote configuration via HTTPS</li> <li>• SNMP V2c</li> <li>• Tropos MIB</li> <li>• Browser-based management tool</li> <li>• Simple configuration save and restore</li> <li>• Network &amp; client monitoring and statistical capture features</li> </ul>
Security	<ul style="list-style-type: none"> <li>• WPA - (64, 128, 152-WEP with TKIP)</li> <li>• Multiple ESSIDs</li> <li>• Full VPN compatibility</li> <li>• VPN filtering—rejects non-VPN traffic</li> <li>• MAC address access control lists</li> <li>• HTTPS only to on-board management tools</li> <li>• AES encryption of wireless routing</li> <li>• Packet filtering</li> <li>• ESSID suppression</li> </ul>

Environmental Specifications	<ul style="list-style-type: none"> <li>• Operating temperature range: -40°C to 55°C</li> <li>• Storage temperature range: -40°C to 85°C</li> <li>• Weather rating: IP67 weathertight</li> <li>• Wind survivability: &gt;165 mph</li> <li>• Wind loading (165 mph): &lt;1024 Newtons</li> <li>• MIL-STD-810F 509.4 Salt Fog rust resistance compliant</li> <li>• Shock &amp; vibration: ETSI 300-19-2-4 spec T41.E class 4M3</li> <li>• Transportation: ISTA 2A</li> </ul>
Optional Battery Back-Up	<ul style="list-style-type: none"> <li>• Factory Installed Li-Ion battery</li> <li>• Back-up power 4-12 hours typical</li> </ul>
Optional Accessories	<ul style="list-style-type: none"> <li>• Power Cables</li> <li>• Street light NEMA photo-electric control power tap 90-480 V AC, 2 wire 4 ft. power cable</li> <li>• Street light NEMA photo-electric control power tap 90-480 V AC, 2 wire 20 ft. power cable</li> <li>• Electrical power cord, US/Canada 120 VAC, 15 A, 3 prong 6 ft. or 30 ft.</li> <li>• CAT5 building entrance data protection; network protection unit</li> </ul>
Package Contents	<ul style="list-style-type: none"> <li>• Tropos 5210</li> <li>• Mounting bracket and accessories</li> <li>• Hardware Installation and Quick Start Guides</li> </ul>
Approvals	<ul style="list-style-type: none"> <li>• FCC CFR 47 Part 15, Class B</li> <li>• Industry Canada RSS 210</li> <li>• Taiwan DGT LP0001/LP0002</li> <li>• VCCI class B</li> <li>• ARIB STD-T66</li> <li>• EN 301 489-17</li> <li>• EN 300 328</li> <li>• EN 60 950</li> <li>• IEC 950</li> <li>• UL 60950-1</li> <li>• CSA 22.2 No. 950</li> <li>• UL 579/IEC 60529 IP67 rated for outdoor use</li> <li>• UL 1449/IEC 60 664-1</li> <li>• CE</li> </ul>
Hardware Specifications	<ul style="list-style-type: none"> <li>• Autosensing 10/100BaseT Ethernet</li> <li>• Power input:</li> <li>• 90-480VAC 50/60Hz single and split-phase ANSI/IEEE C62.41 category C3 integrated branch circuit protection</li> <li>• AC power consumption: 18 W typical</li> <li>• Power over Ethernet power sourcing capability:</li> <li>• 12Vdc @ 14W, 24Vdc @ 12W, 48Vdc @ 10W output</li> <li>• Power-on and network status lamp: Green/Red</li> <li>• Dimensions (w/o mounting brackets or antennas): 13.00 in (33.02 cm) wide x 8.00 in (20.32 cm) deep x 5.3 in (13.50 cm) high</li> <li>• Weight: 14 lbs (6.40 kg) max., with mounting brackets</li> </ul>
Protection Circuits	<ul style="list-style-type: none"> <li>• Antenna Protection: <math>\leq 0.5\mu\text{J}</math> for 6kV/3kA @ 8/20<math>\mu\text{s}</math> Waveform</li> <li>• Electrical Protection: <ul style="list-style-type: none"> <li>- ANSI/IEEE C62.41, UL 1449-2nd ed., 10kA @ 8/20 <math>\mu\text{s}</math> Wave form, 36kA per phase, L-L, L-N, L-PE</li> <li>- EN61000-4-5 Level 4 AC Surge Immunity</li> <li>- EN61000-4-4 Level 4 Electrical Fast Transient Burst Immunity</li> <li>- EN61000-4-3 EMC Field Immunity</li> </ul> </li> <li>• Data Protection: EN61000-4-2 Level 4 ESD Immunity</li> </ul>

Warranty	<ul style="list-style-type: none"> <li>• One (1) year on parts and labor; return to point of purchase</li> <li>• Optional standard and premium support packages available</li> </ul>
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High Capacity Wireless Backhaul Components

EarthLink is in the process of evaluating several vendors of high capacity wireless backhaul equipment, in the unlicensed 5.7 GHz band, as well as in leased / licensed point-to-point 6 GHz, 11 GHz, 18 GHz, 23 GHz, 24 GHz, 26 GHz or 28 GHz bands. These radios will provide the 45 Mbps to 400 Mbps backhaul connections from the Access Towers to the Aggregation Towers to the Master Towers, as specified in the EarthLink network design.

Proof of Concept

The proof of concept network validation will utilize the network throughput, coverage and mobility design control documents as the test criteria for the proof of concept acceptance. The test area will cover more than 10 square miles and less than 20 square miles and will include an estimated 450 Tropos 5210 Wi-Fi nodes and approximately 150 Motorola Canopy Gateway Modules to backhaul the traffic from the Wi-Fi mesh to the access towers. A minimum of two separate tower locations will feed the mesh network to provide backhaul route diversity.

Design Control Documents (DCDs) will be created for the Proof of Concept zone (and subsequent zones). The DCDs will include a detailed design for each zone and details on Acceptance Testing processes and methods to measure the Performance Criteria identified in the Requirements. Final Service Level Agreements (SLAs) will be created following the completion of Acceptance Testing and appended to the definitive agreement.

**EXHIBIT H**

**HIGH LEVEL PROJECT SCHEDULE**



Philadelphia Project Overview	Day 0	Day 30	Day 60	Day 90	Day 120	Day 150	Day 180	Day 210	Day 240	Day 270	Day 300	Day 330	Day 360	Day 390	Day 420	Day 450	Day 480
All necessary contracts are executed by WP, City, EarthLink and Utility	■																
Milestone #1: Contracts Complete, Project Begins	▲																
Proof of Concept Design Control Document created and ratified		■															
Proof of Concept Acceptance Criteria created and ratified			■														
Proof of Concept permitting process with City				■													
Milestone #2: DCD and Acceptance Criteria Ratified		▲															
Installation of 15 square mile Proof of Concept area			■														
Proof of Concept testing and results analysis				■													
Full Market Deployment Design Control Document created and ratified					■												
Full Market Deployment Final Acceptance Criteria created and ratified						■											
Service Level Agreements created and ratified							■										
Milestone #3: Proof of Concept Acceptance, Full Market Requirements Established							▲										
Full Market Deployment permitting process				■													
Installation of 135 Square Mile Full Market Deployment					■												
Milestone #4: Full Market Deployment Installation Complete															▲		
Full Market Deployment Final Acceptance Criteria tested and evaluated																	
Adjustments and optimization of network																	
Milestone #5: Final Acceptance																	▲

## EXHIBIT I

### PRODUCTS / PRICING / REVENUE SHARE

From time to time, upon the request of either Party, the Steering Committee will review the product offerings.

1. Open Access Commitment.
  - a. In operating the System, providing services and setting prices described in this Agreement EarthLink is committed to in good faith provide an open access system on which third parties can compete against each other and EarthLink for all products.
  - b. In setting pricing and other obligations for Service Providers, EarthLink shall treat similarly situated Service Providers in a similar manner.
2. EarthLink Retail Wi-Fi Broadband Product. The EarthLink Retail Wi-Fi Broadband Product ("EL Retail Wi-Fi") shall consist of the Base Service. Nothing herein shall prevent EarthLink from offering additional variations of the EarthLink Retail Wi-Fi Broadband Product, with alternative included Core ISP Services or with no Core ISP Services. It shall be the responsibility of EarthLink to clearly communicate such configurations, modifications and options to subscribers. EarthLink may, at its sole discretion, provide and charge for CPE and installation services to EarthLink Retail Wi-Fi Broadband Product subscribers.
  - a. Revenue Share. EarthLink shall deliver to WP each month the greater of one dollar (\$1.00) or five percent (5%) of the Net Access Revenue generated per month for every EL Retail Wi-Fi subscriber utilizing the System each month. Such revenue sharing payments shall commence following the Fixed Payment Period.
3. EarthLink Retail Assistance Program Wi-Fi Broadband Product. The Assistance Program Wi-Fi Broadband Product ("EL Assisted Wi-Fi") shall provide Base Service. WP will determine guidelines, with input from EarthLink, and qualification criteria to determine individuals eligible for EL Assisted Wi-Fi. The qualification of subscribers for the EL Assisted Wi-Fi shall be the responsibility of WP. WP and EarthLink will mutually agree upon a communication process to enable EarthLink to identify subscribers qualifying for the EarthLink Assistance Program without being obligated to request any income information from a subscriber. EarthLink and WP shall work together to develop a mutually agreeable plan by which CPE and installation services shall be provided to Assistance Program Subscribers. EarthLink shall be the only provider required to maintain an assistance program product. If a party other than EarthLink is the provider of CPE or installation services to an EL Assisted Wi-Fi Subscriber, EarthLink is not required to provide CPE or connectivity support for such Subscriber.

- a. Revenue Sharing to WP for EL Assisted Wi-Fi Subscribers. There shall be no revenue sharing from EarthLink to WP for the EL Assisted Wi-Fi.
- b. Assistance Program. EarthLink shall subsidize and sell the EL Assisted Wi-Fi to qualifying subscribers at a net retail rate no-higher than of \$9.95 per month. During the first three (3) years of the Agreement EarthLink shall also provide EL Assisted Wi-Fi Subscribers with the Core ISP Services listed in Exhibit J, and for the remainder of the Term EL shall provide to EL Assisted Wi-Fi Subscribers those services it provides to standard EarthLink retail customers. EarthLink retains the right to make changes to the EarthLink Service Provider Services at its reasonable discretion (subject to the general requirements of the previous sentence. EarthLink shall have the right to alter the subsidy and net retail price of the EL Assisted Wi-Fi with the approval of the Steering Committee (which approval shall be solicited at least thirty (30) days prior to any planned change).
- c. Limit of Total EL Assisted Wi-Fi Accounts. The total number of EL Assisted Wi-Fi accounts at any time during the Term shall not exceed the greater of 25,000 accounts or 33 percent of the total EL Retail Wi-Fi accounts.
- d. CPE and Fulfillment of Assistance Program Customers. Should CPE be required for an EL Assisted Wi-Fi subscriber, the costs of such CPE and installation services costs shall be borne by WP or the subscriber, and EarthLink and WP shall work together in good faith to determine mutually acceptable methods by which the burden of these costs shall be reduced, including but not limited to direct payments by WP to EarthLink from WP revenue sharing revenues, an increase in the monthly subscription rate for the EL Assisted Wi-Fi, the use of grants to WP for the purpose of supporting the Assistance Program, the use of set up, CPE or installation charges to subscribers, the use of local contractors for installation services, or the use of co-marketing funds or discounts provided to EarthLink or WP by vendors or other industry partners. EarthLink shall provide customer support in the same manner as it provides support to EarthLink Retail Wi-Fi subscribers. Nothing herein shall prevent WP from offering CPE, CPE fulfillment or installation services to Assistance Program Subscribers. EarthLink and WP may also explore the use of Occasional Use products to support the Assistance program, and any such use of Occasional Use Products to support the Assistance Program would be determined jointly and be in a mutually acceptable manner to both parties.
- e. Payment Options. EarthLink will offer all EL Assisted Wi-Fi subscribers the ability to pay via credit card, direct bank debit, and alternative methods of payment reasonably viable for EL Assisted Wi-Fi Subscribers, such as prepayment, debit cards and alternative payment outlets (e.g. check cashing stores). EarthLink may not require any upfront fees to be charged to EL Assisted Wi-Fi subscribers. There shall be no term commitments, activation, reactivation or cancellation fees for EL Assisted Wi-Fi subscribers, unless otherwise determined by the Steering Committee.

- f. **Performance Metrics.** EL will measure the Three Important SLAs for both the entire System and the Digital Inclusion Area and report these SLAs monthly to WP. In the event that in any month the performance of any of the Three Important SLAs in the Digital Inclusion Areas is less 80% of that SLA for the System measured as a whole, then EL shall increase in the Revenue Share payment for all items in this Exhibit I by 25% for that month (e.g. 5% payments become 6.25% payments and \$1 payments become \$1.25 payments). System elements that are common to Digital Inclusion Areas and non-Digital Inclusion Areas will not be included in this calculation. This provision will not apply if the failure to satisfy the 80% test was caused in whole or in part by one or more Force Majeure Events.
4. **Open Access Wi-Fi Broadband Product.** The Open Access Wi-Fi Broadband Product (“OA Wi-Fi”) shall be sold to Service Providers by EL and shall allow Service Providers to offer the types of offering provided by EL as EL Retail Wi-Fi products including, without limitation, Base Service. At each Service Provider’s sole discretion, other Core ISP Services may be packaged by the Service Provider with the OA Wi-Fi. Each Service Provider shall solely determine if the OA Wi-Fi shall be marketed to residential subscribers, business subscribers, additional classes of subscribers or more than one subscriber class. Each Service Provider may, at its sole discretion, provide and charge for CPE and installation services to its respective OA Wi-Fi subscribers. OA Wi-Fi offered by EarthLink to EarthLink related parties that are controlled by or under common control with EarthLink shall pay revenue share as if it were EL Retail Wi-Fi.
- a. **Wholesale Monthly Rate.** The Wholesale Monthly Rate offered to Service Providers for the OA Wi-Fi shall be set by EarthLink in its reasonable discretion.
- b. **Wholesale Monthly Rate – Revenue Share.** EL shall deliver one dollar (\$1.00) to WP per month for every OA Wi-Fi account under the Wholesale Monthly Rate plan utilizing the System each month. Such revenue sharing payments shall commence following the Fixed Payment Period. EL shall collect and remit the Wholesale Monthly Rate - Revenue Share from Service Providers on a monthly basis and EarthLink shall pass the revenue through to WP on a monthly basis.
- c. **Wholesale Inbound Roaming Rate.** The Wholesale Daily Rate shall be set by EarthLink in its reasonable discretion.
- d. **Wholesale Daily Rate – Revenue Share.** EL shall deliver 5 % of its wholesale inbound roaming revenue to WP. Such revenue sharing payments shall commence following the Fixed Payment Period. In the case where EarthLink offers a roaming plan directly via the System to its non-City subscribers (“EL Roaming Wi-Fi”) directly or through a partner, EarthLink shall deliver the five percent (5%) of the average wholesale inbound roaming rate available to unrelated Service Providers to WP for every EL Roaming Wi-Fi account utilizing the System.
- e. **[deleted].**
- f. **[deleted].**

- g. [deleted].
- h. Open Access Certification Fees – Revenue Share. EarthLink shall deliver to WP fifty percent (50%) of the Open Access Certification Fee billed and collected from each Service Provider.
- i. [deleted].
- j. Additional Open-Access Wi-Fi Broadband Services - EarthLink shall have the right to charge Service Providers additional fees for services, other than those included in the Open Access Wi-Fi Broadband Product, requested by Service Providers. Such services, which EarthLink has no obligation to provide, may include and are not limited to: alternative speed tiers, quality of service guarantees, System enhancements and service level guarantees, enhanced System connection security, home networking services, static and multiple IP services, and other services enabled by the System. In each case, the terms for such services, if EarthLink in its sole discretion elects to provide them, will be negotiated between EarthLink and the Service Provider. The Additional Open-Access Wi-Fi Broadband Services will be subject to a revenue share paid to WP, unless otherwise determined by the Steering Committee.
- k. WP may purchase OA Wi-Fi accounts from EarthLink for sale of a WP branded product with the following cost schedule based on users:

- < 10,001 total users = \$11 per month
- > 10,000 total users = \$10 per month
- > 25,000 total users = \$9 per month
- > 50,000 total users = \$8 per month

No Revenue Share will be payable by EarthLink to WP on these accounts. WP may outsource the complete operation of such accounts to only one (1) Service Provider, including, support, marketing, sales, billing, support, provisioning and installation. WP may only provide such accounts in connection with only its own trademark and may not use the trademarks of the other Service Provider in connection with such accounts.

- 5. Municipal Government Wi-Fi Broadband Product. Provision of Municipal Government Wi-Fi Broadband accounts to the City is set forth in Section 7.1.3.1 of the PAID Pole Attachment Agreement. To the extent that the provision of any such accounts to WP, or through WP to third parties, results in sales tax, WP will be responsible for paying such sales tax to EarthLink.
- 6. Parks and Public Spaces Wi-Fi Broadband Product. The Parks and Public Spaces Wi-Fi Broadband Product shall provide Base Service. The duration of splash page persistence, amount of usage by any user and duration of allowed sessions for the Parks and Public Spaces Wi-Fi Broadband Product shall be jointly determined by EarthLink and WP. EarthLink shall have no responsibility to provide CPE or installation services for Service Subscribers utilizing the Parks and Public Spaces Wi-Fi Broadband Product. The locations deemed to be Parks and Public Spaces shall be between 5% and 7% of the City

as are set forth on Exhibit D. The parties will in good faith consider modification to Exhibit D prior to Proof of Concept Acceptance. EarthLink shall have no obligation to provide service if WP or the City cannot provide suitable mounting assets without additional cost to EarthLink (other than the Pole fee). EarthLink shall have the sole right to design the configuration of the System in Parks and Public Spaces to restrict access to the Parks and Public Spaces Wi-Fi Broadband Product by users located in residential households, businesses and institutional premises located adjacent to the Parks and Public Spaces throughout the Coverage Area. Except in High Profile Areas, EarthLink shall have the right to provide lower speed or incomplete coverage in Parks and Public Spaces if it determines that the Parks and Public Spaces Wi-Fi Broadband Product availability overlaps into residential, business or institutional location premises, but will work in good faith with WP to minimize such areas. "High Profile Areas" are the areas designated as "Areas of City Wide Significance" in Exhibit D.

7. Parks and Public Spaces Revenue. EarthLink shall fully subsidize the cost of the Parks and Public Spaces Wi-Fi Broadband Product to users of the System. EarthLink shall have the right to advertise EarthLink Retail products to users utilizing the Parks and Public Spaces Wi-Fi Broadband Products.
  - a. Parks and Public Spaces not shown on Exhibit D shall still be part of the Coverage Area for EarthLink's for-pay Products unless such areas are excluded from the Coverage Area by mutual agreement of EarthLink and WP or WP is not able to provide mounting assets in such areas.
  
8. EarthLink Retail Occasional Use Wi-Fi Broadband Products. The Occasional Use Wi-Fi Broadband Products shall provide Base Service. The Occasional Use Wi-Fi Broadband Products shall be differentiated from other Wi-Fi Broadband Products in that the subscription lengths offered to Service Subscribers shall be 7 days or less, and may include, but are not limited to a 1 hour subscription, 24 hour subscription, 3 day subscription and 7 day subscription, to be determined at the sole discretion of EarthLink. The Steering Committee may provide recommendations from time to time regarding such Occasional Use Wi-Fi Broadband Products and EarthLink will consider such recommendations in good faith. EarthLink shall set the retail price for such Occasional Use Wi-Fi Broadband Products in its reasonable discretion and shall be solely responsible for the marketing, sales, provisioning, customer support and billing of such services. EarthLink may, at its sole discretion, provide and charge for CPE and installation services to Occasional Use Wi-Fi Broadband Products Service Subscribers.
  - a. Revenue Sharing to WP for EarthLink Retail Wi-Fi Occasional Use Products. EarthLink shall deliver five percent (5%) of Net Access Revenue per month generated by Occasional Use Products to WP.
  
9. Municipal Government T1 Alternative Product. Provision of Municipal Government T1 Alternative accounts to the City is set forth in Section 7.1.3.2 of the PAID Pole Attachment Agreement. To the extent that the provision of any such accounts to WP, or through WP to third parties, results in sales tax, WP will be responsible for paying such sales tax to EarthLink.

10. EarthLink Retail T1 Alternative Product. The EarthLink Retail T1 Alternative Product shall provide point-to-multipoint fixed wireless Internet access featuring a minimum 1.5 Mbps downstream / 1.5 Mbps upstream data transmission rate, to the extent commercially reasonable, and a dynamic IP address. EarthLink shall solely determine if the EarthLink Retail T1 Alternative Product shall be marketed to residential subscribers, business subscribers, additional classes of subscribers, more than one subscriber class, or no subscriber classes. EarthLink may, at its sole discretion, provide and charge for CPE and installation services to EarthLink Retail T1 Alternative Product Service Subscribers. EarthLink shall set the price for the EarthLink Retail T1 Alternative Product in its reasonable discretion.
  - a. Revenue Sharing to WP for EarthLink Retail. EarthLink shall deliver five percent (5%) of Net Access Revenue per month generated by the EarthLink Retail T1 Alternative Product to WP.
  
11. Open Access T1 Alternative Product. The Open Access T1 Alternative Product shall provide point-to-multipoint fixed wireless Internet access featuring a minimum 1.5 Mbps downstream / 1.5 Mbps upstream data transmission rate, to the extent commercially reasonable, and a dynamic IP address. Each Service Provider shall solely determine if the Open Access T1 Alternative Product shall be marketed to residential subscribers, business subscribers, additional classes of subscribers, more than one subscriber class or no subscriber classes. EarthLink may, at its sole discretion, provide and charge for set up, CPE and installation services to Service Providers. Each Service Provider, at its sole discretion, may charge for set up, CPE and installation services to Service Subscribers. EarthLink shall set the price for the Open Access T1 Alternative Product in its reasonable discretion.
  - a. Revenue Sharing to WP for Open Access T1 Alternative Products. EarthLink shall deliver five percent (5%) of Net Access Revenue per month generated by the EarthLink Open Access T1 Alternative Product to WP.
  
12. Future Products. It is contemplated that Future Products shall be enabled over the System in order to support emerging applications and connectivity needs over the Term of the Definitive Agreement. EarthLink and WP shall work together in good faith to identify mutually agreeable business models and operating plans to support such Future Products.
  - a. Revenue Sharing to WP for Future Products. Revenue Share on any Future Products will be determined by the Steering Committee. In the event that the Steering Committee cannot agree on an appropriate revenue share for a Product, EL may introduce such product and the Revenue Share shall be five percent (5%) of Net Access Revenue for such product.
  - b. EarthLink will not provide, or allow others to provide, Cable Service or OVS Service in violation of Section 2.3 PAID Pole Attachment Agreement.
  - c. For each Future Product offered by EarthLink, in order to ensure open access and competition, within six months EarthLink shall arrange for at least three other unrelated viable Service Providers to offer the same Product through the System.

If the three alternative Service Providers are not available on the System at that time, unless the Steering Committee waives such requirement, EarthLink shall cease providing such Product to any additional Subscribers for that Product, but may continue to offer the Product to already existing subscriber of such Product. At such time as EarthLink has the three alternative Service Providers for such product it may reintroduce it and continue to add subscribers.

13. [Deleted]

14. Ombudsman. EarthLink and WP agree to establish a communications process for community organizations to discuss various issues such as access, aesthetics, content and interference with EarthLink and WP. EarthLink and WP agree to cooperate through the Steering Committee to discuss such issues, to make recommendations, and where technically and economically feasible, to develop mutually acceptable solutions to address the desires of the community organizations.

15. Net Access Revenue – Except in the case where there are fixed payments per account, EarthLink will pay WP Revenue Share based on Net Access Revenue. In calculating Net Access Revenue the parties recognize that at times access and non-access Products will be bundled. In such cases, EarthLink shall in good faith determine the access portion of the charges as follows:

- Where retail product is bundled, the charge will be based on
  - (a) the lower of (i) the actual bundled product price or (ii) the price of the most similar retail access product; or
  - (b) if there is no retail bundled product or similar retail access product, 1.65 multiplied by the weighted average wholesale rate for that bundled product.
- For a wholesale product, the revenue share is based off the wholesale amount.

EarthLink shall at all times act in good faith in setting both retail and wholesale prices so as not to diminish Revenue Share payments to WP. For example, (i) lowering or eliminating access charges and recouping payment from other non-access products (either wholesale or retail), or (ii) charging wholesale Service Providers higher rates in other locations (which have lower or no revenue sharing rates) and lower rates in the City. The foregoing is not meant to prevent EarthLink from providing wholesale discounts based on aggregated volume for multiple locations. However, in calculating Net Access Revenue, exchanges of in-kind services shall be taken into account (such as lower wholesale rates in exchange for advertising on a Service Provider's web site or access to another Service Provider's network). It is not the intent of this Section to prevent EarthLink from structuring prices and various economic deals as it sees fit, however in such cases EarthLink shall make equitable adjustments to its calculation of Net Access Revenue.

16. Modification of Base Service. EarthLink may terminate the Base Service and provide a higher bandwidth alternative Service (“Alternative Service”) provided that:

- a. EarthLink migrates all then current Base Service to the Alternative Service which service shall otherwise meet or exceed the System SLAs;



- b. WP's revenue share on the Alternative Service remains identical to its revenue sharing on the Base Service;
- c. EarthLink continues to comply with its open access obligations with respect to the Alternative Service (i.e. at least 3 other ISPs within 6 months, etc.); and
- d. WP's wholesale pricing deal for such Alternative Service is identical to the current wholesale deal on the Base Service (i.e. \$8 - \$11 per account depending on volume).
- e. Retail Assisted Wi-Fi accounts migrate to Alternative Service at the same time as other accounts do so as well (and at \$9.95 or less).
- f. Other pricing is determined by the market (subject to WP's wholesale pricing capability).
- g. Same standards above apply to migrations from future Alternative Services.

Upon compliance with the a-g above, the Alternative Service shall become the Base Service. EarthLink shall review any Alternative Service with the Steering Committee at least thirty (30) days prior to termination of the then current Base Service. If EarthLink ceases to provide the then current Base Service in violation of this Section 15, without permission of the Steering Committee, EarthLink shall be required to cease providing all Services and Products on the System.

## 17. WP NON-PROFIT CORPORATION PROVISIONS

Joint Governance. EarthLink and WP shall work in good faith to create such oversight committees and boards as needed to monitor and direct activities to do with the design, installation and operation of the System.

- a. Steering Committee. EarthLink and WP shall establish a Steering Committee which shall provide input to the Wireless Philadelphia program. EarthLink and WP shall each have the same number of members to the Steering Committee and decisions shall be made by consent of both Parties.
- b. Technology Advisory Board. EarthLink and WP shall establish a Technology Advisory Board which shall provide oversight of the System, including but not limited to reviews of wireless and other emerging technologies, network and system architecture, network performance criteria and network upgrade plans. The Technology Advisory board shall approve the Design Control Documents prior to commencement of the project. EarthLink and WP shall each have the same number of members to the Technology Advisory Board and decisions shall be made by consent of both Parties.
- c. Additional Committees. EarthLink and WP shall establish additional committees and oversight boards as required to monitor and direct the activities of the project team and the ongoing operations, as shall be deemed appropriate by the Steering Committee from time to time. The Steering Committee shall also retain the

ability to dissolve Additional Committees from time to time as may be deemed appropriate.

18. Revenue Share Reports. The reports provided to WP by EarthLink with each monthly Revenue Share payment shall detail the number of retail and wholesale accounts for each product and service, the price paid to EarthLink for each such product and service, and adjustments made in the calculation of Net Access Revenue. For any product or service where access charges were not separately itemized from other charges, EarthLink shall detail the full amount paid and its methodology for arriving at the access portion of the charge.

## **EXHIBIT J**

### **CURRENT DESCRIPTION OF CORE PRODUCT FEATURES-- EL ASSISTED WI-FI**

At the commencement of the Term, the EL Assisted Wi-Fi product will provide the following:

- 8 @earthlink.net email boxes per user
- EarthLink Web Mail
- EarthLink SpamBlocker
- Symantec Server Side Email Anti Virus Protection
- EarthLink Personal Start Page with Google
- 100 MB Personal Web Space per email box
- EarthLink Total Access Client Software
- EarthLink Pop Up Blocker
- EarthLink SpyWare Blocker
- EarthLink Scam Blocker
- EarthLink Parental Controls
- EarthLink Privacy Tools
- Instant Messenger, Newsgroups
- 10 free hours dial-up
- 1-800 and International roaming dial up at \$6 and \$9 per hour respectively

## **EXHIBIT K**

### **PORTAL / CAPTURE PAGE**

1. **Capture Portal**. Non authenticated users shall be directed to a WP and EarthLink Branded Capture Portal landing page where they shall be presented with options to login to the network using their existing username and password, or to purchase EarthLink Retail Wi-Fi Broadband Products, Open Access Wi-Fi Broadband Products or Occasional Use Wi-Fi Broadband Products. Based on the Service Subscriber's selection of EarthLink Retail Wi-Fi Broadband Products or Open Access Wi-Fi Broadband Products, the Service Subscriber will be directed to appropriate landing pages where options for EarthLink and all Service Providers will be presented. EarthLink shall receive preferential position above other Service Providers on all Capture Portal pages, however all Service Providers shall be clearly and reasonably presented in the Open Access Service Provider landing pages. Service Subscribers shall select a Service Provider option and shall be redirected to the appropriate Service Provider's proprietary sign up pages to complete the sign up transaction. Based on the Service Subscriber's selection of Occasional Use Wi-Fi Broadband Products, the Service Subscriber will be directed to appropriate landing pages where options for Occasional Use Wi-Fi Broadband Products will be presented. Users shall select an Occasional Use Wi-Fi Broadband Product option (e.g. 1 hour subscription, 24 hour subscription) and shall be directed to the EarthLink proprietary Occasional Use Wi-Fi Broadband Product sign up and billing information capture pages to complete the transaction. All Service Subscribers must agree to the terms and conditions of use for the Wireless Philadelphia Network.
2. **Capture Portal for Parks and Public Spaces**. Non authenticated users shall be directed to a WP and EarthLink Branded Capture Portal landing page where they shall be presented with options to login to the network at no charge, to login to the network using their existing username and password, or to purchase EarthLink Retail Wi-Fi Broadband Products, Open Access Wi-Fi Broadband Products or Occasional Use Wi-Fi Broadband Products. Based on the Service Subscriber's selection of EarthLink Retail Wi-Fi Broadband Products, Open Access Wi-Fi Broadband Products or Occasional Use Wi-Fi Broadband Products, the Service Subscriber will be directed to appropriate landing pages. All Service Subscribers must agree to the terms and conditions of use for the Wireless Philadelphia Network.
  - a. **Liability for Free Access** -- EarthLink and WP shall work together to create appropriate disclaimers and protections to protect both Parties from any liability which could result by providing subsidized Internet Access to Service Subscribers/Network Users in Parks and Public Spaces via the Wireless Philadelphia Network.

3. Branding Capture Portal Pages. EarthLink's and WP's name or logo may or may not appear at EarthLink's or WP's respective election on all Capture Portal pages. EarthLink and WP shall work together to determine the mutually acceptable use of EarthLink's marks and WP's marks on the Capture Portal pages. EarthLink shall have positioning priority over other Service Providers within the Service Provider selection areas of the Capture Portal.
4. WP shall be entitled to determine up to 6 links in the Capture Portal landing and welcome pages in its reasonable discretion for announcements, community notices and/or advertising.
5. Free Garden.

To the extent it is reasonable, mutually agreeable, and technically possible, EarthLink shall allow limited access to the end users from the WP links to the underlying sites to end users that have not logged in or signed up for service. EarthLink may also make available certain functionality to allow the user to perform local directory searches, access maps and to perform other functions as may be determined from time to time, within the context of the Free Garden. The user must agree to the terms and conditions of use for the Wireless Philadelphia Network in order to access these Web sites and utilities in the Free Garden.

## **EXHIBIT L**

### **MAREKETING**

1. **Marketing Cooperation.** The Parties will cooperate in making available to each other marketing, advertising and promotional plans, schedules and materials regarding the Service and shall license the use of each Party's brands and marks in accordance with a mutually agreed upon marketing plan. The Parties will work jointly to create the marketing layout, look and feel for the Capture Portal pages and the branding of Occasional Use Wi-Fi Broadband Products. All plans regarding the Capture Portal pages and branding of Occasional Use Wi-Fi Broadband Products must be approved by the Steering Committee prior to execution.
2. **WP Marketing Support.** WP shall endorse the use of the Wireless Philadelphia Network for Philadelphia residents, businesses and visitors. EarthLink and WP shall work in cooperation to market services enabled by the Wireless Philadelphia Network.
3. **No Individual Branding of ESSIDs.** No individual branding of the ESSID shall be made to Service Providers. Unique private ESSIDs may be allocated for use by the municipal government workforce and municipal public safety workforce utilizing the Municipal Government Wi-Fi Broadband Product.
4. **EarthLink Retail Reseller Program.** EarthLink shall establish a reseller program by which local sales agents and affinity groups may resell the EarthLink Retail Wi-Fi Broadband Product to individuals and groups within the Coverage Area on behalf of EarthLink. EarthLink shall determine, in its sole discretion, but shall solicit input from WP, the appropriate non-recurring sales bounties as well as the specific sales criteria and program details to enable the EarthLink Retail Reseller Program.

## EXHIBIT M

### CUSTOMER SUPPORT

1. Subscriber Care – Service Providers. Service Providers and EarthLink shall independently provide the following care elements in connection with delivery of the Service to their respective Service Subscribers:
  - a. Service Subscriber technical support shall be specifically trained for the delivery of the Service, which Service Subscriber technical support will be available 24 hours a day, 7 days a week. The number of dedicated Service Subscriber technical support staff will be scaled over time, in each Service Provider’s reasonable judgment, to accommodate Service Subscriber growth;
  - b. EarthLink shall cooperate with Service Provider personnel and provision to Service Providers all necessary information (including without limitation “Frequently Asked Questions”), to create Tier 0 Service Subscriber support and diagnostic tool sets. The Tier 0 support level consists of e-care in the form of Frequently Asked Questions (FAQs) and self help tools that are accessed via printed materials and the Internet. Service Providers shall provide Tier 0 support services for their own Service Subscribers, customized to the specific services and applications provided by each Service Provider.
  - c. Service Providers shall provide a Tier 1 level of customer support which shall be available 24 hours a day, 7 days a week and shall consist of one-to-one interaction between Service Subscribers and Service Provider Customer Care Representatives via email, chat or telephone. Each Service Provider is expected to provide Tier 1 support services for their own retail subscribers, customized to the specific services and applications provided by each Service Provider. Service Provider Tier 1 support shall address the following issue types:
    - Sales inquiries
    - Order status
    - Cancellations
    - Service setup
    - Service Provider Services issues
    - Connectivity issues
    - Credits and refunds processing
    - Account and billing inquiries
    - Disconnect and relocation requests
  - d. Service Provider Tier 1 connectivity issues shall be the responsibility of the Service Provider and shall be resolved using among others, diagnostic tools provided by EarthLink. In this regard, EarthLink shall have the right to deploy such diagnostic tools, as it deems reasonably necessary. EarthLink will provide Service Provider with a working version of all such diagnostic tools in a

reasonable period of time prior to the Service Provider Service deployment for Service Provider's determination whether such tools conflict with or impair the functionality of any portion of the Service Provider Service.

- e. Service Providers shall provide a Tier 2 level of customer support which shall be available 24 hours a day, 7 days a week and shall consist of an escalated one-to-one interaction between Service Subscribers and Supervisor level Service Provider Customer Care Representatives.
  - f. Service Provider Tier 3 support shall be at the Network Operations Center (NOC) level and shall address problems that could not be resolved at the Tier 2 level. Service Providers Tier 3 shall represent the primary point of interaction between EarthLink Tier 3 and Service Provider customer support organizations.
  - g. Service Provider Tier 3 shall report technical support issues that cannot be resolved by Service Providers to EarthLink Tier 3 support via a trouble ticketing system that will be made available to Service Providers and shall address connectivity issues due to suspected network outages or failures.
2. Subscriber Care – EarthLink Tier 3. EarthLink shall provide the following Service Subscriber care elements in connection with delivery of the Service Provider Service to all Service Providers including EarthLink's Retail Service Subscribers:
- a. EarthLink's Network Operations Center (NOC) will be Service Provider's initial point of contact for the escalation of issues related to EarthLink's provision of the Service Provider Services (e.g., service interruptions due to network equipment outages or failures). EarthLink will use commercially reasonable efforts to cause the NOC to investigate and facilitate (e.g., through the issuance and management of trouble tickets) the remediation of problems reported to it by Service Providers. Tier 3 problems will be worked on a peer level basis between the Service Provider Network Operations Center (Service Provider NOC) and the EarthLink NOC (NOC).
  - b. EarthLink shall create a Service Provider Integration protocol for Service Providers which will provide detailed information on communications and escalation procedures with the EarthLink NOC. EarthLink shall work in good faith to create and implement policies, procedures and technology that permits Service Providers and WP visibility into the EarthLink NOC and shall work in good faith to provide proactive communications to Service Providers and WP via emails and outage boards informing Service Providers and WP of any planned maintenance, scheduled and unscheduled network outages.
  - c. EarthLink will provide contact information, including names, email addresses, telephone numbers for use 24 hours a day, 7 days a week, which may be used by Service Provider Tier 3 NOC personnel and technical support groups to escalate or resolve Service Subscriber issues that are attributable to EarthLink and the Wireless Philadelphia Network.



3. Escalation Protocol. EarthLink and Service Providers shall work together to create appropriate escalation communication protocols to escalate and resolve a wide range of potential Service Subscriber Support issues.
4. SLA – Service Provider Tier 1 and 2 Subscriber Care. All Service Providers, including EarthLink, shall be required to meet certain Tier 1 and Tier 2 Service Subscriber Support Service Levels, as mutually determined by EarthLink and WP. All SLAs will be commercially reasonable and consistent with industry standards, which may be adjusted from time to time in accordance with the technology and marketplace.
5. SLA – EarthLink Tier 3 Subscriber Care. EarthLink shall be required to meet certain Tier 3 Service Subscriber Support Service Levels, as mutually determined by EarthLink and WP. All SLAs will be commercially reasonable and consistent with industry standards.
6. Customer Support Metrics. EarthLink shall develop and implement a system for measuring Customer Support quality and customer satisfaction (including the EL products) and shall share the results of system with WP on a Quarterly basis.

## EXHIBIT N

### OPEN ACCESS PROVISIONS

1. Open Access. Any Service Provider that has been qualified and certified shall have the right to market, advertise and sell Services to Service Subscribers over the Wireless Philadelphia Network.
  
2. Service Provider Certification. In order to establish a Service Provider's technical ability to make its Service Provider Service available as a part of the Wireless Philadelphia Network, each Service Provider shall participate in the certification process established by EarthLink and WP. EarthLink shall enable an EarthLink Retail Reseller Program that enables organizations that do not qualify as a Service Provider to be resellers of EarthLink's Retail Wi-Fi Broadband Product. Nothing herein shall prevent WP from applying, certifying and becoming a Service Provider, so long as WP shall meet all the same requirements and certifications as required for any other Service Provider utilizing the Wireless Philadelphia Network.
  - a. Certification Fee. Each Service Provider shall pay the Certification Fee. EarthLink and WP will work together in good faith to create a mutually acceptable Certification Fee Structure to accommodate Service Providers of varying sizes while creating significant enough investment by the Service Provider to assure EarthLink and WP of Service Provider commitment to the required system integration and marketing activity, and to prevent abuse of the Open Access program by individual Service Subscribers. The Certification Fee shall be five thousand dollars (\$5,000.00) and shall be payable to EarthLink and split 50/50 with WP. Each Service Provider shall have ninety (90) days to fulfill the Certification Requirements, or the Service Provider must reapply to restart the Certification process.
  
  - b. Prepayment for Service Provider Services. Upon successful achievement of the Certification process by each Service Provider, the Service Provider shall make a ten thousand dollar (\$10,000.00) non-refundable prepayment to EarthLink toward Service Fees to be accrued by the Service Provider toward Open Access Wi-Fi Broadband or Open Access Data T1 Alternative Products enabled by the Wireless Philadelphia Network.
  
  - c. Waiver of Certification Fee and Prepayment Obligations. Certain requirements and obligations of Service Providers including, but not limited to the Certification Fee and the Prepayment for Service Provider Services may be waived at the discretion of the Steering Committee. Such waiver of these obligations shall be reserved for special cases in which a clear benefit can be demonstrated to WP and EarthLink from such waiver.

- d. Open Access Technical Interface Document. An Open Access Technical Interface Document which outlines the requirements, processes and methods by which Service Providers shall interface with and support subscribers on the Wireless Philadelphia Network shall be written, reviewed and approved by the Steering Committee and Technical Advisory Board prior to the completion of the Proof of Concept phase.
3. CPE Fulfillment and Installation.
  - a. Each Service Provider shall be responsible for the procurement, fulfillment, installation and all associated costs for all non-customer supplied customer premises equipment, including, without limitation 802.11 b/g network interface equipment and antennae, but excluding the Service Subscriber's personal computer or other devices (collectively, "CPE") to its respective Service Subscribers. Nothing herein shall prevent Service Providers from implementing a Service Subscriber "bring your own modem" program or self-installation program.
  - b. Service Providers will each determine the retail price for Service installation and non-customer supplied CPE, and communication of such prices, and changes thereto, shall be the sole responsibility of the Service Provider to its respective Service Subscribers.
  - c. Service Providers shall be free to contract with affiliates within the City of Philadelphia local markets with respect to installation promotional programs and related matters for their respective Services.
4. Service Provider Pricing. Each Service Provider shall have sole and exclusive discretion with respect to establishing the fees charged to Service Subscribers for the Service Provider's Service.
5. Service Provider Billing. Each Service Provider shall have sole and exclusive discretion with respect to billing and collecting the fees charged to Service Subscribers for the Service Provider's Service, including monthly service fees, installation and set up charges, and CPE fees.
6. Service Provider Premium Services Pricing and Billing. Each Service Provider shall have sole and exclusive discretion with respect to establishing the fees charged to Service Subscribers for any of its Premium Services offered to a Service Subscriber and shall be responsible for the billing for such Premium Services to Service Subscribers.
7. Taxes. Service Providers shall be responsible for the collection and remittance of all Taxes imposed on the Service Provider Service.

## EXHIBIT O

### **MINORITY, WOMAN AND DISABLED OWNED BUSINESS PARTICIPATION**

EarthLink shall meet, and will strive to exceed the Minority, Woman and Disabled Owned business participation ranges in the deployment and ongoing operations of the Wireless Philadelphia network as outlined in guidelines provided by the City of Philadelphia and Wireless Philadelphia. To that end, the following tables represent the percentage ranges of contract awards that will be distributed to qualified MBEC enterprises over the course of the project.

*Minority-owned business enterprises: 20% - 25%*  
*Woman-owned business enterprises: 5% - 10%*  
*Disabled-owned business enterprises: 0% - 1.5%*

The above participation levels may be modified based on union labor requirements and availability of qualified firms. EarthLink will also attempt, where possible, to give preference to local contractors when deciding among several qualified suppliers. These percentages are based on the labor costs of deployment and ongoing operations and are exclusive of the cost of the network hardware, equipment, site acquisition and leasing costs.

**EXHIBIT P  
ELECTRICITY ALLOCATION**

To Be Determined

## **EXHIBIT R Privacy Policy**

Below is EarthLink's current Privacy Policy. EarthLink is entitled to modify its Privacy Policy in the future provided that future Privacy Policies will disclose the policy of EarthLink on all the same issues contained in the below Policy even if EarthLink has changed the way in which such issue is handled by EarthLink. In addition, EarthLink agrees to modify its Privacy Policy so that in the future it also will disclose how EarthLink handles disclosure of physical location issues. EarthLink also agrees to maintain its current practices for tracking usage and legal requests.

### **Current EarthLink Privacy Policy (subject to change)**

Your privacy is very important to us. We want to make your experience on the Internet as enjoyable and rewarding as possible, and we want you to use the Internet's vast array of information, tools, and opportunities with complete confidence.

EarthLink has created this Privacy Policy to demonstrate our firm commitment to privacy and security. This Privacy Policy describes how EarthLink collects information from users of EarthLink services (the "Services"), how we use the information we collect and the choices you have concerning the collection and use of such information. Please read this Privacy Policy carefully.

### **Collection and Use of Information**

Members are asked to provide certain information when they sign up for our Services such as name, address, telephone number, billing information (such as a credit card number), and the type of personal computer being used to access the Services. The personal information collected from Members during the registration process is used to manage each Member's account (such as billing and collections).

In order to better understand its Members, EarthLink collects consumer data such as ZIP code, demographics and other publicly available information from third-parties. EarthLink uses this data to provide product and service offers. We use data in aggregate to develop products and offers to better serve its Members.

EarthLink collects information from Visitors and Members who use the various parts of our Services. We use this information primarily to provide a customized experience as you use our Services. EarthLink collects consumer information about its Members through surveys or preference pages. You may request that EarthLink not collect consumer data by visiting our opt-out web site at <https://myaccount.earthlink.net/cam/contactinfo.jsp>.

EarthLink may share personal information with select affiliates in order to provide EarthLink services to our Members. EarthLink does not share identifying information (like Name and address) with affiliates for their use in delivering product and

service offers to Members. Affiliates will not be allowed to use any information provided in serving our customers to be sold, rented, or given to any other company. Affiliates are not allowed to use EarthLink data for any other purpose other than EarthLink approved programs designed to better serve Members.

In instances where EarthLink and an affiliate jointly promote the Services, EarthLink may provide the affiliate certain personal information, as a result of the joint promotion. In this instance, the information may not be used by the affiliate for any other purpose. EarthLink may also generate aggregate profiles from information provided during registration (such as the total number, but not the names, of Members). We may use this aggregated and non-identifying information to sell advertisements that appear on the Services.

We use registration information to contact you in a variety of ways. We may send you offers through email, phone or regular mail of EarthLink products and services or offers on behalf of selected affiliates. If you order products directly from EarthLink, we will use your information to continue to provide you products that you are interested in. You may exercise your options to not receive any marketing from EarthLink by visiting our opt-out web site at <https://myaccount.earthlink.net/cam/contactinfo.jsp>. Customers will still receive administrative emails from EarthLink.

### **EarthLink Affiliates and Sponsors**

Some EarthLink products and services are offered to Members in conjunction with a third-party vendor. For example, we outsource the provision of stock quotes and operation of your stock portfolio (accessible through your Personal Start Page) to a third-party vendor. To provide these products and services, the vendor may need to collect and maintain your personal information. Additionally, many EarthLink Members have co-branded Personal Start Pages that are cosponsored by non-affiliated partners. EarthLink may share non-identifying and aggregate consumer information with such affiliates in order to more effectively market our co-branded products or services offered to our customers.

### **Online Shopping**

At some web sites, you can purchase products and services or register to receive materials, such as a catalog or new product and service updates. In many cases, you may be asked to provide contact information, such as your name, address, email address, phone number, and credit/debit card information. If you complete an order for someone else, such as an online gift order sent directly to a recipient, you may be asked to provide information about the recipient, such as the recipient's name, address, and phone number. EarthLink has no control over third-party web sites and their use of any personal information you provide when placing such an order. Please exercise care when doing so.

### **Online Advertisements**

EarthLink may share aggregated and non-identifying information about our Visitors and Members collected through the registration process as well as through online

surveys and promotions with select advertisers. In some instances, we use this information to deliver tailored advertisements. Based upon the information we have collected, we may then display advertisements to specific audiences. EarthLink does not share personal information about its Members with these advertisers.

We use DoubleClick and other third-party advertising companies to serve ads when you visit our Web sites. These companies may use information (not including your name, address, email address or telephone number) about your visits to this and other Web sites in order to provide advertisements on this site and other sites about goods and services that may be of interest to you. If you would like more information about this practice and to know your choices about not having this information used by these companies, please click here [www.networkadvertising.org](http://www.networkadvertising.org)

### **Voluntary Surveys**

We may periodically conduct both business and individual surveys. We encourage Members to participate in these voluntary surveys because they provide us with important information that helps us to improve the types of services we offer and how we provide them to you. Your personal information and responses will remain confidential, even if the survey is conducted by a third-party.

We take the information we receive from individuals responding to our surveys and combine (or aggregate) it with the responses of other Members to create broader, generic responses to the survey questions (such as gender, age, residence, hobbies, education, employment, industry sector, or other demographic information). We then use the aggregated information to improve the quality of our services to you, and to develop new services and products. This aggregated, non-personally identifying information may be shared with third-party affiliates.

### **Special Cases**

It is EarthLink's policy not to use or share the personal information in ways unrelated to the ones described above without also providing an opportunity to opt out or otherwise prohibit such unrelated uses. However, EarthLink may disclose personal information or information regarding use of the Services if, for any reason, in our sole discretion, we believe that it is reasonable to do so, including: to satisfy laws, regulations or other legal requests for such information; to disclose information that is necessary to identify, contact or bring legal action against someone who may be violating our Acceptable Use Policy or other policies; to operate the Services properly; or to protect EarthLink, our Services, our employees or our Members.

### **"Cookies" and How EarthLink Uses Them**

A "cookie" is a small data file that can be placed on your hard drive when you visit certain Web sites. EarthLink may use cookies to collect, store, and sometimes track information for statistical purposes to operate and improve the products and services we provide and to manage our network and property. If you have created your own Personal Start Page, we will use a cookie to save your settings and to



provide customizable and personalized services. Additionally, be aware that if you visit non-EarthLink web sites where you are prompted to log in or that are customizable, you may be required to accept cookies.

Advertisers and partners may also use their own cookies. We do not control use of these cookies and expressly disclaim responsibility for information collected through them.

### **EarthLink's Commitment to Children's Privacy**

Protecting children's privacy is especially important to us. It is our policy to comply with the Children's Online Privacy Protection Act of 1998 and other applicable laws. You must be 18 to use the Services. EarthLink does not attempt to ask or collect information from any person under the age of 18.

EarthLink may have products and web pages designed especially for younger users under the direct supervision of an adult Member. While we make every effort to ensure that these Services are fun and age-appropriate for a younger audience, we believe that there is no substitute for proper parental supervision. For further information about tips, tools, age-appropriate or kid-friendly Web sites and how to report online trouble, please visit [www.getnetwise.org](http://www.getnetwise.org).

EarthLink recommends that children ask a parent for permission before sending any personal information anywhere using the Internet.

### **Public Forums**

Any information that you disclose in public areas of our Web sites or the Internet may become public information. You should exercise caution when deciding to disclose personal information in these areas.

### **EarthLink's Commitment to Data Security**

EarthLink has security measures in place to protect the loss, misuse, and alteration of the information under our control. While we make every effort to ensure the integrity and security of our network and systems, we cannot guarantee that our security measures will prevent third-party "hackers" from illegally obtaining this information. We will never sell your information to a third party.

### **How to Access or Modify Your Information**

EarthLink offers Members the opportunity to access or modify information provided during registration. To access or modify such information, visit [myaccount.earthlink.net](http://myaccount.earthlink.net).

### **Questions About EarthLink's Privacy Policy**

Questions about this Privacy Policy or the practices described herein should be directed to our FAQ page that is located at [www.earthlink.net/optout](http://www.earthlink.net/optout).

If you have any additional questions about this Privacy Policy or the practices described herein, you may contact:

Customer Service  
EarthLink, Inc.  
1375 Peachtree Street, N.W.  
Level A  
Atlanta, Georgia 30309

Or email: [privacyquestions@corp.earthlink.net](mailto:privacyquestions@corp.earthlink.net)

### **Revisions to This Policy**

EarthLink reserves the right to revise, amend, or modify this policy and our other policies and agreements at any time and in any manner. Any revision, amendment, or modification will be posted on our web site: [www.earthlink.net](http://www.earthlink.net).

Version 2.0  
Effective 10/31/2003