

City of Alexandria, Virginia

MEMORANDUM

DATE: DECEMBER 12, 2006

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER *J*

SUBJECT: ORDINANCE TO GRANT A CITYWIDE WIRELESS NETWORK
FRANCHISE TO EARTHLINK, INC.

ISSUE: Consideration of an ordinance to grant a franchise to EarthLink, Inc. to use the public right-of-way and other City property for the construction, maintenance, operation, and upgrade of a Citywide wireless network.

RECOMMENDATION: That City Council:

- (1) Hold the public hearing and following the public hearing adopt the wireless franchise ordinance (Attachment II) on second reading which will award the franchise to EarthLink, Inc.; and
- (2) Authorize the City Manager to execute a wireless network franchise agreement and right-of-way franchise agreement with EarthLink, Inc., substantially in the form reflected in Attachment II, and with the adjustments noted in the discussion below.

DISCUSSION: On November 28, City Council received a report (Attachment I) and adopted an ordinance, on first reading, to grant a Citywide wireless network franchise to EarthLink, Inc. Based on input received from the Alexandria City Public Schools and the community since the proposed Franchise Agreement was drafted, I recommend that two changes be made before the document is executed. EarthLink has agreed to these two changes.

- a. In Exhibit F, Section 1.3.1, of the proposed Franchise Agreement (page 76 of Attachment II), change the language to indicate that EarthLink will provide free network access to "at least 2,700 laptop devices issued to students by the Alexandria City Public Schools," rather than "at least 2,500 laptop devices owned and controlled by the Alexandria City Public Schools." This change reflects the actual number of laptops currently issued to 9-12 grade students, and includes laptops that are leased, as well as owned, by the school system.

- b. In Exhibit F, Section 2.4.4, of the proposed Franchise Agreement (page 80 of Attachment I), change the portion of Mt. Vernon Avenue that will have free public wireless access from “Hume Avenue to E. Braddock Road” to “Four Mile Run to E. Braddock Road.” This change will result in free coverage along the entire Mt. Vernon Avenue commercial corridor, including Arlandria.

FISCAL IMPACT: As a result of the increase in the number of student accounts provided under the franchise agreement, the approximate value of the franchise will increase \$403,200, from \$13,017,960 to \$13,421,160. There is no direct fiscal impact on the City associated with changing the boundaries of the free public area along Mt. Vernon Avenue.

ATTACHMENTS:

Attachment I. Wireless Docket Memo dated November 21, 2006

Attachment II. Ordinance, proposed Franchise Agreement, and proposed Right-of-Way Franchise Agreement with EarthLink, Inc.

STAFF:

Mark Jinks, Deputy City Manager

Mike Herway, Director, Information Technology Services

Craig Fifer, E-Government Manager, Information Technology Services

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11-28-06

City of Alexandria, Virginia

MEMORANDUM

DATE: NOVEMBER 21, 2006

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: ORDINANCE TO GRANT A CITYWIDE WIRELESS NETWORK
FRANCHISE TO EARTHLINK, INC.

ISSUE: Consideration of an ordinance to grant a franchise to EarthLink, Inc., to use the public rights-of-way and other City property, for the construction, maintenance, operation, and upgrade of a Citywide wireless network.

RECOMMENDATION: That City Council:

- (1) Pass the wireless franchise ordinance (attached) on first reading and schedule it for public hearing, second reading and final passage on Saturday, December 16, 2006; and
- (2) Authorize the City Manager to execute a wireless network franchise agreement with EarthLink, Inc. substantially in the form reflected in the attached.

DISCUSSION: On May 20, City Council adopted an ordinance to solicit proposals for the creation of a Citywide wireless network. On June 27, Council received ten proposals from private sector entities, and referred them to the City Manager for review. The City Manager appointed an evaluation committee consisting of representatives from Information Technology Services, Police, Fire, the Alexandria City Public Schools, and the Commission on Information Technology. After carefully evaluating the proposals, interviewing finalists, and researching references, the Committee unanimously recommended EarthLink, Inc. as the preferred wireless network provider. With the City Manager's concurrence, staff from Information Technology Services and the City Attorney's Office negotiated a franchise agreement with EarthLink.

Upon award of the wireless franchise, EarthLink would proceed to build out its network over a period of approximately six to nine months. Assuming a final award on December 16, the network is projected to be operational in Summer 2007. EarthLink will invest approximately \$1.9 million in the initial capital deployment. The entire cost of the network's construction and

operation will be funded by EarthLink, which will then recoup its investment by charging residential, business, and wholesale Internet subscribers for a variety of wireless services. In exchange for the franchise, EarthLink has agreed to provide to the City fee revenues and public benefits estimated at more than \$13 million over the eight-year term of the franchise agreement. These benefits and fees are described in more detail later in this report.

EarthLink's proposal was selected primarily on the basis of the company's financial strength and previous experience with municipal wireless projects; its proposed technology to deploy the network; and its offer of public benefits in exchange for the franchise. Founded in 1994, EarthLink is a recognized national Internet service provider with more than 5.3 million current subscribers in the United States and several other notable municipal wireless deployments (including Philadelphia, Anaheim and New Orleans). EarthLink is a publicly-traded company with total revenues in 2005 of \$1.3 billion, and has created a dedicated Municipal Networks subsidiary. EarthLink's equipment partners for this project are Motorola (which supplies the majority of the City's existing public safety and public works radio systems) and Tropos Networks (which supplied the equipment for the City's King Street wireless pilot project).

The negotiated franchise agreement includes the following key terms:

- The wireless network, which will cover the entire City, will be constructed, maintained, owned, operated, and upgraded by EarthLink, with no taxpayer funding or City financial investment whatsoever. This project is not a joint venture or partnership, and the City will not be a municipal Internet service provider or compete against the private sector. Instead, EarthLink will be a private sector Internet service provider.
- Residential and business consumers will have a new choice for broadband Internet service, in addition to current choices such as cable, DSL, cellular, and satellite. EarthLink's wireless services will be provided directly from pole-mounted equipment throughout the City, and not through wires entering homes or businesses. The availability of wireless Internet will benefit consumers by stimulating additional price and service competition in the market. Other than through the terms of the franchise agreement, the City will not regulate EarthLink's provision of services to consumers. EarthLink has indicated that basic residential Internet service will initially be priced at approximately \$21 per month. Visitors will also be able to purchase hourly or daily access.
- EarthLink will provide five categories of public benefits and revenues, estimated to be worth more than \$13 million over the eight-year term of the franchise agreement, in lieu of a franchise fee or other similar fee. Because wireless Internet service is still in its early stages, staff recommends this approach to guarantee the value of the franchise to the City regardless of EarthLink's eventual gross receipts.

- Accounts for Government Use: EarthLink will provide, on an ongoing basis, up to 500 free wireless Internet accounts for use by the City government. The City may purchase additional accounts at \$10 per month for individual workers and \$2 per month for fixed-in-place devices such as traffic signals or parking meters.
- Accounts for Student Use: EarthLink will provide free access over the wireless network to the 2,500 laptops currently issued to Alexandria City Public Schools (ACPS) ninth grade center and high school students, in order for them to access the Schools' existing network 24 hours per day. This will dramatically increase the value and usefulness of the Schools' laptop program by providing home Internet access to students who may not otherwise have such Internet access and allowing students to access ACPS network resources such as homework dropboxes and printers. Internet access through the ACPS network is currently filtered by ACPS to reduce the availability of inappropriate content, and this filtering will remain in place when students access the ACPS network via the EarthLink network. In the event that ACPS issues laptops to more than 2,500 students in the future, additional accounts may be purchased by ACPS at \$10 each per month. With the combination of ACPS-provided laptops and the Citywide free wireless access for these students, Alexandria may be the first jurisdiction in the nation to provide such extensive free computers and Internet access to its secondary school students. Because many students live in low-income households, this combination of laptops and free wireless Internet service will also help address a significant aspect of the digital divide.
- Digital Inclusion Accounts: EarthLink will offer a fixed price of \$9.95 per month, for the term of the franchise, to 2,700 low-income residents (approximately four percent of Alexandria households). This represents a discount of more than half off EarthLink's current projected retail rate. In the event that EarthLink upgrades its basic Internet account offering, low-income residents will still receive a discount. Eligible residents will be qualified under guidelines to be determined by the City, and the City may partner with community non-profit organizations to assist in distributing these accounts and providing low-cost computers and computer training to complement the Internet access.
- Free Public Internet Access Areas: EarthLink will provide free public Internet access in approximately two dozen locations, representing five percent of the City's total area. The exact locations are subject to field testing once network deployment begins, but will include the entire

Potomac River waterfront and adjacent parks, the King Street corridor from Callahan Drive to the waterfront, the Mt. Vernon Avenue corridor between Hume Avenue and E. Braddock Road, and all Alexandria Metrorail, Amtrak, and VRE stations. The additional areas will consist of major parks located throughout the City (e.g. Ben Brenman Park), and Landmark Mall. Whether or not an individual is in a free public Internet access area, any individual anywhere in the City will be able to access the City's web site, the ACPS web site, the Alexandria Convention and Visitors Association web site, and other such City and non-profit web content.

- Fees and Rent: In exchange for the right to mount some of its network equipment on City-owned property, EarthLink will pay an annual fee of one percent of its retail access revenues under the franchise, or \$37,500, whichever is greater; plus a monthly rental fee of \$1 per pole or \$500 per building rooftop actually used. EarthLink will also pay an annual fee of at least \$5,000 for access to the public rights-of-way.
- The eight-year franchise is not exclusive, and may be renewed for up to three four-year periods only with the consent of both parties. The City may award additional franchises to other wireless providers in the future. EarthLink will operate an open network, meaning that other providers may purchase wholesale accounts to resell to their customers.
- EarthLink's equipment will consist primarily of small devices mounted on Dominion Virginia Power street lights. Additional equipment may be mounted on City-owned poles, traffic signals, building rooftops, and other assets. EarthLink will be bound by all City building code, permitting and zoning requirements in the event it installs equipment on any private property (upon agreement with the property owner).
- EarthLink will pay for all electricity used, whether or not on City property, and will pay any business license, business personal property, or other taxes normally applicable to its business.
- The franchise agreement contains provisions related to protection of City property, insurance requirements, dispute resolution, indemnification, and other terms to protect the City.

FISCAL IMPACT: This franchise is projected to provide more than \$13 million in public benefits and fee revenues to the City and its residents and businesses, over eight years. This equates to more than \$1.6 million in public benefits and fee revenues per year. This includes the capital cost avoided while still having use of a citywide network for municipal and public purposes; the free and discounted accounts available to the government, students, and low-income

residents; and fees and rent paid for use of City property. Note that these are estimates based on conservative assumptions and do not attempt to incorporate values such as free public Internet access areas, indirect economic development and tourism, communications and sales tax revenue from EarthLink's customers, or EarthLink's payment of business license tax and business personal property tax.

	<u>Value of Projected Benefits</u>
Initial Capital Investment Avoided by Taxpayers	\$ 1,900,000
Capital Upgrades and Maintenance Over Franchise Term	805,000
500 Free Government Accounts	1,008,000
500 Fixed-In-Place Device Accounts	912,000
2,500 Free Student Accounts	5,040,000
2,700 Digital Inclusion Accounts	2,864,160
Minimum Revenue Share	300,000
Rent for 50 City Poles	148,800
Right-of-Way Access Fee	<u>40,000</u>
TOTAL	\$ 13,017,960

ATTACHMENT: Proposed Franchise Agreement and Right-of-Way Franchise Agreement with EarthLink, Inc.

STAFF:

Mark Jinks, Deputy City Manager

Mike Herway, Director, Information Technology Services

Craig Fifer, E-Government Manager, Information Technology Services

1 Introduction and first reading: 11/28/06
2 Public hearing: 12/16/06
3 Second reading and enactment: 12/16/06
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6 INFORMATION ON PROPOSED ORDINANCE
7

8 Title
9

10 AN ORDINANCE to grant to Earthlink, Inc., its successors and assigns a franchise, under certain
11 conditions, permitting the grantee to use the public right-of-way and on other public property
12 in the City of Alexandria, for the design, construction, maintenance, and operation of a
13 citywide wireless network for internet access and other purposes, for the benefit of residents,
14 businesses and government in the City.
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16 Summary
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18 The proposed ordinance grants a franchise to Earthlink, Inc., for a citywide wireless network
19 to provide internet access and other service, for the benefit of residents, businesses and
20 government in the City.
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22 Sponsor
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24 Department of Information Technology Services
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27 Staff
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29 Mark Jinks, Deputy City Manager
30 Mike Herway, Director of Information Technology Services
31 Craig Fifer, E-Government Manager
32 Karen S. Snow, Assistant City Attorney
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34 Authority
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36 15.2-2100, et seq., of the Code of Virginia (1950), as amended
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38 Estimated Costs of Implementation
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40 None
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42 Attachments in Addition to Proposed Ordinance and its Attachments (if any)
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44 None
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ORDINANCE NO. _____

AN ORDINANCE to grant to Earthlink, Inc., its successors and assigns a franchise, under certain conditions, permitting the grantee to use the public right-of-way and on other public property in the City of Alexandria, for the design, construction, maintenance, and operation of a citywide wireless network for internet access and other purposes, for the benefit of residents, businesses and government in the City..

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That this Franchise is hereby granted to Earthlink, Inc., hereinafter referred to as "Grantee," its successors and assigns, to permit the Grantee to design, construct, maintain, and operate a citywide wireless network for internet access and other purposes, using the public right-of-way and other public property in the City.

Section 2. That the said Franchise is awarded to the Grantee after public notice and invitation for bids, as required by law, pursuant to Section 2 of Ordinance No. 4477, and after the invitation for bids was duly closed and all bids were fully and carefully investigated and evaluated.

Section 3. That the Grantee be, and hereby is, granted a Franchise for eight years to design, construct, maintain, and operate a citywide wireless network for internet access and other purposes, for the benefit of residents, businesses and government in the City. The Grantee shall strictly comply with the terms of this Ordinance and with the Franchise Agreement and Right-of-Way Franchise Agreement attached hereto and incorporated fully herein by reference, together with all applicable laws and regulations of the City of Alexandria, the Commonwealth of Virginia and the United States, and any regulatory agency having jurisdiction, including, without limitation, with the following conditions:

1. Each year an updated map of all facilities within the City, existing and proposed, showing locations, scheduled construction and service dates, and such additional information as the city manager may specify in his reasonable discretion, shall be filed with the city's department of transportation and environmental services.

2. All necessary permits shall be obtained for each and every excavation or installation, including but not limited to boring in and/or under a public right-of-way or other public place.

3. In the event the relocation, construction, reconstruction, maintenance or repair by the City, the Commonwealth of Virginia or the Washington Metropolitan Area Transit Authority of any facilities or services is necessary or desirable, and it is necessary to alter or relocate, either permanently or temporarily, any of the Grantee's property in the public right-of way or other public property in order to accomplish same, the Grantee will, after reasonable notice, move, alter or relocate its property at its own cost and expense, and should the Grantee fail to comply with such notice, its property may be removed, altered or relocated by the City, state or Washington Metropolitan Area Transit Authority at the cost of the Grantee and without

1 liability for any resulting damage. The Grantee will do everything reasonably necessary, in a
2 timely manner, to prevent any delays in construction projects of the City, the state or the
3 Washington Metropolitan Area Transit Authority.
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5 4. This Franchise may be assigned or transferred; provided, however, that no such
6 assignment or transfer shall be effective without the prior written consent of the City, which
7 consent will not be unreasonably withheld.
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9 5. The Grantee will obtain liability insurance to the satisfaction of the city
10 attorney, which insurance shall name the City as an additional insured.
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12 6. The Grantee will not use the privileges granted by this Franchise to provide the
13 functional equivalent of a cable system or cable service as defined in sections 9-3-17 and 9-3-18
14 of the Alexandria City Code.
15

16 7. In exchange for the privileges granted by this Franchise, the City shall have
17 free use of the network for municipal governmental purposes.
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19 8. In exchange for the privileges granted by this Franchise, the general public
20 shall have free use of the network for wireless internet access in the outdoor areas and public
21 facilities in the City designated in the Franchise Agreement.
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23 9. At such time as the City may require underground installation of existing,
24 overhead facilities in any area covered by this Franchise, the Grantee will, at its sole cost and
25 expense, relocate its facilities underground in accordance with the provisions of the City's
26 underground utilities ordinance, to the extent underground location of such facilities is
27 technically feasible.
28

29 10. The Grantee shall protect all property of the City or any other person during
30 any work of designing, constructing, maintaining, or operating its system in or adjacent to the
31 public right-of-way or other public place, and shall fully restore, in kind, any property damaged
32 or destroyed during any such work. In the event the Grantee and any property owner are unable to
33 agree on a remedy, the Grantee agrees to abide by the determination of the City as to
34 compensation or restoration.
35

36 11. That nothing in this Franchise shall be construed to obligate the City to
37 continue its franchise with any other franchisee who owns or uses the poles to be used by the
38 Grantee, nor shall this Franchise increase or strengthen the rights that other franchisees may
39 have. The City shall have no liability to the Grantee for exercising any rights the City may have
40 in general or under its franchises with other franchisees, regardless of the effect of such exercise
41 on the Grantee.
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43 12. The Grantee shall remove its property at its own expense at the expiration or
44 termination of this Franchise or any extension hereof.

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Section 4. That the city manager be and hereby is authorized to execute such documents as may be required to effectuate the Franchise hereby granted.

Section 5. That the city clerk be and hereby is authorized to attest the execution of said documents and to affix thereon the official seal of the City of Alexandria, Virginia.

Section 6. That this ordinance shall become effective on the date and at the time of its final passage.

WILLIAM D. EUILLE,
Mayor

Attachment: Franchise Agreement
Right-of-Way Franchise Agreement

Introduction: 11/28/06
First Reading: 12/16/06
Publication:
Public Hearing:
Second Reading:
Final Passage:

FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") is made and entered into as of this ____ day of December, 2006 ("Effective Date"), by and between The City of Alexandria ("City"), and EarthLink, Inc., a Delaware corporation ("EarthLink"). The City and EarthLink may be referred to herein individually as a "Party", and collectively as the "Parties."

BACKGROUND

- A. The City owns, operates and maintains certain street light, traffic signal poles, and the associated support arms and connecting hardware, as described on the attached **Exhibit A** (collectively "City Owned Poles").
- B. The City owns, operates and maintains certain buildings and other real property as specifically described on the attached **Exhibit B** (collectively "City Premises"). The City Owned Poles and City Premises shall be jointly referred to as "City Property."
- C. The City seeks to grant EarthLink the right to use the City Property for the construction, maintenance, operation and upgrade of a City-wide wireless broadband system, for the benefit of residents, businesses and government in the City.
- D. EarthLink desires to attach its radios, antennae, gateways, wires, cables, fibers, filters, amplifiers and other equipment, and switching, processing, monitoring, transmission and distribution components of its broadband wireless system, comprised of the equipment described on Exhibit C, and substantially similar equipment as further described in Section 1.5 hereof (collectively "Approved Equipment") to City Property for the purpose of installing, operating and maintaining a wireless broadband network in the City ("Network").
- E. EarthLink desires to offer wireless broadband services by means of the Network as more fully described in Section 1.2 hereof (the "Services") to residential, business and municipal customers in the City.

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

1. SCOPE OF AGREEMENT

- 1.1 Construction of Network. EarthLink shall establish, construct, own, operate, upgrade and maintain the Network in accordance with this Agreement. EarthLink itself may perform the work required to install and maintain its Approved Equipment, to operate the Network, and to meet its other obligations under this Agreement, and EarthLink may also use contractors or agents for such purposes, provided that EarthLink shall remain responsible for compliance with all of the terms of this Agreement.

- 1.2 Non-Exclusive Permission. The City hereby grants to EarthLink the permission, on a non-exclusive basis, to attach, install, control, operate, maintain, repair, replace, reattach, reinstall, relocate, and remove Approved Equipment on and from City Property, all for the limited purpose of providing EarthLink's Services within the City, subject to the terms of this Agreement, and all applicable laws and regulations. Access to the City Property shall be subject to the terms of the licenses required by this Agreement to access City Property and any required permits. The "Services" shall consist of (i) wireless broadband Internet access provided by EarthLink to its subscribers by means of the Network and using IEEE standards 802.11 and 802.16 (commonly known as "WiFi" and "WiMax") and protocols as required to support the Network, or substantially similar successor technologies such as IEEE standard 802.22; (ii) wireless services provided by EarthLink to its subscribers within the Network using IEEE standards 802.11x and 802.16 or substantially similar successor technologies, but without using the Internet; (iii) any other services that can be provided by means of the Approved Equipment, with the exception of cable services; and (iv) access to the Network by other service providers in order to allow such providers to provide the foregoing wireless broadband Internet access service and wireless services to the subscribers of such other service providers. EarthLink may use the Network to provide cable services in the City if EarthLink has first obtained a franchise or other applicable authorization from the City, in accordance with applicable law. For purposes of this section, the term "cable services" shall be defined as it is under the Communications Act of 1934, as amended. Except as otherwise provided in this Agreement, EarthLink shall obtain and maintain in force all licenses, permits, intellectual property rights and other permission required for it to construct and operate the Network and provide the Services.
- 1.3 Use of Approved Equipment. EarthLink's Approved Equipment shall be used exclusively by EarthLink solely for the rendering of Services. This provision shall not be construed to prohibit EarthLink from selling access to the Network to other service providers on a wholesale basis, for the direct provision or resale of Services to end users. In operating the Network, EarthLink is committed to in good faith provide an open access system on which third parties can provide services enabled by the Network that may be competitive with each other and EarthLink. In setting pricing and other obligations for service providers, EarthLink shall treat similarly situated service providers in a similar manner, which may include the requirement for reciprocal access to the service provider's networks.

- 1.4 Subject to Rights of City and Others; No Property Interest. The permissions granted to EarthLink pursuant to this Agreement shall be: (i) exercised by EarthLink at EarthLink's sole risk and expense; (ii) subject to the rights of the City to use and permit others to use City Property, provided that any future grant of such rights does not have the effect of substantially defeating the purposes of this Agreement; and (iii) subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, claims of title, leases, licenses, permits, permission, and rights (whether recorded or unrecorded) of others in, or that may affect the City Property, specifically including all rights of the Virginia Department of Transportation ("VDOT"), provided the City will notify EarthLink of any such rights or obligations that affect EarthLink's access to or use of any City Property of which the City becomes aware. As of the Effective Date, the City is not aware of any existing rights that would substantially interfere with EarthLink's use of the City Property as contemplated by this Agreement and the applicable Exhibits, but the City has conducted no investigation into the existence of any such rights, and makes no warranties or representations regarding the existence of any such rights as of the Effective Date. This Agreement grants a mere license with respect to the right to occupy any particular City Pole or City Premises. Nothing in this Agreement shall be deemed to grant, convey, create, or vest any real property interest in EarthLink, including any fee or leasehold interest or easement.
- 1.5 Only Approved Equipment may be attached to City Property. Approved Equipment shall be installed in a manner substantially similar to the installation specifications and configurations shown in the drawings and photographs in Exhibit C. Any installation method or configuration that is not substantially similar to an installation method or configuration described in Exhibit C shall not be employed without the prior written permission of the City, such permission not to be unreasonably withheld or delayed. In determining whether an installation method is substantially similar, the City may consider whether such method causes materially greater damage to City Property than the existing method. EarthLink may amend Exhibit C to include new or different equipment that is substantially similar to Approved Equipment already in use by submitting information to replace or supplement information in Exhibit C and requesting the City's approval of such changes, which shall not be unreasonably withheld or delayed. If EarthLink does not receive any response from the City within ninety (90) days of written notice to the City, then such installation method, configuration or equipment will be deemed approved by the City and Exhibit C shall be deemed modified. If EarthLink installs any equipment other than Approved Equipment, EarthLink shall promptly remove such equipment at its sole cost and expense upon notice from the City, or the City may do so at EarthLink's sole cost and expense.
- 1.6 Installation on Private Property. Equipment to be installed on private property shall comply with all generally applicable City ordinances and regulations, including, but not limited to, the City's Zoning Ordinance.
- 1.7 Co-location. Nothing in this Agreement shall be deemed to obligate the City to grant EarthLink permission to use any particular facility or property not covered

by this Agreement. The City reserves the right to enter into other agreements for the same or different services and the right to enter into co-location agreements with other persons or entities including, but not limited to, telecommunications and information services providers, for use of City Property subject to the City's obligations under this Agreement. No other person or entity shall be permitted to co-locate any facilities with Approved Equipment or City Property until such person or entity first enters into a separate agreement with the City.

2. USE OF CITY PROPERTY

- 2.1 General Permit. The City hereby grants to EarthLink a general permit for construction required or appropriate in order to install and maintain the Approved Equipment on City Property ("General Permit"). The General Permit shall authorize EarthLink to install Approved Equipment without obtaining individual permits governing such installations, provided that EarthLink complies with all requirements of applicable City Code provisions, regulations and standard permit conditions governing construction and safety standards and procedures. The General Permit does not authorize EarthLink to perform any construction or other activity in the public rights-of-way without first obtaining a Right-of-Way permit from the City. In addition, EarthLink may be required to obtain a lane closure permit, submit a maintenance of traffic plan and secure additional permits and approvals as required by the Virginia Work Area Protection Manual, effective January 1, 1996, as amended, and other applicable local, state and federal laws and regulations.
- 2.2 Placement on City Poles. The City hereby grants to EarthLink a license to place Approved Equipment on the City Poles at any time during the Term of this Agreement, subject to applicable zoning requirements. "Installed City Poles" shall refer to any City Pole on which Approved Equipment is actually installed pursuant to this Agreement. EarthLink will submit an installation plan for the initial construction of the Network in connection with the permitting process. EarthLink's installation(s) shall be performed in such a manner as not to interfere with the street light services of the City or the operation of traffic signals. Within ninety (90) days after the completion of all installation on the City Poles that EarthLink then intends to install, EarthLink shall give written notice to the City designating the City Poles on which EarthLink has installed Approved Equipment ("Placement Notice"). Each Placement Notice shall include, in hard copy and electronic format, a full set of as-built drawings, showing in detail the exact location of EarthLink's facilities on City Property, and clearly identifying each of the City Poles and City Premises to which such facilities have been attached. The City will not object to Placement Notices provided that the items described in the notice are otherwise Approved Equipment.
- 2.3 Intentionally Left Blank.
- 2.4 Use of City Premises. The City hereby grants to EarthLink a license during the Term to install Approved Equipment directly on the City Premises described on

Exhibit B, and to operate and maintain Approved Equipment at those locations, subject to applicable zoning requirements. EarthLink shall execute a separate license with respect to each of the City Premises, each in the form attached as Exhibit B. EarthLink shall be entitled to access the City Premises for purposes of installation, inspection, repair, removal and upgrade of Approved Equipment on the terms specified in each individual license. The City Manager or his designee is hereby authorized to execute individual licenses in the form of further Exhibit Bs adding additional City Premises and Approved Equipment without the necessity of further approvals by the City Council so long as the terms of such licenses are consistent with Exhibit B. The City will promptly inform all appropriate City representatives and employees and security personnel about the access rights necessary or appropriate to ensure timely access to Approved Equipment located on City Premises.

- 2.5 No Exclusivity. EarthLink shall not have the exclusive right to use or occupy any City Poles or City Premises. EarthLink agrees that, for purposes of the City Property only and the FCC's Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000: (i) EarthLink's rights to use City Property pursuant to this Agreement or any individual site license do not constitute a direct or indirect ownership or leasehold interest; (ii) none of the City Property that EarthLink has the right to use pursuant to this Agreement or any individual site license is within the exclusive use or control of EarthLink; and (iii) no provision of this Agreement or any individual site license impairs the installation, maintenance, or use of any Approved Equipment.
- 2.6 No Interference. EarthLink shall, at its own expense, install, operate, and maintain Approved Equipment on City Property in a good and workmanlike manner and in accordance with applicable City, state and federal laws, ordinances and regulations, including, without limitation, any applicable regulations of the Federal Communications Commission.
- 2.6.1 EarthLink shall inspect, construct, and maintain the Approved Equipment in a manner that will not cause unreasonable physical interference to City and other tenants or licensees of the City Premises, including without limitation the operation or use of any portion of the sanitary sewers, storm sewers and drains, water mains, gas mains, poles, or other City Property, except to the extent contemplated by a permit or other applicable license. EarthLink shall also avoid physically blocking the transmissions of radio equipment operated by the City.
- 2.6.2 EarthLink is not obligated to conduct any tests, studies or investigations. EarthLink shall operate the Approved Equipment in a manner that will not cause harmful radio frequency interference ("RF Interference") to the City and other tenants or licensees of the City Premises. All operations by EarthLink shall be in compliance with all Federal Communications Commission ("FCC") requirements and all other applicable laws, codes, rules and regulations.

- 2.6.3 Subsequent to the installation of the Approved Equipment, City shall, to the extent practicable without limiting the City's ability to conduct its activities in accordance with its normal practices, attempt to avoid causing RF Interference to or physically blocking the signals of Approved Equipment. The City shall also inform new tenants of City Property on which Approved Equipment has been installed of the existence and location of such Approved Equipment and shall obligate each new tenant in its lease to operate its equipment in compliance with all applicable FCC regulations, to use commercially reasonable efforts not to cause RF Interference or to cause physical interference with the Approved Equipment installed on the Premises, and, if the new tenant causes RF Interference to the Approved Equipment, to participate in the interference resolution process described in Section 2.6.4.
- 2.6.4 In the event either party suffers from RF Interference as a result of the actions of the other party, the affected party shall give the other party written notice of the nature of RF Interference, including any studies that demonstrate or may have been performed in connection with such RF Interference. The parties shall then meet and mutually cooperate to determine the cause of the RF Interference and agree on a method for eliminating the RF Interference, or reducing it to an acceptable level. Notwithstanding the foregoing, in the event that the RF Interference continues for more than ten (10) days and causes material harm to EarthLink's operation of the Network, the Installed City Pole Fees or other payments due from EarthLink with respect to Approved Equipment affected by RF Interference shall abate proportionately on a per diem basis for each day after such ten-day period. In addition, during any period in which EarthLink suffers from RF Interference, EarthLink will not be required to provide the Public Benefits within the geographic area directly affected by the RF Interference, or, to the extent the RF Interference affects EarthLink's ability to provide Public Benefits in a manner other than geographic coverage, EarthLink may alter or reduce the Public Benefits in a manner reasonably related to the effects of the RF Interference on EarthLink's ability to provide the Public Benefits. Additionally, if such material RF Interference continues for a period of ninety (90) days and the parties are unable to agree on a mutually satisfactory resolution of the problem, EarthLink shall have the right to terminate the applicable Exhibit B and/or this Agreement immediately upon notice to City. Similarly, if the actions of EarthLink cause RF Interference to City facilities which materially affects the operation of such facilities for a period of ninety (90) days and the parties are unable to agree on a mutually satisfactory resolution of the problem, the City shall have the right to terminate the applicable Exhibit B and/or this Agreement immediately upon notice to City. Upon termination of any Exhibit B in connection with this Section 2.6, EarthLink will not be required to provide

the Public Benefits to the extent directly impacted by the termination of the applicable Exhibit B.

- 2.6.5 Subject to the City's obligations set forth in Section 2.6.3 and 2.6.4, the City shall have no liability to EarthLink for RF Interference caused by any third party, provided that the foregoing provisions shall not affect EarthLink's rights regarding the procedure for resolving RF Interference in this Agreement, including, without limitation, EarthLink's right to terminate a site license or this Agreement. The City shall exercise its best efforts to assist in the resolution of any dispute regarding RF Interference caused by the activities of an occupant of City property other than EarthLink or the City.
- 2.7 Substitution. At any time during the Term, EarthLink shall have the right to install, maintain and use Approved Equipment described in its Placement Notice and any upgraded Approved Equipment later installed on City Poles or City Premises. If EarthLink determines that a designated City Pole cannot or should not be used for the Network, during installation or thereafter, EarthLink may install Approved Equipment on another City Pole. In such event, EarthLink shall notify the City, by an amended Placement Notice ("Amended Placement Notice"), within thirty (30) days after the installation of Approved Equipment on the substitute City Pole. The City will not object to an Amended Placement Notice, provided that the items described in the notice are otherwise Approved Equipment.
- 2.8 Addition of City Poles. At any time during the Term of this Agreement, EarthLink shall be entitled to place additional, upgraded, or replacement Approved Equipment on any City Poles, and to modify the location of existing Approved Equipment and to designate additional City Poles for installation of Approved Equipment by following the notification procedure set forth in this Agreement and the aggregate total number of Installed City Poles shall be adjusted accordingly.
- 2.9 Reduction of City Poles. At any time during the Term of this Agreement, EarthLink shall be entitled to remove any of EarthLink's Approved Equipment from any or all of the Installed City Poles and the aggregate number of Installed City Poles and the applicable Installed City Pole Use Fees shall be reduced accordingly. If EarthLink removes any Approved Equipment from any of the Installed City Poles, then EarthLink shall, within thirty (30) days after such removal, give notice thereof to the City, specifying the Installed City Poles vacated and the location thereof, as well as the date of removal. Such removal by EarthLink or a removal by the City as permitted herein shall immediately terminate EarthLink's obligation for payment of the Installed City Pole Use Fee and other rental charges for the applicable Installed City Poles after the removal occurred and the sums due for such previously Installed City Poles will be pro-rated through the date of such removal. The rights granted by this Section 2.9 shall not be exercised in a way that would defeat the intent of this Agreement.

- 2.10 Replacement. In the event any Installed City Poles are to be replaced, repaired, altered or made incapacitated by power interruption or other reasons, the City shall give EarthLink reasonable advance written notice which shall be at least thirty (30) days advance written notice, except as described in Section 2.11. If the City removes, repairs or alters Installed City Poles in such a way that EarthLink is required to remove and/or reinstall the Approved Equipment on such Installed City Poles as contemplated in this Agreement, then EarthLink shall be entitled to reinstall on any other City Pole chosen by EarthLink as soon as EarthLink elects and the City shall not charge EarthLink any fees for obtaining approval of any substitute Installed City Poles. EarthLink may elect to relocate, replace or transfer Approved Equipment from all, some or none of the affected Installed City Poles to replacement City Poles. If EarthLink elects not to replace or relocate Approved Equipment from any Installed City Poles, the Installed City Pole Use Fee for those Installed City Poles will terminate effective upon the earlier of removal of the Approved Equipment or removal of the Installed City Pole.
- 2.11 Emergency. In case of an emergency or a Force Majeure Event (as defined below), the City may remove Approved Equipment as required, if the City determines it is necessary to protect public safety or public property from imminent danger. In the event of an emergency, the City shall make reasonable efforts to give EarthLink oral notice of the nature of the emergency and the reasons that the Approved Equipment must be removed before the removal takes place. In any event, the City shall notify EarthLink of the nature of the emergency and the reasons that the Approved Equipment must be removed as soon as reasonably practical. The City shall store and protect any equipment removed by the City until it is reclaimed by EarthLink.
- 2.12 Damaged Pole. If an Installed City Pole is fully or partially destroyed or damaged, and as a result thereof EarthLink is unable to conduct its operations on such Installed City Pole in a manner that is functionally equivalent to EarthLink's operations before such event, EarthLink will so notify the City in writing once EarthLink becomes aware of such destruction or damage. The City shall give EarthLink reasonable notice of whether or not the City intends to repair, rebuild or restore the applicable Installed City Pole. If the City removes an Installed City Pole on which EarthLink has installed Approved Equipment for any reason then the City shall give EarthLink reasonable notice and protect and return to EarthLink the Approved Equipment installed on those Installed City Poles. In either event EarthLink shall be entitled to install Approved Equipment on a substitute Installed City Pole determined by EarthLink. The City shall permit the substitute City Pole installation. EarthLink shall be entitled to a pro-rata abatement of the Installed City Pole Use Fee for the affected Installed City Pole(s) for the number of twenty-four (24) hour periods it is unable to conduct its normal operations from the affected Installed City Pole or the substitute Installed City Pole.
- 2.13 Removal of Previous Installations. If in the course of installing Approved Equipment EarthLink finds third party equipment on a City Pole that appears to be abandoned or no longer in operation, EarthLink shall notify the City. If the

presence of such existing equipment would interfere with the installation or operation of Approved Equipment, EarthLink may request authority from the City to remove the existing equipment, and shall only remove the existing equipment upon receipt of such authority. If failure to grant such authority would make installation or operation of Approved Equipment on a City Pole impractical, EarthLink shall inform the City of the consequences, and the parties shall discuss alternatives.

2.14 Right to Inspect. The City shall have the right to make periodic inspections at the City's discretion and cost as conditions may warrant. Such inspections shall not be charged to EarthLink. Failure of the City to make any inspections shall not delay EarthLink or the Network installation. Except as otherwise provided in this Agreement, EarthLink is not obligated to obtain any inspections before proceeding as provided hereunder.

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2.16 Compensation for Installed City Poles and City Premises.

2.16.1 Compensation for City Poles. As compensation for the right to occupy City Poles, EarthLink shall pay in arrears to the City a fee ("Installed City Pole Use Fee") for the right to access and use the Installed City Owned Poles in the amount and when described on the attached **Exhibit E** commencing on the first day of the first calendar month after the entire Network becomes operational with customers who are paying for the services of the Network after all pilots and testing is completed ("Commencement Date"). The Installed City Pole Use Fee shall be calculated based on the number of Installed City Poles determined as of the date that is thirty (30) days prior to each payment date so the amount owed will increase and decrease as the number of Installed City Poles increases and decreases. EarthLink shall pay to the City the Installed City Pole Use Fee in arrears for each previous month, and shall make such payments annually within forty-five (45) days of the last day of each anniversary of the Effective Date

2.16.2 Compensation for City Premises. EarthLink shall pay a license fee with respect to each of the City Premises on which it installs Approved Equipment, in the amount specified in Exhibit B. The fee shall be owed for a specific location only for as long as the Approved Equipment is in fact located on that Premises and only for the number of devices that are so installed and maintained. The license fees for use of City Premises shall be due and payable at the same time as the Installed City Pole Use Fee.

2.16.3 Generally. As further compensation for the right to occupy City Poles and City Premises regardless of whether any City Pole or City Property is utilized, during the Term EarthLink shall pay the City an annual fee

calculated as follows: the greater of (i) thirty seven thousand five hundred dollars (\$37,500), or (ii) one percent of EarthLink's total receipts collected and received by EarthLink for the retail access services provided via the Network in the City, less any amounts paid for digital inclusion accounts or paid by the City to EarthLink for any of the Public Benefits or Additional Services ("Access Revenue Fee"). 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. The City acknowledges that the fees described in this Section 2.16, and the Public Benefits described in Exhibit F constitute full consideration and are the only compensation owed to the City in connection with this Agreement or any Site License Agreement, and no additional compensation, consideration, license fee, franchise fee or other fees required to receive the permissions set forth in this Agreement will be owed to the City even if the City elects not to purchase or use such Public Benefits. EarthLink will remit the remainder of the Access Revenue Fee within forty-five (45) days after EarthLink's books are audited for the relevant calendar year.

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- 2.19 No Relief from Taxes. The fees required by this Agreement shall be in addition to, and not in lieu of, all taxes required by the City, and all other amounts EarthLink may be required to pay the City by law, ordinance, or other agreement.
- 2.20 Costs and Expenses Borne by EarthLink. EarthLink shall bear all costs incurred by EarthLink in connection with the planning, design, construction, repair, modification, disconnection, attachment, installation, control, operation, maintenance, reattachment, reinstallation, relocation, removal, and replacement of the Network by EarthLink or as otherwise authorized by this Agreement. EarthLink shall be responsible for, and shall bear all costs of, damage to, repair of, or deterioration of, the Network due to repair, maintenance, or force majeure. As between EarthLink and the City, EarthLink agrees to bear such costs except to the extent the damage results solely from the gross negligence or willful misconduct of the City, its officers, employees, or agents.
- 2.21 Late Payment. Any amounts not paid within sixty (60) days of EarthLink's receipt of an invoice will incur interest at a rate of ten (10%) percent per annum until paid.
- 2.22 No Waiver. Acceptance by either the City or EarthLink of any payment, or EarthLink's use of the City Property, shall not be deemed a waiver by the City or EarthLink of any breach of this Agreement by the other party.
- 2.23 Repair of Damaged City Property. EarthLink promptly shall repair, replace, or refinish, at EarthLink's sole cost and expense, any City Pole or other City Property

that is damaged materially in function or in form during the attachment, installation, maintenance, reattachment, reinstallation, relocation, removal, and replacement of the Network or as a result of acts of EarthLink or its contractors or agents in connection with the operation of the Network. Without limiting any other remedies available to the City, if EarthLink fails to repair, replace, or refinish such damage or disturbance within a reasonable amount of time after notice from the City detailing damage caused by EarthLink or its contractors or agents then the City may, in its sole discretion, but without any obligation to do so, repair, replace or refinish the damage or disturbance. In the event that the City undertakes the repair, replacement, or refinishing as a result of EarthLink's failure to do so after allowing EarthLink a reasonable amount of time to do so, EarthLink promptly shall, upon receipt of an invoice for such costs and expenses, reimburse the City for all reasonable and actual costs and expenses incurred in the repair, replacement or refinishing. For purposes of this section, the term "refinish" means to restore affected property to a condition as good as or better than its condition at the time of commencement of the work that led to the damage to City Property, reasonable wear and tear excepted.

- 2.24 City Required Removal/Relocation of EarthLink's Facilities from City Property for reasons other than Emergency. If the City determines that the protection, temporary disconnection, removal, relocation, or reconfiguration of any Approved Equipment on City Property is necessary (i) to preserve public health or safety, or (ii) for the construction, repair, relocation or maintenance of a City project for the public welfare (including without limitation any future conversion of overhead to underground utilities resulting in the removal of a City Pole), the City will provide EarthLink with written notice as soon as reasonable under the circumstances describing which of EarthLink's facilities are affected and the proposed dates by which the work is to be completed by EarthLink, provided that where immediate action is not required to avoid danger to the public safety or property, the City shall give EarthLink at least thirty (30) days prior written notice. EarthLink shall, at its sole cost and expense, promptly disconnect, remove, relocate, or reconfigure such portion of the Network as mutually agreed upon with the City. The City will use good faith efforts to conduct City projects in a manner to minimize negative impact to the Network. Regardless of anything to the contrary in this Section 2.24, the City will not request EarthLink to remove or relocate the Approved Equipment in a manner that deliberately makes it uneconomical for EarthLink to operate the Network and provide services in the City or in a manner that gives any preference to a subsequent third party offering a similar service. Where any removal or relocation is required, the City will use its best efforts to provide alternate City Property on which to place the Approved Equipment that will enable EarthLink to comply with its obligations to provide the Public Benefits. If suitable alternative City Property cannot be located for the placement of such Approved Equipment, or if any City required removal or relocation materially adversely affects the Network or EarthLink's ability to provide the Public Benefits, EarthLink will not be liable or responsible to provide the Public Benefits to the extent directly impacted by the excluded City Property, provided that EarthLink has requested that the parties meet

to review the impacted Public Benefits pursuant to the dispute resolution process set forth in Section 9, and subject to the outcome of that process. The City warrants to EarthLink that the City will not disturb, move, alter or relocate the Approved Equipment placed on City Property except as set forth in this Agreement.

- 2.25 Network Control Center; On-Line Access. EarthLink's network control center operator shall be available to the staff of the City Department of Transportation and Environmental Services, twenty-four (24) hours a day, seven (7) days a week, for the reporting to EarthLink by the City of problems or complaints resulting from the attachment, installation, control, operation, maintenance, reattachment, reinstallation, relocation, removal, and replacement of EarthLink's facilities. The City may contact the network control center operator at a telephone number provided by EarthLink from time to time regarding such problems or complaints. EarthLink will monitor the Network and provide the City with information related to outages or service problems pursuant to EarthLink's designated communication process as described in the applicable operational guide.
- 2.26 Non-use of EarthLink's Facilities on City Property. EarthLink will provide the City with information on a quarterly basis describing any Approved Equipment installed on City Property or that has been out of service for a period of six (6) months or more. EarthLink is not required to submit such report if no Approved Equipment is required to be reported. Within ninety (90) days after EarthLink's receipt of written notice from the City to remove such facilities, EarthLink shall promptly remove the facilities at EarthLink's cost and expense, if EarthLink has not already done so. If EarthLink fails to remove any abandoned facilities as described in this Section, then the City shall be entitled to remove the facilities from City Property. EarthLink shall reimburse the City for its reasonable and actual costs and expenses for removals pursuant to this Section.
- 2.27 Maintenance of EarthLink's Facilities. EarthLink shall ensure that EarthLink's facilities are maintained at all times in safe condition and installed in a good and workmanlike manner. EarthLink shall use reasonable care in installing, relocating, removing, repairing, and replacing EarthLink's facilities.
- 2.28 Removal and Reduction of Fees. The removal by EarthLink or the City of all Approved Equipment from any City Property shall immediately terminate EarthLink's obligation for payment of any applicable fees or charges with respect to such City Property and any sums due with respect to such City Property will be pro-rated through the date of such removal.
- 2.29 Emergency Contact Information. The City shall provide EarthLink a 24-hour contact phone number to enable EarthLink to report any concerns regarding the Approved Equipment, the Network, or City Property. In the event that EarthLink reports such concerns to the City, the City shall promptly respond to such call(s).

- 2.30 Notice of Interruption to Service. The City shall give EarthLink a minimum of thirty (30) days advance written notice of any non-emergency work which will affect the Approved Equipment, City Property, or the Network.
- 2.31 Conditions of Performance. The obligations of EarthLink hereunder shall be subject to, and conditioned upon, the following conditions (“Conditions”). If any of the following Conditions have not been satisfied by a date that is one hundred and eighty (180) days after the Effective Date of this Agreement, EarthLink will notify the City of that fact, including which Conditions remain unsatisfied;- if any such outstanding Conditions have not been resolved within an additional ninety (90) days (“Initial Conditions Termination Date”), EarthLink shall have the option, at that time, to terminate this Agreement by giving ten (10) days prior written notice. If EarthLink does not exercise the foregoing termination right at the time of the Initial Conditions Termination Date, the right shall be deemed waived and EarthLink shall be bound by all of the terms and conditions of the Agreement for the remainder of the Term.
- 2.31.1 This Agreement has been approved and fully executed by all Parties by fully authorized representatives.
- 2.31.2 The City Council shall have taken all the actions required by law to authorize the City to enter into this Agreement and grant to EarthLink the rights to use the City Property provided in this Agreement and no approval of any other local governing body is required.
- 2.31.3 The City Zoning Commission, the State Corporation Commission, and the Federal Communications Commission and any other governing body shall have taken any other actions required by law pertaining to approval of the installation and operation of the Network and the Approved Equipment as such may be required to grant EarthLink the rights necessary to install the Network.
- 2.31.4 The applicable electric providers have agreed they will furnish electricity service to the Approved Equipment installed on City Poles or any other location installation is required in the City to provide the Network upon commercially reasonable rates, terms and conditions and in a manner that the Parties agree complies with applicable laws and regulations.
- 2.31.5 EarthLink is able to obtain signed leases or license agreements for all of the towers and rooftop lease sites (other than City Premises) to install all of the backhaul antennae, radio and fiber optic and broadband service necessary to operate the Network.
- 2.31.6 The owners or authorized representatives of the poles other than the City have granted EarthLink the right to attach the Approved Equipment on poles in a manner that the Parties agree complies with applicable laws and regulations and upon commercially reasonable rates, terms and conditions.

2.31.7 EarthLink is not prohibited from constructing and operating the Network, or performing substantially all of the services or exercising substantially all of the rights set forth in this Agreement.

2.31.8 EarthLink has obtained all applicable permits, licenses, and authorizations from the State, and the federal government for the installation and operation of the Network, and such authorizations have not been terminated or revoked.

3. USE OF ELECTRICITY

- 3.1 Allowed Use. The City receives Electrical Service (as defined below) from the electric utilities serving the City Poles (collectively "Electric Utility"). Subject to applicable tariffs or agreement with the Electric Utility, electrical power to operate Approved Equipment may be taken from the power sources connected to the City Poles. The City will cooperate with EarthLink to obtain permission from the Electric Utility for EarthLink to use the electricity from the City Poles.
- 3.2 Availability. The City acknowledges that any City Poles which are not supplied electrical power 24 hours per day or which are otherwise not suitable for EarthLink's use under this Agreement (collectively "Unsuitable Poles") are excluded from this Agreement and EarthLink will not be required to offer service coverage in areas containing such Unsuitable Poles. The City cannot and will not guarantee an uninterrupted supply of power, nor can it guarantee the quality of power provided by the Electric Utility. Notwithstanding anything to the contrary, EarthLink's performance under this Agreement requires an adequate supply of electricity 24 hours per day every day. EarthLink shall not be deemed to be in default or required to provide Network service during such time and in such areas as are directly affected by the lack of electrical power. If 24 hour electricity is not reliably available for a material number of Installed City Poles and/or those that are designated as potential Installed City Poles for the Approved Equipment then EarthLink shall be entitled, but not obligated, to terminate this Agreement and all payment obligations hereunder.
- 3.3 Electricity Costs. The City shall not be responsible for any payment or payments to the Electric Utility or any other electricity provider for electrical usage by EarthLink, except to the extent an agreement to supply the necessary electrical power is executed between the City and the Electric Utility or to the extent the obligation to pay is passed through the City to EarthLink through an agreement between the City and the Electric Utility. EarthLink shall be responsible for all payments for use of electrical power, including but not limited to power usage, metering and any other electric utility services required for the operation of the Network, except as provided otherwise in a written agreement signed by the City and EarthLink. The obligations of EarthLink hereunder are conditioned on EarthLink obtaining continuous electrical service in sufficient capacity and quality and upon terms and electrical rates that are reasonably satisfactory to EarthLink or, at the option of EarthLink, the City agreeing to provide electricity through the City

for sums equal to a flat rate negotiated between EarthLink and the City for the cost of the electrical consumption of EarthLink's Approved Equipment being served that is in an amount that is acceptable to EarthLink ("Electrical Service"). If the City or EarthLink does not obtain from the Electric Utility an agreement to provide such Electrical Service during the term of this Agreement then EarthLink is entitled at any time prior to obtaining such an Agreement to terminate this Agreement and all obligations to continue providing the implementation of Network services hereunder. EarthLink may continue to implement the Network without waiving this condition and the right to terminate as provided above.

4. **EARTHLINK SERVICES PROVIDED TO CITY**

- 4.1 **Public Benefits.** EarthLink shall provide to the City the services described in Exhibit F (the "Public Benefits") on the terms described therein. EarthLink, at its sole discretion, may also offer other services, products, applications, content, and other Internet access services to the City (the "Additional Services"). The City shall retain the sole option to purchase the Additional Services.
- 4.2 **Optional.** If the City elects not to use or purchase any of the Public Benefits then this Agreement shall continue and the City will not be entitled to any additional payments or compensation in lieu thereof. The City acknowledges that the Public Benefits and the fees provided for in Section 2.16 constitute full consideration and are the only compensation owed to the City in connection with this Agreement or any Site License Agreement, and no additional compensation, consideration, license fee, franchise fee or other fees required to receive the permissions set forth in this Agreement will be owed to the City even if the City elects not to purchase or use such Public Benefits.
- 4.3 **Future Products.** Because of the significant investment by EarthLink in the present wireless Network, EarthLink desires the opportunity to provide additional wireless broadband services to the City. Therefore, if during the Term of this Agreement, the City desires from time to time to consider additional wireless Internet protocol (IP) applications to serve municipal operations only ("New Network") then before the City enters with any provider into any bids or contract(s) related to such New Network, the City shall: (1) give EarthLink notice of such desire to implement a New Network and provide all relevant details and answer all reasonable questions of EarthLink; and (2) give EarthLink the opportunity to propose solutions and terms that build on EarthLink's Network; and (3) evaluate the modification/inclusion within this Network Agreement of the EarthLink solution(s) as the preferred approach to meeting the City's service delivery objective. Notwithstanding the above, EarthLink is under no obligation to propose or provide an EarthLink solution and EarthLink retains the option to decide whether to propose other solutions.

5. **PROGRAM MANAGEMENT**

EarthLink will at all times during the Term of this Agreement maintain a program manager responsible for implementing and operating the Network. The Parties shall meet at an agreed upon schedule to discuss ongoing operation of the Network including ongoing compliance with the Agreement. EarthLink and the City shall maintain and update a list of all open issues and resolutions throughout the Term of this Agreement. The City and EarthLink may mutually agree upon additional meetings.

6. **OTHER AUTHORIZATIONS**

The authorizations granted in this Agreement shall be non-exclusive and nothing contained in this Agreement shall be construed to limit, alter, or waive the right of the City to enter into agreements authorizing persons or entities other than EarthLink to access and use City Property to install any form of communications equipment or for any other purpose. The City shall give EarthLink prompt prior written notice of any applications received by the City from others requesting permission to install devices similar to the Approved Equipment on the City Poles or Premises. Nothing in this Agreement shall be deemed to obligate the City to grant EarthLink permission to use any particular facility, or property, or right-of-way not covered by this Agreement, including, without limitation, the City's public rights-of-way.

7. **NO PARTNERSHIP OR ENDORSEMENT**

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 City and EarthLink. Nothing contained herein shall be deemed to constitute an endorsement of EarthLink or EarthLink's products or services by the City.

8. **THIRD PARTY RIGHTS**

The City shall be responsible for identifying and notifying holders of third party rights on designated City Property of EarthLink's use thereof.

9. **DISPUTE RESOLUTION**

Except as otherwise provided in this Agreement, any dispute between the Parties or default by either party which arises during the Term of this Agreement, shall be subject to the following administrative remedy:

- 9.1 Internal Resolution. Both Parties shall attempt to resolve any controversy claim, problem, default, or dispute ("Dispute") arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. The Parties shall also rely on this mechanism to determine how to modify EarthLink's obligations pursuant to Sections 2.24 and 15. In the event that a Dispute is not resolved by the project managers of each Party, either Party may upon written notice to the other 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 either Party within fifteen (15) calendar days of the Parties' 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 ten (10) business days of the Request for Internal Resolution. Project managers and senior management for each Party shall be the General Market Manager and Vice President, Municipal Networks respectively, for EarthLink, and the City Project Manager and the City Manager or City Manager's designee respectively, for the City, and their respective successors in office. The project managers and senior management may be changed by notice given by the Party changing its personnel.

- 9.2 Notice. 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. If the Parties do not successfully resolve the Dispute by senior management, then the Party finding the senior management resolution unsatisfactory shall provide written notice to the other Party, demanding mediation ("Request for Mediation"). The Request for Mediation may not be given prior to the first meeting of senior management, or fifteen (15) business days after the request for Internal Resolution, whichever is earlier, and shall not be given any later than forty-five (45) calendar days following the completion of the first senior management meeting. The Request for Mediation shall set forth all of the issues that Party deems outstanding that must be submitted to mediation. The Party in receipt of the Request for Mediation shall respond within twenty (20) calendar days listing any issues it deems appropriate for submission to the Mediator. All of the requirements of Dispute Resolution and Mediation as described in this Article 9 shall be referred to collectively as the "Resolution Procedures".
- 9.3 Mediation. Any Disputes shall be mediated within forty-five (45) calendar days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available, except that those for which the remedy requested is injunctive relief or other equitable remedies shall be mediated within ten (10) business days.
- 9.4 Mediator. A mediator shall not have any employment, engagement or other interest in either party. If the parties cannot agree upon a mediator within five (5) business days of the submission of a Request for Mediation then the mediator shall be appointed by the local office of the American Arbitration Association upon request of either party.
- 9.5 Costs. The costs of mediation shall be borne by the Parties equally.
- 9.6 Equitable Relief. Each party agrees that any threatened or actual failure of the other party to comply with its obligations hereunder may cause immediate irreparable harm to the non-defaulting party for which there is no adequate remedy at law. Accordingly, each party agrees that the non-defaulting party will be entitled

to an order for specific performance and to injunctive relief from a court of competent jurisdiction as remedy for any such threatened or actual default. Nothing in this Agreement, 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 comply with the provisions of this Agreement, and not to take actions that violate its obligations under this Agreement; provided, that such order shall not prevent EarthLink from operating the Network and maintaining the Approved Equipment on the City Property, except on account of expiration of the Term or in the event of termination in compliance with this Agreement and applicable law for a Major Default after full completion of all Resolution Procedures and a court order is issued as provided herein; and provided further that such order for specific performance and injunction shall not require either party to pay or expend any sums in excess of the liability limitation set forth herein.

10. ASSIGNMENTS

The City shall not assign this Agreement, or any portion of it, without the prior written permission of EarthLink. EarthLink can assign this Agreement to an entity that is wholly owned or wholly controlled by EarthLink or by a wholly-owned affiliate of EarthLink (each to be referred to as an "Affiliated Entity") without the prior consent of the City. EarthLink can also assign this Agreement pursuant to the sale of all or substantially all of the assets or stock of EarthLink or pursuant to the sale of all or substantially all of the assets or operations of the division of EarthLink that is operating the Network or pursuant to the sale of the Network; provided that if such assignment is not to an Affiliated Entity, then EarthLink must first obtain the City's prior written consent, such consent not to be unreasonably withheld. EarthLink may enter into one or more agreements for installation of Approved Equipment, operation of the Network, or both with one or more entities ("Operating Companies"), provided that under such agreements overall control of the Network shall remain with EarthLink. Approved Equipment may be subject to security interests of vendors or of lenders to Operating Companies. The City shall have no ownership interest in or to Approved Equipment, unless the Approved Equipment has been abandoned and taken over by the City as provided for in Section 2.26, or EarthLink has filed a petition in bankruptcy, in which case the City shall have all rights provided for by applicable law.

11. TERM, RENEWAL, AND TERMINATION

- 11.1 Effective Date and Term. This Agreement shall become effective on the Effective Date and shall continue in effect for eight (8) years after the Commencement Date (collectively with Renewals Terms "Term").
- 11.2 Renewal. Upon the end of the first twelve (12) years of the Term, the Term may be renewed for three (3) successive four (4) year periods of time, upon mutual agreement of EarthLink and the City.

11.3 Major Default. In the event that either Party fails to pay undisputed sums due and payable hereunder (“Monetary Default”) within ninety (90) days after a default notice of nonpayment is delivered to by such Party to the other Party, then such Party (the “Non-defaulting Party”) may terminate this Agreement upon providing the other Party (the “Defaulting Party”) ninety (90) days prior written notice of its intent to terminate this Agreement. If the Non-defaulting Party pays the sum or disputes the amount due, within such ninety (90) day period, then such termination notice shall not be effective and this Agreement will not terminate. In the event that a Party commits a Major Default hereunder that is not a Monetary Default (also a “Defaulting Party”) and does not cure such Major Default within one hundred and twenty (120) days after the other Party (also a Non-defaulting Party) has delivered a default notice describing the Major Default to the Defaulting Party, then the Non-defaulting Party may terminate this Agreement upon providing Defaulting Party one hundred and twenty (120) days prior written notice of the Non-defaulting Party’s intent to terminate this Agreement. If the Defaulting Party cures the Major Default, within such one hundred and twenty (120) day period, such termination notice shall not be effective and this Agreement will not terminate. When used herein “Major Default” shall mean that the Defaulting Party has violated an obligation under this Agreement, that is not a Monetary Default, that has resulted in actual direct damages to the Non-defaulting Party (expressly not including damages of any other third parties) in excess of \$10,000.00 that has not been reimbursed by the Defaulting Party or by insurance proceeds of some party. If there is a dispute concerning whether a Monetary Default exists or whether the Defaulting Party has committed a Major Default then in either case this Agreement, the Term and the rights of the Defaulting Party shall not be terminated until a court of competent jurisdiction has ordered that a Monetary Default has occurred and continued past all applicable notice and cure periods or that the Defaulting Party has committed a Major Default that has continued past all applicable notice and cure periods, as applicable, and the Defaulting Party has not paid such sums to cure the Monetary Default or cured the Major Default, as applicable, within thirty (30) days after such order has been signed and issued by such court. If the Dispute Resolution Process results in agreement between the parties that there is a plan to cure the Major Default that will be in the best interests of all parties then prior to terminating this Agreement both parties shall exercise reasonable efforts to implement such plan in accordance with such terms as the parties have agreed upon. EarthLink should be considered in Major Default of this Agreement for any failure if the failure is caused in whole or in part by the failure of another party or by an act or omission of a third party.

11.4 Termination by EarthLink. Notwithstanding anything to the contrary in this Agreement, the City recognizes that certain issues may adversely impact EarthLink’s ability to continue to operate, maintain, upgrade and provide the Network and the Public Benefits. Therefore, each party agrees EarthLink is entitled to terminate this Agreement by giving as much notice as is reasonably practicable under the circumstances using reasonable efforts to provide at least thirty (30) days prior written notice to the City, if at any time during the Term any

of the following events occur and EarthLink's operation, maintenance or upgrade of the Network or provision of Services is adversely impacted in a material manner.

11.4.1 Any local, state or federal government authority or agency (i) shall have taken any action requiring any approval for the continued operation, upgrade or maintenance of the Network, Approved Equipment or provision of Services that significantly impairs the continued operation, upgrade or maintenance, (ii) prohibits or takes action that significantly impairs the operation, upgrade or maintenance of the Network or the Approved Equipment, (iii) does not issue or terminates or revokes applicable permits, licenses, and authorizations from the City, state, and the federal government or agency for the operation, maintaining or upgrading of the Network.

11.4.2 The applicable electric provider has ceased or given notice it will cease furnishing electricity service to the Approved Equipment installed in the City and used to provide the Network upon commercially reasonable rates, terms and conditions and in a manner that the Parties agree complies with applicable laws and regulations.

11.4.3 The owners of towers, rooftop sites, poles or other assets used to install the backhaul antennae, radio and fiber optic and broadband service necessary to operate the Network cease any grant to allow EarthLink access of, use of and attachment to such tower, rooftop site, pole or other asset in a manner that complies with applicable laws and regulations and upon commercially reasonable rates, terms and conditions, and EarthLink's operation, maintenance or upgrade of the Network or provision of the wireless services is adversely impacted in a material manner and EarthLink is unable to obtain the right to use substitute towers, rooftop sites, poles or other assets in a manner that complies with applicable laws and regulations and upon commercially reasonable rates, terms and conditions.

11.4.4 EarthLink is prohibited from operating, maintaining or upgrading the Network, or performing substantially all of the services or exercising substantially all of the rights set forth in this Agreement.

11.4.5 EarthLink may also terminate this Agreement in the event of a Monetary Default or a Major Default, pursuant to Section 11.3.

11.5 Removal Obligations. Upon termination of this Agreement or upon expiration of the Term, EarthLink, at its own expense, shall remove the Approved Equipment from City Property within nine (9) months of said date of termination or expiration

and return City Property to the condition in which the property existed immediately prior to EarthLink's installation, with normal wear, tear and evidence of installation excluded. If EarthLink fails to remove the Approved Equipment from the City Property within nine (9) months thereafter, the City may remove any of the Approved Equipment so remaining, and shall be reimbursed for the equipment and labor costs actually incurred in connection with removing the Approved Equipment within thirty (30) days of returning such Approved Equipment to EarthLink or making such Approved Equipment available to EarthLink for pickup at a safe storage facility within the City limits or at such other mutually agreed upon location.

11.6 Termination by City. Notwithstanding any other provision of this Agreement, the City has the right to terminate this Agreement in the following circumstances:

11.6.1 If EarthLink has failed to provide the Public Benefits, in whole or in part, pursuant to the terms of this Agreement, the City may terminate this Agreement after giving EarthLink reasonable notice and opportunity to cure. Prior to exercising this right, the City shall comply with the procedures in Section 9.1, which shall constitute such notice and opportunity to cure, provided that in no event shall the City terminate this Agreement under this Section 11.6.1 in fewer than sixty (60) days from EarthLink's receipt of the written notice described in Section 9.1. The City may, in its sole discretion, choose to refer the dispute to mediation pursuant to Section 9.2, but shall have no obligation to do so. The City Manager shall have full authority to exercise all of the City's rights under this Section.

11.6.2 The City may also terminate this Agreement in the event of a Monetary Default or a Major Default, pursuant to Section 11.3.

11.7 Termination of City Poles and Other Assets. In addition to any termination rights granted hereunder to EarthLink, EarthLink shall be entitled to terminate this Agreement with respect to any or all of the City Poles in the Network, any or all of the Approved Equipment located on the City Premises and the sums owed hereunder for Installed City Poles, City Premises as applicable, shall be reduced proportionately as of the effective date of such termination, provided such termination will not relieve EarthLink's obligations to provide the Public Benefits as set forth in Exhibit F. In such case EarthLink shall disconnect and remove from the Installed City Poles and/or City Premises that are terminated the Approved Equipment within eighteen (18) months thereafter or the City will be entitled to remove them as described above.

11.8 Survival. Any payment obligations or other liability that accrued prior to the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. 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.

12. NOTICE

12.1 Addresses. Except as otherwise set forth herein, all notices given or which may be given pursuant to this Agreement must be in writing and transmitted by (i) telecopy and, on the same day, first class United States mail or (ii) nationally recognized over night delivery service postage pre-paid as follows:

To the City at: City of Alexandria
301 King Street, Suite 3230
Alexandria, VA 22314
Attn: E-Government Manager
Facsimile: 703-997-6445

With a copy to: City of Alexandria
301 King Street, Suite 1300
Alexandria, VA 22314
Attn: City Attorney
Facsimile: 703-838-4810

and to EarthLink at: EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, Georgia 30309
Attention: General Counsel
Facsimile: 404-287-4905

With a copy to: EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, Georgia 30309
Attention: President, Municipal Wireless
Facsimile: 404-892-7616

Either party may change its address by written notice to the other party. Notice may also be provided to such other address as either Party may from time to time designate in writing.

12.2 Effective Date of Notice. Notice shall be deemed received on the next business day if it is sent by telecopy and first class mail, or the date of delivery or refusal of delivery if it is sent by over night delivery service.

13. INSURANCE

EarthLink shall maintain in full force and effect the insurance policies described in the attached **Exhibit G**.

14. 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.

15. FORCE MAJEURE

The time for performance by the City or EarthLink of any term, provision, or covenant of this Agreement, except for the payment of the Access Revenue Fees or other fees owed under this Agreement, shall be deemed extended by time lost due to delays resulting from acts of God, acts of terrorism, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not within the reasonable control of the City or EarthLink, as the case may be (collectively, "Force Majeure Events"). If a Force Majeure Event renders it impossible or commercially unreasonable for EarthLink to provide the Public Benefits in all or a portion of the City or to use any City Property in connection with the Network or Services, and such Force Majeure Event continues for or cannot be remedied in a commercially reasonable manner within ninety (90) days (unless the Parties mutually agree in writing to a longer period to cure), either party may request the effect of such Force Majeure Event be reviewed pursuant to Section 9.1, provided that if no resolution is mutually agreed upon pursuant to Section 9.1, then the parties may either continue with the dispute resolution procedures set forth in Sections 9.2-9.4 or either party may terminate any affected City Property or Public Benefits from this Agreement or terminate this Agreement provided any such termination will be reasonably proportional to the effect caused by the Force Majeure Event.

16. **REPRESENTATIONS AND WARRANTIES OF THE CITY**

The City represents and warrants that: (a) the City and the officials of the City executing this Agreement are authorized to grant to EarthLink all of the rights granted herein; (b) all necessary and appropriate authorizations and approvals have been obtained by the City and the officials of the City signing this Agreement; (c) there is not any regulation, ordinance or law that would permit the City to terminate this Agreement except as is expressly stated herein; and (d) this Agreement does not conflict with or violate any other agreement, regulation, ordinance or law that is binding upon the City.

17. **PARTIES BEAR THEIR OWN COSTS**

Except as expressly set forth herein, each Party shall pay their own costs of performing hereunder. This Agreement and the Exhibits state the only charges and sums that EarthLink is required to pay during the Term for installation, attachment, maintenance, and use of the City Poles, the City Premises and Electrical Services. Except as otherwise set forth in this Agreement, EarthLink shall not owe the City for the services of City employees unless described expressly on an attached Exhibit or EarthLink has executed on paper a written agreement specifying the charges EarthLink agrees to pay and the work to be performed by City employees.

18. **LIMITATION OF LIABILITY**

NEITHER EARTHLINK NOR THE CITY SHALL 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 shall not be liable for direct damages under this Franchise Agreement and any other agreement between the parties in an amount that, in the aggregate, exceeds the amounts received by EarthLink from the City and subscribers for the Network during the immediately preceding twelve (12) months except for damages caused by loss of life, bodily injury, or damage to property.

19. **INDEMNIFICATION**

19.1 As respects bodily injury, death, personal injury, or third-party property damage, EarthLink agrees to indemnify, defend with counsel to whom City does not have reasonable objections, and hold harmless City, its appointed and elected officials, officers, employees, agents, and representatives from and against any and all claims, losses, damages, defense costs, or liability, of any kind or nature (collectively referred to hereinafter as "Claims"), resulting from EarthLink's (or EarthLink's contractors' or subcontractors', if any) work performed by, or on behalf of, EarthLink, relative to this Agreement, except to the extent those Claims (a) arise solely out of the gross negligence or willful misconduct of the City for Claims resulting from governmental functions performed by the City, or (b) arise out of the gross negligence or willful misconduct of the City for Claims outside the

scope or of not resulting from governmental functions of the City. Further, EarthLink agrees to indemnify, defend, with counsel to whom City does not have reasonable objections, and hold harmless City, its appointed and elected officials, officers, employees, agents, and representatives from and against any and all Claims directly or proximately caused by EarthLink's violation of applicable law related to the Network or the Services, except to the extent those Claims (a) arise solely out of the gross negligence or willful misconduct of the City for Claims resulting from governmental functions performed by the City, or (b) arise out of the gross negligence or willful misconduct of the City for Claims outside the scope or of not resulting from governmental functions of the City. EarthLink's obligations under this Section are conditioned upon: 1) that EarthLink shall have been promptly informed of an actual Claim or written notice of a potential Claim and shall have been furnished a copy of each communication, notice or other action related to the alleged Claim, 2) that the City shall cooperate with EarthLink to provide information and assistance necessary to defend or settle the suit or proceeding, and 3) that EarthLink shall be given sole control of the defense (including the right to select counsel), at its sole expense, and the sole right to compromise and settle any suit or proceeding, provided EarthLink will not compromise or settle any suit that admits the liability of the City without the City's prior approval. EarthLink shall be responsible for all attorney's fees and other costs of defending against any alleged Claim, and shall have the right to select counsel. The obligations set forth in this Indemnification provision (i) shall be in effect without regard to whether or not City, EarthLink, or any other person maintains, or fails to maintain, insurance coverage, or a self-insurance program, for any such Claims; and (ii) shall survive the termination of this Agreement. Nothing herein shall prevent EarthLink's insurer(s) from satisfying EarthLink's obligations under this Section.

19.2 Infringement Indemnity.

19.2.1 EarthLink will indemnify the City, 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 Network, or if EarthLink believes infringement is likely, then EarthLink will (a) procure the right to use the System Operations in the Network free of any liability for infringement, (b) replace or modify the System Operations in the Network with a non-infringing substitute otherwise complying substantially with the specifications for the Network; 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 Network or otherwise procure the right to continue using the System Operations in the Network then EarthLink will be entitled to remove the infringing System Operations from the Network and obtain substitutes that will result in the Network performing substantially as required herein. "System Operations" means (i) the Network or any portion thereof (ii) products and services as 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 Network, and (iii) operation and design (including attaching devices to City Poles) of the Network.

19.2.2 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 Network 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 the City 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 the City will reimburse EarthLink for its reasonable expenses (including reasonable litigation costs and attorneys fees) incurred therein.

19.2.3 THE FOREGOING CONTAINS THE SOLE AND EXCLUSIVE LIABILITY FOR EARTHLINK'S AND ITS SUPPLIERS' INDEMNITY AGAINST INFRINGEMENT IN THIS SECTION 19.2 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.

20. **NO WARRANTIES**

THE ONLY WARRANTIES CONCERNING THE PUBLIC BENEFITS AND THE NETWORK AND OTHER DELIVERABLES (EXCEPT FOR EXPRESS WARRANTIES INCLUDED IN ANY AMENDMENT OR EXHIBIT SIGNED IN WRITING BY EARTHLINK AND THE CITY, IF ANY) PROVIDED UNDER THIS AGREEMENT ARE THOSE CONTAINED HEREIN, AND ARE MADE FOR THE BENEFIT OF THE CITY 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, TITLE, NON-INFRINGEMENT OR OTHERWISE. EARTHLINK ALSO SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS RELATED TO THE INTERNET; SECURITY-RELATED FEATURES OF THE NETWORK AND/OR PUBLIC BENEFITS. EARTHLINK CANNOT GUARANTEE COMPLETE SECURITY VIA THE INTERNET OR THE NETWORK OR PUBLIC BENEFITS 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 FOR THE CONDUCT OF SUBSCRIBERS USING OR ACCESSING THE NETWORK OR PUBLIC BENEFITS.

21. **CONFIDENTIALITY**

To the extent permitted by applicable law the City will not disclose any of the Confidential Information of EarthLink during the Term and for a period of three (3) years after the Term ends. If applicable law requires disclosure of EarthLink's Confidential Information or the terms and conditions of this Agreement then the City will promptly give EarthLink written notice and assist EarthLink in limiting the disclosure to only those portions of that Confidential Information as is necessary to be disclosed according to applicable law. "Confidential Information" of EarthLink means the business plans, financial information and technical information about the Network and the customers of EarthLink and its vendors that are confidential or otherwise trade secrets under applicable law. In addition, the City's obligation not to disclose the trade secrets of EarthLink will continue as long as they are trade secrets under applicable law.

22. **REASONABLE TREATMENT**

Notwithstanding anything to the contrary, the City agrees not to withhold unreasonably or delay any approvals or other actions or approvals necessary or appropriate for EarthLink to exercise the rights and to perform as permitted herein. 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 an unreasonable City delay. The City further agrees that EarthLink will not be in breach of this Agreement for EarthLink's failure to comply with ordinances and other requirements of the City to the extent they are not applied in a reasonable and nondiscriminatory manner of general application, provided that, if EarthLink asserts that any such ordinance or other

requirement has not been applied in a reasonable and nondiscriminatory manner, EarthLink has challenged or has notified the City of its intent to formally challenge the City's application of any such ordinance or other requirement in an appropriate forum.

23. MISCELLANEOUS

- 23.1 Applicable Law and Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Virginia. The courts of the City of Alexandria, Virginia, shall be the proper fora for any disputes arising hereunder.
- 23.2 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.
- 23.3 Integrated Document. This Agreement, together with its Exhibits and City Ordinances No. 4477 and [REDACTED], constitutes the entire agreement between the Parties with respect to the subject matter hereof. Except as set forth herein, there are no promises, representations or understandings between the parties of any kind or nature whatsoever with respect to the subject matter hereof.
- 23.4 Amendments. This Agreement may be amended from time to time only by amendments that are written and executed on paper by both Parties to this Agreement.
- 23.5 Counterparts. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.
- 23.6 Public Announcements: The City agrees, subject to any public disclosure law requirements, not to make public statements, press releases, publications, or claims about the Network's status, completion, future plans, performance or pricing that constitutes or includes EarthLink's Confidential Information. When appropriate and practical, in the City's sole discretion, the City will give EarthLink an opportunity to review and/or approve written press releases proposed to be issued by the City about the Network. The City will not host or arrange for press visits to the facilities of EarthLink or its contractors without first obtaining the prior written consent of EarthLink.
- 23.7 Marketing Support: The City shall assist EarthLink in marketing subscriptions to the Network to the employees of the City.
- 23.8 Benefit to Public. Subject to the obligations of the City and rights granted to EarthLink and other provisions set forth in this Agreement and any License Exhibit or amendment executed by EarthLink and the City in connection with this Agreement, EarthLink acknowledges that (i) the paramount use of City Property dedicated for public use is for the benefit of the public at large, and (ii) its use of City Property shall not conflict with the City's uses.

- 23.9 No Waiver of Sovereign Immunity. Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by City pursuant to this Agreement, nor any document which arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the City, or of its elected and appointed officials, officers and employees, to the extent applicable.
- 23.10 Compliance with Laws. In addition to all requirements contained herein, in the exercise of the permission granted by this Agreement, EarthLink shall comply with all applicable federal, state and local laws, ordinances, business license requirements, regulations, orders, directives, rules and policies now in force or as hereafter enacted, adopted or promulgated.
- 23.11 Severability. If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial decision to be void, voidable, or unenforceable, then such provisions shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining provisions of this Agreement.
- 23.12 Recitals. The Recitals are incorporated into this Agreement by reference.
- 23.13 Radio Frequency Radiation Assessment. EarthLink represents that the radio frequency radiation of the Approved Equipment complies with the permissible exposure limits set forth in Federal Communications Commission regulations at 47 C.F.R. §§ 1.1307 (b) and 1.1310, or as amended.

IN WITNESS WHEREOF, the Parties 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 Effective Date.

THE CITY OF ALEXANDRIA

Signed: _____

Name: _____

Title: _____

Date: _____

EARTHLINK, INC.

Signed: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
City Pole Assets

SITE LICENSE AGREEMENT

THIS SITE LICENSE AGREEMENT (the "License") is entered into this ___ day of _____, 20___, between the City of Alexandria, a municipal corporation of Virginia ("Licensor"), and EarthLink, Inc., a Delaware corporation ("Licensee").

- A. Licensee and Licensor have entered into a Franchise Agreement dated as of _____ 2006 (the "Franchise Agreement"), pursuant to which Licensee will build and operate a wireless broadband network in the City of Alexandria (the "Network").
- B. In the Franchise Agreement, Licensor has agreed to make certain sites owned by Licensor available to Licensee for the installation of Approved Equipment, as defined in the Franchise Agreement, subject to individual license agreements.
- C. Licensor and Licensee have agreed that one such suitable site is located at [INSERT NAME OF BUILDING, IF ANY, AND ADDRESS] (the "Building").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Terms Subject to Franchise Agreement.

Licensor and Licensee are entering into this License pursuant to Section 2.4 of the Franchise Agreement, which provides that Licensor has granted Licensee a license to install Approved Equipment subject to individual license agreements consistent with Exhibit B-1 of the Franchise Agreement, and that each such license agreement shall constitute an exhibit to the Franchise Agreement. This License is subject to all of the terms of the Franchise Agreement and constitutes an integral part thereof.

2. Premises.

Licensor hereby licenses to Licensee exterior space on the roof of the Building, space either adjacent to or on the roof of the Building, and interior space in the Building as described in Exhibit 1 attached hereto (the "Premises") for use on a non-exclusive basis. Licensee shall have the right to attach, erect, install, maintain and operate Approved Equipment and additional personal property of the Licensee necessary for the use and operation of the Approved Equipment, including, without limitation, computer equipment, equipment panels, cabling, cabinets, emergency power systems and other personal property as listed on Exhibit 2 hereof (which shall also constitute Approved Equipment for purposes of this License), in the number, configuration, size, and location(s) also described on Exhibit 2 hereof, which will be updated to reflect actual as-built installation within a reasonable amount of time after such installation is completed. Licensor has or will obtain all approvals of third parties that are required for Licensor to grant the license rights as provided herein.

3. License Only; No Exclusivity.

3.1 This License creates a license only and Licensee acknowledges that Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Building or Premises by virtue of this License or Licensee's use of the Premises pursuant hereto. In connection with the foregoing, the parties further acknowledge that in no event shall the relationship between Licensor and Licensee be deemed to be a so-called landlord-tenant relationship and that in no event shall either party be entitled to avail itself of any rights afforded to landlords or tenants respectively under the laws of the jurisdiction in which the Building is located. In the event of any sale, assignment or transfer of the

Building or Licensor's interest therein, Licensor's obligations under this License shall thereafter be automatically binding upon the grantee, assignee or other transferee of such interest, and any such grantee, assignee or transferee, by accepting such interest, shall be deemed to have assumed Licensor's obligations hereunder and be entitled to receive Licensor's benefits hereunder. A lease of the entire Building shall be deemed a transfer within the meaning of the foregoing sentence. This License is not and does not grant an easement.

3.2 Licensor reserves the right to license other portions of the Property to other parties during the term of this License. Licensor also reserves the right to enter upon the Premises at any time. Licensor also reserves the right to require Licensee to move its Approved Equipment to another location in or on the Building, or to another Licensor-owned property, subject to the terms of Section 2.24 and other relevant provisions of the Franchise Agreement. Licensee shall not have the exclusive right to use or occupy the Premises. Licensee agrees that, for purposes of the Premises and the FCC's Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000: (i) Licensee's rights to use the Premises pursuant to this License do not constitute a direct or indirect ownership or leasehold interest; (ii) none of the Premises that Licensee has the right to use pursuant to this License is within the exclusive use or control of Licensee; and (iii) no provision of this Agreement or any individual site license impairs the installation, maintenance, or use of any Approved Equipment.

4. Term.

4.1 The initial term of this License shall commence on the date Licensee commences construction or installation of Approved Equipment on the Premises (the "Commencement Date"). The Licensee shall have no right to occupy the Premises until the Commencement Date. The Term of this License shall expire on the same date as the Franchise Agreement. Notwithstanding any other provision of this License, this License shall terminate upon the expiration or termination of the Franchise Agreement.

4.2 Licensee shall have the right to extend this License to coincide with the term of the Franchise Agreement, in the event the Franchise Agreement is renewed or extended in accordance with its terms. Each such additional time period shall be called a Renewal Term.

5 License Fee.

From and after the occurrence of the Commencement Date until the commencement of a Renewal Term, Licensee shall pay Licensor annually, in advance, the sum of five hundred dollars (\$500) monthly for each antennae pole/cluster on a rooftop or tower ("License Fee"). Any tripod based mounting or multiple connections to a roof or tower shall be considered one connection point of one antennae pole/cluster, and additional poles or antennae that may be attached to that antennae pole/cluster are not subject to additional charge. The License Fee shall increase annually during the Initial Term and any Renewal Term, effective as of each anniversary of the Commencement Date, by an amount equal to three and one-half percent (3.5%) per annum above the amount of the License Fee in effect immediately prior to such increase. The License Fee shall be payable annually in advance without offset or deduction, except as provided herein. If the term commences on other than the first day of a month, the License Fee shall be prorated for that first month for the number of days from the Commencement Date to the end of the month. If, at any time, Licensee fails to make timely payment when due of the monthly License Fee, interest shall accrue on the past due amount at the rate of 18% per annum or the maximum allowable by law, whichever is less, until paid in full. This right is in addition to all rights of Licensor to

terminate this License pursuant to Section 11 herein. All sums payable by Licensee under this License, whether or not stated to be License Fees or additional License Fees, shall be collectible by Licensor as License Fees, and upon default in payment thereof Licensor shall have the same rights and remedies as for failure to pay License Fees (without prejudice to any other right or remedy available therefor).

6 Permitted Use.

The Premises may be used for attaching, erecting, installing, mounting, maintaining, and operating Approved Equipment for the purposes authorized by the Franchise Agreement ("Permitted Use"). Licensor agrees to cooperate with Licensee, at Licensee's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Licensee's intended use of the Premises ("Approvals").

7 Interference.

7.1 Licensee shall, at its own expense, install, operate, and maintain the Approved Equipment on the Premises in a good and workmanlike manner and in accordance with applicable local, state and federal laws, ordinances and regulations, including, without limitation, any applicable regulations of the Federal Communications Commission ("FCC"). Licensee shall inspect, construct, and maintain the Approved Equipment in a manner that will not cause unreasonable physical interference to Licensor and other tenants or licensees of the Building, including without limitation the operation or use of any portion of the sanitary sewers, storm sewers and drains, water mains, gas mains, poles, or other property of Licensor, except to the extent contemplated by a permit or other applicable license. Licensee shall also avoid physically blocking the transmissions of radio equipment operated by Licensor.

7.2 Licensee is not obligated to conduct any tests, studies or investigations. Licensee shall operate the Approved Equipment in a manner that will not cause harmful radio frequency interference ("RF Interference") to Licensor and other tenants or licensees of the Building. All operations by Licensee shall be in compliance with all FCC requirements and all other applicable laws, codes, rules and regulations.

7.3 Subsequent to the installation of the Approved Equipment, Licensor shall, to the extent practicable without limiting Licensor's ability to conduct its activities in accordance with its normal practices, attempt to avoid causing RF Interference to or physically blocking the signals of Approved Equipment. Licensor shall also inform new tenants of the Building of the existence and location of the Approved Equipment and shall obligate each new tenant in its lease to operate its equipment in compliance with all applicable FCC regulations, to use commercially reasonable efforts not to cause RF Interference or to cause physical interference with the Approved Equipment installed on the Premises, and, if the new tenant causes RF Interference to the Approved Equipment, to participate in the interference resolution process described in Section 7.4.

7.4 In the event either party suffers from RF Interference as a result of the actions of the other party, the affected party shall give the other party written notice of the nature of RF Interference, including any studies that demonstrate or may have been performed in connection with such RF Interference. The parties shall then meet and mutually cooperate to determine the cause of the RF Interference and agree on a method for eliminating the RF Interference, or reducing it to an acceptable level. Notwithstanding the foregoing, in the event that the RF Interference continues for more than ten

(10) days and causes material harm to Licensee's operation of the Network, the Installed City Pole Fees or other payments due from Licensee with respect to Approved Equipment affected by RF Interference shall abate proportionately on a per diem basis for each day after such ten-day period. In addition, during any period in which Licensee suffers from RF Interference, Licensee will not be required to provide the Public Benefits (as defined in the Franchise Agreement) within the geographic area directly affected by the RF Interference, or, to the extent the RF Interference affects Licensee's ability to provide Public Benefits in a manner other than geographic coverage, Licensee may alter or reduce the Public Benefits in a manner reasonably related to the effects of the RF Interference on Licensee's ability to provide the Public Benefits. Additionally, if such material RF Interference continues for a period of ninety (90) days and the parties are unable to agree on a mutually satisfactory resolution of the problem, Licensee shall have the right to terminate this Agreement immediately upon notice to Licensor. Similarly, if the actions of Licensee cause RF Interference to Licensor's facilities which materially affects the operation of such facilities for a period of ninety (90) days and the parties are unable to agree on a mutually satisfactory resolution of the problem, the Licensor shall have the right to terminate this Agreement immediately upon notice to Licensee. Upon termination of this Agreement in connection with this Section 7.4, Licensee will not be required to provide the Public Benefits to the extent directly impacted by the termination of this Agreement.

7.5 Subject to Licensor's obligations set forth in Sections 7.3 and 7.4, Licensor shall have no liability to Licensee for RF Interference caused by any third party, provided that the foregoing provisions shall not affect Licensee's rights regarding the procedure for resolving RF Interference in this Agreement, including, without limitation, Licensee's right to terminate this License. Licensor shall exercise its best efforts to assist in the resolution of any dispute regarding RF Interference caused by the activities of an occupant of the Building other than Licensee or Licensor.

8 Improvements; Utilities.

8.1 Prior to installing Approved Equipment on the Premises, Licensee shall submit detailed engineering plans and specifications of the planned installation to Licensor for Licensor's written approval, which approval shall not be unreasonably withheld, delayed or conditioned. Such plans and specifications are attached hereto as Exhibit 3 which will be updated to reflect the actual as-built installation within a reasonable amount of time after such installation is completed. Licensor's review of Licensee's plans shall include a review of the appearance of the Approved Equipment. Licensor's approval of any installation is not a representation that such installation of the Approved Equipment is in compliance with all applicable governmental laws, ordinances, rules and regulations or that such facilities will not cause interference with other communications systems, if any, then in operation on the Building. Licensee hereby confirms and agrees that its Approved Equipment shall be installed and operated solely within the Premises.

8.2 All work by Licensee shall be performed in compliance with applicable laws and ordinances. During Licensee's construction of its Approved Equipment, Licensee shall have, and Licensor hereby grants to Licensee, a temporary construction easement to use portions of the Building reasonably necessary for the storage of materials and staging of construction. Licensee and its contractors and subcontractors shall be solely responsible for the transportation, storage and safekeeping of materials and equipment used in the performance of any work, for the removal of waste and debris resulting there from on a daily basis, and for any damage caused by them to any installations or work

performed by Licensee's contractors and subcontractors. Upon completion of construction, Licensee shall remove any items stored or placed by Licensee in such temporary easement area and return such area to Licensor in the condition existing prior to construction.

8.3 Licensee is not authorized to contract for or on behalf of Licensor for work on, or the furnishing of materials to the Premises or any other part of the Building, and Licensee shall discharge of record by payment, bond or otherwise, within ten (10) days subsequent to the date of its receipt of notice thereof from Licensor, any mechanic's, laborer's or similar lien filed against the Premises or the Building for work or materials claimed to have been furnished at the instance of Licensee. The Approved Equipment shall remain the exclusive property of Licensee during the term of this License, and Licensee shall have the right to remove all or any portion of the Approved Equipment at any time during the term of this License or following the term of this License as hereinafter provided.

8.4 Licensee will notify Licensor prior to commencing Licensee's installation work in the Building. Licensee shall not commence installation work until Licensee, at its own cost and expense, has delivered to Licensor a certificate of insurance confirming that comprehensive general liability insurance as required under Exhibit G of the Franchise Agreement, covering the risk during the course of performance of Licensee's installation, has been obtained and is in place.

8.5 All installation and other work to be performed by Licensee hereunder will be done in such a manner so as not to interfere materially with, delay or impose any additional expense upon Licensor in maintaining the Building. In no event will Licensor be required to consent to any installation or other work by Licensee which would physically affect any part of the Building outside the Premises (other than with respect to the temporary construction easement described in Section 8.2 hereof, which shall be subject to Licensee's duty to restore such area as provided therein). Licensee shall repair any damage caused by Licensee to Licensor's Property.

8.6 Following any termination or expiration of this License, Licensee shall use commercially reasonable efforts to remove all of the Approved Equipment within ninety (90) days of such expiration or earlier termination. In performing such removal, Licensee shall restore the Premises and any personal property and fixtures thereon to as good a condition as they were in prior to the installation or placement of the Approved Equipment, normal wear and tear excepted. If Licensee fails to remove such Approved Equipment within such ninety (90) day period, Licensor may remove and dispose of the Approved Equipment within the next succeeding ninety (90) day period, and Licensee shall reimburse Licensor for the reasonable costs actually incurred in such removal within thirty (30) days of returning such Approved Equipment to Licensee or making such Approved Equipment available to EarthLink for pickup at a safe storage facility within the City limits or at such other mutually agreed upon location. In the event of termination of this License as a consequence of termination of the Franchise Agreement, Section 11.5 of the Franchise Agreement shall control.

8.7 Licensee shall, at Licensee's expense, keep and maintain the Premises in commercially reasonable condition and repair during the term of this License. Licensee agrees to maintain the Approved Equipment in proper operating condition and within industry accepted safety standards. Except as otherwise provided in this License or in the Franchise Agreement, all installations and operations of the Approved Equipment by Licensee shall comply in all material respects with all applicable rules and regulations of the FCC and all applicable federal, state, and local codes and regulations. Licensor assumes no responsibility for the licensing, operation or maintenance of the Approved Equipment.

8.8 Licensee has the right to erect, maintain and operate the Approved Equipment using existing utility lines, transmission lines, electronic equipment, radio transmitting and receiving antennae and supporting equipment and structures thereto. In connection therewith, Licensee and its contractors have the right to do all work necessary to prepare, install, erect, and maintain the Approved Equipment and to alter the Premises for the Approved Equipment, if any, and all work shall be performed in accordance with the specifications set forth on Exhibit 3 or as mutually agreed upon with the City's designated contact for the Premises. All of Licensee's construction and installation work shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner. In performing work pursuant to this License, Licensee shall be entitled to use any labor and other service providers and contractors it determines without restriction. Title to the Approved Equipment shall be held by Licensee. All of the Approved Equipment shall remain Licensee's personal property and are not fixtures. Notwithstanding the foregoing, if the Approved Equipment has been abandoned or Licensee has filed a petition in bankruptcy, Licensor shall have all rights provided for by applicable law.

8.9 Licensee shall have the right to draw electricity and other utilities from the existing utilities on the Premises or in the Building subject to Section 3.3 of the Franchise Agreement and Exhibit 3 hereof. Among other things, Exhibit 3 shall specify any modifications to the Building or the Premises Licensee shall be permitted to make, at its own expense, in connection with Licensee's requirements for utility service, including, without limitation, such matters as use of a standby power generator, installation of a separate electric meter, or alterations to the electric grounding system in the Building.

8.10 Licensee shall not move any of the Approved Equipment to other locations in or on the Building without the approval of Licensor, which approval will not be unreasonably delayed or withheld and will not be subject to additional charge. Licensee is entitled to remove Approved Equipment from the Premises and Licensee is entitled to replace the Approved Equipment with new or different equipment that is substantially similar to Approved Equipment already in use by submitting information to replace or supplement information in Exhibit 2 and requesting Licensor's approval of such changes, which shall not be unreasonably withheld or delayed. If Licensee does not receive any response from Licensor within ninety (90) days of written notice to Licensor, then such installation method, configuration or equipment will be deemed approved by Licensor and Exhibit 2 shall be deemed modified. If Licensee installs any equipment other than Approved Equipment, Licensee shall promptly remove such equipment at its sole cost and expense upon notice from Licensor, or Licensor may do so at Licensee's sole cost and expense, subject to applicable provisions of the Franchise Agreement. Licensor shall not remove or disconnect any of the Approved Equipment except as permitted by the Franchise Agreement, including, without limitation, Sections 2.11, 11.5, and 11.7 thereof.

9 Compliance with Laws.

Licensee agrees that the installation, operation and maintenance of the Approved Equipment shall at all times, and at Licensee's expense, comply with all applicable governmental laws and regulations. If any such laws or regulations require that Licensee modify or revise any then-existing installation, operation or maintenance of the Approved Equipment, then Licensee shall promptly make such modifications or revisions at Licensee's sole expense.

10 Access.

Licensee and its Authorized Personnel shall be entitled to access to the Premises on the following basis: **[INSERT DAYS, HOURS AND OTHER TERMS OF ACCESS]** There shall be no charge for access beyond the License Fee. Licensor grants to Licensee and its Authorized Personnel a non-exclusive license for pedestrian ingress and egress through the Building to the Premises and, if appropriate, a license for vehicular access to the Building. For purposes hereof, "Authorized Personnel" shall mean only authorized employees, engineers, technicians, agents, and subcontractors of Licensee. Licensee may obtain access to the Building and the Premises for lenders, guests and invitees so long as such persons are under the direct supervision of Authorized Personnel, upon prior notice to Licensor's designated representative for the Building. Licensor shall provide Licensee with the name and contact information of the designated representative and shall promptly inform Licensee of any change in the identity of the designated representative. All access to the Premises by Licensee shall be subject in each instance to the reasonable security requirements and reasonable rules and regulations from time to time in effect at the Property; Licensor shall provide written notice of any changes in such requirements and regulations to the extent practicable. Notwithstanding the foregoing, in the event that the access of any of Licensee's Authorized Personnel to the Premises is prevented for more than seven (7) days, the License Fee shall abate proportionately on a per diem basis for each day after such seven (7) day period.

11 Termination by Licensor.

Licensor may terminate this License if:

11.1 Licensee has defaulted in the payment when due of any License Fees or other sum of money specified hereunder to be paid by Licensee, and Licensee does not remedy such default within ninety (90) days after written notice thereof from Licensor; or

11.2 Licensee has defaulted in the performance of any other of the terms, conditions or covenants contained in this License to be performed or observed by Licensee and Licensee does not remedy such default within ninety (90) days after written notice thereof is given to Licensee or, if such default cannot be remedied in such period, Licensee does not, within twenty (20) days after such notice from Licensor, commence such efforts or acts as shall be necessary to remedy the default and continue to prosecute such efforts and/or acts to completion with reasonable diligence.

12 Termination by Licensee.

12.1 Licensee, for any reason at its discretion, may terminate this License at any time by giving a written termination notice at least ninety (90) days prior to the designated termination date, in which event the License Fees or other sums due hereunder shall be paid until that termination date and no further sums will be owed thereafter. In addition, Licensee is entitled to terminate this License on lesser notice if otherwise entitled to do so under the terms of the Franchise Agreement, and in any event this License shall terminate immediately upon termination of the Franchise Agreement. Termination of this License alone shall not relieve the Licensee of the obligation to provide the Public Benefits in accordance with the Franchise Agreement, except as provided in Section 7.4 of this License or any applicable provision of the Franchise Agreement.

12.2 Upon termination in accordance with this Section, Licensee shall surrender and vacate the Premises immediately.

13 Taxes.

The fees required by this Agreement shall be in addition to, and not in lieu of, all taxes required by the City, and all other amounts EarthLink may be required to pay the City by law, ordinance, or other agreement. Licensee shall not be responsible for any real property taxes attributable to the Building, but Licensee shall be responsible for personal property taxes assessed on the Approved Equipment.

14 Insurance, Release and Hold Harmless.

14.1 Licensee shall, at Licensee's sole cost and expense, procure and continue in force during the term of this License, including any Renewal Term, all insurance required by the Franchise Agreement.

14.2 Licensee shall require that its contractors (and any subcontractors) produce, prior to commencing any installation, repair, or maintenance work on the Premises, a certificate of original insurance policy evidencing that all insurance required by the Franchise Agreement is maintained.

14.3 Licensee agrees to indemnify, defend, and hold harmless Licensor and Licensor's appointed and elected officials, officers, employees, agents, and representatives, in accordance with the terms of Section 19 of the Franchise Agreement.

15 Notices.

All notices, requests, demands and other communications hereunder shall be in writing and shall be personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

To the City at: City of Alexandria

Alexandria, VA 22314
Attn: _____
Facsimile: _____

With a copy to: City of Alexandria
301 King Street, Suite 1300
Alexandria, VA 22314
Attn: City Attorney
Facsimile: 703-838-4810

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If to Licensee, to:

EarthLink, Inc.
1375 Peachtree Street
Atlanta, Georgia 30309
Attention: General Counsel

With copies to:

EarthLink, Inc.
1375 Peachtree Street
Atlanta, Georgia 30309
Attention: Director of Strategic Sourcing

or to such other address as each party may designate for itself by like notice given in accordance with this Section 15. Notices will be deemed to have been given upon either receipt or rejection. Unless or until either of the respective addresses is changed by notice in writing sent to the other party as set forth above, thereafter to the address contained in such notice.

16 Title and Authority.

Licensor warrants that (i) it has full right, power and authority to execute this License and has the power to grant all rights hereunder; (ii) it has good and marketable title to the Building free and clear of any liens, mortgages, restrictions or other encumbrances that will interfere with Licensee's Permitted Use of the Premises; and (iii) its execution and performance of this License will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, license or other agreement binding on Licensor.

17 Hazardous Substances.

Licensee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. Licensor represents, warrants and agrees (1) that neither Licensor nor, to Licensor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Premises in violation of any law or regulation, and (2) that Licensor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. Licensor and Licensee each agree to defend, indemnify and hold harmless the other and the other's appointed and elected officers and officials, partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, asbestos-containing material, PCB, any substance known by the Commonwealth of Virginia to cause cancer and/or reproductive toxicity, and/or

any substance, chemical, or waste that is identified as hazardous, toxic or dangerous in any federal, state or local law or regulation. This paragraph shall survive the termination of this License.

18 Assignment and Sublicensing.

Licensor shall not assign this Agreement, or any portion of it, without the prior written permission of Licensee. Licensee can assign this Agreement to an entity that is wholly-owned or controlled by Licensee or by a wholly-owned affiliate of Licensee (each to be referred to as an "Affiliated Entity") without the prior consent of Licensor. Licensee can also assign this License pursuant to the sale of all or substantially all of the assets or stock of Licensee or pursuant to the sale of all or substantially all of the assets or operations of the division of Licensee that is operating the Network or pursuant to the sale of the Network; provided that if such assignment is not to an Affiliated Entity, then Licensee must first obtain Licensor's prior written consent, such consent not to be unreasonably withheld. Licensee may enter into one or more agreements for installation of Approved Equipment, operation of the Network, or both with one or more entities ("Operating Companies"), provided that under such agreements overall control of the Network shall remain with EarthLink. Approved Equipment may be subject to security interests of vendors or of lenders to Operating Companies. Licensee shall not grant any sublicense of any of its rights under this License.

19 Successors and Assigns.

This License shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

20 Miscellaneous.

20.1 Reasonable Treatment. Each party agrees to furnish to the other, within ten (10) business days after request, such truthful, customary and reasonable estoppel information as the other may reasonably request. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this License, such party shall not unreasonably condition, delay or withhold its approval or consent.

20.2 Entire Agreement. This License constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements, except for the Franchise Agreement and its exhibits and ancillary agreements. There are no representations or understandings of any kind not set forth herein. Any amendment to this License must be in writing and executed by both parties.

20.3 Governing Law. This License shall be construed in accordance with the laws of the Commonwealth of Virginia.

20.4 Severability. If any term of this License is found to be void or invalid, such invalidity shall not affect the remaining terms of this License, which shall continue in full force and effect.

20.5 Emergency. Licensor shall notify Licensee as soon as reasonably practicable in the event of an emergency that Licensor has reason to believe adversely impacts the use of the Approved Equipment.

20.6 No Liens. Licensee will not permit any mechanics' or materialmen's or other liens on the Building or the property surrounding the Building for any labor or material furnished at Licensee's request pursuant to this License ("Licensee Lien"). If a Licensee Lien has been filed against the Building and a final judgment on the Licensee Lien is adverse to Licensor, Licensee shall pay the determined amount of Licensee Lien with full costs, fees and charges, thereby releasing such Licensee Lien. Licensee shall have the right to contest the validity, nature or amount of any such Licensee Lien, but upon the final determination of such questions, shall immediately pay any adverse judgment rendered with all proper costs and charges and shall have the lien released at its own expense. Licensor waives any lien rights it may have concerning the Approved Equipment, and Licensee has the right to remove the same at any time without Licensor's consent. The Approved Equipment shall not be considered fixtures.

20.7 Waiver of Licensor's Lien. Licensor acknowledges that Licensee may enter into financing arrangements, including promissory notes and financial and security agreements, for the financing of the Approved Equipment ("Collateral") with a third party financing entity. Licensor (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Licensee Fees due or to become due, and that such Collateral may be removed at any time without recourse to legal proceedings.

20.8 Condemnation. If Licensor receives notification of any condemnation proceedings affecting the Building, Licensor will provide notice of the proceeding to Licensee within ten (10) days of Licensor receiving notice. If a condemning authority takes all of the Building, or a portion sufficient, in Licensee's reasonable determination, to render the Sites unsuitable for Licensee, this License will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, to the extent that any awards to Licensee will not diminish Licensor's recovery. Licensor will refund to Licensee any License Fees paid for the period after such termination.

20.9 Destruction. Licensor will provide notice to Licensee of any casualty affecting the Building within ten (10) days of such casualty. Licensor will notify Licensee as soon as possible for any casualty or other event that damages the Sites or the Approved Equipment or, to Licensor's knowledge, prevents the Approved Equipment from operating properly. If any part of the Approved Equipment or Building is damaged by casualty so that the Approved Equipment cannot operate properly ("Destruction"), License Fees shall abate until the Sites and the Approved Equipment are repaired and operating commercially again. Neither Licensor nor Licensee is obligated to re-build or repair the damages of such Destruction. If either party elects not to repair the damages of Destruction, then that party may terminate this License by providing written notice, which termination will be effective as of the date of such Destruction. Upon such termination, Licensor will refund to Licensee any License Fees paid for the period after Destruction. If Destruction occurs, Licensor agrees to use its reasonable efforts to permit Licensee to place temporary transmission and reception facilities on the Building without assessment of any License Fee, until the Sites and Approved Equipment are repaired and operational.

20.10 Repairs. Licensee shall not be required to make any repairs to the Building unless such repairs shall be necessitated by reason of the default of Licensee, or as otherwise required by the Franchise Agreement. Licensor shall maintain and repair all portions of the Building other than the Approved Equipment in a proper operating and reasonably safe condition. Any maintenance or repair work to or near the Premises shall be coordinated with Licensee and shall be conducted in such a manner

as to prevent interference with the Approved Equipment, if Licensor reasonably anticipates that such work may affect Licensee's access to the Approved Equipment.

20.11 Building and Safety Requirements. During the Term of this License, Licensor shall maintain the Building in compliance with all applicable state and federal building codes, statutes, orders, ordinances and regulations.

20.12 Marking and Lighting Requirements. Licensor shall cooperate with Licensee with respect to compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC. Should Licensee be cited because the Building is not in compliance due to Licensor's operations and actions or inactions in or on the Building, and should Licensor fail to cure the conditions of noncompliance, Licensee may, in addition to any other remedies, cure the conditions of noncompliance at Licensor's expense, which amounts may be deducted from License Fees.

20.13 No Third Party Beneficiaries. This License shall not create for, nor give to, any third party any claim or right of action against either party to this License that would not arise in the absence of this License.

20.14 Waiver and Remedies. The failure of either party to enforce any provision of this License or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its party of any such provision but the same shall nevertheless be and remain in full force and effect. This License shall be subject to the remedies and dispute resolution procedures set forth in the Franchise Agreement. The remedies expressly provided in this License shall be in addition to any other remedies available at law or in equity.

20.15 Counterparts. This License may be executed in duplicate counterparts, each of which shall be deemed an original.

20.16 Headings. Section headings of this License are inserted only for reference and in no way define, limit, or describe the scope or intent of this License nor affects its terms or provisions.

21 Mortgage Subordination.

This License is and shall be subject and subordinate to all ground or underlying leases of the Building and to all mortgages, deeds of trust and similar security documents which may now or hereafter be secured upon the Property, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any lessor or mortgagee, but in confirmation of such subordination, Licensee shall execute, within fifteen (15) days after request, any certificate that Licensor may reasonably require acknowledging such subordination. Notwithstanding the foregoing, the party holding the instrument to which this License is subordinate shall have the right to recognize and preserve this License in the event of any foreclosure sale or possessory action, and in such case, this License shall continue in full force and effect at the option of the party holding the superior lien and Licensee shall attorn to such party and shall execute, acknowledge and deliver any instrument that has for its purpose and effect the confirmation of such attornment. Notwithstanding the foregoing, the subordination set forth above shall be subject to the terms of any SNDA which may be entered into by and between Licensee, Licensor and Licensor's mortgagee.

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22. Warranty of Title and Non-Disturbance. Each party represents and warrants to the other that: (i) that such party has full right to make and perform this License; (ii) the making of this License and the performance thereof will not violate any laws, ordinance, restrictive covenants or other agreements under which such party is bound; and (iii) all persons signing on behalf of such party were authorized to do so by appropriate corporate or partnership action. Licensor represents and warrants that Licensor owns the Building in fee simple or has the right under a ground lease to grant the rights granted to Licensee herein.

23. Parties Bear Their Own Costs. Except as expressly set forth herein, each party shall pay its own costs of performing hereunder. This License, the Franchise Agreement, and the Exhibits state the only charges and sums that Licensee is required to pay during the Term for installation, attachment, maintenance, and use of the Approved Equipment and for electricity usage.

24. Limitation of Liability. THE PARTIES EXPRESSLY AGREE THAT LICENSOR AND LICENSEE 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 Licensee and Licensor shall not be liable for direct damages in an amount in excess of the amount of License Fees paid by Licensee hereunder during the immediately preceding twelve (12) months, except for damages caused by loss of life, bodily injury, or damage to property.

IN WITNESS WHEREOF, the parties hereto have executed this License as of the date aforesaid.

LICENSEE:

City of Alexandria, a municipal corporation of Virginia

By: _____

James K. Hartmann, City Manager

Date: _____

LICENSEE:

EarthLink, Inc.

By: _____

Printed Name: _____

Title: _____

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Date: _____

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EXHIBIT 1
PREMISES

The Premises shall consist of the following:

1. Ground space measuring approximately _____' in length by _____' in width.

[An as-built drawing depicting the Premises shall replace this Exhibit].

EXHIBIT 2

APPROVED EQUIPMENT

[INSERT LIST OF APPROVED EQUIPMENT TO BE USED AT THIS SITE.]

EXHIBIT 3
INSTALLATION PLANS AND SPECIFICATIONS

4096 03/00124058.DOC

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EXHIBIT C
Approved Communication Equipment

Device Power Consumption Profiles

Tropos 5210

Norm Volts	Amp Rating	Rating %	Op. Hrs.	KWh/Mo Billing
110V	0.13	100%	731	10.60
220V	0.08	100%	731	12.43
480V	0.04	100%	731	13.52

Motorola Canopy 900 MHz Subscriber Module and Tropos 5210 with Connectorized Antenna

Norm Volts	Amp Rating	Rating %	Op. Hrs.	KWh/Mo Billing
110V	0.20	100%	731	16.08
220V	0.11	100%	731	17.91
480V	0.05	100%	731	19.01

Motorola Canopy 5.2 GHz Advantage Subscriber Module and Tropos 5210

Nom Volts.	Amp Rating	Rating %	Op. Hrs	kWh/Mo Billing
110V	0.20	100%	731	16.08
220V	0.11	100%	731	17.91
480V	0.05	100%	731	19.01

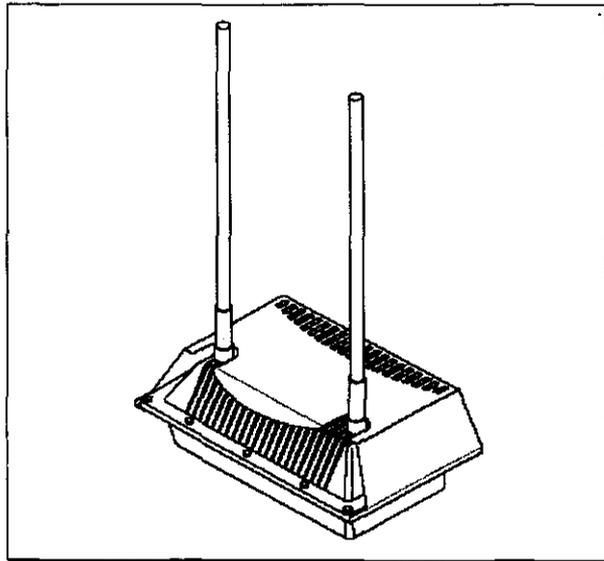
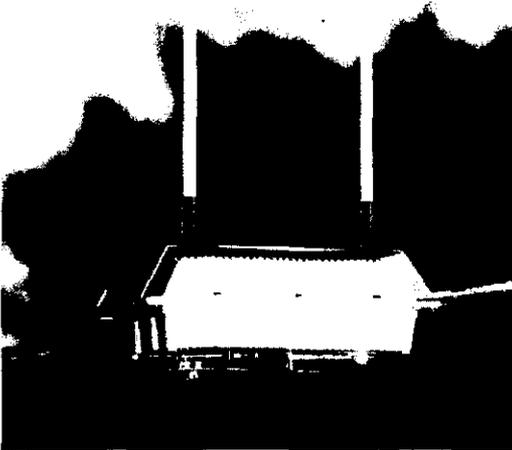
Motorola Canopy 5.7 GHz Advantage Subscriber Module and Tropos 5210

Nom Volts.	Amp Rating	Rating %	Op. Hrs	kWh/Mo Billing
110V	0.20	100%	731	16.08
220V	0.11	100%	731	17.91
480V	0.05	100%	731	19.01

The following pictures are typical of EarthLink's radio installations. However, these do not represent the complete range of mounting options or equipment combinations that may be required to support a specific situation. Additionally, new product enhancements may include a modified look or system specifications. EarthLink is entitled to use different mounts.

Device Images and Installation Methods

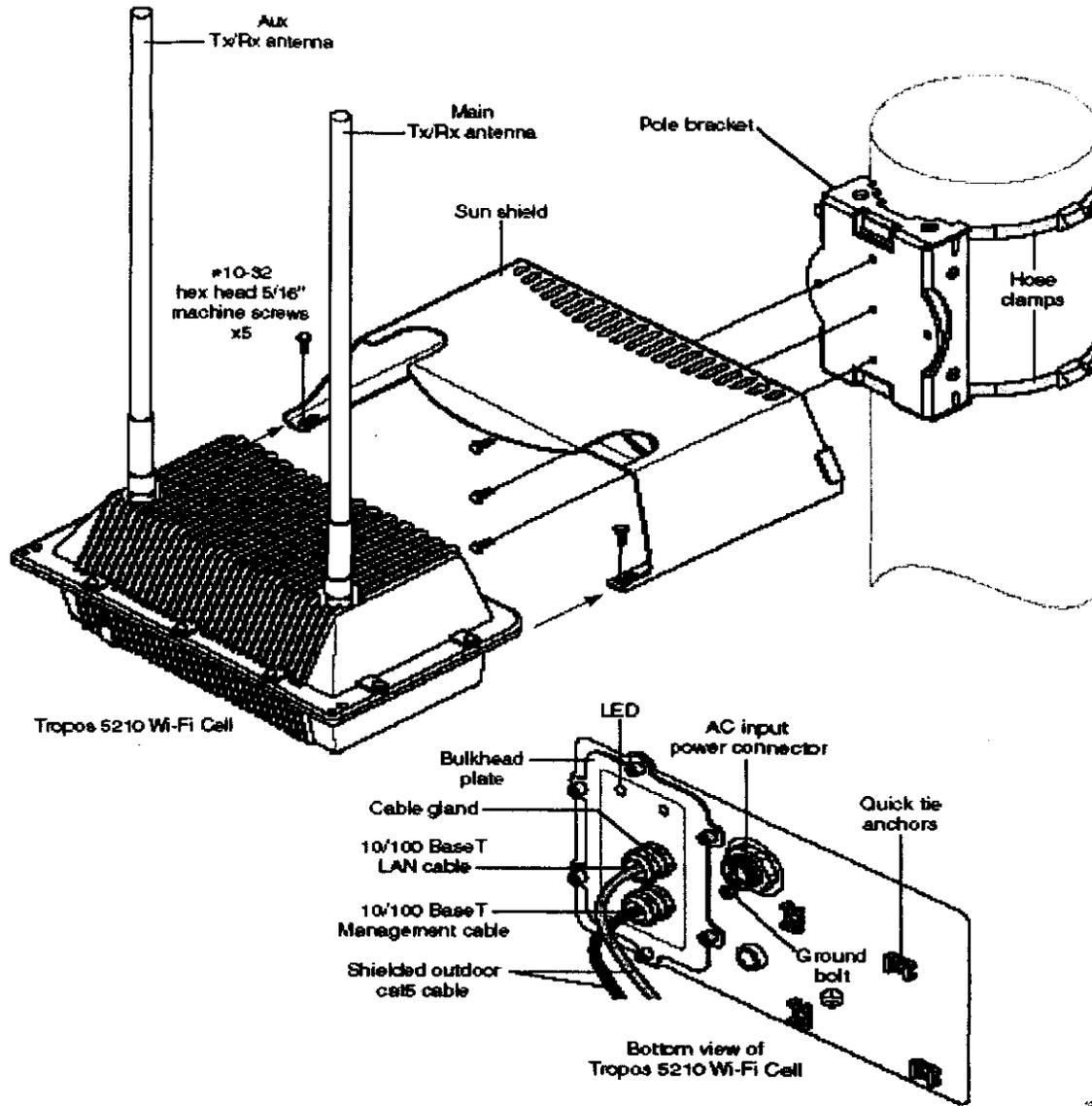
Images, Diagrams and Specifications for the Tropos 5210 Outdoor MetroMesh Router



Tropos 5210 Wi-Fi Node with Attached Motorola Canopy Subscriber Module



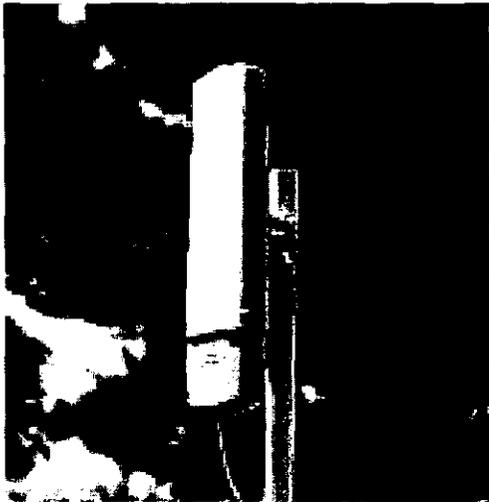
Tropos 5210 Wi-Fi Cell Exploded View



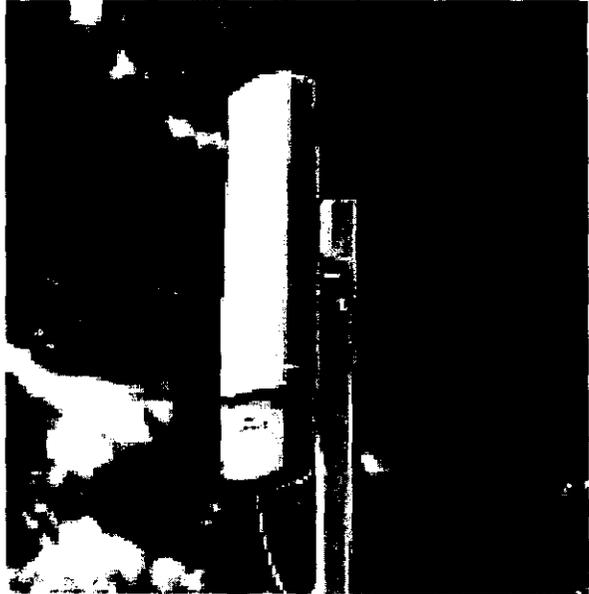
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Images, Diagrams and Specifications for the Motorola Canopy Advantage 5.7 GHz Subscriber Module



Images, Diagrams and Specifications for the Motorola Canopy Advantage 5.2 GHz Subscriber Module



Images, Diagrams and Specifications for the Motorola Canopy 900 MHz Subscriber Module with Connectorized Antenna



Pole Top Installation Process

PART 1 Install the Tropos 5210 Wi-Fi cell

NOTE: Complete all documentation required per Checklist and/or Work Order

1. Select a mounting location. You can attach the Tropos 5210 cell to any streetlight arm with diameter 1.75" to 10". Correctly, install mount plate to pole with supplied clamps. (Diameters less than 8" use inside slots, 8"> use outside slots.)
2. Slip the flat portion of the hose clamp under the inside lip of the pole bracket.
3. Use the hose clamps to attach the pole bracket to the streetlight. Depending upon the diameter of the pole, you may need to use 2 small clamps, 2 large clamps, or 2 pairs of large clamps joined together.
4. Attach the sun shield of the cell to the structure with three 5/16-inch machine screws. Insert one screw through the hole in the center back of the sun shield and the other two screws through the curved slot tracks.

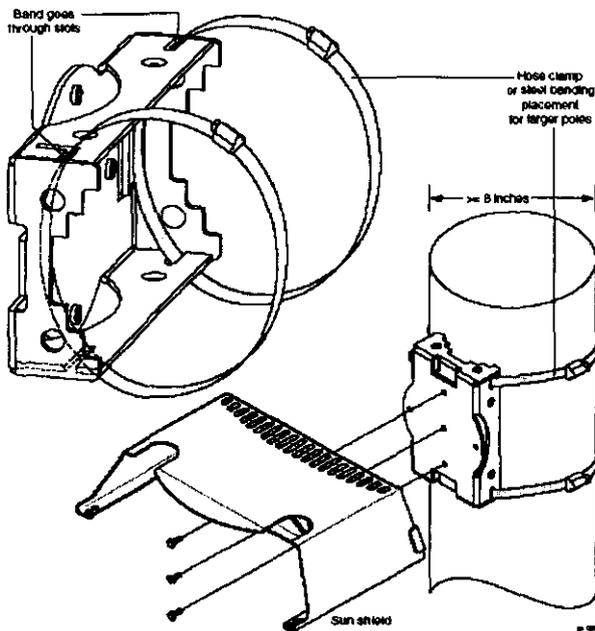
5. Level the sun shield by rotating the unit along the curved slot tracks. 2 built-in levels are located on the shield. Level both directions, and then tighten all screws and clamps.

6. Apply two drops of Loctite Threadlocker 242 to the base of the antenna connector thread, mount the antennas to Tropos 5210 per included instructions, and weatherproof with approved outdoor tape.

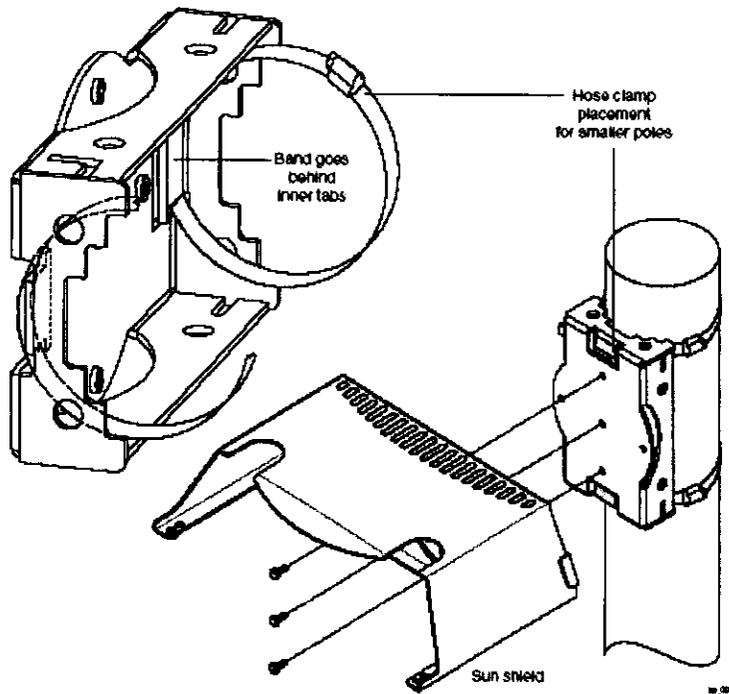
7. Slide the Tropos 5210 cell into place and secure it at the end with two #10-32 hex head machine screws. NOTE If this is to be a Gateway unit, see additional instructions in Part 2 to install data cable and access cover before mounting 5210

8. Follow steps for Connecting City Pole Power.

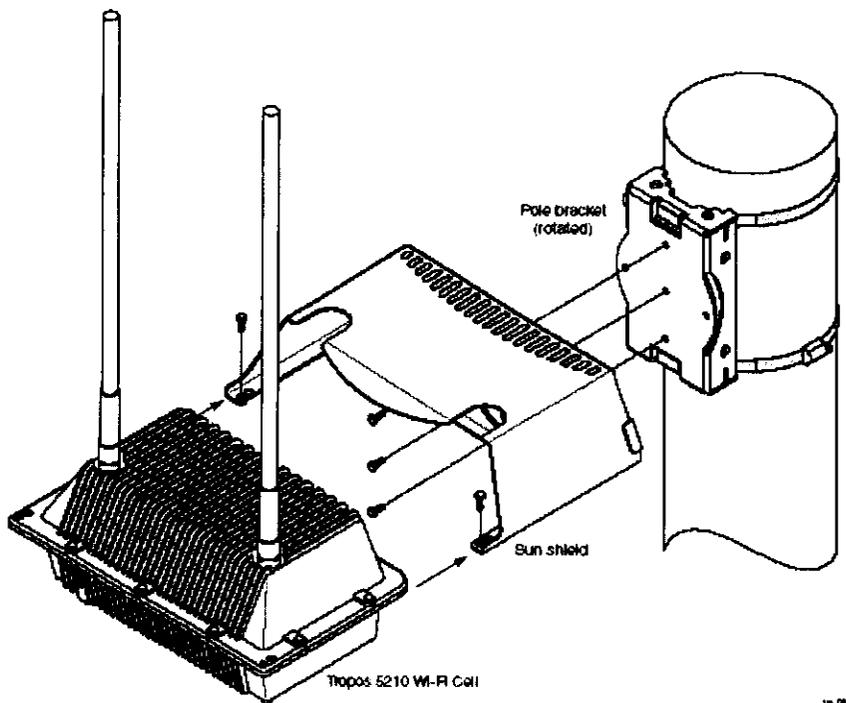
Proper Use of Hose Clamps - Large Poles (≥ 8 Inches)



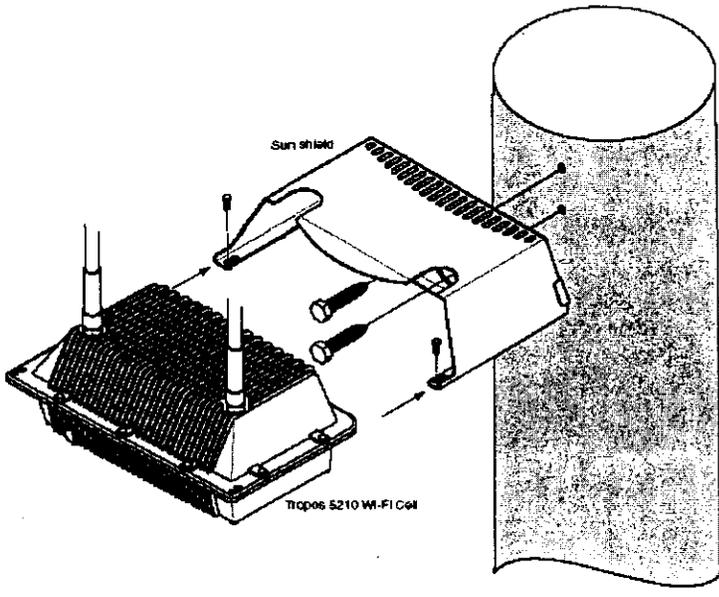
Proper Use of Hose Clamps - Small Poles (< 8 Inches)



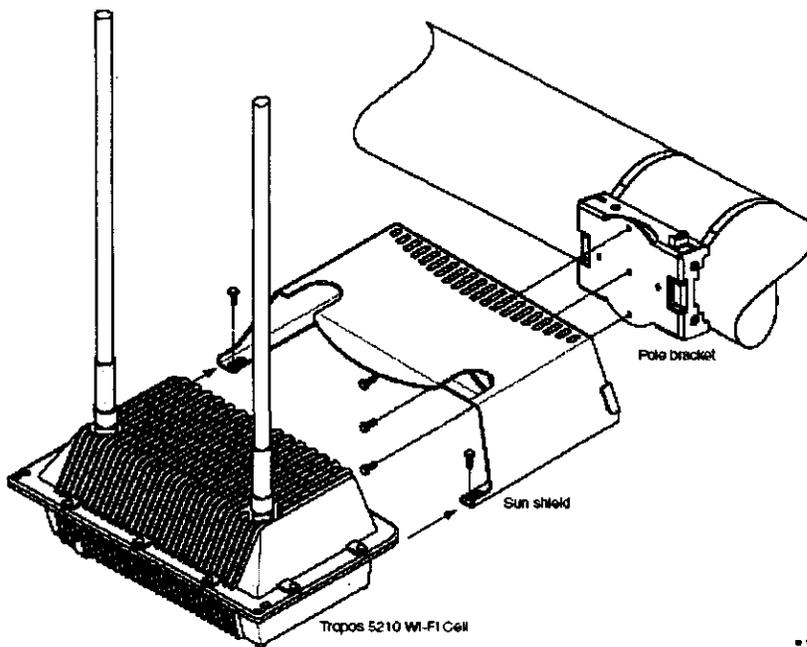
Metal Pole Mounting



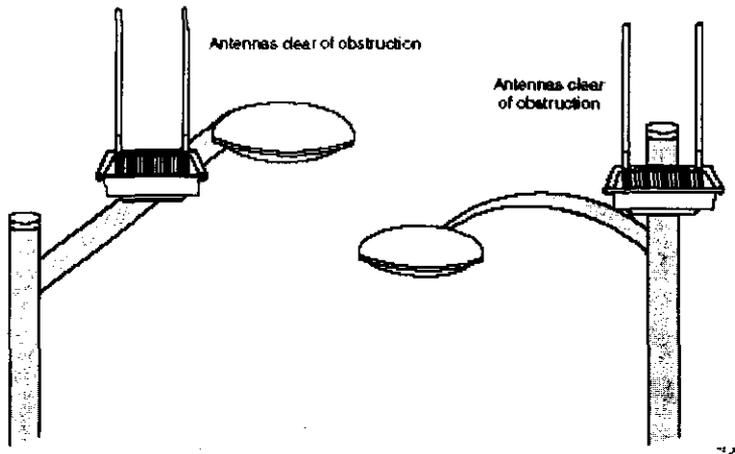
Wood Pole Mounting



Street Light Arm Mounting



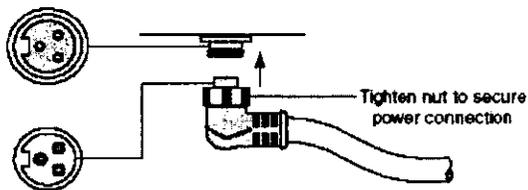
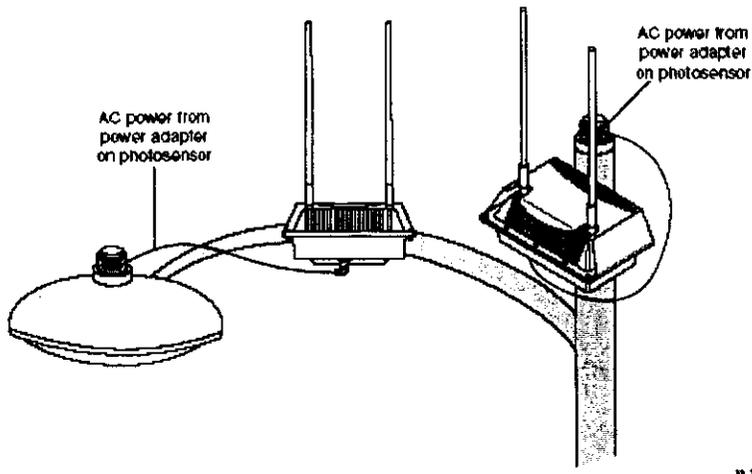
Example Tropos 5210 Mounting Location - Antennas Facing Upward



Connect device to a streetlight power source:

1. Cover photocell to verify light works prior removing, also note North Arrow direction.
2. Remove photocell and verify that the service voltage is 90-480 VAC 50/60 Hz
3. Connect the photosensor to the top of the NEMA 3 prong plug adaptor.
4. Connect the NEMA 3 prong plug from the Tropos 5210 to the photosensor connector on the streetlight.
5. Check orientation of photosensor's North Arrow and realign if needed.
6. Connect the AC plug to the Tropos 5210 and tighten hand-tight.
7. Confirm that power to the Tropos 5210 comes on observe power LED.
8. Weather proof all connection points, and Secure cables with approved cable ties.
9. RE-Verify streetlight operation by covering the photocell.
10. Complete all documentation to include GPS coordinates, Pole Location information, Street and Cross-Street, installation checklists, radio documentation and any electronic data collection that may be required.

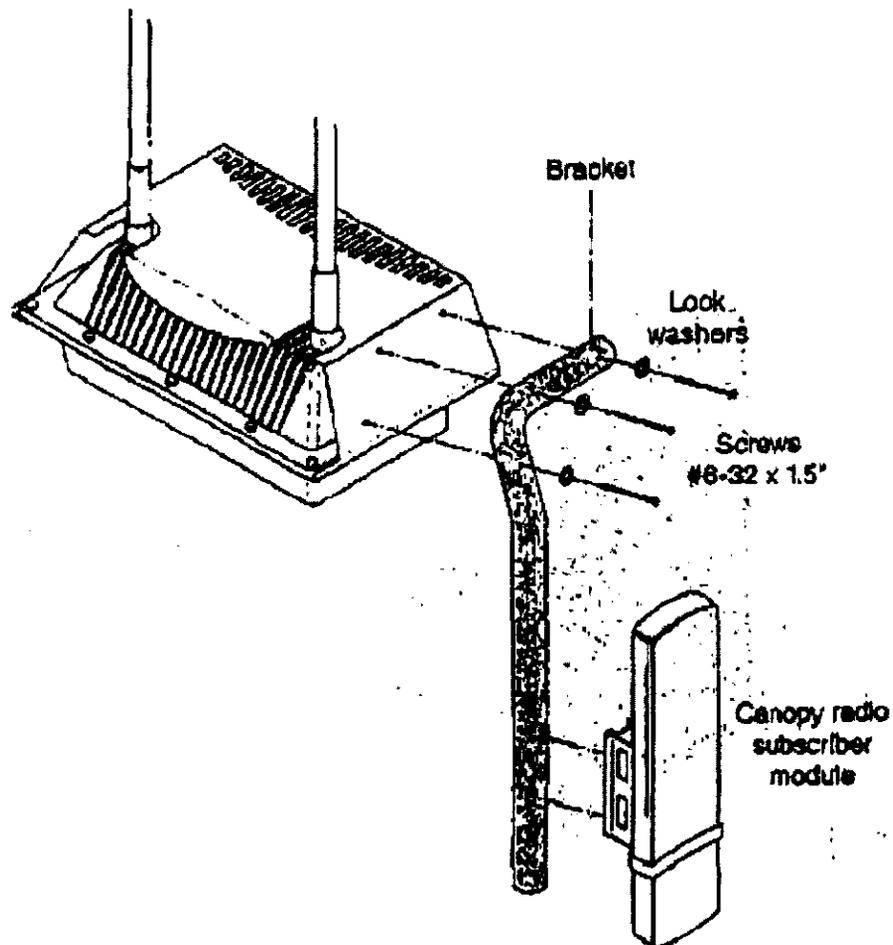
Connecting Streetlight Power



Install the Canopy SM Mounting arm

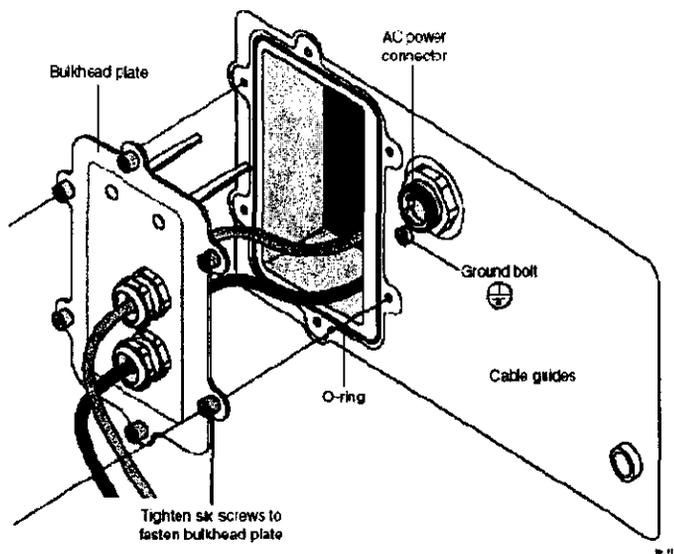
1. Orientate the mounting arm onto the desired side of the Tropos 5210 Sun Shield, and mount with the three long screws into the corresponding holes.
2. Attach the Canopy SM module to the end of the Mounting Arm with appropriate clamps.

Installing the Canopy SM Mounting arm



3. Verify that the power cable is disconnected on the designated Tropos unit.
4. Remove the connector access cover from the bottom of both the Tropos 5210, and from the Canopy SM.

Connecting Cat 5 Ethernet Cable from Canopy to Tropos Node



5. Run raw-unterminated, shielded Category 5 Ethernet cable appropriate for outdoor use through the Tropos 5210 access cover bulkhead openings, allowing sufficient length to terminate the cables without causing crowding in the connection area.

6. Install (Terminate) cable with a shielded RJ-45 connector, paying careful attention to follow the wiring diagram and connect to the Powered LAN port inside the Tropos 5210.

Inside Tropos radio, connect CAT 5 to LAN port

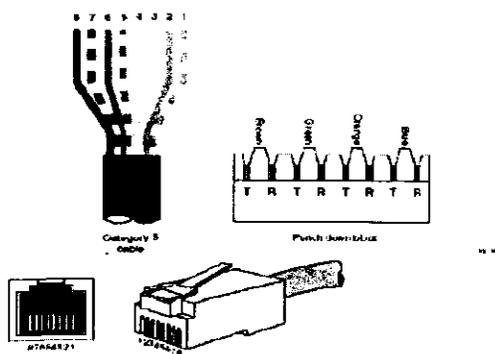
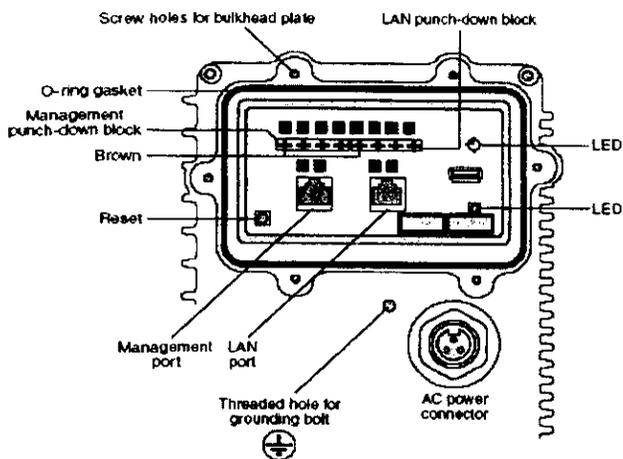


Table 3 RJ45 Pin Descriptions for Data Connection

Pin	T/R	Signal	Color	Description
1	T	TXD-	Orange-White	TX Data 10/100BaseT
2	R	TXD+	Orange	TX Data 10/100BaseT
3	T	RXD-	Green-White	RX Data 10/100BaseT
4	R	POE+	Blue	Power output, 0, 12, 24, 48 Vdc (+)
5	T	POE-	Blue-White	Power output, 0, 12, 24, 48 Vdc (-)
6	R	RXD+	Green	RX Data 10/100BaseT
7	T	PoE	Brown-White	Power output, 0, 12, 24, 48 Vdc (-)
8	R	PoE+	Brown	Power output, 0, 12, 24, 48 Vdc (+)

7. Properly secure the Access Cover, mount the Tropos 5210 into the sun shield.
8. Connect the other end of the Category 5 cable to the Canopy SM unit
9. Reconnect the Tropos Power and confirm that power to the Tropos 5210 and the Canopy SM unit comes on.
10. Align the Canopy SM to AP tower per instructions on work order.

11. Make Tropos 5210 and Canopy SM ready for use and secure all covers and cable connections.

12. Water proof all cable connection points with approved weatherproofing tape, and secure all cables with approved cable ties.

13. Re-Verify proper street light operation by covering the photocell.

14. Measure the radio height, take two pictures and clean up any trash around installation site.

Inspection List

INSPECTION LIST		Yes	No
1. Cordon proper safety area		<input type="checkbox"/>	<input type="checkbox"/>
2. Confirm you are at the right location and the pole is fit for use		<input type="checkbox"/>	<input type="checkbox"/>
3. Record Pole ID		<input type="checkbox"/>	<input type="checkbox"/>
4. Record GPS LAT/LONG		<input type="checkbox"/>	<input type="checkbox"/>
5. Record Address, Street, X-Street		<input type="checkbox"/>	<input type="checkbox"/>
6. Record Type of Install		<input type="checkbox"/>	<input type="checkbox"/>
7. Confirmed light works prior to voltage measurement at photo cell socket		<input type="checkbox"/>	<input type="checkbox"/>
8. Back plate and sun shield are properly mounted and level		<input type="checkbox"/>	<input type="checkbox"/>
9. If Gateway/SM location, Canopy mounting bracket properly installed		<input type="checkbox"/>	<input type="checkbox"/>
10. Record Serial Numbers and MAC Addresses		<input type="checkbox"/>	<input type="checkbox"/>
11. Tropos 5210 Antennas are secure and weatherproofed		<input type="checkbox"/>	<input type="checkbox"/>
12. If a Gateway/SM - ported access cover and cables properly installed		<input type="checkbox"/>	<input type="checkbox"/>
13. Tropos 5210 radio unit properly installed in mount		<input type="checkbox"/>	<input type="checkbox"/>
14. Canopy SM unit is mounted and cabled		<input type="checkbox"/>	<input type="checkbox"/>
15. Tropos Radio power cable properly connected to radio		<input type="checkbox"/>	<input type="checkbox"/>
16. Photo cell and power adaptor properly installed on street light		<input type="checkbox"/>	<input type="checkbox"/>
17. Verify all power indicator LED are properly illuminated		<input type="checkbox"/>	<input type="checkbox"/>
18. Canopy SM antenna properly aligned per work order		<input type="checkbox"/>	<input type="checkbox"/>
19. Verify all covers are in place and all connections weather proofed		<input type="checkbox"/>	<input type="checkbox"/>
20. Secure all cables with approved tie wraps		<input type="checkbox"/>	<input type="checkbox"/>
21. Re-Verify street light operates by covering photocell		<input type="checkbox"/>	<input type="checkbox"/>
22. Measure and Record Radio height and verify 2 pictures were taken		<input type="checkbox"/>	<input type="checkbox"/>
23. Trash cleaned up and removed upon completion		<input type="checkbox"/>	<input type="checkbox"/>
24. Comments/Extra Information			
		Job Completed	
		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Technician:	Phone:	Date:	

EXHIBIT E
Installed City Pole Use Fees

Installed City Pole Use Fees

Municipal Assets:

EarthLink shall pay the City a flat rate of One Dollar (\$1.00) per Installed City Pole per month for each Installed City Pole as to which EarthLink receives all rights under the Agreement. EarthLink shall pay to the appropriate electric company the electric charges for the Installed City Poles, provided that as a condition to EarthLink's obligations under the Agreement, the electric charges for all Poles shall not exceed the lesser of the flat rate level electricity consumption charge or Two Dollars (\$2.00) per Installed City Pole per month.

EXHIBIT F
Public Benefits and Additional Services Provided by EarthLink

A. Public Benefits

EarthLink shall provide the Public Benefits as set forth in this Section A. The City acknowledges and agrees that the pricing of the Public Benefits is a significant departure from standard pricing for comparable accounts.

1. **Wi-Fi Accounts.** EarthLink shall provide accounts for the following uses (i) Government Use (ii) Digital Inclusion; and (iii) Student Use (the “Wi-Fi Broadband Accounts”). Customer premises equipment, including without limitation any user equipment or devices for accessing or using the accounts (collectively “CPE”), is not included and not provided by EarthLink for the prices set forth in this Exhibit, including without limitation for any digital inclusion use. EarthLink may provide information or recommendations regarding CPE. EarthLink may provide any CPE for the Wi-Fi Broadband Accounts or otherwise under the Agreement for Government Use Accounts or Digital Inclusion Program Accounts on such terms as EarthLink generally makes available to third parties.

1.1 Wi-Fi Broadband Accounts for Government Use

- 1.1.1 EarthLink shall furnish Wi-Fi Broadband Accounts for Government Use to the City, on a discounted basis as follows: Wi-Fi Broadband Accounts for Government Use shall be assigned by the City for use by elected and appointed officers, officials, employees, contractors and agents of the City. The first five hundred (500) Wi-Fi Broadband Accounts for Government Use that are used by the City during a billing period will be free. The City may purchase additional Wi-Fi Broadband Accounts for Government Use, at the City’s sole option, for the price of Ten Dollars (\$10) per month per account. The Wi-Fi Broadband Accounts for Government Use shall provide wireless data transmission and Internet access with a commercially reasonable efforts data transmission rate of at least approximately 1.0 Mbps downstream / 1.0 Mbps upstream, and dynamic IP addresses; provided EarthLink shall provide the Wi-Fi Broadband Accounts for Government Use the service availability it provides to EarthLink retail customers that purchase the standard unlimited access wi-fi product. EarthLink retains the right to make changes to the EarthLink retail services and services offered to the Wi-Fi Broadband Accounts for Government Use at its reasonable discretion (subject to the general requirements of the previous sentence). In addition, EarthLink shall offer to the City an access product with a feature set designed to support low aggregate data consumption on an intermittent basis. This access product will be designed for device-only access to the Network. No restriction placed on this access product shall have the effect of limiting the number of transmissions per day or specific times of access per day, beyond reasonable limits intended to protect the integrity of the network.. The

price of this product shall be \$2.00 for 40 MB of aggregate data transmission per month per device.

1.1.2 In the City's sole discretion, the City may bundle its own services, including, but not limited to, email, software, support, Web pages, systems, VPN software, and other services selected by the City with the Wi-Fi Broadband product to the City's end users at the City's cost. The City will be responsible for the cost of CPE and installation services for Wi-Fi Broadband accounts for its end users, and may in its sole discretion, itself provide and/or charge its end users for CPE installation services and ongoing support. The CPE shall be approved and certified by EarthLink to run on the Network and shall not be detrimental to the Network's performance.

1.1.3 If EarthLink discontinues the underlying commercial Service used to provide the Wi-Fi Broadband Accounts for Government Use and replaces it with a product of the same or higher transmission rate, EarthLink shall provide accounts for such replacement product to the City instead under the same terms and conditions.

1.1.4 "Wi-Fi Broadband Accounts for Government Use":

(1) Shall be utilized for municipal government activities and purposes, and shall not be used for non-City activities, such as personal recreational use and shall not be used by students of the public schools of the City;

(2) Shall fall under a wholesale account umbrella which shall be managed by a single designated point of contact within the City;

(3) Shall access the Network through City specific non-broadcast Service Set Identifiers (SSIDs);

(4) Shall be routed by an EarthLink proxy RADIUS server to a designated City RADIUS server for authentication;

(5) Shall be provisioned and maintained by the City and only for use by elected or appointed officers, officials, employees, contractors and agents of the City or of agencies supported wholly or principally by City funds ("City-Related Agencies");

(6) Shall be accounts associated with the City's primary Internet domain name, or such other domains that as a matter of regular practice are managed by the City's IT departments;

(7) Shall receive Tier 3 Network Operations Center (NOC) support via a single interface from the City's Tier 3 NOC to EarthLink's Tier 3 NOC support center;

(8) Shall be billed to the City on a single invoice each month;

(9) Shall not be resold, except to City-Related Agencies; and

(10) Shall include only one login name per account with no simultaneous logins of the same account allowed. EarthLink shall have the right to prevent simultaneous logins or to assess reasonable charges to the City for shared account or simultaneous activity by multiple users or devices using a single account to access the Network.

1.2 Wi-Fi Broadband Accounts for Digital Inclusion Program.

1.2.1 EarthLink shall make available at least two thousand seven hundred (2,700) Wi-Fi Broadband Accounts for individual personal use to residents of the City who are qualified by the City under the requirements set forth in subsection 1.2.2 below, to the extent the City qualifies two thousand seven hundred (2,700) individuals (“Digital Inclusion Program”). These Digital Inclusion Program accounts will be at the price of Nine Dollars and Ninety-Five Cents (\$9.95) per month per account. The Wi-Fi Broadband product shall provide Wi-Fi data transmission and Internet access using commercially reasonable efforts data transmission rate of approximately 1.0 Mbps downstream / 1.0 Mbps upstream data transmission rate (or more) and dynamic IP addresses (“Digital Inclusion Standard Offering”). EarthLink retains the right to modify the services and functionality of the Digital Inclusion Standard Offering (other than by reducing the data transmission rate) or to reduce the cost of the Digital Inclusion Standard Offering. Additionally, EarthLink shall offer the Digital Inclusion Program accounts those services it provides to standard EarthLink retail customers for a price no greater than fifty percent (50%) of the standard (non-promotional) retail price offering (“Digital Inclusion Tiered Offering”). EarthLink retains the right to make changes to the EarthLink retail services and services offered to the Digital Inclusion Tiered Offering accounts at its reasonable discretion (subject to the general requirements of the previous sentence). The Digital Inclusion Standard Offering and the Digital Inclusion Tiered Offering are both part of and made available only through the Digital Inclusion Program.

1.2.2 To qualify under the Digital Inclusion Program, each user shall be an individual resident of the City, who meets eligibility guidelines established by the City, and is qualified by applicable City authorized representatives as meeting and, from time to time as established by the City, continuing to meet such guidelines. EarthLink may, from time to time, request verification by the City of the qualification status of any or all users then currently receiving service under the Digital Inclusion Program, and EarthLink will not disclose any such information it receives to any third party. EarthLink will not provide CPE for the Digital Inclusion Program Accounts, except on such terms as are available to third parties. The City

will manage the Digital Inclusion Program and qualification of the individual Accounts and users under this program, but the users shall be customers of EarthLink and no commercial or business relationship between a user and the City shall exist by virtue of the user having been provided by EarthLink with a Digital Inclusion Program Account.

1.3 Wi-Fi Broadband Accounts for Student Use

- 1.3.1 EarthLink shall make available free access only within the Network and without EarthLink providing Internet transit or any Internet access, solely for Alexandria City Public Schools (ACPS) students, for at least 2,500 laptop devices owned and controlled by the Alexandria City Public Schools (“ACPS”) while being used by the ACPS student who is assigned that laptop device (“Wi-Fi Broadband Accounts for Student Use”). The City or ACPS may purchase additional Wi-Fi Broadband Accounts for Student Use at the option of either the City or ACPS, for the price of Ten Dollars (\$10.00) per month per account. The Wi-Fi Broadband Accounts for Student Use shall provide wireless data transmission using commercially reasonable efforts data transmission rate of approximately 1.0 Mbps downstream / 1.0 Mbps upstream (or more).
- 1.3.2 The City or ACPS will pay for any circuit, transit and/or cross connect fees from the EarthLink POP to the appropriate demarcation point on the ACPS network. The City and ACPS shall pay for all taxes assessed on these Wi-Fi Broadband Accounts for Student Use.
- 1.3.3 The City agrees to request ACPS' cooperation in making ACPS employees, parents, and students aware of EarthLink's role in providing services under this Agreement.
- 1.3.4 The Wi-Fi Broadband Accounts for Student Use will also have access to the schools' internal Web site via the Walled Garden in the manner specified by ACPS .

1.4 The Wi-Fi Broadband Accounts for Student Use:

- (1) Shall fall under a wholesale account umbrella which shall be managed by a single designated point of contact within the City or ACPS;
- (2) Shall access the Network through City specific non-broadcast Service Set Identifiers (SSIDs);
- (3) Shall be routed by EarthLink via Layer 2 handoff to a designated City and/or ACPS RADIUS servers for authentication;
- (4) Shall be provisioned and maintained by the City only for use by ACPS students;

(5) No EarthLink account will be directly associated with the accounts;

(6) Shall receive Tier 3 Network Operations Center (NOC) support via a single interface from the City's Tier 3 NOC to EarthLink's Tier 3 NOC support center;

(7) Shall be billed (for any charges, as applicable) to the City or to ACPS, as designated by the City, each on a single invoice each month;

(8) Shall not be resold; and

(9) Shall include only one login name per account with no simultaneous logins of the same account allowed. EarthLink shall have the right to prevent simultaneous logins or to assess reasonable charges to the City for shared account or simultaneous activity by multiple users or devices using a single account to access the Network.

1.5 EarthLink will provide information regarding device configuration and security standards compatible with the Network. For devices not provided by EarthLink, the City will be responsible for managing configuration and implementation of appropriate security standards for devices accessing the Network in connection with Government Use and Student Use accounts.

1.6 Support Tiers and Responsibilities

The following service standards apply to the Wi-Fi Broadband Accounts for Government Use and the Wi-Fi Broadband Accounts for Student Use.

1.6.1 City Tier 0. EarthLink shall cooperate with City personnel and provision to the City all necessary information (including without limitation "Frequently Asked Questions"), to create Tier 0 end user 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. The City may provide Tier 0 support services for its own end users, customized to the specific services and applications provided by the City.

1.6.2 City Tier 1. The City may provide a Tier 1 level of customer support which shall be available at the City's discretion and shall consist of one-to-one interaction between the City's end users and City help desk or support representatives via email, chat or telephone. The City is expected to provide Tier 1 support services for its own end users, customized to the specific services and applications provided by the City. Service Provider Tier 1 support shall address issues including but not limited to service setup and provisioning issues, City application and services issues, connectivity issues and account and authentication issues. Tier 1 connectivity issues shall be the responsibility of the City.

- 1.6.3 City Tier 2. The City may provide a Tier 2 level of end user support which shall be available at the City's discretion and shall consist of an escalated one-to-one interaction between the City's end users and supervisor level help desk or support representatives.
- 1.6.4 City Tier 3. Tier 3 support shall be at the Network Operations Center (NOC) level and shall addresses problems that could not be resolved at the Tier 2 level. The City's Tier 3 support organization shall represent the primary point of interaction between EarthLink Tier 3 and the City's help desk or support organizations. The City's Tier 3 shall report technical support issues that cannot be resolved by City help desk or support personnel to EarthLink Tier 3 support via a trouble ticketing system that will be made available to the City and shall address connectivity issues due to suspected network outages or failures.
- 1.6.5 EarthLink Tier 3. EarthLink's Network Operations Center (NOC) will be the City's initial point of contact for the escalation of issues related to EarthLink's provision of the City 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 the City. Tier 3 problems will be worked on a peer level basis between the City Network Operations Center and the EarthLink NOC. EarthLink shall create an integration protocol for the City 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 the City visibility into the EarthLink NOC and shall work in good faith to provide proactive communications to the City via emails and outage boards informing the City of any planned maintenance, scheduled and unscheduled network outages.
- 1.6.6 Availability. 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 City Tier 3 NOC personnel and technical support groups to escalate or resolve issues that are attributable to EarthLink and the Network.

1.7 Billing and Taxes

- 1.7.1 EarthLink shall bill account charges, if any, and the cost of EarthLink provided support, if any, directly to the City. Any Wi-Fi Broadband Accounts or T1 Alternative accounts made available to the City will appear in EarthLink's operational support systems as wholesale accounts. If EarthLink's provision of Wi-Fi Broadband Accounts or T1 Alternative accounts under this Section results in a sales tax charge to EarthLink, the

City will pay the amount of the sales tax to EarthLink for remittance to appropriate tax authorities. The City will tender to EarthLink a tax exemption certificate(s) or statement(s) covering all wireless internet access service purchases made by the City pursuant to this Agreement.

2. Parks and Public Spaces Wi-Fi Broadband Service

- 2.1 Parks and Public Spaces Wi-Fi Broadband Service. EarthLink shall provide Wi-Fi data transmission and Internet access to end users in designated parks and public spaces (as designated per subsection 2.4 below) (the "Parks and Public Spaces Wi-Fi Broadband Service"). The throughput of the service, the duration of splash page persistence, the amount of usage by any user (beyond four sessions per 24-hour period) and duration of allowed sessions (beyond two hours per session) for the Parks and Public Spaces Wi-Fi Broadband Service shall be solely determined by EarthLink. EarthLink shall have the right to provide varied speed or incomplete coverage in Parks and Public Spaces, but will work in good faith with the City to minimize such areas and to provide minimum service speeds of 150 kbps (subject to incomplete coverage as described in this Section 5). EarthLink shall have no responsibility to provide CPE or installation services for end users utilizing the Parks and Public Spaces Wi-Fi Broadband Service. EarthLink's provision of the Parks and Public Spaces Wi-Fi Broadband Service is expressly subject to the Conditions set forth in Sections 2.31 and 11.4 of this Agreement.
- 2.2 Configuration. EarthLink shall have the sole right to design the configuration of the Network in parks and public spaces to limit the use of Parks and Public Spaces Wi-Fi Broadband Service by users located in residential households, businesses and institutional premises adjacent to the designated locations throughout the City. The portal page for the Parks and Public Spaces Wi-Fi Broadband Service shall bear the "Wireless Alexandria" logo, or such other identification as the City may reasonably select, in order to identify the service as a free public benefit facilitated by the City.
- 2.3 Parks and Public Spaces Revenue. There shall be no charge to any user or to the City for the use of or EarthLink's provision of the Parks and Public Spaces Wi-Fi Broadband Service. Subject to EarthLink's compliance with applicable laws and this Agreement, EarthLink shall have at its discretion the right to advertise EarthLink retail products and to publish other content and applications to users utilizing the Parks and Public Spaces Wi-Fi Broadband Service.
- 2.4 The configuration of the facilities needed to provide the Parks and Public Spaces Wi-Fi Broadband Service shall be designed by the City and EarthLink upon mutual agreement from the areas listed below and on the basis described below:
- 2.4.1 All of the sites in all of the parks and public spaces agreed upon will not exceed 5% of the total 16 square miles of the geographic area of the City.

- 2.4.2 EarthLink shall have the right in its discretion to provide lower speed or incomplete coverage in parks and public spaces, or limit the user experience in any areas that overlap into commercially viable areas (such as a place with large number of homes or businesses).
- 2.4.3 If the street lights, poles or other assets necessary to provide an acceptable level of service in any park or public space are owned by an entity other than the City, and the owner does not grant access to street lights, poles or other assets on commercially reasonable terms, then EarthLink is not obligated to provide service in that location; provided, however, that EarthLink shall provide service if the City installs poles or other structures suitable for mounting Approved Equipment in order to provide the necessary level of service. The parties may also discuss terms under which EarthLink may install such mounting structures to serve such location. In addition, if the parties conclude that it is impractical to serve part or all of the location in question or undesirable or not economically viable to install any necessary mounting structures to serve the location, the City may substitute an alternate location, pursuant to Section 2.4.3.
- 2.4.4 Parks and Public Spaces Wi-Fi Broadband Service will be provided in the following locations, provided that the City and EarthLink may mutually agree to designate alternate locations.

African American Heritage Park (500 Holland Lane)
 Armistead Boothe Park (435 Ferdinand Day Drive)
 Ben Brenman Park (5000 Duke Street)
 Braddock Road Metrorail Station (700 N. West Street)
 Cameron Run Park (3699 Eisenhower Avenue)
 Cameron Station Westend Park (Pickett Street & Edsall Road)
 Chinguapin Park (3210 King Street)
 Dora Kelley Park (5700 Sanger Avenue)
 Eisenhower Avenue Metrorail Station (2400 Eisenhower Avenue)
 Ewald Park (4454 Duke Street)
 Fort Ward Park (4401 W. Braddock Road)
 Four Mile Run Park (3700 Commonwealth Avenue)
 Holmes Run Scenic Easement (Beauregard Street and Morgan Street)
 John Adams School Park (5651 Rayburn Avenue)
 Joseph M. Hensley Park (4200 Eisenhower Avenue)
 King Street, between Callahan Drive and the Potomac River, including
 Alexandria Union Station (110 Callahan Drive), the King Street
 Metrorail Station (1900 King Street) and Market Square (301 King
 Street).
 Landmark Mall (5801 Duke Street)
 Minnie Howard Field (3701 W. Braddock Road)
 Mt. Vernon Avenue, between Hume Avenue and E. Braddock Road.
 Potomac River Waterfront and adjacent parks, from Dangerfield Island
 (Marina Drive) to Jones Point Park (Jones Point Drive)

Schuyler Hamilton Jones Skateboard Park (3540 Wheeler Avenue)
Simpson Stadium Park (500 Monroe Avenue)
Stevenson Park (300 Stulz Road)
Van Dorn Street Metrorail Station (5690 Eisenhower Avenue)

2.5 Portal

- 2.5.1 Portal Landing Page. Individuals seeking to access EarthLink's Network in any Designated Public Space who are not subscribers to a commercial service, or have not been assigned a Wi-Fi Broadband Account, shall be directed to the Wi-Fi Broadband Service Portal Landing Page. All end users must agree to the terms and conditions of use for the Network. The Portal Landing Page shall carry the "Wireless Alexandria" or other City-designated logo, and may, at EarthLink's discretion, offer users the opportunity to purchase EarthLink's retail products.
- 2.5.2 Liability for Access – EarthLink shall create appropriate disclaimers, limitations, and protections for the benefit of both Parties from any liability which could result by providing Internet Access to end users via the Network.
- 2.5.3 City Designated Links. The City shall be entitled to determine up to 6 links in the Portal landing and welcome pages in its reasonable discretion for announcements, community notices and/or advertising (the "City Designated Links").
- 2.5.4 Limited Access within Walled Garden. EarthLink shall allow any end user to obtain access by means of the City Designated Links to the underlying sites at no cost and without requiring such end users to log in or subscribe to any service. EarthLink may also make available additional functionality at EarthLink's sole discretion within the Walled Garden. The user must agree to the terms and conditions of use of the Network in order to access the Web sites, applications and utilities in the Walled Garden.

B. T1 Alternative Accounts

EarthLink shall furnish T1 Alternative product accounts to the City, at the City's sole option to purchase, for the price of Two Hundred Dollars (\$200) per month per account, plus a one-time, non-recurring fee for CPE and installation (which may be waived by EarthLink at EarthLink's sole discretion in return for a multiyear agreement commitment by the City) of Five Hundred Dollars (\$500) per account. The T1 Alternative product shall provide point-to-multipoint fixed wireless data transmission and Internet access to municipal buildings and municipal government locations with a commercially reasonable efforts data transmission rate of at least approximately 1.5 Mbps downstream / 1.5 Mbps upstream, and dynamic and static IP addresses (as requested by the City).

C. General.

Use of the Public Benefits and Additional Services may be subject to the then-current EarthLink Service Agreement and Acceptable Use Policy governing access by subscribers to the Network.

9/29/06

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EXHIBIT G
Insurance Coverage Requirements

EarthLink will procure and maintain, at its sole cost and expense, insurance coverage with insurance companies possessing an *A. M. Best's* rating of A-VII or higher that satisfies or exceeds the below minimum:

(a) Workers Compensation and Employers Liability

- Workers Compensation: Statutory limits
- Employers Liability: \$1,000,000 each Accident - Bodily Injury by Accident; \$1,000,000 Each Employee - Bodily Injury by Disease; and \$1,000,000 Policy Limit - Bodily Injury by Disease.

(b) Commercial General Liability Insurance

- Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 personal and advertising injury; \$2,000,000 general aggregate and \$2,000,000 aggregate for products and completed operations. Also EarthLink has a \$1,000,000 umbrella/excess liability policy that is on top of the above coverage. EarthLink is entitled to allow a combination of primary and excess policies to meet these requirements.
- Coverage: Premises liability; Contractual liability; Personal and Advertising Injury liability; Products and Completed Operations;

(c) Commercial Automobile Liability

- Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- Coverage: Owned, non-owned and hired vehicles.

(d) Umbrella or Excess Liability

- Limit of liability: \$1,000,000 per occurrence

EarthLink will submit, at the City's request, certificates of insurance evidencing the required coverages prior to the commencement of work. EarthLink may obtain any part or all of the insurance policies required under this Exhibit with a deductible or self-insured retention chosen by EarthLink, or by a combination of primary and excess policies, without the prior written approval of the City or any other entity. If at the time of commencement of the work under this Agreement, EarthLink self-insures its workers' compensation or automobile liability, EarthLink may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State letter of approval, whichever is appropriate.

The parties agree the insurance (including self-insurance) requirements of this Exhibit are not intended to, and do not, (a) expand or limit the indemnifications made in this Agreement by

EarthLink to the City, if any, or (b) expand or limit EarthLink's liability to the City as provided in this Agreement.

4096-03-00124059.DOC

RIGHT-OF-WAY FRANCHISE AGREEMENT

THIS RIGHT-OF-WAY FRANCHISE AGREEMENT (the "ROW Agreement") is entered into this ____ day of December, 2006, between the City of Alexandria, a municipal corporation of Virginia ("City"), and EarthLink, Inc., a Delaware corporation ("EarthLink").

- A. The City owns and controls certain Public Rights-of-Way, to which EarthLink seeks to obtain access for purposes of installing, maintaining, and operating portions of a wireless broadband network (the "Network").
- B. The City seeks to grant EarthLink the right to use the Public Rights-of-Way for the purpose of installing, maintaining, and operating portions of the Network.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

1.1 "Public Rights-of-Way" means the space in, upon, above, along, across, over, and below the public streets, roads, lanes, courts, ways, alleys, and boulevards, including all public street easements, as the same now exist or may hereafter be established, that are under the legal jurisdiction and physical control of the City.

1.2 "Services" means (i) wireless broadband Internet access provided by EarthLink to its subscribers by means of the Network and using IEEE standards 802.11 and 802.16 (commonly known as "WiFi" and "WiMax") and protocols as required to support the Network, or substantially similar successor technologies such as IEEE standard 802.22; (ii) wireless services provided by EarthLink to its subscribers within the Network using IEEE standards 802.11x and 802.16 or substantially similar successor technologies, but without using the Internet; (iii) any other services that can be provided by means of the Approved Equipment, with the exception of cable services; and (iv) access to the Network by other service providers in order to allow such providers to provide the foregoing wireless broadband Internet access service and wireless services to the subscribers of such other service providers.

2. Use of Public Rights-of-Ways.

2.1 The City hereby grants to EarthLink the permission, on a non-exclusive basis, to access and enter upon the Public Rights-of-Way to attach, install, control, operate, maintain, repair, replace, reattach, reinstall, relocate, remove and upgrade communications equipment comprising portions of EarthLink's Network on and from property located in the Public Rights-of-Way (subject to any authorization or approval of the owner of any such property), all for the limited purpose of providing EarthLink's Services within the City, subject to the terms of this ROW Agreement, and all applicable

laws and regulations.

2.2 For the Term of this ROW Agreement, EarthLink is authorized to use the Public Rights-of-Way to obtain access to property owned by the City and third parties that is located within the Public Rights-of-Way and to which portions of the Network are or will be attached, provided nothing in this Section authorizes EarthLink to attach any equipment to any such property.

2.3 Subject to the obligations of the City and rights granted to EarthLink and other provisions set forth in this ROW Agreement, EarthLink acknowledges that (i) the paramount use of the Public Rights-of-Way dedicated for public use is for the benefit of the public at large, and (ii) its use of the Public Rights-of-Way shall not conflict with the City's uses.

2.4 The permissions granted to EarthLink pursuant to this ROW Agreement shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, claims of title, leases, licenses, permits, permission, and rights (whether recorded or unrecorded) of others in, or that may affect the Public Rights-of-Way, specifically including all rights of the Virginia Department of Transportation ("VDOT"), provided that the City will notify EarthLink of any such rights or obligations that affect EarthLink's access to or use of any Public Rights-of-Way of which the City becomes aware. As of the Effective Date, the City is not aware of any existing rights that would substantially interfere with EarthLink's use of the Public Rights-of-Way as contemplated by this ROW Agreement, but the City has conducted no investigation into the existence of any such rights, and the City makes no representations or warranties regarding the existence of any such rights as of the Effective Date. Nothing in this ROW Agreement shall be deemed to grant, convey, create, or vest any real property interest in EarthLink, including any fee or leasehold interest or easement.

3. Permits.

Any construction, maintenance or other activities including but not limited to, operation, repair, replacement, reattachment, reinstallation, relocation or removal of the Network by EarthLink in the Public Rights-of Way shall be subject to the City's general permit requirements. The City will not unreasonably withhold or delay provision of any permit requested by EarthLink pursuant to this ROW Agreement in accordance with the City's standard permitting policies generally applicable to all applicants.

4. Notification to City of Work to Be Performed in the Public Rights-of-Way for Initial Installation of Network.

4.1. Prior to EarthLink occupying the Public Rights-of-Way for the initial installation of the Network, EarthLink shall prepare and submit to the City's Department of Transportation and Environmental Services an initial plan which shall: (i) describe or otherwise show the approximate location within each Public Right-of-Way in which the proposed installation is to take place and general maintenance and repair plans; (ii) provide the approximate date(s) on which EarthLink intends to commence installation of EarthLink's equipment in the Public Rights-of-Way and the

approximate date of completion; (iii) describe the Approved Equipment and/or the activity that is to take place in the Public Rights-of-Way to accomplish the installation, maintenance, repair, replacement, reattachment, reinstallation, relocation, and/or removal; (iv) provide a traffic control plan that shall be reviewed and approved by the Director of Transportation and Environmental Services, or his designee provided such approval shall not be unreasonably withheld or delayed; (v) verify that EarthLink has obtained, or will obtain prior to commencing the installation, of the equipment in the Public Rights-of-Way any required permits from any other entity; (including departments or agencies of the City of Alexandria) whose approval is required by law (the "Plan"), and (vi) shall provide other information the Director of Transportation and Environmental Services (the "Director"), or his designee, reasonably requires. The Director or his designee will submit any comments or questions to EarthLink promptly after submission of EarthLink's initial Plan. If the Director does not respond within ten (10) days after EarthLink's submission of the initial Plan, EarthLink may proceed with its installation activities. The Director will not object to any EarthLink equipment to the extent such equipment is deemed "Approved Equipment" under the Franchise Agreement between the parties executed on a date even herewith.

4.2. This initial Plan shall be non-binding, but shall represent a reasonable projection by EarthLink of the activities it anticipates undertaking in the Public Rights-of-Way.

4.3. EarthLink shall within a reasonable time review comments or questions posed by the Director, or his designee, regarding the initial Plan and shall respond within a reasonable time period to any such questions posed by the Director. Each ninety (90) days during the EarthLink installation activities, EarthLink will submit as-built plans describing the locations of the EarthLink's equipment in the Public Rights-of-Way, provided such information is treated as EarthLink's confidential information and will be entitled to treatment as trade secret or confidential information as further described in Section 16.

4.4. The Director shall have the discretion, which is to be reasonably exercised, to determine the dates of the proposed installation of the Network as described in the initial Plan, taking into account both the dates requested by EarthLink and other planned or on-going work in the affected Public Rights-of-Way, provided the Director shall not unreasonably delay the time lines proposed in the Plan and will notify EarthLink as soon as reasonably practicable (and, if possible, prior to approve of the initial Plan) once the Director is aware of potential conflicts or any changes required to the time lines proposed in the Plan. The Director will notify EarthLink as soon as reasonably practical of (i) any other activities by a third party authorized to be in the Public Rights of Way which were unforeseeable at the time the Director reviewed the initial Plan, or (ii) emergency activities by any other government agency or utility or authorized to be in the Public Rights of Way, that may interfere with the planned EarthLink activities. In the event the Director requires any changes to the proposed time line, the Director will cooperate with EarthLink to reissue any outstanding permits for another time mutually agreed upon by the Director and EarthLink. EarthLink agrees that the installation, maintenance, operation, attachment, repair, replacement, reattachment, reinstallation, relocation or removal of the Network in the Public Rights-of-Way shall be done in such locations and in such manner so as not to unreasonably interfere with existing water, gas, sewer pipe, traffic signal, street light and other utilities and conduits in the Public Rights-of-Way, or with

the public's use of the Public Rights-of-Way, and shall, to the maximum degree feasible, be coordinated with any entity performing work or construction in the Public Rights-of-Way.

4.5. EarthLink shall, in connection with any installation, maintenance, operation, attachment, repair, replacement, reattachment, reinstatement, relocation, removal or other activities in the Public Rights-of-Way, comply with all applicable laws and regulations, including all permits required by the City.

4.6. If the City determines that the protection, temporary disconnection, removal, relocation, or reconfiguration of any portion of the Network located in the Public Rights-of-Way is necessary (i) to preserve public health or safety, or (ii) for the construction, repair, relocation or maintenance of a City project for the public welfare (including without limitation any future conversion of overhead to underground utilities), the City will provide EarthLink with written notice as soon as reasonable under the circumstances describing which of EarthLink's facilities are affected and the proposed dates by which the work is to be completed by EarthLink, provided that where immediate action is not required to avoid danger to the public safety or property, the City shall give EarthLink at least thirty (30) days prior written notice. EarthLink shall, at its sole cost and expense, promptly disconnect, remove, relocate, or reconfigure such portion of the Network as mutually agreed upon with the City. The City will use good faith efforts to conduct City projects in a manner to minimize negative impact to the Network. Regardless of anything to the contrary in this Section 4.7, the City will not request EarthLink to remove or relocate the equipment in a manner that deliberately makes it uneconomical for EarthLink to operate the Network and provide services in the City or in a manner that gives any preferences to a subsequent third party offering a similar service. The City warrants to EarthLink that the City will not disturb, move, alter or relocate the equipment placed in the Public Rights-of-Way except as set forth in this ROW Agreement.

5. Maintenance, Repair and Upgrade of the Network.

5.1 EarthLink may perform maintenance, repair or reattachment on the Network from time to time without prior approval of the Director as long as neither the component of the Network being worked on, nor any of the equipment or workers involved in such maintenance, repair or reattachment are located on the travel, parking, curb or sidewalk portion of a Public Right-of-Way, or any other portion of a Public Right-of-Way. At least 30 days prior to performing maintenance, repair or reattachment on the Network while located on the travel, parking, curb or sidewalk portion of a Public Right-of-Way, or any other portion of a Public Right-of-Way, EarthLink: (i) shall inform the Director in writing of the location at which it intends to perform such maintenance, repair or reattachment, (ii) shall provide whatever other information the Director requests, and (iii) shall obtain either a verbal or a written approval of the maintenance, repair or reattachment from the Director. In performing maintenance, repair or reattachment on the Network, EarthLink shall comply with all requirements set forth in the applicable permits or as set forth in the Plan. In addition to and notwithstanding the provisions of this subsection, EarthLink shall maintain in good and safe condition all elements of the Network that it places within the Public Rights-of-Way and shall, in connection with any maintenance, repair or reattachment activity it undertakes, comply with all applicable laws and regulations.

5.2 Notwithstanding anything to the contrary in Section 5.1, EarthLink may perform any maintenance, repair, reattachment, removal, replacement, relocation or upgrade to the Network from time to time without prior approval of the Director to the extent it was described in the maintenance policies or plan previously approved by the Director.

6. EarthLink Shall Not Impede or Inconvenience the General Public.

When engaged in installation, operation, attachment, maintenance, repair, replacement, relocation, removal, reattachment or upgrade of the Network, EarthLink shall comply with this ROW Agreement and the applicable permits and not cause any inconvenience to the general public or the City's work forces, except as authorized by the Director. When performing installation, operation, attachment, maintenance, repair, replacement, relocation, removal, reattachment or upgrade of the Network, EarthLink shall not hinder or impede the flow of traffic to any greater extent than is reasonably necessary. EarthLink shall abide by any requirements set forth in the applicable permits or as mutually agreed upon by the Director and EarthLink in the Plan, including requirements relating to time limitations and the submission of a traffic control plan.

7. Unauthorized Use.

In the event of any use by EarthLink of the Public Rights-of-Way in a manner that is not authorized by this ROW Agreement, EarthLink shall, immediately, upon notice by the City, cease the unauthorized use and remove all facilities associated with the unauthorized use. In addition, if EarthLink does not remedy the violation within one business day of written notice from the City describing the unauthorized use, EarthLink shall pay to the City a sum of five hundred dollars (\$500) for each day that the unauthorized use occurs.

8. Term.

The term of this ROW Agreement shall commence on the Effective Date and shall continue in effect for eight (8) years thereafter. This ROW Agreement may be renewed for three (3) successive four (4) year periods of time, upon mutual agreement of EarthLink and the City. If EarthLink continues to occupy the Public Rights-of-Way at the expiration or termination of this ROW Agreement, the City shall have the right to remove EarthLink's property from the Public Rights-of-Way at any time, without notice, in addition to all other applicable remedies.

9. Permit Fees and Taxes.

EarthLink shall be responsible for all applicable permit fees and taxes.

10. Compensation.

As consideration for the right to occupy and use the Public Rights of Way pursuant to this ROW Agreement, EarthLink shall pay the City an annual fee of five thousand dollars (\$5,000), plus

an annual fee of three dollars and 50/100 (\$3.50) per linear foot of Public Rights of Ways occupied by EarthLink, after the first 1,429 feet ("ROW Fee"). The ROW Fee constitutes full consideration and is the only compensation owed to the City in connection with this ROW Agreement, and no additional compensation, consideration, license fee, franchise fee or other fees are required to receive the permissions set forth in this ROW Agreement. The City has considered other fees charged for access to the Public Rights of Way and determined the ROW Fee is reasonable and non-discriminatory. Notwithstanding the foregoing, if EarthLink becomes a certificated provider of telecommunications service for purposes of Va. Code Ann. § 56-468.1, then the foregoing fee shall no longer apply and the City shall be compensated by means of the Public Rights of Way Use Fee established by Va. Code Ann. § 56-468.1(B). The City shall have no ownership interest in or to EarthLink's equipment located in the Public Rights of Way unless EarthLink has filed a petition in bankruptcy, in which case the City shall have all rights provided for by applicable law.

11. Indemnity.

As respects bodily injury, death, personal injury, or third-party property damage, EarthLink agrees to indemnify, defend with counsel to whom City does not have reasonable objections, and hold harmless City, its appointed and elected officials, officers, employees, agents, and representatives from and against any and all claims, losses, damages, defense costs, or liability, of any kind or nature (collectively referred to hereinafter as "Claims"), resulting from EarthLink's (or EarthLink's contractors' or subcontractors', if any) work performed by, or on behalf of, EarthLink, relative to this Agreement, except to the extent those Claims (a) arise solely out of the gross negligence or willful misconduct of the City for Claims resulting from governmental functions performed by the City, or (b) arise out of the gross negligence or willful misconduct of the City for Claims outside the scope or of not resulting from governmental functions of the City. Further, EarthLink agrees to indemnify, defend, with counsel to whom City does not have reasonable objections, and hold harmless City, its appointed and elected officials, officers, employees, agents, and representatives from and against any and all Claims directly or proximately caused by EarthLink's violation of applicable law related to the Network or the Services, except to the extent those Claims (a) arise solely out of the gross negligence or willful misconduct of the City for Claims resulting from governmental functions performed by the City, or (b) arise out of the gross negligence or willful misconduct of the City for Claims outside the scope or of not resulting from governmental functions of the City. EarthLink's obligations under this Section are conditioned upon: 1) that EarthLink shall have been promptly informed of an actual Claim or written notice of a potential Claim and shall have been furnished a copy of each communication, notice or other action related to the alleged Claim, 2) that the City shall cooperate with EarthLink to provide information and assistance necessary to defend or settle the suit or proceeding, and 3) that EarthLink shall be given sole control of the defense (including the right to select counsel), at its sole expense, and the sole right to compromise and settle any suit or proceeding, provided EarthLink will not compromise or settle any suit that admits the liability of the City without the City's prior approval. EarthLink shall be responsible for all attorney's fees and other costs of defending against any alleged Claim, and shall have the right to select counsel. The obligations set forth in this Indemnification provision (i) shall be in effect without regard to whether or not City, EarthLink, or any other person maintains, or fails to maintain, insurance coverage, or a self-insurance program, for any such Claims; and (ii) shall

survive the termination of this Agreement. Nothing herein shall prevent EarthLink's insurer(s) from satisfying EarthLink's obligations under this Section.

12. Limitation of Liability.

NEITHER EARTHLINK NOR THE CITY SHALL 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 shall not be liable for direct damages under this ROW Agreement and any other agreement between the parties in an amount that, in the aggregate, exceeds the amounts received by EarthLink from the City and subscribers for the Network during the immediately preceding twelve (12) months except for damages caused by loss of life, bodily injury, or damage to property.

13. Assignment and Sublicensing.

The City shall not assign this ROW Agreement, or any portion of it, without the prior written permission of EarthLink. EarthLink can assign this ROW Agreement to an entity that is wholly owned or wholly controlled by EarthLink or by a wholly-owned affiliate of EarthLink (each to be referred to as an "Affiliated Entity") without the prior consent of the City. EarthLink can also assign this ROW Agreement pursuant to the sale of all or substantially all of the assets or stock of EarthLink or pursuant to the sale of all or substantially all of the assets or operations of the division of EarthLink that is operating the Network or pursuant to the sale of the Network; provided that if such assignment is not to an Affiliated Entity, then EarthLink must first obtain the City's prior written consent, such consent not to be unreasonably withheld. EarthLink may authorize its contractors and agents to exercise the rights and obligations granted to EarthLink provided EarthLink will be responsible for such contractors' and agents' compliance with this ROW Agreement, provided that under such agreements overall control of the activities in the Public Rights of shall remain with EarthLink.

14. Parties Bear Their Own Costs.

Except as expressly set forth herein, each of EarthLink and the City shall pay their own costs of performing hereunder. EarthLink shall not owe the City for the services of City employees unless described expressly on an attached Exhibit or EarthLink has executed on paper a written agreement specifying the charges EarthLink agrees to pay and the work to be performed by City employees.

15. Notice.

15.1 Except as otherwise set forth herein, all notices given or which may be given pursuant to this ROW Agreement must be in writing and transmitted by (i) telecopy and, on the same day, first class United States mail or (ii) nationally recognized over night delivery service postage pre-paid as follows:

To the City at: City of Alexandria
301 King Street, Suite 3230
Alexandria, VA 22314
Attn: E-Government Manager
Facsimile: 703-997-6445

With a copy to: City of Alexandria
301 King Street, Suite 1300
Alexandria, VA 22314
Attn: City Attorney
Facsimile: 703-838-4810

and to EarthLink at: EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, Georgia 30309
Attention: General Counsel
Facsimile: 404-287-4905

With a copy to: EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, Georgia 30309
Attention: President, Municipal Wireless
Facsimile: 404-892-7616

Either party may change its address by written notice to the other party. Notice may also be provided to such other address as either Party may from time to time designate in writing.

15.2 Notice shall be deemed received on the next business day if it is sent by telecopy and first class mail, or the date of delivery or refusal of delivery if it is sent by over night delivery service.

16. Confidentiality.

To the extent permitted by applicable law the City will not disclose any of the Confidential Information of EarthLink during the Term and for a period of three (3) years after the Term ends. If applicable law requires disclosure of EarthLink's Confidential Information or the terms and conditions of this ROW Agreement then the City will promptly give EarthLink written notice and assist EarthLink in limiting the disclosure to only those portions of that Confidential Information as is necessary to be disclosed according to applicable law. "Confidential Information" of EarthLink means the business plans, financial information and technical information about the Network and the customers of EarthLink and its vendors that are confidential or otherwise trade secrets under applicable law. In addition, the City's obligation not to disclose the trade secrets of EarthLink will

continue as long as they are trade secrets under applicable law.

17. Dispute Resolution.

Except as otherwise provided in this ROW Agreement, any dispute between the Parties or default by either party which arises during the Term of this ROW Agreement, shall be subject to the following administrative remedy:

17.1 Both Parties shall attempt to resolve any controversy claim, problem, default, or dispute ("Dispute") arising out of, or related to, this ROW Agreement through good faith consultation in the ordinary course of business.

17.2 In the event that a Dispute is not resolved by the project managers of each Party, either Party may upon written notice to the other 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 either Party within fifteen (15) calendar days of the Parties' 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 ten (10) business days of the Request for Internal Resolution. Project managers and senior management for each Party shall be the General Market Manager and Vice President, Municipal Networks respectively, for EarthLink, and the City Project Manager and the City Manager or City Manager's designee respectively, for the City, and their respective successors in office. The project managers and senior management may be changed by notice given by the Party changing its personnel.

17.3 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. If the Parties do not successfully resolve the Dispute by senior management, then the Party finding the senior management resolution unsatisfactory shall provide written notice to the other Party, demanding mediation ("Request for Mediation"). The Request for Mediation may not be given prior to the first meeting of senior management, or fifteen (15) business days after the request for Internal Resolution, whichever is earlier, and shall not be given any later than forty-five (45) calendar days following the completion of the first senior management meeting. The Request for Mediation shall set forth all of the issues that Party deems outstanding that must be submitted to mediation. The Party in receipt of the Request for Mediation shall respond within twenty (20) calendar days listing any issues it deems appropriate for submission to the Mediator. All of the requirements of Dispute Resolution and Mediation as described in this Article 9 shall be referred to collectively as the "Resolution Procedures".

17.4 Any Disputes shall be mediated within forty-five (45) calendar days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available, except that those for which the remedy requested is injunctive relief or other equitable remedies shall be mediated within ten (10) business days.

17.5 A mediator shall not have any employment, engagement or other interest in either party. If the parties cannot agree upon a mediator within five (5) business days of the submission of a Request for Mediation then the mediator shall be appointed by the local office of the American Arbitration Association upon request of either party.

17.6 The costs of mediation shall be borne by the Parties equally.

17.7 Each party agrees that any threatened or actual failure of the other party to comply with its obligations hereunder may cause immediate irreparable harm to the non-defaulting party for which there is no adequate remedy at law. Accordingly, each party agrees that the non-defaulting party will be entitled to an order for specific performance and to injunctive relief from a court of competent jurisdiction as remedy for any such threatened or actual default. Nothing in this ROW Agreement, 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 comply with the provisions of this ROW Agreement, and not to take actions that violate its obligations under this ROW Agreement; provided, that such order shall not prevent EarthLink from operating the Network and maintaining the Approved Equipment on the City Property, except on account of expiration of the Term or in the event of termination in compliance with this ROW Agreement and applicable law for a Major Default after full completion of all Resolution Procedures and a court order is issued as provided herein; and provided further that such order for specific performance and injunction shall not require either party to pay or expend any sums in excess of the liability limitation set forth herein.

18. Miscellaneous.

18.1 This ROW Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendment to this ROW Agreement must be in writing and executed by both parties.

18.2 This ROW Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.

18.3 This ROW Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

18.4 If one or more of the provisions of this ROW Agreement shall be held by a court of competent jurisdiction in a final judicial decision to be void, voidable, or unenforceable, then such provisions shall be deemed severable from the remaining provisions of this ROW Agreement and shall in no way affect the validity of the remaining provisions of this ROW Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this ROW Agreement as of the date aforesaid.

CITY:

City of Alexandria, a municipal corporation of
Virginia

By: _____

James K. Hartmann, City Manager

Date: _____

EARTHLINK:

EarthLink, Inc.

By: _____

Printed Name: _____

Title: _____

Date: _____

4096-03-00124060.DOC

EXHIBIT NO. 2

7
12-16-06

~~17~~
~~11-28-06~~

City of Alexandria, Virginia

MEMORANDUM

DATE: NOVEMBER 21, 2006

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: ORDINANCE TO GRANT A CITYWIDE WIRELESS NETWORK
FRANCHISE TO EARTHLINK, INC.

ISSUE: Consideration of an ordinance to grant a franchise to EarthLink, Inc., to use the public rights-of-way and other City property, for the construction, maintenance, operation, and upgrade of a Citywide wireless network.

RECOMMENDATION: That City Council:

- (1) Pass the wireless franchise ordinance (attached) on first reading and schedule it for public hearing, second reading and final passage on Saturday, December 16, 2006; and
- (2) Authorize the City Manager to execute a wireless network franchise agreement with EarthLink, Inc. substantially in the form reflected in the attached.

DISCUSSION: On May 20, City Council adopted an ordinance to solicit proposals for the creation of a Citywide wireless network. On June 27, Council received ten proposals from private sector entities, and referred them to the City Manager for review. The City Manager appointed an evaluation committee consisting of representatives from Information Technology Services, Police, Fire, the Alexandria City Public Schools, and the Commission on Information Technology. After carefully evaluating the proposals, interviewing finalists, and researching references, the Committee unanimously recommended EarthLink, Inc. as the preferred wireless network provider. With the City Manager's concurrence, staff from Information Technology Services and the City Attorney's Office negotiated a franchise agreement with EarthLink.

Upon award of the wireless franchise, EarthLink would proceed to build out its network over a period of approximately six to nine months. Assuming a final award on December 16, the network is projected to be operational in Summer 2007. EarthLink will invest approximately \$1.9 million in the initial capital deployment. The entire cost of the network's construction and

operation will be funded by EarthLink, which will then recoup its investment by charging residential, business, and wholesale Internet subscribers for a variety of wireless services. In exchange for the franchise, EarthLink has agreed to provide to the City fee revenues and public benefits estimated at more than \$13 million over the eight-year term of the franchise agreement. These benefits and fees are described in more detail later in this report.

EarthLink's proposal was selected primarily on the basis of the company's financial strength and previous experience with municipal wireless projects; its proposed technology to deploy the network; and its offer of public benefits in exchange for the franchise. Founded in 1994, EarthLink is a recognized national Internet service provider with more than 5.3 million current subscribers in the United States and several other notable municipal wireless deployments (including Philadelphia, Anaheim and New Orleans). EarthLink is a publicly-traded company with total revenues in 2005 of \$1.3 billion, and has created a dedicated Municipal Networks subsidiary. EarthLink's equipment partners for this project are Motorola (which supplies the majority of the City's existing public safety and public works radio systems) and Tropos Networks (which supplied the equipment for the City's King Street wireless pilot project).

The negotiated franchise agreement includes the following key terms:

- The wireless network, which will cover the entire City, will be constructed, maintained, owned, operated, and upgraded by EarthLink, with no taxpayer funding or City financial investment whatsoever. This project is not a joint venture or partnership, and the City will not be a municipal Internet service provider or compete against the private sector. Instead, EarthLink will be a private sector Internet service provider.
- Residential and business consumers will have a new choice for broadband Internet service, in addition to current choices such as cable, DSL, cellular, and satellite. EarthLink's wireless services will be provided directly from pole-mounted equipment throughout the City, and not through wires entering homes or businesses. The availability of wireless Internet will benefit consumers by stimulating additional price and service competition in the market. Other than through the terms of the franchise agreement, the City will not regulate EarthLink's provision of services to consumers. EarthLink has indicated that basic residential Internet service will initially be priced at approximately \$21 per month. Visitors will also be able to purchase hourly or daily access.
- EarthLink will provide five categories of public benefits and revenues, estimated to be worth more than \$13 million over the eight-year term of the franchise agreement, in lieu of a franchise fee or other similar fee. Because wireless Internet service is still in its early stages, staff recommends this approach to guarantee the value of the franchise to the City regardless of EarthLink's eventual gross receipts.

- Accounts for Government Use: EarthLink will provide, on an ongoing basis, up to 500 free wireless Internet accounts for use by the City government. The City may purchase additional accounts at \$10 per month for individual workers and \$2 per month for fixed-in-place devices such as traffic signals or parking meters.
- Accounts for Student Use: EarthLink will provide free access over the wireless network to the 2,500 laptops currently issued to Alexandria City Public Schools (ACPS) ninth grade center and high school students, in order for them to access the Schools' existing network 24 hours per day. This will dramatically increase the value and usefulness of the Schools' laptop program by providing home Internet access to students who may not otherwise have such Internet access and allowing students to access ACPS network resources such as homework dropboxes and printers. Internet access through the ACPS network is currently filtered by ACPS to reduce the availability of inappropriate content, and this filtering will remain in place when students access the ACPS network via the EarthLink network. In the event that ACPS issues laptops to more than 2,500 students in the future, additional accounts may be purchased by ACPS at \$10 each per month. With the combination of ACPS-provided laptops and the Citywide free wireless access for these students, Alexandria may be the first jurisdiction in the nation to provide such extensive free computers and Internet access to its secondary school students. Because many students live in low-income households, this combination of laptops and free wireless Internet service will also help address a significant aspect of the digital divide.
- Digital Inclusion Accounts: EarthLink will offer a fixed price of \$9.95 per month, for the term of the franchise, to 2,700 low-income residents (approximately four percent of Alexandria households). This represents a discount of more than half off EarthLink's current projected retail rate. In the event that EarthLink upgrades its basic Internet account offering, low-income residents will still receive a discount. Eligible residents will be qualified under guidelines to be determined by the City, and the City may partner with community non-profit organizations to assist in distributing these accounts and providing low-cost computers and computer training to complement the Internet access.
- Free Public Internet Access Areas: EarthLink will provide free public Internet access in approximately two dozen locations, representing five percent of the City's total area. The exact locations are subject to field testing once network deployment begins, but will include the entire

Potomac River waterfront and adjacent parks, the King Street corridor from Callahan Drive to the waterfront, the Mt. Vernon Avenue corridor between Hume Avenue and E. Braddock Road, and all Alexandria Metrorail, Amtrak, and VRE stations. The additional areas will consist of major parks located throughout the City (e.g. Ben Brenman Park), and Landmark Mall. Whether or not an individual is in a free public Internet access area, any individual anywhere in the City will be able to access the City's web site, the ACPS web site, the Alexandria Convention and Visitors Association web site, and other such City and non-profit web content.

- **Fees and Rent:** In exchange for the right to mount some of its network equipment on City-owned property, EarthLink will pay an annual fee of one percent of its retail access revenues under the franchise, or \$37,500, whichever is greater; plus a monthly rental fee of \$1 per pole or \$500 per building rooftop actually used. EarthLink will also pay an annual fee of at least \$5,000 for access to the public rights-of-way.
- The eight-year franchise is not exclusive, and may be renewed for up to three four-year periods only with the consent of both parties. The City may award additional franchises to other wireless providers in the future. EarthLink will operate an open network, meaning that other providers may purchase wholesale accounts to resell to their customers.
- EarthLink's equipment will consist primarily of small devices mounted on Dominion Virginia Power street lights. Additional equipment may be mounted on City-owned poles, traffic signals, building rooftops, and other assets. EarthLink will be bound by all City building code, permitting and zoning requirements in the event it installs equipment on any private property (upon agreement with the property owner).
- EarthLink will pay for all electricity used, whether or not on City property, and will pay any business license, business personal property, or other taxes normally applicable to its business.
- The franchise agreement contains provisions related to protection of City property, insurance requirements, dispute resolution, indemnification, and other terms to protect the City.

FISCAL IMPACT: This franchise is projected to provide more than \$13 million in public benefits and fee revenues to the City and its residents and businesses, over eight years. This equates to more than \$1.6 million in public benefits and fee revenues per year. This includes the capital cost avoided while still having use of a citywide network for municipal and public purposes; the free and discounted accounts available to the government, students, and low-income

residents; and fees and rent paid for use of City property. Note that these are estimates based on conservative assumptions and do not attempt to incorporate values such as free public Internet access areas, indirect economic development and tourism, communications and sales tax revenue from EarthLink's customers, or EarthLink's payment of business license tax and business personal property tax.

	<u>Value of Projected Benefits</u>
Initial Capital Investment Avoided by Taxpayers	\$ 1,900,000
Capital Upgrades and Maintenance Over Franchise Term	805,000
500 Free Government Accounts	1,008,000
500 Fixed-In-Place Device Accounts	912,000
2,500 Free Student Accounts	5,040,000
2,700 Digital Inclusion Accounts	2,864,160
Minimum Revenue Share	300,000
Rent for 50 City Poles	148,800
Right-of-Way Access Fee	<u>40,000</u>
TOTAL	\$ 13,017,960

ATTACHMENT: Proposed Franchise Agreement and Right-of-Way Franchise Agreement with EarthLink, Inc.

STAFF:

Mark Jinks, Deputy City Manager

Mike Herway, Director, Information Technology Services

Craig Fifer, E-Government Manager, Information Technology Services

Introduction and first reading:	11/28/06
Public hearing:	12/16/06
Second reading and enactment:	12/16/06

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to grant to Earthlink, Inc., its successors and assigns a franchise, under certain conditions, permitting the grantee to use the public right-of-way and on other public property in the City of Alexandria, for the design, construction, maintenance, and operation of a citywide wireless network for internet access and other purposes, for the benefit of residents, businesses and government in the City.

Summary

The proposed ordinance grants a franchise to Earthlink, Inc., for a citywide wireless network to provide internet access and other service, for the benefit of residents, businesses and government in the City.

Sponsor

Department of Information Technology Services

Staff

Mark Jinks, Deputy City Manager
Mike Herway, Director of Information Technology Services
Craig Fifer, E-Government Manager
Karen S. Snow, Assistant City Attorney

Authority

15.2-2100, et seq., of the Code of Virginia (1950), as amended

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. _____

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AN ORDINANCE to grant to Earthlink, Inc., its successors and assigns a franchise, under certain conditions, permitting the grantee to use the public right-of-way and on other public property in the City of Alexandria, for the design, construction, maintenance, and operation of a citywide wireless network for internet access and other purposes, for the benefit of residents, businesses and government in the City..

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That this Franchise is hereby granted to Earthlink, Inc., hereinafter referred to as "Grantee," its successors and assigns, to permit the Grantee to design, construct, maintain, and operate a citywide wireless network for internet access and other purposes, using the public right-of-way and other public property in the City.

Section 2. That the said Franchise is awarded to the Grantee after public notice and invitation for bids, as required by law, pursuant to Section 2 of Ordinance No. 4477, and after the invitation for bids was duly closed and all bids were fully and carefully investigated and evaluated.

Section 3. That the Grantee be, and hereby is, granted a Franchise for eight years to design, construct, maintain, and operate a citywide wireless network for internet access and other purposes, for the benefit of residents, businesses and government in the City. The Grantee shall strictly comply with the terms of this Ordinance and with the Franchise Agreement and Right-of-Way Franchise Agreement attached hereto and incorporated fully herein by reference, together with all applicable laws and regulations of the City of Alexandria, the Commonwealth of Virginia and the United States, and any regulatory agency having jurisdiction, including, without limitation, with the following conditions:

1. Each year an updated map of all facilities within the City, existing and proposed, showing locations, scheduled construction and service dates, and such additional information as the city manager may specify in his reasonable discretion, shall be filed with the city's department of transportation and environmental services.

2. All necessary permits shall be obtained for each and every excavation or installation, including but not limited to boring in and/or under a public right-of-way or other public place.

3. In the event the relocation, construction, reconstruction, maintenance or repair by the City, the Commonwealth of Virginia or the Washington Metropolitan Area Transit Authority of any facilities or services is necessary or desirable, and it is necessary to alter or relocate, either permanently or temporarily, any of the Grantee's property in the public right-of way or other public property in order to accomplish same, the Grantee will, after reasonable notice, move, alter or relocate its property at its own cost and expense, and should the Grantee fail to comply with such notice, its property may be removed, altered or relocated by the City, state or Washington Metropolitan Area Transit Authority at the cost of the Grantee and without

1 liability for any resulting damage. The Grantee will do everything reasonably necessary, in a
2 timely manner, to prevent any delays in construction projects of the City, the state or the
3 Washington Metropolitan Area Transit Authority.
4

5 4. This Franchise may be assigned or transferred; provided, however, that no such
6 assignment or transfer shall be effective without the prior written consent of the City, which
7 consent will not be unreasonably withheld.
8

9 5. The Grantee will obtain liability insurance to the satisfaction of the city
10 attorney, which insurance shall name the City as an additional insured.
11

12 6. The Grantee will not use the privileges granted by this Franchise to provide the
13 functional equivalent of a cable system or cable service as defined in sections 9-3-17 and 9-3-18
14 of the Alexandria City Code.
15

16 7. In exchange for the privileges granted by this Franchise, the City shall have
17 free use of the network for municipal governmental purposes.
18

19 8. In exchange for the privileges granted by this Franchise, the general public
20 shall have free use of the network for wireless internet access in the outdoor areas and public
21 facilities in the City designated in the Franchise Agreement.
22

23 9. At such time as the City may require underground installation of existing,
24 overhead facilities in any area covered by this Franchise, the Grantee will, at its sole cost and
25 expense, relocate its facilities underground in accordance with the provisions of the City's
26 underground utilities ordinance, to the extent underground location of such facilities is
27 technically feasible.
28

29 10. The Grantee shall protect all property of the City or any other person during
30 any work of designing, constructing, maintaining, or operating its system in or adjacent to the
31 public right-of-way or other public place, and shall fully restore, in kind, any property damaged
32 or destroyed during any such work. In the event the Grantee and any property owner are unable to
33 agree on a remedy, the Grantee agrees to abide by the determination of the City as to
34 compensation or restoration.
35

36 11. That nothing in this Franchise shall be construed to obligate the City to
37 continue its franchise with any other franchisee who owns or uses the poles to be used by the
38 Grantee, nor shall this Franchise increase or strengthen the rights that other franchisees may
39 have. The City shall have no liability to the Grantee for exercising any rights the City may have
40 in general or under its franchises with other franchisees, regardless of the effect of such exercise
41 on the Grantee.
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43 12. The Grantee shall remove its property at its own expense at the expiration or
44 termination of this Franchise or any extension hereof.

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Section 4. That the city manager be and hereby is authorized to execute such documents as may be required to effectuate the Franchise hereby granted.

Section 5. That the city clerk be and hereby is authorized to attest the execution of said documents and to affix thereon the official seal of the City of Alexandria, Virginia.

Section 6. That this ordinance shall become effective on the date and at the time of its final passage.

WILLIAM D. EUILLE,
Mayor

Attachment: Franchise Agreement
Right-of-Way Franchise Agreement

Introduction: 11/28/06
First Reading: 12/16/06
Publication:
Public Hearing:
Second Reading:
Final Passage:

FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") is made and entered into as of this ____ day of December, 2006 ("Effective Date"), by and between The City of Alexandria ("City"), and EarthLink, Inc., a Delaware corporation ("EarthLink"). The City and EarthLink may be referred to herein individually as a "Party", and collectively as the "Parties."

BACKGROUND

- A. The City owns, operates and maintains certain street light, traffic signal poles, and the associated support arms and connecting hardware, as described on the attached **Exhibit A** (collectively "City Owned Poles").
- B. The City owns, operates and maintains certain buildings and other real property as specifically described on the attached **Exhibit B** (collectively "City Premises"). The City Owned Poles and City Premises shall be jointly referred to as "City Property."
- C. The City seeks to grant EarthLink the right to use the City Property for the construction, maintenance, operation and upgrade of a City-wide wireless broadband system, for the benefit of residents, businesses and government in the City.
- D. EarthLink desires to attach its radios, antennae, gateways, wires, cables, fibers, filters, amplifiers and other equipment, and switching, processing, monitoring, transmission and distribution components of its broadband wireless system, comprised of the equipment described on Exhibit C, and substantially similar equipment as further described in Section 1.5 hereof (collectively "Approved Equipment") to City Property for the purpose of installing, operating and maintaining a wireless broadband network in the City ("Network").
- E. EarthLink desires to offer wireless broadband services by means of the Network as more fully described in Section 1.2 hereof (the "Services") to residential, business and municipal customers in the City.

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

1. SCOPE OF AGREEMENT

- 1.1 Construction of Network. EarthLink shall establish, construct, own, operate, upgrade and maintain the Network in accordance with this Agreement. EarthLink itself may perform the work required to install and maintain its Approved Equipment, to operate the Network, and to meet its other obligations under this Agreement, and EarthLink may also use contractors or agents for such purposes, provided that EarthLink shall remain responsible for compliance with all of the terms of this Agreement.

- 1.2 Non-Exclusive Permission. The City hereby grants to EarthLink the permission, on a non-exclusive basis, to attach, install, control, operate, maintain, repair, replace, reattach, reinstall, relocate, and remove Approved Equipment on and from City Property, all for the limited purpose of providing EarthLink's Services within the City, subject to the terms of this Agreement, and all applicable laws and regulations. Access to the City Property shall be subject to the terms of the licenses required by this Agreement to access City Property and any required permits. The "Services" shall consist of (i) wireless broadband Internet access provided by EarthLink to its subscribers by means of the Network and using IEEE standards 802.11 and 802.16 (commonly known as "WiFi" and "WiMax") and protocols as required to support the Network, or substantially similar successor technologies such as IEEE standard 802.22; (ii) wireless services provided by EarthLink to its subscribers within the Network using IEEE standards 802.11x and 802.16 or substantially similar successor technologies, but without using the Internet; (iii) any other services that can be provided by means of the Approved Equipment, with the exception of cable services; and (iv) access to the Network by other service providers in order to allow such providers to provide the foregoing wireless broadband Internet access service and wireless services to the subscribers of such other service providers. EarthLink may use the Network to provide cable services in the City if EarthLink has first obtained a franchise or other applicable authorization from the City, in accordance with applicable law. For purposes of this section, the term "cable services" shall be defined as it is under the Communications Act of 1934, as amended. Except as otherwise provided in this Agreement, EarthLink shall obtain and maintain in force all licenses, permits, intellectual property rights and other permission required for it to construct and operate the Network and provide the Services.
- 1.3 Use of Approved Equipment. EarthLink's Approved Equipment shall be used exclusively by EarthLink solely for the rendering of Services. This provision shall not be construed to prohibit EarthLink from selling access to the Network to other service providers on a wholesale basis, for the direct provision or resale of Services to end users. In operating the Network, EarthLink is committed to in good faith provide an open access system on which third parties can provide services enabled by the Network that may be competitive with each other and EarthLink. In setting pricing and other obligations for service providers, EarthLink shall treat similarly situated service providers in a similar manner, which may include the requirement for reciprocal access to the service provider's networks.

- 1.4 Subject to Rights of City and Others; No Property Interest. The permissions granted to EarthLink pursuant to this Agreement shall be: (i) exercised by EarthLink at EarthLink's sole risk and expense; (ii) subject to the rights of the City to use and permit others to use City Property, provided that any future grant of such rights does not have the effect of substantially defeating the purposes of this Agreement; and (iii) subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, claims of title, leases, licenses, permits, permission, and rights (whether recorded or unrecorded) of others in, or that may affect the City Property, specifically including all rights of the Virginia Department of Transportation ("VDOT"), provided the City will notify EarthLink of any such rights or obligations that affect EarthLink's access to or use of any City Property of which the City becomes aware. As of the Effective Date, the City is not aware of any existing rights that would substantially interfere with EarthLink's use of the City Property as contemplated by this Agreement and the applicable Exhibits, but the City has conducted no investigation into the existence of any such rights, and makes no warranties or representations regarding the existence of any such rights as of the Effective Date. This Agreement grants a mere license with respect to the right to occupy any particular City Pole or City Premises. Nothing in this Agreement shall be deemed to grant, convey, create, or vest any real property interest in EarthLink, including any fee or leasehold interest or easement.
- 1.5 Only Approved Equipment may be attached to City Property. Approved Equipment shall be installed in a manner substantially similar to the installation specifications and configurations shown in the drawings and photographs in Exhibit C. Any installation method or configuration that is not substantially similar to an installation method or configuration described in Exhibit C shall not be employed without the prior written permission of the City, such permission not to be unreasonably withheld or delayed. In determining whether an installation method is substantially similar, the City may consider whether such method causes materially greater damage to City Property than the existing method. EarthLink may amend Exhibit C to include new or different equipment that is substantially similar to Approved Equipment already in use by submitting information to replace or supplement information in Exhibit C and requesting the City's approval of such changes, which shall not be unreasonably withheld or delayed. If EarthLink does not receive any response from the City within ninety (90) days of written notice to the City, then such installation method, configuration or equipment will be deemed approved by the City and Exhibit C shall be deemed modified. If EarthLink installs any equipment other than Approved Equipment, EarthLink shall promptly remove such equipment at its sole cost and expense upon notice from the City, or the City may do so at EarthLink's sole cost and expense.
- 1.6 Installation on Private Property. Equipment to be installed on private property shall comply with all generally applicable City ordinances and regulations, including, but not limited to, the City's Zoning Ordinance.
- 1.7 Co-location. Nothing in this Agreement shall be deemed to obligate the City to grant EarthLink permission to use any particular facility or property not covered

by this Agreement. The City reserves the right to enter into other agreements for the same or different services and the right to enter into co-location agreements with other persons or entities including, but not limited to, telecommunications and information services providers, for use of City Property subject to the City's obligations under this Agreement. No other person or entity shall be permitted to co-locate any facilities with Approved Equipment or City Property until such person or entity first enters into a separate agreement with the City.

2. USE OF CITY PROPERTY

- 2.1 General Permit. The City hereby grants to EarthLink a general permit for construction required or appropriate in order to install and maintain the Approved Equipment on City Property ("General Permit"). The General Permit shall authorize EarthLink to install Approved Equipment without obtaining individual permits governing such installations, provided that EarthLink complies with all requirements of applicable City Code provisions, regulations and standard permit conditions governing construction and safety standards and procedures. The General Permit does not authorize EarthLink to perform any construction or other activity in the public rights-of-way without first obtaining a Right-of-Way permit from the City. In addition, EarthLink may be required to obtain a lane closure permit, submit a maintenance of traffic plan and secure additional permits and approvals as required by the Virginia Work Area Protection Manual, effective January 1, 1996, as amended, and other applicable local, state and federal laws and regulations.
- 2.2 Placement on City Poles. The City hereby grants to EarthLink a license to place Approved Equipment on the City Poles at any time during the Term of this Agreement, subject to applicable zoning requirements. "Installed City Poles" shall refer to any City Pole on which Approved Equipment is actually installed pursuant to this Agreement. EarthLink will submit an installation plan for the initial construction of the Network in connection with the permitting process. EarthLink's installation(s) shall be performed in such a manner as not to interfere with the street light services of the City or the operation of traffic signals. Within ninety (90) days after the completion of all installation on the City Poles that EarthLink then intends to install, EarthLink shall give written notice to the City designating the City Poles on which EarthLink has installed Approved Equipment ("Placement Notice"). Each Placement Notice shall include, in hard copy and electronic format, a full set of as-built drawings, showing in detail the exact location of EarthLink's facilities on City Property, and clearly identifying each of the City Poles and City Premises to which such facilities have been attached. The City will not object to Placement Notices provided that the items described in the notice are otherwise Approved Equipment.
- 2.3 Intentionally Left Blank.
- 2.4 Use of City Premises. The City hereby grants to EarthLink a license during the Term to install Approved Equipment directly on the City Premises described on

Exhibit B, and to operate and maintain Approved Equipment at those locations, subject to applicable zoning requirements. EarthLink shall execute a separate license with respect to each of the City Premises, each in the form attached as Exhibit B. EarthLink shall be entitled to access the City Premises for purposes of installation, inspection, repair, removal and upgrade of Approved Equipment on the terms specified in each individual license. The City Manager or his designee is hereby authorized to execute individual licenses in the form of further Exhibit Bs adding additional City Premises and Approved Equipment without the necessity of further approvals by the City Council so long as the terms of such licenses are consistent with Exhibit B. The City will promptly inform all appropriate City representatives and employees and security personnel about the access rights necessary or appropriate to ensure timely access to Approved Equipment located on City Premises.

- 2.5 No Exclusivity. EarthLink shall not have the exclusive right to use or occupy any City Poles or City Premises. EarthLink agrees that, for purposes of the City Property only and the FCC's Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000: (i) EarthLink's rights to use City Property pursuant to this Agreement or any individual site license do not constitute a direct or indirect ownership or leasehold interest; (ii) none of the City Property that EarthLink has the right to use pursuant to this Agreement or any individual site license is within the exclusive use or control of EarthLink; and (iii) no provision of this Agreement or any individual site license impairs the installation, maintenance, or use of any Approved Equipment.
- 2.6 No Interference. EarthLink shall, at its own expense, install, operate, and maintain Approved Equipment on City Property in a good and workmanlike manner and in accordance with applicable City, state and federal laws, ordinances and regulations, including, without limitation, any applicable regulations of the Federal Communications Commission.
- 2.6.1 EarthLink shall inspect, construct, and maintain the Approved Equipment in a manner that will not cause unreasonable physical interference to City and other tenants or licensees of the City Premises, including without limitation the operation or use of any portion of the sanitary sewers, storm sewers and drains, water mains, gas mains, poles, or other City Property, except to the extent contemplated by a permit or other applicable license. EarthLink shall also avoid physically blocking the transmissions of radio equipment operated by the City.
- 2.6.2 EarthLink is not obligated to conduct any tests, studies or investigations. EarthLink shall operate the Approved Equipment in a manner that will not cause harmful radio frequency interference ("RF Interference") to the City and other tenants or licensees of the City Premises. All operations by EarthLink shall be in compliance with all Federal Communications Commission ("FCC") requirements and all other applicable laws, codes, rules and regulations.

- 2.6.3 Subsequent to the installation of the Approved Equipment, City shall, to the extent practicable without limiting the City's ability to conduct its activities in accordance with its normal practices, attempt to avoid causing RF Interference to or physically blocking the signals of Approved Equipment. The City shall also inform new tenants of City Property on which Approved Equipment has been installed of the existence and location of such Approved Equipment and shall obligate each new tenant in its lease to operate its equipment in compliance with all applicable FCC regulations, to use commercially reasonable efforts not to cause RF Interference or to cause physical interference with the Approved Equipment installed on the Premises, and, if the new tenant causes RF Interference to the Approved Equipment, to participate in the interference resolution process described in Section 2.6.4.
- 2.6.4 In the event either party suffers from RF Interference as a result of the actions of the other party, the affected party shall give the other party written notice of the nature of RF Interference, including any studies that demonstrate or may have been performed in connection with such RF Interference. The parties shall then meet and mutually cooperate to determine the cause of the RF Interference and agree on a method for eliminating the RF Interference, or reducing it to an acceptable level. Notwithstanding the foregoing, in the event that the RF Interference continues for more than ten (10) days and causes material harm to EarthLink's operation of the Network, the Installed City Pole Fees or other payments due from EarthLink with respect to Approved Equipment affected by RF Interference shall abate proportionately on a per diem basis for each day after such ten-day period. In addition, during any period in which EarthLink suffers from RF Interference, EarthLink will not be required to provide the Public Benefits within the geographic area directly affected by the RF Interference, or, to the extent the RF Interference affects EarthLink's ability to provide Public Benefits in a manner other than geographic coverage, EarthLink may alter or reduce the Public Benefits in a manner reasonably related to the effects of the RF Interference on EarthLink's ability to provide the Public Benefits. Additionally, if such material RF Interference continues for a period of ninety (90) days and the parties are unable to agree on a mutually satisfactory resolution of the problem, EarthLink shall have the right to terminate the applicable Exhibit B and/or this Agreement immediately upon notice to City. Similarly, if the actions of EarthLink cause RF Interference to City facilities which materially affects the operation of such facilities for a period of ninety (90) days and the parties are unable to agree on a mutually satisfactory resolution of the problem, the City shall have the right to terminate the applicable Exhibit B and/or this Agreement immediately upon notice to City. Upon termination of any Exhibit B in connection with this Section 2.6, EarthLink will not be required to provide

the Public Benefits to the extent directly impacted by the termination of the applicable Exhibit B.

- 2.6.5 Subject to the City's obligations set forth in Section 2.6.3 and 2.6.4, the City shall have no liability to EarthLink for RF Interference caused by any third party, provided that the foregoing provisions shall not affect EarthLink's rights regarding the procedure for resolving RF Interference in this Agreement, including, without limitation, EarthLink's right to terminate a site license or this Agreement. The City shall exercise its best efforts to assist in the resolution of any dispute regarding RF Interference caused by the activities of an occupant of City property other than EarthLink or the City.
- 2.7 Substitution. At any time during the Term, EarthLink shall have the right to install, maintain and use Approved Equipment described in its Placement Notice and any upgraded Approved Equipment later installed on City Poles or City Premises. If EarthLink determines that a designated City Pole cannot or should not be used for the Network, during installation or thereafter, EarthLink may install Approved Equipment on another City Pole. In such event, EarthLink shall notify the City, by an amended Placement Notice ("Amended Placement Notice"), within thirty (30) days after the installation of Approved Equipment on the substitute City Pole. The City will not object to an Amended Placement Notice, provided that the items described in the notice are otherwise Approved Equipment.
- 2.8 Addition of City Poles. At any time during the Term of this Agreement, EarthLink shall be entitled to place additional, upgraded, or replacement Approved Equipment on any City Poles, and to modify the location of existing Approved Equipment and to designate additional City Poles for installation of Approved Equipment by following the notification procedure set forth in this Agreement and the aggregate total number of Installed City Poles shall be adjusted accordingly.
- 2.9 Reduction of City Poles. At any time during the Term of this Agreement, EarthLink shall be entitled to remove any of EarthLink's Approved Equipment from any or all of the Installed City Poles and the aggregate number of Installed City Poles and the applicable Installed City Pole Use Fees shall be reduced accordingly. If EarthLink removes any Approved Equipment from any of the Installed City Poles, then EarthLink shall, within thirty (30) days after such removal, give notice thereof to the City, specifying the Installed City Poles vacated and the location thereof, as well as the date of removal. Such removal by EarthLink or a removal by the City as permitted herein shall immediately terminate EarthLink's obligation for payment of the Installed City Pole Use Fee and other rental charges for the applicable Installed City Poles after the removal occurred and the sums due for such previously Installed City Poles will be pro-rated through the date of such removal. The rights granted by this Section 2.9 shall not be exercised in a way that would defeat the intent of this Agreement.

- 2.10 Replacement. In the event any Installed City Poles are to be replaced, repaired, altered or made incapacitated by power interruption or other reasons, the City shall give EarthLink reasonable advance written notice which shall be at least thirty (30) days advance written notice, except as described in Section 2.11. If the City removes, repairs or alters Installed City Poles in such a way that EarthLink is required to remove and/or reinstall the Approved Equipment on such Installed City Poles as contemplated in this Agreement, then EarthLink shall be entitled to reinstall on any other City Pole chosen by EarthLink as soon as EarthLink elects and the City shall not charge EarthLink any fees for obtaining approval of any substitute Installed City Poles. EarthLink may elect to relocate, replace or transfer Approved Equipment from all, some or none of the affected Installed City Poles to replacement City Poles. If EarthLink elects not to replace or relocate Approved Equipment from any Installed City Poles, the Installed City Pole Use Fee for those Installed City Poles will terminate effective upon the earlier of removal of the Approved Equipment or removal of the Installed City Pole.
- 2.11 Emergency. In case of an emergency or a Force Majeure Event (as defined below), the City may remove Approved Equipment as required, if the City determines it is necessary to protect public safety or public property from imminent danger. In the event of an emergency, the City shall make reasonable efforts to give EarthLink oral notice of the nature of the emergency and the reasons that the Approved Equipment must be removed before the removal takes place. In any event, the City shall notify EarthLink of the nature of the emergency and the reasons that the Approved Equipment must be removed as soon as reasonably practical. The City shall store and protect any equipment removed by the City until it is reclaimed by EarthLink.
- 2.12 Damaged Pole. If an Installed City Pole is fully or partially destroyed or damaged, and as a result thereof EarthLink is unable to conduct its operations on such Installed City Pole in a manner that is functionally equivalent to EarthLink's operations before such event, EarthLink will so notify the City in writing once EarthLink becomes aware of such destruction or damage. The City shall give EarthLink reasonable notice of whether or not the City intends to repair, rebuild or restore the applicable Installed City Pole. If the City removes an Installed City Pole on which EarthLink has installed Approved Equipment for any reason then the City shall give EarthLink reasonable notice and protect and return to EarthLink the Approved Equipment installed on those Installed City Poles. In either event EarthLink shall be entitled to install Approved Equipment on a substitute Installed City Pole determined by EarthLink. The City shall permit the substitute City Pole installation. EarthLink shall be entitled to a pro-rata abatement of the Installed City Pole Use Fee for the affected Installed City Pole(s) for the number of twenty-four (24) hour periods it is unable to conduct its normal operations from the affected Installed City Pole or the substitute Installed City Pole.
- 2.13 Removal of Previous Installations. If in the course of installing Approved Equipment EarthLink finds third party equipment on a City Pole that appears to be abandoned or no longer in operation, EarthLink shall notify the City. If the

presence of such existing equipment would interfere with the installation or operation of Approved Equipment, EarthLink may request authority from the City to remove the existing equipment, and shall only remove the existing equipment upon receipt of such authority. If failure to grant such authority would make installation or operation of Approved Equipment on a City Pole impractical, EarthLink shall inform the City of the consequences, and the parties shall discuss alternatives.

2.14 Right to Inspect. The City shall have the right to make periodic inspections at the City's discretion and cost as conditions may warrant. Such inspections shall not be charged to EarthLink. Failure of the City to make any inspections shall not delay EarthLink or the Network installation. Except as otherwise provided in this Agreement, EarthLink is not obligated to obtain any inspections before proceeding as provided hereunder.

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2.16 Compensation for Installed City Poles and City Premises.

2.16.1 Compensation for City Poles. As compensation for the right to occupy City Poles, EarthLink shall pay in arrears to the City a fee ("Installed City Pole Use Fee") for the right to access and use the Installed City Owned Poles in the amount and when described on the attached **Exhibit E** commencing on the first day of the first calendar month after the entire Network becomes operational with customers who are paying for the services of the Network after all pilots and testing is completed ("Commencement Date"). The Installed City Pole Use Fee shall be calculated based on the number of Installed City Poles determined as of the date that is thirty (30) days prior to each payment date so the amount owed will increase and decrease as the number of Installed City Poles increases and decreases. EarthLink shall pay to the City the Installed City Pole Use Fee in arrears for each previous month, and shall make such payments annually within forty-five (45) days of the last day of each anniversary of the Effective Date

2.16.2 Compensation for City Premises. EarthLink shall pay a license fee with respect to each of the City Premises on which it installs Approved Equipment, in the amount specified in Exhibit B. The fee shall be owed for a specific location only for as long as the Approved Equipment is in fact located on that Premises and only for the number of devices that are so installed and maintained. The license fees for use of City Premises shall be due and payable at the same time as the Installed City Pole Use Fee.

2.16.3 Generally. As further compensation for the right to occupy City Poles and City Premises regardless of whether any City Pole or City Property is utilized, during the Term EarthLink shall pay the City an annual fee

calculated as follows: the greater of (i) thirty seven thousand five hundred dollars (\$37,500), or (ii) one percent of EarthLink's total receipts collected and received by EarthLink for the retail access services provided via the Network in the City, less any amounts paid for digital inclusion accounts or paid by the City to EarthLink for any of the Public Benefits or Additional Services ("Access Revenue Fee"). 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. The City acknowledges that the fees described in this Section 2.16, and the Public Benefits described in Exhibit F constitute full consideration and are the only compensation owed to the City in connection with this Agreement or any Site License Agreement, and no additional compensation, consideration, license fee, franchise fee or other fees required to receive the permissions set forth in this Agreement will be owed to the City even if the City elects not to purchase or use such Public Benefits. EarthLink will remit the remainder of the Access Revenue Fee within forty-five (45) days after EarthLink's books are audited for the relevant calendar year.

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- 2.19 No Relief from Taxes. The fees required by this Agreement shall be in addition to, and not in lieu of, all taxes required by the City, and all other amounts EarthLink may be required to pay the City by law, ordinance, or other agreement.
- 2.20 Costs and Expenses Borne by EarthLink. EarthLink shall bear all costs incurred by EarthLink in connection with the planning, design, construction, repair, modification, disconnection, attachment, installation, control, operation, maintenance, reattachment, reinstallation, relocation, removal, and replacement of the Network by EarthLink or as otherwise authorized by this Agreement. EarthLink shall be responsible for, and shall bear all costs of, damage to, repair of, or deterioration of, the Network due to repair, maintenance, or force majeure. As between EarthLink and the City, EarthLink agrees to bear such costs except to the extent the damage results solely from the gross negligence or willful misconduct of the City, its officers, employees, or agents.
- 2.21 Late Payment. Any amounts not paid within sixty (60) days of EarthLink's receipt of an invoice will incur interest at a rate of ten (10%) percent per annum until paid.
- 2.22 No Waiver. Acceptance by either the City or EarthLink of any payment, or EarthLink's use of the City Property, shall not be deemed a waiver by the City or EarthLink of any breach of this Agreement by the other party.
- 2.23 Repair of Damaged City Property. EarthLink promptly shall repair, replace, or refinish, at EarthLink's sole cost and expense, any City Pole or other City Property

that is damaged materially in function or in form during the attachment, installation, maintenance, reattachment, reinstallation, relocation, removal, and replacement of the Network or as a result of acts of EarthLink or its contractors or agents in connection with the operation of the Network. Without limiting any other remedies available to the City, if EarthLink fails to repair, replace, or refinish such damage or disturbance within a reasonable amount of time after notice from the City detailing damage caused by EarthLink or its contractors or agents then the City may, in its sole discretion, but without any obligation to do so, repair, replace or refinish the damage or disturbance. In the event that the City undertakes the repair, replacement, or refinishing as a result of EarthLink's failure to do so after allowing EarthLink a reasonable amount of time to do so, EarthLink promptly shall, upon receipt of an invoice for such costs and expenses, reimburse the City for all reasonable and actual costs and expenses incurred in the repair, replacement or refinishing. For purposes of this section, the term "refinish" means to restore affected property to a condition as good as or better than its condition at the time of commencement of the work that led to the damage to City Property, reasonable wear and tear excepted.

- 2.24 City Required Removal/Relocation of EarthLink's Facilities from City Property for reasons other than Emergency. If the City determines that the protection, temporary disconnection, removal, relocation, or reconfiguration of any Approved Equipment on City Property is necessary (i) to preserve public health or safety, or (ii) for the construction, repair, relocation or maintenance of a City project for the public welfare (including without limitation any future conversion of overhead to underground utilities resulting in the removal of a City Pole), the City will provide EarthLink with written notice as soon as reasonable under the circumstances describing which of EarthLink's facilities are affected and the proposed dates by which the work is to be completed by EarthLink, provided that where immediate action is not required to avoid danger to the public safety or property, the City shall give EarthLink at least thirty (30) days prior written notice. EarthLink shall, at its sole cost and expense, promptly disconnect, remove, relocate, or reconfigure such portion of the Network as mutually agreed upon with the City. The City will use good faith efforts to conduct City projects in a manner to minimize negative impact to the Network. Regardless of anything to the contrary in this Section 2.24, the City will not request EarthLink to remove or relocate the Approved Equipment in a manner that deliberately makes it uneconomical for EarthLink to operate the Network and provide services in the City or in a manner that gives any preference to a subsequent third party offering a similar service. Where any removal or relocation is required, the City will use its best efforts to provide alternate City Property on which to place the Approved Equipment that will enable EarthLink to comply with its obligations to provide the Public Benefits. If suitable alternative City Property cannot be located for the placement of such Approved Equipment, or if any City required removal or relocation materially adversely affects the Network or EarthLink's ability to provide the Public Benefits, EarthLink will not be liable or responsible to provide the Public Benefits to the extent directly impacted by the excluded City Property, provided that EarthLink has requested that the parties meet

to review the impacted Public Benefits pursuant to the dispute resolution process set forth in Section 9, and subject to the outcome of that process. The City warrants to EarthLink that the City will not disturb, move, alter or relocate the Approved Equipment placed on City Property except as set forth in this Agreement.

- 2.25 Network Control Center; On-Line Access. EarthLink's network control center operator shall be available to the staff of the City Department of Transportation and Environmental Services, twenty-four (24) hours a day, seven (7) days a week, for the reporting to EarthLink by the City of problems or complaints resulting from the attachment, installation, control, operation, maintenance, reattachment, reinstallation, relocation, removal, and replacement of EarthLink's facilities. The City may contact the network control center operator at a telephone number provided by EarthLink from time to time regarding such problems or complaints. EarthLink will monitor the Network and provide the City with information related to outages or service problems pursuant to EarthLink's designated communication process as described in the applicable operational guide.
- 2.26 Non-use of EarthLink's Facilities on City Property. EarthLink will provide the City with information on a quarterly basis describing any Approved Equipment installed on City Property or that has been out of service for a period of six (6) months or more. EarthLink is not required to submit such report if no Approved Equipment is required to be reported. Within ninety (90) days after EarthLink's receipt of written notice from the City to remove such facilities, EarthLink shall promptly remove the facilities at EarthLink's cost and expense, if EarthLink has not already done so. If EarthLink fails to remove any abandoned facilities as described in this Section, then the City shall be entitled to remove the facilities from City Property. EarthLink shall reimburse the City for its reasonable and actual costs and expenses for removals pursuant to this Section.
- 2.27 Maintenance of EarthLink's Facilities. EarthLink shall ensure that EarthLink's facilities are maintained at all times in safe condition and installed in a good and workmanlike manner. EarthLink shall use reasonable care in installing, relocating, removing, repairing, and replacing EarthLink's facilities.
- 2.28 Removal and Reduction of Fees. The removal by EarthLink or the City of all Approved Equipment from any City Property shall immediately terminate EarthLink's obligation for payment of any applicable fees or charges with respect to such City Property and any sums due with respect to such City Property will be pro-rated through the date of such removal.
- 2.29 Emergency Contact Information. The City shall provide EarthLink a 24-hour contact phone number to enable EarthLink to report any concerns regarding the Approved Equipment, the Network, or City Property. In the event that EarthLink reports such concerns to the City, the City shall promptly respond to such call(s).

- 2.30 Notice of Interruption to Service. The City shall give EarthLink a minimum of thirty (30) days advance written notice of any non-emergency work which will affect the Approved Equipment, City Property, or the Network.
- 2.31 Conditions of Performance. The obligations of EarthLink hereunder shall be subject to, and conditioned upon, the following conditions (“Conditions”). If any of the following Conditions have not been satisfied by a date that is one hundred and eighty (180) days after the Effective Date of this Agreement, EarthLink will notify the City of that fact, including which Conditions remain unsatisfied;- if any such outstanding Conditions have not been resolved within an additional ninety (90) days (“Initial Conditions Termination Date”), EarthLink shall have the option, at that time, to terminate this Agreement by giving ten (10) days prior written notice. If EarthLink does not exercise the foregoing termination right at the time of the Initial Conditions Termination Date, the right shall be deemed waived and EarthLink shall be bound by all of the terms and conditions of the Agreement for the remainder of the Term.
- 2.31.1 This Agreement has been approved and fully executed by all Parties by fully authorized representatives.
- 2.31.2 The City Council shall have taken all the actions required by law to authorize the City to enter into this Agreement and grant to EarthLink the rights to use the City Property provided in this Agreement and no approval of any other local governing body is required.
- 2.31.3 The City Zoning Commission, the State Corporation Commission, and the Federal Communications Commission and any other governing body shall have taken any other actions required by law pertaining to approval of the installation and operation of the Network and the Approved Equipment as such may be required to grant EarthLink the rights necessary to install the Network.
- 2.31.4 The applicable electric providers have agreed they will furnish electricity service to the Approved Equipment installed on City Poles or any other location installation is required in the City to provide the Network upon commercially reasonable rates, terms and conditions and in a manner that the Parties agree complies with applicable laws and regulations.
- 2.31.5 EarthLink is able to obtain signed leases or license agreements for all of the towers and rooftop lease sites (other than City Premises) to install all of the backhaul antennae, radio and fiber optic and broadband service necessary to operate the Network.
- 2.31.6 The owners or authorized representatives of the poles other than the City have granted EarthLink the right to attach the Approved Equipment on poles in a manner that the Parties agree complies with applicable laws and regulations and upon commercially reasonable rates, terms and conditions.

2.31.7 EarthLink is not prohibited from constructing and operating the Network, or performing substantially all of the services or exercising substantially all of the rights set forth in this Agreement.

2.31.8 EarthLink has obtained all applicable permits, licenses, and authorizations from the State, and the federal government for the installation and operation of the Network, and such authorizations have not been terminated or revoked.

3. USE OF ELECTRICITY

- 3.1 Allowed Use. The City receives Electrical Service (as defined below) from the electric utilities serving the City Poles (collectively "Electric Utility"). Subject to applicable tariffs or agreement with the Electric Utility, electrical power to operate Approved Equipment may be taken from the power sources connected to the City Poles. The City will cooperate with EarthLink to obtain permission from the Electric Utility for EarthLink to use the electricity from the City Poles.
- 3.2 Availability. The City acknowledges that any City Poles which are not supplied electrical power 24 hours per day or which are otherwise not suitable for EarthLink's use under this Agreement (collectively "Unsuitable Poles") are excluded from this Agreement and EarthLink will not be required to offer service coverage in areas containing such Unsuitable Poles. The City cannot and will not guarantee an uninterrupted supply of power, nor can it guarantee the quality of power provided by the Electric Utility. Notwithstanding anything to the contrary, EarthLink's performance under this Agreement requires an adequate supply of electricity 24 hours per day every day. EarthLink shall not be deemed to be in default or required to provide Network service during such time and in such areas as are directly affected by the lack of electrical power. If 24 hour electricity is not reliably available for a material number of Installed City Poles and/or those that are designated as potential Installed City Poles for the Approved Equipment then EarthLink shall be entitled, but not obligated, to terminate this Agreement and all payment obligations hereunder.
- 3.3 Electricity Costs. The City shall not be responsible for any payment or payments to the Electric Utility or any other electricity provider for electrical usage by EarthLink, except to the extent an agreement to supply the necessary electrical power is executed between the City and the Electric Utility or to the extent the obligation to pay is passed through the City to EarthLink through an agreement between the City and the Electric Utility. EarthLink shall be responsible for all payments for use of electrical power, including but not limited to power usage, metering and any other electric utility services required for the operation of the Network, except as provided otherwise in a written agreement signed by the City and EarthLink. The obligations of EarthLink hereunder are conditioned on EarthLink obtaining continuous electrical service in sufficient capacity and quality and upon terms and electrical rates that are reasonably satisfactory to EarthLink or, at the option of EarthLink, the City agreeing to provide electricity through the City

for sums equal to a flat rate negotiated between EarthLink and the City for the cost of the electrical consumption of EarthLink's Approved Equipment being served that is in an amount that is acceptable to EarthLink ("Electrical Service"). If the City or EarthLink does not obtain from the Electric Utility an agreement to provide such Electrical Service during the term of this Agreement then EarthLink is entitled at any time prior to obtaining such an Agreement to terminate this Agreement and all obligations to continue providing the implementation of Network services hereunder. EarthLink may continue to implement the Network without waiving this condition and the right to terminate as provided above.

4. **EARTHLINK SERVICES PROVIDED TO CITY**

- 4.1 Public Benefits. EarthLink shall provide to the City the services described in Exhibit F (the "Public Benefits") on the terms described therein. EarthLink, at its sole discretion, may also offer other services, products, applications, content, and other Internet access services to the City (the "Additional Services"). The City shall retain the sole option to purchase the Additional Services.
- 4.2 Optional. If the City elects not to use or purchase any of the Public Benefits then this Agreement shall continue and the City will not be entitled to any additional payments or compensation in lieu thereof. The City acknowledges that the Public Benefits and the fees provided for in Section 2.16 constitute full consideration and are the only compensation owed to the City in connection with this Agreement or any Site License Agreement, and no additional compensation, consideration, license fee, franchise fee or other fees required to receive the permissions set forth in this Agreement will be owed to the City even if the City elects not to purchase or use such Public Benefits.
- 4.3 Future Products. Because of the significant investment by EarthLink in the present wireless Network, EarthLink desires the opportunity to provide additional wireless broadband services to the City. Therefore, if during the Term of this Agreement, the City desires from time to time to consider additional wireless Internet protocol (IP) applications to serve municipal operations only ("New Network") then before the City enters with any provider into any bids or contract(s) related to such New Network, the City shall: (1) give EarthLink notice of such desire to implement a New Network and provide all relevant details and answer all reasonable questions of EarthLink; and (2) give EarthLink the opportunity to propose solutions and terms that build on EarthLink's Network; and (3) evaluate the modification/inclusion within this Network Agreement of the EarthLink solution(s) as the preferred approach to meeting the City's service delivery objective. Notwithstanding the above, EarthLink is under no obligation to propose or provide an EarthLink solution and EarthLink retains the option to decide whether to propose other solutions.

5. **PROGRAM MANAGEMENT**

EarthLink will at all times during the Term of this Agreement maintain a program manager responsible for implementing and operating the Network. The Parties shall meet at an agreed upon schedule to discuss ongoing operation of the Network including ongoing compliance with the Agreement. EarthLink and the City shall maintain and update a list of all open issues and resolutions throughout the Term of this Agreement. The City and EarthLink may mutually agree upon additional meetings.

6. **OTHER AUTHORIZATIONS**

The authorizations granted in this Agreement shall be non-exclusive and nothing contained in this Agreement shall be construed to limit, alter, or waive the right of the City to enter into agreements authorizing persons or entities other than EarthLink to access and use City Property to install any form of communications equipment or for any other purpose. The City shall give EarthLink prompt prior written notice of any applications received by the City from others requesting permission to install devices similar to the Approved Equipment on the City Poles or Premises. Nothing in this Agreement shall be deemed to obligate the City to grant EarthLink permission to use any particular facility, or property, or right-of-way not covered by this Agreement, including, without limitation, the City's public rights-of-way.

7. **NO PARTNERSHIP OR ENDORSEMENT**

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 City and EarthLink. Nothing contained herein shall be deemed to constitute an endorsement of EarthLink or EarthLink's products or services by the City.

8. **THIRD PARTY RIGHTS**

The City shall be responsible for identifying and notifying holders of third party rights on designated City Property of EarthLink's use thereof.

9. **DISPUTE RESOLUTION**

Except as otherwise provided in this Agreement, any dispute between the Parties or default by either party which arises during the Term of this Agreement, shall be subject to the following administrative remedy:

- 9.1 Internal Resolution. Both Parties shall attempt to resolve any controversy claim, problem, default, or dispute ("Dispute") arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. The Parties shall also rely on this mechanism to determine how to modify EarthLink's obligations pursuant to Sections 2.24 and 15. In the event that a Dispute is not resolved by the project managers of each Party, either Party may upon written notice to the other 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 either Party within fifteen (15) calendar days of the Parties' 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 ten (10) business days of the Request for Internal Resolution. Project managers and senior management for each Party shall be the General Market Manager and Vice President, Municipal Networks respectively, for EarthLink, and the City Project Manager and the City Manager or City Manager's designee respectively, for the City, and their respective successors in office. The project managers and senior management may be changed by notice given by the Party changing its personnel.

- 9.2 Notice. 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. If the Parties do not successfully resolve the Dispute by senior management, then the Party finding the senior management resolution unsatisfactory shall provide written notice to the other Party, demanding mediation ("Request for Mediation"). The Request for Mediation may not be given prior to the first meeting of senior management, or fifteen (15) business days after the request for Internal Resolution, whichever is earlier, and shall not be given any later than forty-five (45) calendar days following the completion of the first senior management meeting. The Request for Mediation shall set forth all of the issues that Party deems outstanding that must be submitted to mediation. The Party in receipt of the Request for Mediation shall respond within twenty (20) calendar days listing any issues it deems appropriate for submission to the Mediator. All of the requirements of Dispute Resolution and Mediation as described in this Article 9 shall be referred to collectively as the "Resolution Procedures".
- 9.3 Mediation. Any Disputes shall be mediated within forty-five (45) calendar days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available, except that those for which the remedy requested is injunctive relief or other equitable remedies shall be mediated within ten (10) business days.
- 9.4 Mediator. A mediator shall not have any employment, engagement or other interest in either party. If the parties cannot agree upon a mediator within five (5) business days of the submission of a Request for Mediation then the mediator shall be appointed by the local office of the American Arbitration Association upon request of either party.
- 9.5 Costs. The costs of mediation shall be borne by the Parties equally.
- 9.6 Equitable Relief. Each party agrees that any threatened or actual failure of the other party to comply with its obligations hereunder may cause immediate irreparable harm to the non-defaulting party for which there is no adequate remedy at law. Accordingly, each party agrees that the non-defaulting party will be entitled

to an order for specific performance and to injunctive relief from a court of competent jurisdiction as remedy for any such threatened or actual default. Nothing in this Agreement, 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 comply with the provisions of this Agreement, and not to take actions that violate its obligations under this Agreement; provided, that such order shall not prevent EarthLink from operating the Network and maintaining the Approved Equipment on the City Property, except on account of expiration of the Term or in the event of termination in compliance with this Agreement and applicable law for a Major Default after full completion of all Resolution Procedures and a court order is issued as provided herein; and provided further that such order for specific performance and injunction shall not require either party to pay or expend any sums in excess of the liability limitation set forth herein.

10. **ASSIGNMENTS**

The City shall not assign this Agreement, or any portion of it, without the prior written permission of EarthLink. EarthLink can assign this Agreement to an entity that is wholly owned or wholly controlled by EarthLink or by a wholly-owned affiliate of EarthLink (each to be referred to as an "Affiliated Entity") without the prior consent of the City. EarthLink can also assign this Agreement pursuant to the sale of all or substantially all of the assets or stock of EarthLink or pursuant to the sale of all or substantially all of the assets or operations of the division of EarthLink that is operating the Network or pursuant to the sale of the Network; provided that if such assignment is not to an Affiliated Entity, then EarthLink must first obtain the City's prior written consent, such consent not to be unreasonably withheld. EarthLink may enter into one or more agreements for installation of Approved Equipment, operation of the Network, or both with one or more entities ("Operating Companies"), provided that under such agreements overall control of the Network shall remain with EarthLink. Approved Equipment may be subject to security interests of vendors or of lenders to Operating Companies. The City shall have no ownership interest in or to Approved Equipment, unless the Approved Equipment has been abandoned and taken over by the City as provided for in Section 2.26, or EarthLink has filed a petition in bankruptcy, in which case the City shall have all rights provided for by applicable law.

11. **TERM, RENEWAL, AND TERMINATION**

- 11.1 Effective Date and Term. This Agreement shall become effective on the Effective Date and shall continue in effect for eight (8) years after the Commencement Date (collectively with Renewals Terms "Term").
- 11.2 Renewal. Upon the end of the first twelve (12) years of the Term, the Term may be renewed for three (3) successive four (4) year periods of time, upon mutual agreement of EarthLink and the City.

11.3 Major Default. In the event that either Party fails to pay undisputed sums due and payable hereunder (“Monetary Default”) within ninety (90) days after a default notice of nonpayment is delivered to by such Party to the other Party, then such Party (the “Non-defaulting Party”) may terminate this Agreement upon providing the other Party (the “Defaulting Party”) ninety (90) days prior written notice of its intent to terminate this Agreement. If the Non-defaulting Party pays the sum or disputes the amount due, within such ninety (90) day period, then such termination notice shall not be effective and this Agreement will not terminate. In the event that a Party commits a Major Default hereunder that is not a Monetary Default (also a “Defaulting Party”) and does not cure such Major Default within one hundred and twenty (120) days after the other Party (also a Non-defaulting Party) has delivered a default notice describing the Major Default to the Defaulting Party, then the Non-defaulting Party may terminate this Agreement upon providing Defaulting Party one hundred and twenty (120) days prior written notice of the Non-defaulting Party’s intent to terminate this Agreement. If the Defaulting Party cures the Major Default, within such one hundred and twenty (120) day period, such termination notice shall not be effective and this Agreement will not terminate. When used herein “Major Default” shall mean that the Defaulting Party has violated an obligation under this Agreement, that is not a Monetary Default, that has resulted in actual direct damages to the Non-defaulting Party (expressly not including damages of any other third parties) in excess of \$10,000.00 that has not been reimbursed by the Defaulting Party or by insurance proceeds of some party. If there is a dispute concerning whether a Monetary Default exists or whether the Defaulting Party has committed a Major Default then in either case this Agreement, the Term and the rights of the Defaulting Party shall not be terminated until a court of competent jurisdiction has ordered that a Monetary Default has occurred and continued past all applicable notice and cure periods or that the Defaulting Party has committed a Major Default that has continued past all applicable notice and cure periods, as applicable, and the Defaulting Party has not paid such sums to cure the Monetary Default or cured the Major Default, as applicable, within thirty (30) days after such order has been signed and issued by such court. If the Dispute Resolution Process results in agreement between the parties that there is a plan to cure the Major Default that will be in the best interests of all parties then prior to terminating this Agreement both parties shall exercise reasonable efforts to implement such plan in accordance with such terms as the parties have agreed upon. EarthLink should be considered in Major Default of this Agreement for any failure if the failure is caused in whole or in part by the failure of another party or by an act or omission of a third party.

11.4 Termination by EarthLink. Notwithstanding anything to the contrary in this Agreement, the City recognizes that certain issues may adversely impact EarthLink’s ability to continue to operate, maintain, upgrade and provide the Network and the Public Benefits. Therefore, each party agrees EarthLink is entitled to terminate this Agreement by giving as much notice as is reasonably practicable under the circumstances using reasonable efforts to provide at least thirty (30) days prior written notice to the City, if at any time during the Term any

of the following events occur and EarthLink's operation, maintenance or upgrade of the Network or provision of Services is adversely impacted in a material manner.

- 11.4.1 Any local, state or federal government authority or agency (i) shall have taken any action requiring any approval for the continued operation, upgrade or maintenance of the Network, Approved Equipment or provision of Services that significantly impairs the continued operation, upgrade or maintenance, (ii) prohibits or takes action that significantly impairs the operation, upgrade or maintenance of the Network or the Approved Equipment, (iii) does not issue or terminates or revokes applicable permits, licenses, and authorizations from the City, state, and the federal government or agency for the operation, maintaining or upgrading of the Network.
 - 11.4.2 The applicable electric provider has ceased or given notice it will cease furnishing electricity service to the Approved Equipment installed in the City and used to provide the Network upon commercially reasonable rates, terms and conditions and in a manner that the Parties agree complies with applicable laws and regulations.
 - 11.4.3 The owners of towers, rooftop sites, poles or other assets used to install the backhaul antennae, radio and fiber optic and broadband service necessary to operate the Network cease any grant to allow EarthLink access of, use of and attachment to such tower, rooftop site, pole or other asset in a manner that complies with applicable laws and regulations and upon commercially reasonable rates, terms and conditions, and EarthLink's operation, maintenance or upgrade of the Network or provision of the wireless services is adversely impacted in a material manner and EarthLink is unable to obtain the right to use substitute towers, rooftop sites, poles or other assets in a manner that complies with applicable laws and regulations and upon commercially reasonable rates, terms and conditions.
 - 11.4.4 EarthLink is prohibited from operating, maintaining or upgrading the Network, or performing substantially all of the services or exercising substantially all of the rights set forth in this Agreement.
 - 11.4.5 EarthLink may also terminate this Agreement in the event of a Monetary Default or a Major Default, pursuant to Section 11.3.
- 11.5 Removal Obligations. Upon termination of this Agreement or upon expiration of the Term, EarthLink, at its own expense, shall remove the Approved Equipment from City Property within nine (9) months of said date of termination or expiration

and return City Property to the condition in which the property existed immediately prior to EarthLink's installation, with normal wear, tear and evidence of installation excluded. If EarthLink fails to remove the Approved Equipment from the City Property within nine (9) months thereafter, the City may remove any of the Approved Equipment so remaining, and shall be reimbursed for the equipment and labor costs actually incurred in connection with removing the Approved Equipment within thirty (30) days of returning such Approved Equipment to EarthLink or making such Approved Equipment available to EarthLink for pickup at a safe storage facility within the City limits or at such other mutually agreed upon location.

11.6 Termination by City. Notwithstanding any other provision of this Agreement, the City has the right to terminate this Agreement in the following circumstances:

11.6.1 If EarthLink has failed to provide the Public Benefits, in whole or in part, pursuant to the terms of this Agreement, the City may terminate this Agreement after giving EarthLink reasonable notice and opportunity to cure. Prior to exercising this right, the City shall comply with the procedures in Section 9.1, which shall constitute such notice and opportunity to cure, provided that in no event shall the City terminate this Agreement under this Section 11.6.1 in fewer than sixty (60) days from EarthLink's receipt of the written notice described in Section 9.1. The City may, in its sole discretion, choose to refer the dispute to mediation pursuant to Section 9.2, but shall have no obligation to do so. The City Manager shall have full authority to exercise all of the City's rights under this Section.

11.6.2 The City may also terminate this Agreement in the event of a Monetary Default or a Major Default, pursuant to Section 11.3.

11.7 Termination of City Poles and Other Assets. In addition to any termination rights granted hereunder to EarthLink, EarthLink shall be entitled to terminate this Agreement with respect to any or all of the City Poles in the Network, any or all of the Approved Equipment located on the City Premises and the sums owed hereunder for Installed City Poles, City Premises as applicable, shall be reduced proportionately as of the effective date of such termination, provided such termination will not relieve EarthLink's obligations to provide the Public Benefits as set forth in Exhibit F. In such case EarthLink shall disconnect and remove from the Installed City Poles and/or City Premises that are terminated the Approved Equipment within eighteen (18) months thereafter or the City will be entitled to remove them as described above.

11.8 Survival. Any payment obligations or other liability that accrued prior to the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. 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.

12. NOTICE

12.1 Addresses. Except as otherwise set forth herein, all notices given or which may be given pursuant to this Agreement must be in writing and transmitted by (i) telecopy and, on the same day, first class United States mail or (ii) nationally recognized over night delivery service postage pre-paid as follows:

To the City at: City of Alexandria
301 King Street, Suite 3230
Alexandria, VA 22314
Attn: E-Government Manager
Facsimile: 703-997-6445

With a copy to: City of Alexandria
301 King Street, Suite 1300
Alexandria, VA 22314
Attn: City Attorney
Facsimile: 703-838-4810

and to EarthLink at: EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, Georgia 30309
Attention: General Counsel
Facsimile: 404-287-4905

With a copy to: EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, Georgia 30309
Attention: President, Municipal Wireless
Facsimile: 404-892-7616

Either party may change its address by written notice to the other party. Notice may also be provided to such other address as either Party may from time to time designate in writing.

12.2 Effective Date of Notice. Notice shall be deemed received on the next business day if it is sent by telecopy and first class mail, or the date of delivery or refusal of delivery if it is sent by over night delivery service.

13. INSURANCE

EarthLink shall maintain in full force and effect the insurance policies described in the attached **Exhibit G**.

14. **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.

15. **FORCE MAJEURE**

The time for performance by the City or EarthLink of any term, provision, or covenant of this Agreement, except for the payment of the Access Revenue Fees or other fees owed under this Agreement, shall be deemed extended by time lost due to delays resulting from acts of God, acts of terrorism, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not within the reasonable control of the City or EarthLink, as the case may be (collectively, "Force Majeure Events"). If a Force Majeure Event renders it impossible or commercially unreasonable for EarthLink to provide the Public Benefits in all or a portion of the City or to use any City Property in connection with the Network or Services, and such Force Majeure Event continues for or cannot be remedied in a commercially reasonable manner within ninety (90) days (unless the Parties mutually agree in writing to a longer period to cure), either party may request the effect of such Force Majeure Event be reviewed pursuant to Section 9.1, provided that if no resolution is mutually agreed upon pursuant to Section 9.1, then the parties may either continue with the dispute resolution procedures set forth in Sections 9.2-9.4 or either party may terminate any affected City Property or Public Benefits from this Agreement or terminate this Agreement provided any such termination will be reasonably proportional to the effect caused by the Force Majeure Event.

16. REPRESENTATIONS AND WARRANTIES OF THE CITY

The City represents and warrants that: (a) the City and the officials of the City executing this Agreement are authorized to grant to EarthLink all of the rights granted herein; (b) all necessary and appropriate authorizations and approvals have been obtained by the City and the officials of the City signing this Agreement; (c) there is not any regulation, ordinance or law that would permit the City to terminate this Agreement except as is expressly stated herein; and (d) this Agreement does not conflict with or violate any other agreement, regulation, ordinance or law that is binding upon the City.

17. PARTIES BEAR THEIR OWN COSTS

Except as expressly set forth herein, each Party shall pay their own costs of performing hereunder. This Agreement and the Exhibits state the only charges and sums that EarthLink is required to pay during the Term for installation, attachment, maintenance, and use of the City Poles, the City Premises and Electrical Services. Except as otherwise set forth in this Agreement, EarthLink shall not owe the City for the services of City employees unless described expressly on an attached Exhibit or EarthLink has executed on paper a written agreement specifying the charges EarthLink agrees to pay and the work to be performed by City employees.

18. LIMITATION OF LIABILITY

NEITHER EARTHLINK NOR THE CITY SHALL 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 shall not be liable for direct damages under this Franchise Agreement and any other agreement between the parties in an amount that, in the aggregate, exceeds the amounts received by EarthLink from the City and subscribers for the Network during the immediately preceding twelve (12) months except for damages caused by loss of life, bodily injury, or damage to property.

19. INDEMNIFICATION

19.1 As respects bodily injury, death, personal injury, or third-party property damage, EarthLink agrees to indemnify, defend with counsel to whom City does not have reasonable objections, and hold harmless City, its appointed and elected officials, officers, employees, agents, and representatives from and against any and all claims, losses, damages, defense costs, or liability, of any kind or nature (collectively referred to hereinafter as "Claims"), resulting from EarthLink's (or EarthLink's contractors' or subcontractors', if any) work performed by, or on behalf of, EarthLink, relative to this Agreement, except to the extent those Claims (a) arise solely out of the gross negligence or willful misconduct of the City for Claims resulting from governmental functions performed by the City, or (b) arise out of the gross negligence or willful misconduct of the City for Claims outside the

scope or of not resulting from governmental functions of the City. Further, EarthLink agrees to indemnify, defend, with counsel to whom City does not have reasonable objections, and hold harmless City, its appointed and elected officials, officers, employees, agents, and representatives from and against any and all Claims directly or proximately caused by EarthLink's violation of applicable law related to the Network or the Services, except to the extent those Claims (a) arise solely out of the gross negligence or willful misconduct of the City for Claims resulting from governmental functions performed by the City, or (b) arise out of the gross negligence or willful misconduct of the City for Claims outside the scope or of not resulting from governmental functions of the City. EarthLink's obligations under this Section are conditioned upon: 1) that EarthLink shall have been promptly informed of an actual Claim or written notice of a potential Claim and shall have been furnished a copy of each communication, notice or other action related to the alleged Claim, 2) that the City shall cooperate with EarthLink to provide information and assistance necessary to defend or settle the suit or proceeding, and 3) that EarthLink shall be given sole control of the defense (including the right to select counsel), at its sole expense, and the sole right to compromise and settle any suit or proceeding, provided EarthLink will not compromise or settle any suit that admits the liability of the City without the City's prior approval. EarthLink shall be responsible for all attorney's fees and other costs of defending against any alleged Claim, and shall have the right to select counsel. The obligations set forth in this Indemnification provision (i) shall be in effect without regard to whether or not City, EarthLink, or any other person maintains, or fails to maintain, insurance coverage, or a self-insurance program, for any such Claims; and (ii) shall survive the termination of this Agreement. Nothing herein shall prevent EarthLink's insurer(s) from satisfying EarthLink's obligations under this Section.

19.2 Infringement Indemnity.

19.2.1 EarthLink will indemnify the City, 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 Network, or if EarthLink believes infringement is likely, then EarthLink will (a) procure the right to use the System Operations in the Network free of any liability for infringement, (b) replace or modify the System Operations in the Network with a non-infringing substitute otherwise complying substantially with the specifications for the Network; 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 Network or otherwise procure the right to continue using the System Operations in the Network then EarthLink will be entitled to remove the infringing System Operations from the Network and obtain substitutes that will result in the Network performing substantially as required herein. "System Operations" means (i) the Network or any portion thereof (ii) products and services as 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 Network, and (iii) operation and design (including attaching devices to City Poles) of the Network.

19.2.2 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 Network 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 the City 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 the City will reimburse EarthLink for its reasonable expenses (including reasonable litigation costs and attorneys fees) incurred therein.

19.2.3 THE FOREGOING CONTAINS THE SOLE AND EXCLUSIVE LIABILITY FOR EARTHLINK'S AND ITS SUPPLIERS' INDEMNITY AGAINST INFRINGEMENT IN THIS SECTION 19.2 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.

20. **NO WARRANTIES**

THE ONLY WARRANTIES CONCERNING THE PUBLIC BENEFITS AND THE NETWORK AND OTHER DELIVERABLES (EXCEPT FOR EXPRESS WARRANTIES INCLUDED IN ANY AMENDMENT OR EXHIBIT SIGNED IN WRITING BY EARTHLINK AND THE CITY, IF ANY) PROVIDED UNDER THIS AGREEMENT ARE THOSE CONTAINED HEREIN, AND ARE MADE FOR THE BENEFIT OF THE CITY 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, TITLE, NON-INFRINGEMENT OR OTHERWISE. EARTHLINK ALSO SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS RELATED TO THE INTERNET; SECURITY-RELATED FEATURES OF THE NETWORK AND/OR PUBLIC BENEFITS. EARTHLINK CANNOT GUARANTEE COMPLETE SECURITY VIA THE INTERNET OR THE NETWORK OR PUBLIC BENEFITS 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 FOR THE CONDUCT OF SUBSCRIBERS USING OR ACCESSING THE NETWORK OR PUBLIC BENEFITS.

21. **CONFIDENTIALITY**

To the extent permitted by applicable law the City will not disclose any of the Confidential Information of EarthLink during the Term and for a period of three (3) years after the Term ends. If applicable law requires disclosure of EarthLink's Confidential Information or the terms and conditions of this Agreement then the City will promptly give EarthLink written notice and assist EarthLink in limiting the disclosure to only those portions of that Confidential Information as is necessary to be disclosed according to applicable law. "Confidential Information" of EarthLink means the business plans, financial information and technical information about the Network and the customers of EarthLink and its vendors that are confidential or otherwise trade secrets under applicable law. In addition, the City's obligation not to disclose the trade secrets of EarthLink will continue as long as they are trade secrets under applicable law.

22. **REASONABLE TREATMENT**

Notwithstanding anything to the contrary, the City agrees not to withhold unreasonably or delay any approvals or other actions or approvals necessary or appropriate for EarthLink to exercise the rights and to perform as permitted herein. 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 an unreasonable City delay. The City further agrees that EarthLink will not be in breach of this Agreement for EarthLink's failure to comply with ordinances and other requirements of the City to the extent they are not applied in a reasonable and nondiscriminatory manner of general application, provided that, if EarthLink asserts that any such ordinance or other

requirement has not been applied in a reasonable and nondiscriminatory manner, EarthLink has challenged or has notified the City of its intent to formally challenge the City's application of any such ordinance or other requirement in an appropriate forum.

23. MISCELLANEOUS

- 23.1 Applicable Law and Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Virginia. The courts of the City of Alexandria, Virginia, shall be the proper fora for any disputes arising hereunder.
- 23.2 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.
- 23.3 Integrated Document. This Agreement, together with its Exhibits and City Ordinances No. 4477 and [REDACTED], constitutes the entire agreement between the Parties with respect to the subject matter hereof. Except as set forth herein, there are no promises, representations or understandings between the parties of any kind or nature whatsoever with respect to the subject matter hereof.
- 23.4 Amendments. This Agreement may be amended from time to time only by amendments that are written and executed on paper by both Parties to this Agreement.
- 23.5 Counterparts. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.
- 23.6 Public Announcements: The City agrees, subject to any public disclosure law requirements, not to make public statements, press releases, publications, or claims about the Network's status, completion, future plans, performance or pricing that constitutes or includes EarthLink's Confidential Information. When appropriate and practical, in the City's sole discretion, the City will give EarthLink an opportunity to review and/or approve written press releases proposed to be issued by the City about the Network. The City will not host or arrange for press visits to the facilities of EarthLink or its contractors without first obtaining the prior written consent of EarthLink.
- 23.7 Marketing Support: The City shall assist EarthLink in marketing subscriptions to the Network to the employees of the City.
- 23.8 Benefit to Public. Subject to the obligations of the City and rights granted to EarthLink and other provisions set forth in this Agreement and any License Exhibit or amendment executed by EarthLink and the City in connection with this Agreement, EarthLink acknowledges that (i) the paramount use of City Property dedicated for public use is for the benefit of the public at large, and (ii) its use of City Property shall not conflict with the City's uses.

- 23.9 No Waiver of Sovereign Immunity. Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by City pursuant to this Agreement, nor any document which arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the City, or of its elected and appointed officials, officers and employees, to the extent applicable.
- 23.10 Compliance with Laws. In addition to all requirements contained herein, in the exercise of the permission granted by this Agreement, EarthLink shall comply with all applicable federal, state and local laws, ordinances, business license requirements, regulations, orders, directives, rules and policies now in force or as hereafter enacted, adopted or promulgated.
- 23.11 Severability. If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial decision to be void, voidable, or unenforceable, then such provisions shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining provisions of this Agreement.
- 23.12 Recitals. The Recitals are incorporated into this Agreement by reference.
- 23.13 Radio Frequency Radiation Assessment. EarthLink represents that the radio frequency radiation of the Approved Equipment complies with the permissible exposure limits set forth in Federal Communications Commission regulations at 47 C.F.R. §§ 1.1307 (b) and 1.1310, or as amended.

IN WITNESS WHEREOF, the Parties 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 Effective Date.

THE CITY OF ALEXANDRIA

Signed: _____

Name: _____

Title: _____

Date: _____

EARTHLINK, INC.

Signed: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
City Pole Assets

SITE LICENSE AGREEMENT

THIS SITE LICENSE AGREEMENT (the "License") is entered into this _ day of _____, 20___, between the City of Alexandria, a municipal corporation of Virginia ("Licensor"), and EarthLink, Inc., a Delaware corporation ("Licensee").

- A. Licensee and Licensor have entered into a Franchise Agreement dated as of _____ 2006 (the "Franchise Agreement"), pursuant to which Licensee will build and operate a wireless broadband network in the City of Alexandria (the "Network").
- B. In the Franchise Agreement, Licensor has agreed to make certain sites owned by Licensor available to Licensee for the installation of Approved Equipment, as defined in the Franchise Agreement, subject to individual license agreements.
- C. Licensor and Licensee have agreed that one such suitable site is located at [INSERT NAME OF BUILDING, IF ANY, AND ADDRESS] (the "Building").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Terms Subject to Franchise Agreement.

Licensor and Licensee are entering into this License pursuant to Section 2.4 of the Franchise Agreement, which provides that Licensor has granted Licensee a license to install Approved Equipment subject to individual license agreements consistent with Exhibit B-1 of the Franchise Agreement, and that each such license agreement shall constitute an exhibit to the Franchise Agreement. This License is subject to all of the terms of the Franchise Agreement and constitutes an integral part thereof.

2. Premises.

Licensor hereby licenses to Licensee exterior space on the roof of the Building, space either adjacent to or on the roof of the Building, and interior space in the Building as described in Exhibit 1 attached hereto (the "Premises") for use on a non-exclusive basis. Licensee shall have the right to attach, erect, install, maintain and operate Approved Equipment and additional personal property of the Licensee necessary for the use and operation of the Approved Equipment, including, without limitation, computer equipment, equipment panels, cabling, cabinets, emergency power systems and other personal property as listed on Exhibit 2 hereof (which shall also constitute Approved Equipment for purposes of this License), in the number, configuration, size, and location(s) also described on Exhibit 2 hereof, which will be updated to reflect actual as-built installation within a reasonable amount of time after such installation is completed. Licensor has or will obtain all approvals of third parties that are required for Licensor to grant the license rights as provided herein.

3. License Only; No Exclusivity.

3.1 This License creates a license only and Licensee acknowledges that Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Building or Premises by virtue of this License or Licensee's use of the Premises pursuant hereto. In connection with the foregoing, the parties further acknowledge that in no event shall the relationship between Licensor and Licensee be deemed to be a so-called landlord-tenant relationship and that in no event shall either party be entitled to avail itself of any rights afforded to landlords or tenants respectively under the laws of the jurisdiction in which the Building is located. In the event of any sale, assignment or transfer of the

Building or Licensor's interest therein, Licensor's obligations under this License shall thereafter be automatically binding upon the grantee, assignee or other transferee of such interest, and any such grantee, assignee or transferee, by accepting such interest, shall be deemed to have assumed Licensor's obligations hereunder and be entitled to receive Licensor's benefits hereunder. A lease of the entire Building shall be deemed a transfer within the meaning of the foregoing sentence. This License is not and does not grant an easement.

3.2 Licensor reserves the right to license other portions of the Property to other parties during the term of this License. Licensor also reserves the right to enter upon the Premises at any time. Licensor also reserves the right to require Licensee to move its Approved Equipment to another location in or on the Building, or to another Licensor-owned property, subject to the terms of Section 2.24 and other relevant provisions of the Franchise Agreement. Licensee shall not have the exclusive right to use or occupy the Premises. Licensee agrees that, for purposes of the Premises and the FCC's Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000: (i) Licensee's rights to use the Premises pursuant to this License do not constitute a direct or indirect ownership or leasehold interest; (ii) none of the Premises that Licensee has the right to use pursuant to this License is within the exclusive use or control of Licensee; and (iii) no provision of this Agreement or any individual site license impairs the installation, maintenance, or use of any Approved Equipment.

4. Term.

4.1 The initial term of this License shall commence on the date Licensee commences construction or installation of Approved Equipment on the Premises (the "Commencement Date"). The Licensee shall have no right to occupy the Premises until the Commencement Date. The Term of this License shall expire on the same date as the Franchise Agreement. Notwithstanding any other provision of this License, this License shall terminate upon the expiration or termination of the Franchise Agreement.

4.2 Licensee shall have the right to extend this License to coincide with the term of the Franchise Agreement, in the event the Franchise Agreement is renewed or extended in accordance with its terms. Each such additional time period shall be called a Renewal Term.

5 License Fee.

From and after the occurrence of the Commencement Date until the commencement of a Renewal Term, Licensee shall pay Licensor annually, in advance, the sum of five hundred dollars (\$500) monthly for each antennae pole/cluster on a rooftop or tower ("License Fee"). Any tripod based mounting or multiple connections to a roof or tower shall be considered one connection point of one antennae pole/cluster, and additional poles or antennae that may be attached to that antennae pole/cluster are not subject to additional charge. The License Fee shall increase annually during the Initial Term and any Renewal Term, effective as of each anniversary of the Commencement Date, by an amount equal to three and one-half percent (3.5%) per annum above the amount of the License Fee in effect immediately prior to such increase. The License Fee shall be payable annually in advance without offset or deduction, except as provided herein. If the term commences on other than the first day of a month, the License Fee shall be prorated for that first month for the number of days from the Commencement Date to the end of the month. If, at any time, Licensee fails to make timely payment when due of the monthly License Fee, interest shall accrue on the past due amount at the rate of 18% per annum or the maximum allowable by law, whichever is less, until paid in full. This right is in addition to all rights of Licensor to

terminate this License pursuant to Section 11 herein. All sums payable by Licensee under this License, whether or not stated to be License Fees or additional License Fees, shall be collectible by Licensor as License Fees, and upon default in payment thereof Licensor shall have the same rights and remedies as for failure to pay License Fees (without prejudice to any other right or remedy available therefor).

6 Permitted Use.

The Premises may be used for attaching, erecting, installing, mounting, maintaining, and operating Approved Equipment for the purposes authorized by the Franchise Agreement ("Permitted Use"). Licensor agrees to cooperate with Licensee, at Licensee's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Licensee's intended use of the Premises ("Approvals").

7 Interference.

7.1 Licensee shall, at its own expense, install, operate, and maintain the Approved Equipment on the Premises in a good and workmanlike manner and in accordance with applicable local, state and federal laws, ordinances and regulations, including, without limitation, any applicable regulations of the Federal Communications Commission ("FCC"). Licensee shall inspect, construct, and maintain the Approved Equipment in a manner that will not cause unreasonable physical interference to Licensor and other tenants or licensees of the Building, including without limitation the operation or use of any portion of the sanitary sewers, storm sewers and drains, water mains, gas mains, poles, or other property of Licensor, except to the extent contemplated by a permit or other applicable license. Licensee shall also avoid physically blocking the transmissions of radio equipment operated by Licensor.

7.2 Licensee is not obligated to conduct any tests, studies or investigations. Licensee shall operate the Approved Equipment in a manner that will not cause harmful radio frequency interference ("RF Interference") to Licensor and other tenants or licensees of the Building. All operations by Licensee shall be in compliance with all FCC requirements and all other applicable laws, codes, rules and regulations.

7.3 Subsequent to the installation of the Approved Equipment, Licensor shall, to the extent practicable without limiting Licensor's ability to conduct its activities in accordance with its normal practices, attempt to avoid causing RF Interference to or physically blocking the signals of Approved Equipment. Licensor shall also inform new tenants of the Building of the existence and location of the Approved Equipment and shall obligate each new tenant in its lease to operate its equipment in compliance with all applicable FCC regulations, to use commercially reasonable efforts not to cause RF Interference or to cause physical interference with the Approved Equipment installed on the Premises, and, if the new tenant causes RF Interference to the Approved Equipment, to participate in the interference resolution process described in Section 7.4.

7.4 In the event either party suffers from RF Interference as a result of the actions of the other party, the affected party shall give the other party written notice of the nature of RF Interference, including any studies that demonstrate or may have been performed in connection with such RF Interference. The parties shall then meet and mutually cooperate to determine the cause of the RF Interference and agree on a method for eliminating the RF Interference, or reducing it to an acceptable level. Notwithstanding the foregoing, in the event that the RF Interference continues for more than ten

(10) days and causes material harm to Licensee's operation of the Network, the Installed City Pole Fees or other payments due from Licensee with respect to Approved Equipment affected by RF Interference shall abate proportionately on a per diem basis for each day after such ten-day period. In addition, during any period in which Licensee suffers from RF Interference, Licensee will not be required to provide the Public Benefits (as defined in the Franchise Agreement) within the geographic area directly affected by the RF Interference, or, to the extent the RF Interference affects Licensee's ability to provide Public Benefits in a manner other than geographic coverage, Licensee may alter or reduce the Public Benefits in a manner reasonably related to the effects of the RF Interference on Licensee's ability to provide the Public Benefits. Additionally, if such material RF Interference continues for a period of ninety (90) days and the parties are unable to agree on a mutually satisfactory resolution of the problem, Licensee shall have the right to terminate this Agreement immediately upon notice to Licensor. Similarly, if the actions of Licensee cause RF Interference to Licensor's facilities which materially affects the operation of such facilities for a period of ninety (90) days and the parties are unable to agree on a mutually satisfactory resolution of the problem, the Licensor shall have the right to terminate this Agreement immediately upon notice to Licensee. Upon termination of this Agreement in connection with this Section 7.4, Licensee will not be required to provide the Public Benefits to the extent directly impacted by the termination of this Agreement.

7.5 Subject to Licensor's obligations set forth in Sections 7.3 and 7.4, Licensor shall have no liability to Licensee for RF Interference caused by any third party, provided that the foregoing provisions shall not affect Licensee's rights regarding the procedure for resolving RF Interference in this Agreement, including, without limitation, Licensee's right to terminate this License. Licensor shall exercise its best efforts to assist in the resolution of any dispute regarding RF Interference caused by the activities of an occupant of the Building other than Licensee or Licensor.

8 Improvements; Utilities.

8.1 Prior to installing Approved Equipment on the Premises, Licensee shall submit detailed engineering plans and specifications of the planned installation to Licensor for Licensor's written approval, which approval shall not be unreasonably withheld, delayed or conditioned. Such plans and specifications are attached hereto as Exhibit 3 which will be updated to reflect the actual as-built installation within a reasonable amount of time after such installation is completed. Licensor's review of Licensee's plans shall include a review of the appearance of the Approved Equipment. Licensor's approval of any installation is not a representation that such installation of the Approved Equipment is in compliance with all applicable governmental laws, ordinances, rules and regulations or that such facilities will not cause interference with other communications systems, if any, then in operation on the Building. Licensee hereby confirms and agrees that its Approved Equipment shall be installed and operated solely within the Premises.

8.2 All work by Licensee shall be performed in compliance with applicable laws and ordinances. During Licensee's construction of its Approved Equipment, Licensee shall have, and Licensor hereby grants to Licensee, a temporary construction easement to use portions of the Building reasonably necessary for the storage of materials and staging of construction. Licensee and its contractors and subcontractors shall be solely responsible for the transportation, storage and safekeeping of materials and equipment used in the performance of any work, for the removal of waste and debris resulting there from on a daily basis, and for any damage caused by them to any installations or work

performed by Licensee's contractors and subcontractors. Upon completion of construction, Licensee shall remove any items stored or placed by Licensee in such temporary easement area and return such area to Licensor in the condition existing prior to construction.

8.3 Licensee is not authorized to contract for or on behalf of Licensor for work on, or the furnishing of materials to the Premises or any other part of the Building, and Licensee shall discharge of record by payment, bond or otherwise, within ten (10) days subsequent to the date of its receipt of notice thereof from Licensor, any mechanic's, laborer's or similar lien filed against the Premises or the Building for work or materials claimed to have been furnished at the instance of Licensee. The Approved Equipment shall remain the exclusive property of Licensee during the term of this License, and Licensee shall have the right to remove all or any portion of the Approved Equipment at any time during the term of this License or following the term of this License as hereinafter provided.

8.4 Licensee will notify Licensor prior to commencing Licensee's installation work in the Building. Licensee shall not commence installation work until Licensee, at its own cost and expense, has delivered to Licensor a certificate of insurance confirming that comprehensive general liability insurance as required under Exhibit G of the Franchise Agreement, covering the risk during the course of performance of Licensee's installation, has been obtained and is in place.

8.5 All installation and other work to be performed by Licensee hereunder will be done in such a manner so as not to interfere materially with, delay or impose any additional expense upon Licensor in maintaining the Building. In no event will Licensor be required to consent to any installation or other work by Licensee which would physically affect any part of the Building outside the Premises (other than with respect to the temporary construction easement described in Section 8.2 hereof, which shall be subject to Licensee's duty to restore such area as provided therein). Licensee shall repair any damage caused by Licensee to Licensor's Property.

8.6 Following any termination or expiration of this License, Licensee shall use commercially reasonable efforts to remove all of the Approved Equipment within ninety (90) days of such expiration or earlier termination. In performing such removal, Licensee shall restore the Premises and any personal property and fixtures thereon to as good a condition as they were in prior to the installation or placement of the Approved Equipment, normal wear and tear excepted. If Licensee fails to remove such Approved Equipment within such ninety (90) day period, Licensor may remove and dispose of the Approved Equipment within the next succeeding ninety (90) day period, and Licensee shall reimburse Licensor for the reasonable costs actually incurred in such removal within thirty (30) days of returning such Approved Equipment to Licensee or making such Approved Equipment available to EarthLink for pickup at a safe storage facility within the City limits or at such other mutually agreed upon location. In the event of termination of this License as a consequence of termination of the Franchise Agreement, Section 11.5 of the Franchise Agreement shall control.

8.7 Licensee shall, at Licensee's expense, keep and maintain the Premises in commercially reasonable condition and repair during the term of this License. Licensee agrees to maintain the Approved Equipment in proper operating condition and within industry accepted safety standards. Except as otherwise provided in this License or in the Franchise Agreement, all installations and operations of the Approved Equipment by Licensee shall comply in all material respects with all applicable rules and regulations of the FCC and all applicable federal, state, and local codes and regulations. Licensor assumes no responsibility for the licensing, operation or maintenance of the Approved Equipment.

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8.8 Licensee has the right to erect, maintain and operate the Approved Equipment using existing utility lines, transmission lines, electronic equipment, radio transmitting and receiving antennae and supporting equipment and structures thereto. In connection therewith, Licensee and its contractors have the right to do all work necessary to prepare, install, erect, and maintain the Approved Equipment and to alter the Premises for the Approved Equipment, if any, and all work shall be performed in accordance with the specifications set forth on Exhibit 3 or as mutually agreed upon with the City's designated contact for the Premises. All of Licensee's construction and installation work shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner. In performing work pursuant to this License, Licensee shall be entitled to use any labor and other service providers and contractors it determines without restriction. Title to the Approved Equipment shall be held by Licensee. All of the Approved Equipment shall remain Licensee's personal property and are not fixtures. Notwithstanding the foregoing, if the Approved Equipment has been abandoned or Licensee has filed a petition in bankruptcy, Licensor shall have all rights provided for by applicable law.

8.9 Licensee shall have the right to draw electricity and other utilities from the existing utilities on the Premises or in the Building subject to Section 3.3 of the Franchise Agreement and Exhibit 3 hereof. Among other things, Exhibit 3 shall specify any modifications to the Building or the Premises Licensee shall be permitted to make, at its own expense, in connection with Licensee's requirements for utility service, including, without limitation, such matters as use of a standby power generator, installation of a separate electric meter, or alterations to the electric grounding system in the Building.

8.10 Licensee shall not move any of the Approved Equipment to other locations in or on the Building without the approval of Licensor, which approval will not be unreasonably delayed or withheld and will not be subject to additional charge. Licensee is entitled to remove Approved Equipment from the Premises and Licensee is entitled to replace the Approved Equipment with new or different equipment that is substantially similar to Approved Equipment already in use by submitting information to replace or supplement information in Exhibit 2 and requesting Licensor's approval of such changes, which shall not be unreasonably withheld or delayed. If Licensee does not receive any response from Licensor within ninety (90) days of written notice to Licensor, then such installation method, configuration or equipment will be deemed approved by Licensor and Exhibit 2 shall be deemed modified. If Licensee installs any equipment other than Approved Equipment, Licensee shall promptly remove such equipment at its sole cost and expense upon notice from Licensor, or Licensor may do so at Licensee's sole cost and expense, subject to applicable provisions of the Franchise Agreement. Licensor shall not remove or disconnect any of the Approved Equipment except as permitted by the Franchise Agreement, including, without limitation, Sections 2.11, 11.5, and 11.7 thereof.

9 Compliance with Laws.

Licensee agrees that the installation, operation and maintenance of the Approved Equipment shall at all times, and at Licensee's expense, comply with all applicable governmental laws and regulations. If any such laws or regulations require that Licensee modify or revise any then-existing installation, operation or maintenance of the Approved Equipment, then Licensee shall promptly make such modifications or revisions at Licensee's sole expense.

10 Access.

Licensee and its Authorized Personnel shall be entitled to access to the Premises on the following basis: **[INSERT DAYS, HOURS AND OTHER TERMS OF ACCESS]** There shall be no charge for access beyond the License Fee. Licensor grants to Licensee and its Authorized Personnel a non-exclusive license for pedestrian ingress and egress through the Building to the Premises and, if appropriate, a license for vehicular access to the Building. For purposes hereof, "Authorized Personnel" shall mean only authorized employees, engineers, technicians, agents, and subcontractors of Licensee. Licensee may obtain access to the Building and the Premises for lenders, guests and invitees so long as such persons are under the direct supervision of Authorized Personnel, upon prior notice to Licensor's designated representative for the Building. Licensor shall provide Licensee with the name and contact information of the designated representative and shall promptly inform Licensee of any change in the identity of the designated representative. All access to the Premises by Licensee shall be subject in each instance to the reasonable security requirements and reasonable rules and regulations from time to time in effect at the Property; Licensor shall provide written notice of any changes in such requirements and regulations to the extent practicable. Notwithstanding the foregoing, in the event that the access of any of Licensee's Authorized Personnel to the Premises is prevented for more than seven (7) days, the License Fee shall abate proportionately on a per diem basis for each day after such seven (7) day period.

11 Termination by Licensor.

Licensor may terminate this License if:

11.1 Licensee has defaulted in the payment when due of any License Fees or other sum of money specified hereunder to be paid by Licensee, and Licensee does not remedy such default within ninety (90) days after written notice thereof from Licensor; or

11.2 Licensee has defaulted in the performance of any other of the terms, conditions or covenants contained in this License to be performed or observed by Licensee and Licensee does not remedy such default within ninety (90) days after written notice thereof is given to Licensee or, if such default cannot be remedied in such period, Licensee does not, within twenty (20) days after such notice from Licensor, commence such efforts or acts as shall be necessary to remedy the default and continue to prosecute such efforts and/or acts to completion with reasonable diligence.

12 Termination by Licensee.

12.1 Licensee, for any reason at its discretion, may terminate this License at any time by giving a written termination notice at least ninety (90) days prior to the designated termination date, in which event the License Fees or other sums due hereunder shall be paid until that termination date and no further sums will be owed thereafter. In addition, Licensee is entitled to terminate this License on lesser notice if otherwise entitled to do so under the terms of the Franchise Agreement, and in any event this License shall terminate immediately upon termination of the Franchise Agreement. Termination of this License alone shall not relieve the Licensee of the obligation to provide the Public Benefits in accordance with the Franchise Agreement, except as provided in Section 7.4 of this License or any applicable provision of the Franchise Agreement.

12.2 Upon termination in accordance with this Section, Licensee shall surrender and vacate the Premises immediately.

13 Taxes.

The fees required by this Agreement shall be in addition to, and not in lieu of, all taxes required by the City, and all other amounts EarthLink may be required to pay the City by law, ordinance, or other agreement. Licensee shall not be responsible for any real property taxes attributable to the Building, but Licensee shall be responsible for personal property taxes assessed on the Approved Equipment.

14 Insurance, Release and Hold Harmless.

14.1 Licensee shall, at Licensee's sole cost and expense, procure and continue in force during the term of this License, including any Renewal Term, all insurance required by the Franchise Agreement.

14.2 Licensee shall require that its contractors (and any subcontractors) produce, prior to commencing any installation, repair, or maintenance work on the Premises, a certificate of original insurance policy evidencing that all insurance required by the Franchise Agreement is maintained.

14.3 Licensee agrees to indemnify, defend, and hold harmless Licensor and Licensor's appointed and elected officials, officers, employees, agents, and representatives, in accordance with the terms of Section 19 of the Franchise Agreement.

15 Notices.

All notices, requests, demands and other communications hereunder shall be in writing and shall be personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

To the City at: City of Alexandria

Alexandria, VA 22314

Attn: _____

Facsimile: _____

With a copy to: City of Alexandria
301 King Street, Suite 1300
Alexandria, VA 22314
Attn: City Attorney
Facsimile: 703-838-4810

If to Licensee, to:

EarthLink, Inc.
1375 Peachtree Street
Atlanta, Georgia 30309
Attention: General Counsel

With copies to:

EarthLink, Inc.
1375 Peachtree Street
Atlanta, Georgia 30309
Attention: Director of Strategic Sourcing

or to such other address as each party may designate for itself by like notice given in accordance with this Section 15. Notices will be deemed to have been given upon either receipt or rejection. Unless or until either of the respective addresses is changed by notice in writing sent to the other party as set forth above, thereafter to the address contained in such notice.

16 Title and Authority.

Licensor warrants that (i) it has full right, power and authority to execute this License and has the power to grant all rights hereunder; (ii) it has good and marketable title to the Building free and clear of any liens, mortgages, restrictions or other encumbrances that will interfere with Licensee's Permitted Use of the Premises; and (iii) its execution and performance of this License will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, license or other agreement binding on Licensor.

17 Hazardous Substances.

Licensee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. Licensor represents, warrants and agrees (1) that neither Licensor nor, to Licensor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Premises in violation of any law or regulation, and (2) that Licensor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. Licensor and Licensee each agree to defend, indemnify and hold harmless the other and the other's appointed and elected officers and officials, partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, asbestos-containing material, PCB, any substance known by the Commonwealth of Virginia to cause cancer and/or reproductive toxicity, and/or

any substance, chemical, or waste that is identified as hazardous, toxic or dangerous in any federal, state or local law or regulation. This paragraph shall survive the termination of this License.

18 Assignment and Sublicensing.

Licensor shall not assign this Agreement, or any portion of it, without the prior written permission of Licensee. Licensee can assign this Agreement to an entity that is wholly-owned or controlled by Licensee or by a wholly-owned affiliate of Licensee (each to be referred to as an "Affiliated Entity") without the prior consent of Licensor. Licensee can also assign this License pursuant to the sale of all or substantially all of the assets or stock of Licensee or pursuant to the sale of all or substantially all of the assets or operations of the division of Licensee that is operating the Network or pursuant to the sale of the Network; provided that if such assignment is not to an Affiliated Entity, then Licensee must first obtain Licensor's prior written consent, such consent not to be unreasonably withheld. Licensee may enter into one or more agreements for installation of Approved Equipment, operation of the Network, or both with one or more entities ("Operating Companies"), provided that under such agreements overall control of the Network shall remain with EarthLink. Approved Equipment may be subject to security interests of vendors or of lenders to Operating Companies. Licensee shall not grant any sublicense of any of its rights under this License.

19 Successors and Assigns.

This License shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

20 Miscellaneous.

20.1 Reasonable Treatment. Each party agrees to furnish to the other, within ten (10) business days after request, such truthful, customary and reasonable estoppel information as the other may reasonably request. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this License, such party shall not unreasonably condition, delay or withhold approval or consent.

20.2 Entire Agreement. This License constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements, except for the Franchise Agreement and its exhibits and ancillary agreements. There are no representations or understandings of any kind not set forth herein. Any amendment to this License must be in writing and executed by both parties.

20.3 Governing Law. This License shall be construed in accordance with the laws of the Commonwealth of Virginia.

20.4 Severability. If any term of this License is found to be void or invalid, such invalidity shall not affect the remaining terms of this License, which shall continue in full force and effect.

20.5 Emergency. Licensor shall notify Licensee as soon as reasonably practicable in the event of an emergency that Licensor has reason to believe adversely impacts the use of the Approved Equipment.

20.6 No Liens. Licensee will not permit any mechanics' or materialmen's or other liens on the Building or the property surrounding the Building for any labor or material furnished at Licensee's request pursuant to this License ("Licensee Lien"). If a Licensee Lien has been filed against the Building and a final judgment on the Licensee Lien is adverse to Licensor, Licensee shall pay the determined amount of Licensee Lien with full costs, fees and charges, thereby releasing such Licensee Lien. Licensee shall have the right to contest the validity, nature or amount of any such Licensee Lien, but upon the final determination of such questions, shall immediately pay any adverse judgment rendered with all proper costs and charges and shall have the lien released at its own expense. Licensor waives any lien rights it may have concerning the Approved Equipment, and Licensee has the right to remove the same at any time without Licensor's consent. The Approved Equipment shall not be considered fixtures.

20.7 Waiver of Licensor's Lien. Licensor acknowledges that Licensee may enter into financing arrangements, including promissory notes and financial and security agreements, for the financing of the Approved Equipment ("Collateral") with a third party financing entity. Licensor (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Licensee Fees due or to become due, and that such Collateral may be removed at any time without recourse to legal proceedings.

20.8 Condemnation. If Licensor receives notification of any condemnation proceedings affecting the Building, Licensor will provide notice of the proceeding to Licensee within ten (10) days of Licensor receiving notice. If a condemning authority takes all of the Building, or a portion sufficient, in Licensee's reasonable determination, to render the Sites unsuitable for Licensee, this License will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, to the extent that any awards to Licensee will not diminish Licensor's recovery. Licensor will refund to Licensee any License Fees paid for the period after such termination.

20.9 Destruction. Licensor will provide notice to Licensee of any casualty affecting the Building within ten (10) days of such casualty. Licensor will notify Licensee as soon as possible for any casualty or other event that damages the Sites or the Approved Equipment or, to Licensor's knowledge, prevents the Approved Equipment from operating properly. If any part of the Approved Equipment or Building is damaged by casualty so that the Approved Equipment cannot operate properly ("Destruction"), License Fees shall abate until the Sites and the Approved Equipment are repaired and operating commercially again. Neither Licensor nor Licensee is obligated to re-build or repair the damages of such Destruction. If either party elects not to repair the damages of Destruction, then that party may terminate this License by providing written notice, which termination will be effective as of the date of such Destruction. Upon such termination, Licensor will refund to Licensee any License Fees paid for the period after Destruction. If Destruction occurs, Licensor agrees to use its reasonable efforts to permit Licensee to place temporary transmission and reception facilities on the Building without assessment of any License Fee, until the Sites and Approved Equipment are repaired and operational.

20.10 Repairs. Licensee shall not be required to make any repairs to the Building unless such repairs shall be necessitated by reason of the default of Licensee, or as otherwise required by the Franchise Agreement. Licensor shall maintain and repair all portions of the Building other than the Approved Equipment in a proper operating and reasonably safe condition. Any maintenance or repair work to or near the Premises shall be coordinated with Licensee and shall be conducted in such a manner

as to prevent interference with the Approved Equipment, if Licensor reasonably anticipates that such work may affect Licensee's access to the Approved Equipment.

20.11 Building and Safety Requirements. During the Term of this License, Licensor shall maintain the Building in compliance with all applicable state and federal building codes, statutes, orders, ordinances and regulations.

20.12 Marking and Lighting Requirements. Licensor shall cooperate with Licensee with respect to compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC. Should Licensee be cited because the Building is not in compliance due to Licensor's operations and actions or inactions in or on the Building, and should Licensor fail to cure the conditions of noncompliance, Licensee may, in addition to any other remedies, cure the conditions of noncompliance at Licensor's expense, which amounts may be deducted from License Fees.

20.13 No Third Party Beneficiaries. This License shall not create for, nor give to, any third party any claim or right of action against either party to this License that would not arise in the absence of this License.

20.14 Waiver and Remedies. The failure of either party to enforce any provision of this License or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its party of any such provision but the same shall nevertheless be and remain in full force and effect. This License shall be subject to the remedies and dispute resolution procedures set forth in the Franchise Agreement. The remedies expressly provided in this License shall be in addition to any other remedies available at law or in equity.

20.15 Counterparts. This License may be executed in duplicate counterparts, each of which shall be deemed an original.

20.16 Headings. Section headings of this License are inserted only for reference and in no way define, limit, or describe the scope or intent of this License nor affects its terms or provisions.

21 Mortgage Subordination.

This License is and shall be subject and subordinate to all ground or underlying leases of the Building and to all mortgages, deeds of trust and similar security documents which may now or hereafter be secured upon the Property, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any lessor or mortgagee, but in confirmation of such subordination, Licensee shall execute, within fifteen (15) days after request, any certificate that Licensor may reasonably require acknowledging such subordination. Notwithstanding the foregoing, the party holding the instrument to which this License is subordinate shall have the right to recognize and preserve this License in the event of any foreclosure sale or possessory action, and in such case, this License shall continue in full force and effect at the option of the party holding the superior lien and Licensee shall attorn to such party and shall execute, acknowledge and deliver any instrument that has for its purpose and effect the confirmation of such attornment. Notwithstanding the foregoing, the subordination set forth above shall be subject to the terms of any SNDA which may be entered into by and between Licensee, Licensor and Licensor's mortgagee.

22. Warranty of Title and Non-Disturbance. Each party represents and warrants to the other that: (i) that such party has full right to make and perform this License; (ii) the making of this License and the performance thereof will not violate any laws, ordinance, restrictive covenants or other agreements under which such party is bound; and (iii) all persons signing on behalf of such party were authorized to do so by appropriate corporate or partnership action. Licensor represents and warrants that Licensor owns the Building in fee simple or has the right under a ground lease to grant the rights granted to Licensee herein.

23. Parties Bear Their Own Costs. Except as expressly set forth herein, each party shall pay its own costs of performing hereunder. This License, the Franchise Agreement, and the Exhibits state the only charges and sums that Licensee is required to pay during the Term for installation, attachment, maintenance, and use of the Approved Equipment and for electricity usage.

24. Limitation of Liability. THE PARTIES EXPRESSLY AGREE THAT LICENSOR AND LICENSEE 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 Licensee and Licensor shall not be liable for direct damages in an amount in excess of the amount of License Fees paid by Licensee hereunder during the immediately preceding twelve (12) months, except for damages caused by loss of life, bodily injury, or damage to property.

IN WITNESS WHEREOF, the parties hereto have executed this License as of the date aforesaid.

LICENSEE:

City of Alexandria, a municipal corporation of Virginia

By: _____

James K. Hartmann, City Manager

Date: _____

LICENSEE:

EarthLink, Inc.

By: _____

Printed Name: _____

Title: _____

Exhibit B
Model Site Agreement

Date: _____

EXHIBIT 1

PREMISES

The Premises shall consist of the following:

1. Ground space measuring approximately _____' in length by _____' in width.

[An as-built drawing depicting the Premises shall replace this Exhibit].

SS

EXHIBIT 2

APPROVED EQUIPMENT

[INSERT LIST OF APPROVED EQUIPMENT TO BE USED AT THIS SITE.]

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EXHIBIT 3
INSTALLATION PLANS AND SPECIFICATIONS

4096 03\00124058.DOC

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EXHIBIT C
Approved Communication Equipment

Device Power Consumption Profiles

Tropos 5210

Norm Volts	Amp Rating	Rating %	Op. Hrs.	KWh/Mo Billing
110V	0.13	100%	731	10.60
220V	0.08	100%	731	12.43
480V	0.04	100%	731	13.52

Motorola Canopy 900 MHz Subscriber Module and Tropos 5210 with Connectorized Antenna

Norm Volts	Amp Rating	Rating %	Op. Hrs.	KWh/Mo Billing
110V	0.20	100%	731	16.08
220V	0.11	100%	731	17.91
480V	0.05	100%	731	19.01

Motorola Canopy 5.2 GHz Advantage Subscriber Module and Tropos 5210

Nom Volts.	Amp Rating	Rating %	Op. Hrs	kWh/Mo Billing
110V	0.20	100%	731	16.08
220V	0.11	100%	731	17.91
480V	0.05	100%	731	19.01

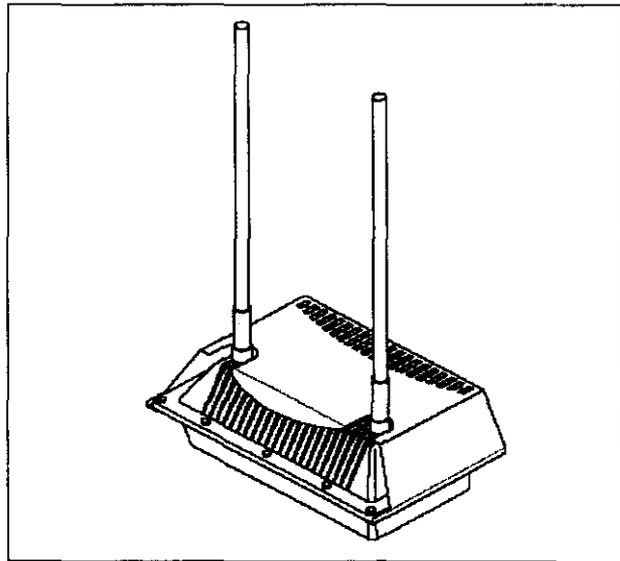
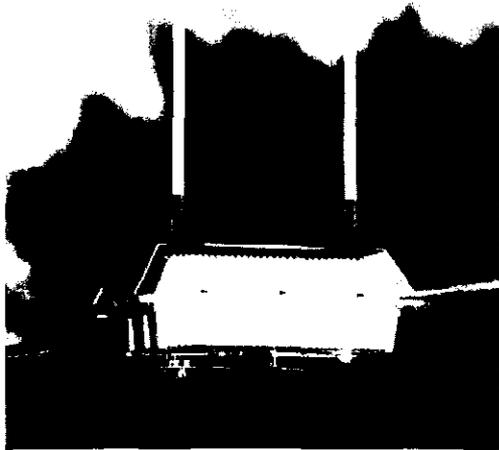
Motorola Canopy 5.7 GHz Advantage Subscriber Module and Tropos 5210

Nom Volts.	Amp Rating	Rating %	Op. Hrs	kWh/Mo Billing
110V	0.20	100%	731	16.08
220V	0.11	100%	731	17.91
480V	0.05	100%	731	19.01

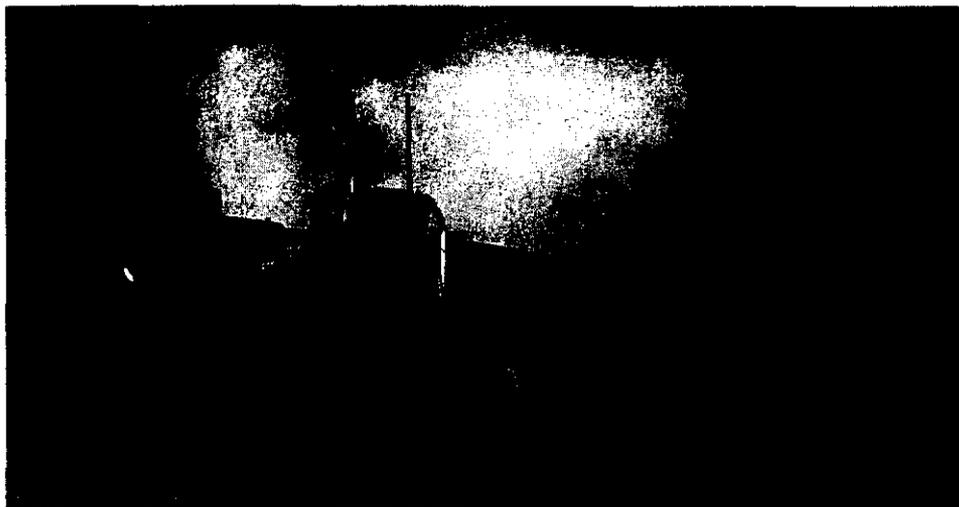
The following pictures are typical of EarthLink's radio installations. However, these do not represent the complete range of mounting options or equipment combinations that may be required to support a specific situation. Additionally, new product enhancements may include a modified look or system specifications. EarthLink is entitled to use different mounts.

Device Images and Installation Methods

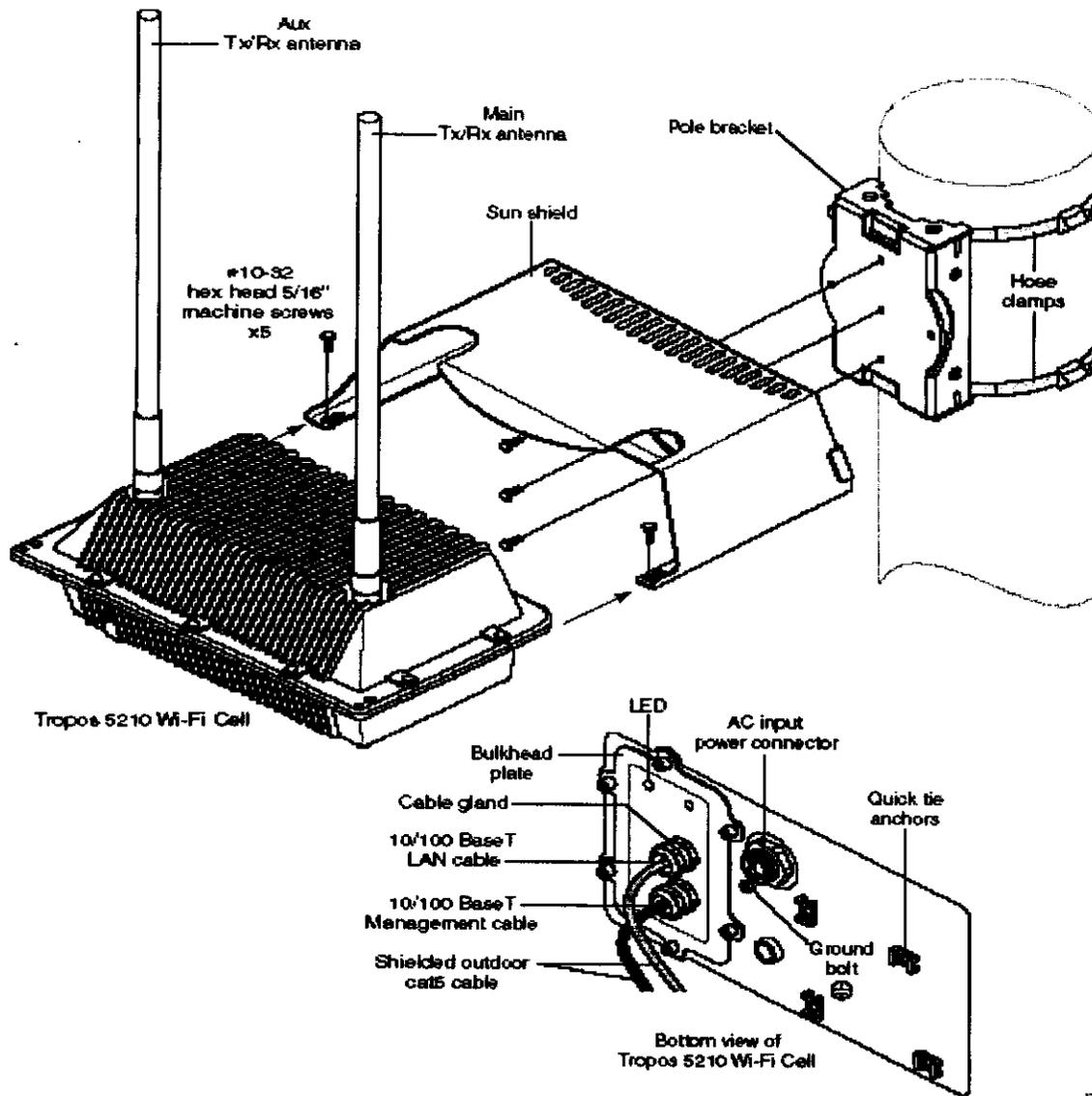
Images, Diagrams and Specifications for the Tropos 5210 Outdoor MetroMesh Router



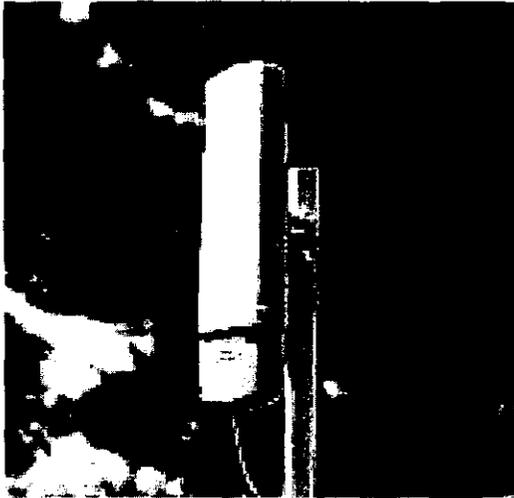
Tropos 5210 Wi-Fi Node with Attached Motorola Canopy Subscriber Module



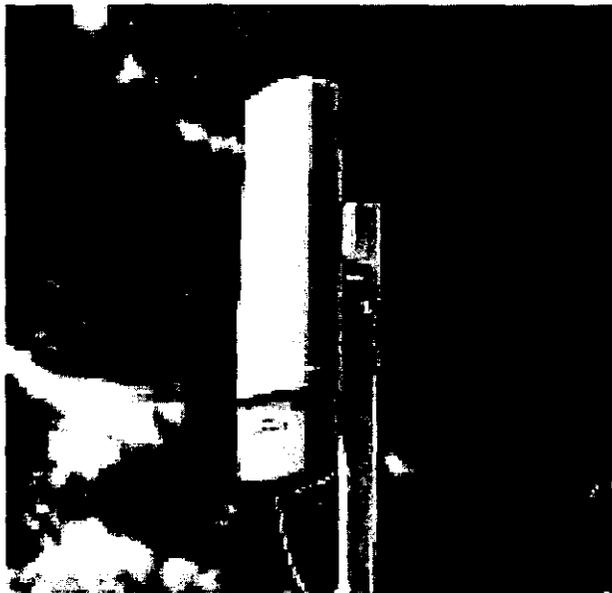
Tropos 5210 Wi-Fi Cell Exploded View



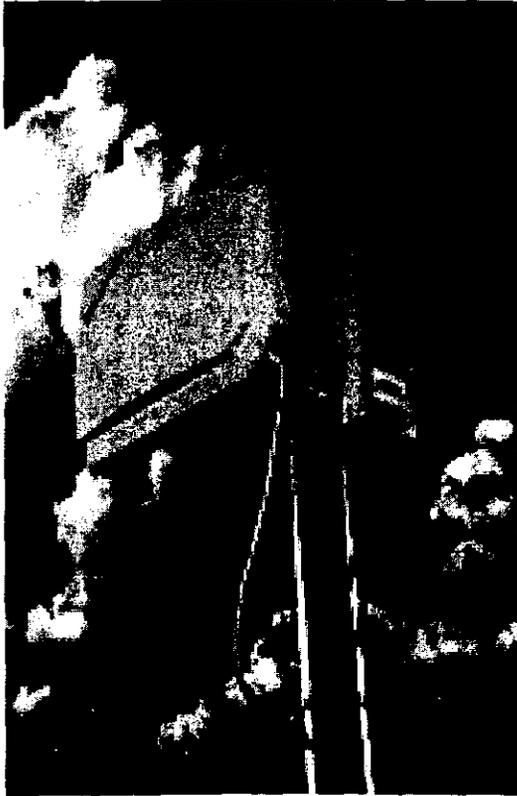
**Images, Diagrams and Specifications for the Motorola Canopy Advantage 5.7 GHz
Subscriber Module**



**Images, Diagrams and Specifications for the Motorola Canopy Advantage 5.2 GHz
Subscriber Module**



Images, Diagrams and Specifications for the Motorola Canopy 900 MHz Subscriber Module with Connectorized Antenna



Pole Top Installation Process

PART 1 Install the Tropos 5210 Wi-Fi cell

NOTE: Complete all documentation required per Checklist and/or Work Order

1. Select a mounting location. You can attach the Tropos 5210 cell to any streetlight arm with diameter 1.75" to 10". Correctly, install mount plate to pole with supplied clamps. (Diameters less than 8" use inside slots, 8"> use outside slots.)
2. Slip the flat portion of the hose clamp under the inside lip of the pole bracket.
3. Use the hose clamps to attach the pole bracket to the streetlight. Depending upon the diameter of the pole, you may need to use 2 small clamps, 2 large clamps, or 2 pairs of large clamps joined together.
4. Attach the sun shield of the cell to the structure with three 5/16-inch machine screws. Insert one screw through the hole in the center back of the sun shield and the other two screws through the curved slot tracks.

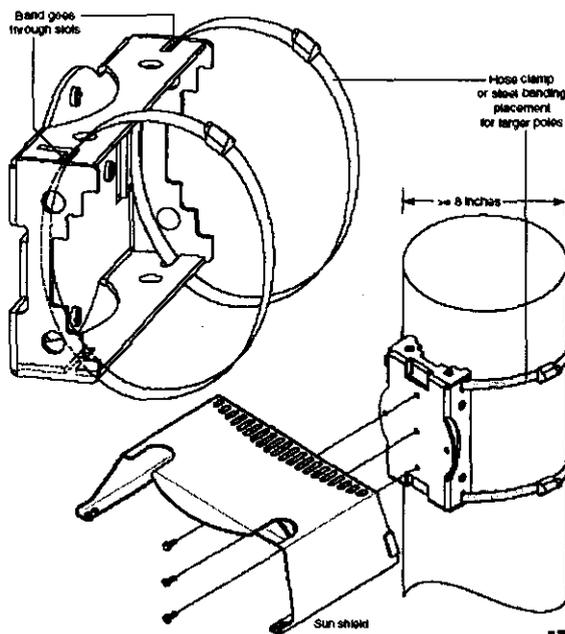
5. Level the sun shield by rotating the unit along the curved slot tracks. 2 built-in levels are located on the shield. Level both directions, and then tighten all screws and clamps.

6. Apply two drops of Loctite Threadlocker 242 to the base of the antenna connector thread, mount the antennas to Tropos 5210 per included instructions, and weatherproof with approved outdoor tape.

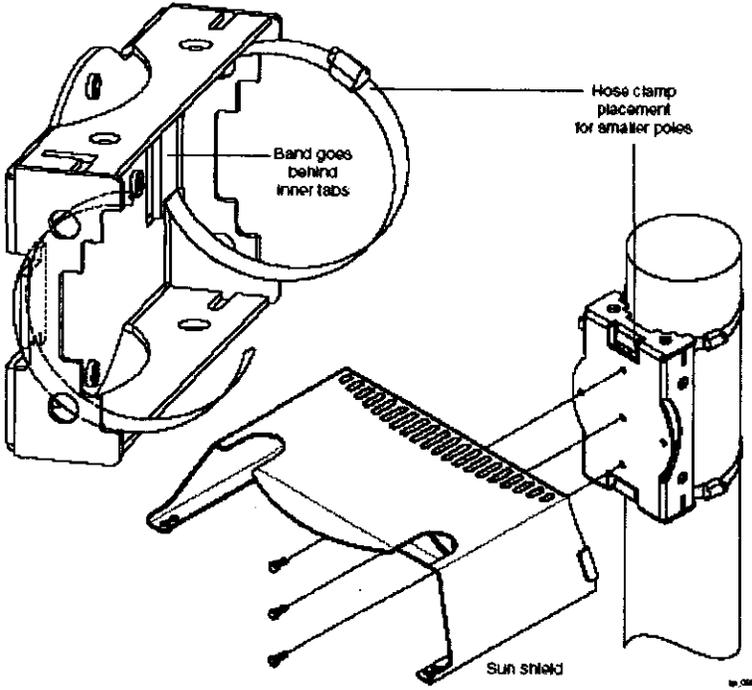
7. Slide the Tropos 5210 cell into place and secure it at the end with two #10-32 hex head machine screws. NOTE If this is to be a Gateway unit, see additional instructions in Part 2 to install data cable and access cover before mounting 5210

8. Follow steps for Connecting City Pole Power.

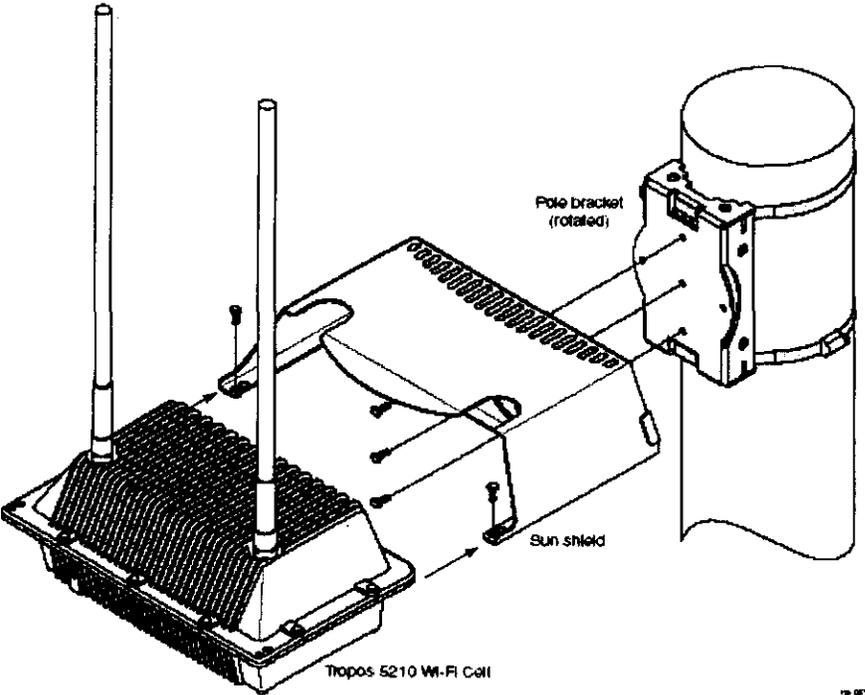
Proper Use of Hose Clamps - Large Poles (≥ 8 Inches)



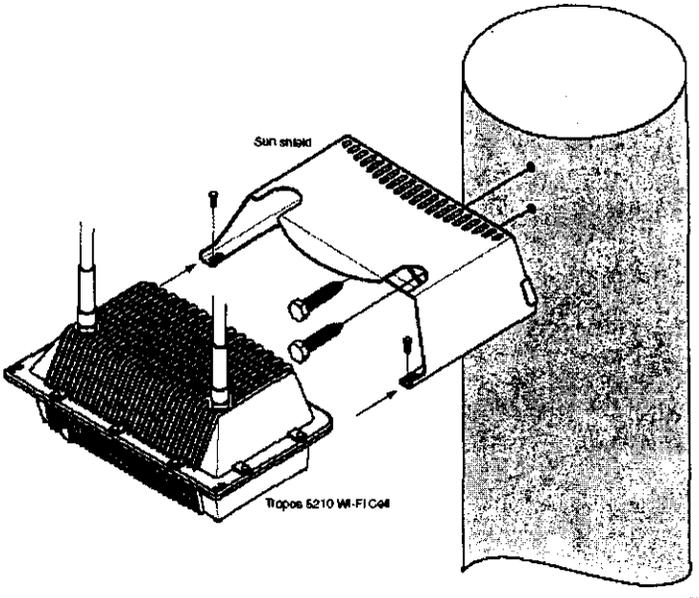
Proper Use of Hose Clamps - Small Poles (< 8 Inches)



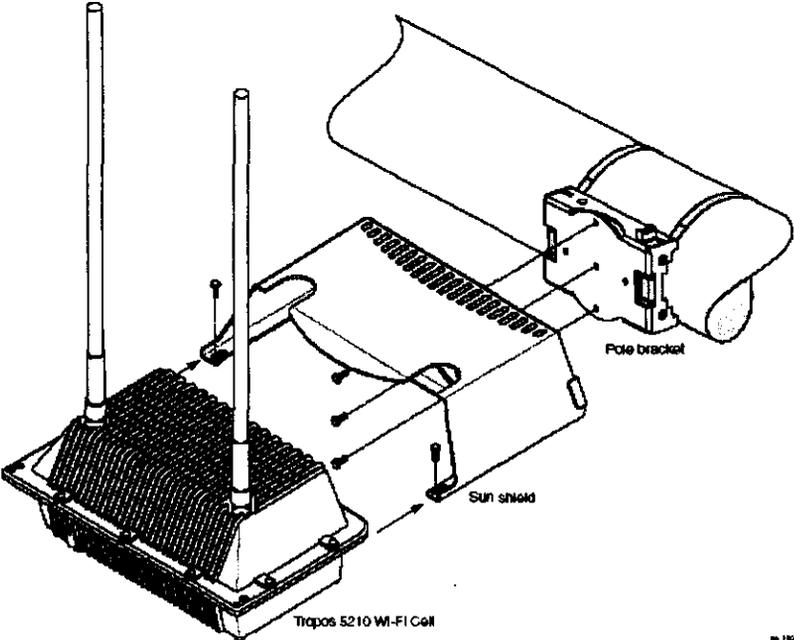
Metal Pole Mounting



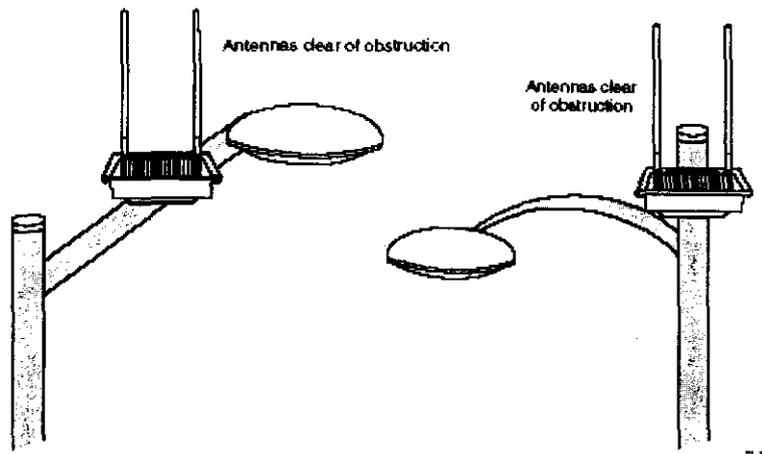
Wood Pole Mounting



Street Light Arm Mounting



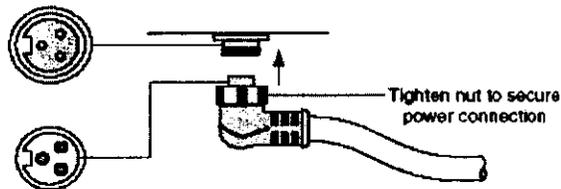
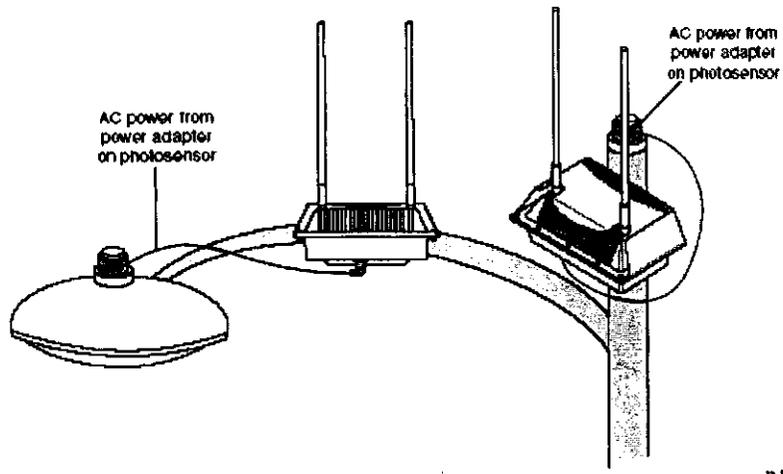
Example Tropos 5210 Mounting Location - Antennas Facing Upward



Connect device to a streetlight power source:

1. Cover photocell to verify light works prior removing, also note North Arrow direction.
2. Remove photocell and verify that the service voltage is 90-480 VAC 50/60 Hz
3. Connect the photosensor to the top of the NEMA 3 prong plug adaptor.
4. Connect the NEMA 3 prong plug from the Tropos 5210 to the photosensor connector on the streetlight.
5. Check orientation of photosensor's North Arrow and realign if needed.
6. Connect the AC plug to the Tropos 5210 and tighten hand-tight.
7. Confirm that power to the Tropos 5210 comes on observe power LED.
8. Weather proof all connection points, and Secure cables with approved cable ties.
9. RE-Verify streetlight operation by covering the photocell.
10. Complete all documentation to include GPS coordinates, Pole Location information, Street and Cross-Street, installation checklists, radio documentation and any electronic data collection that may be required.

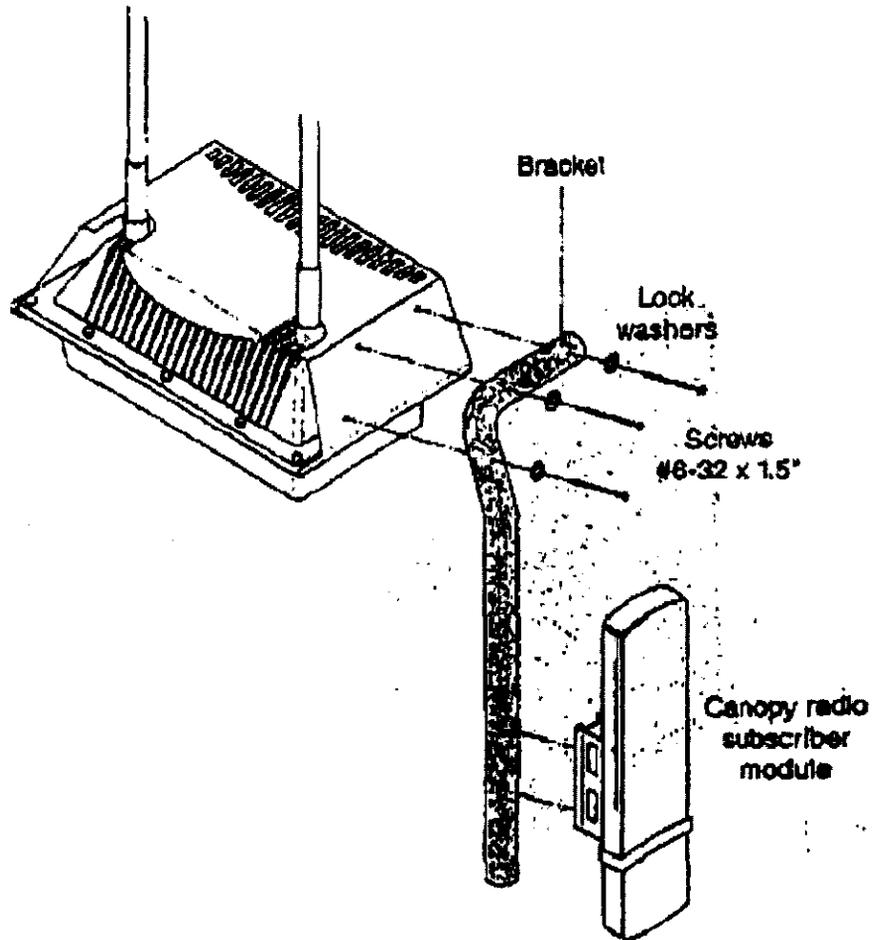
Connecting Streetlight Power



Install the Canopy SM Mounting arm

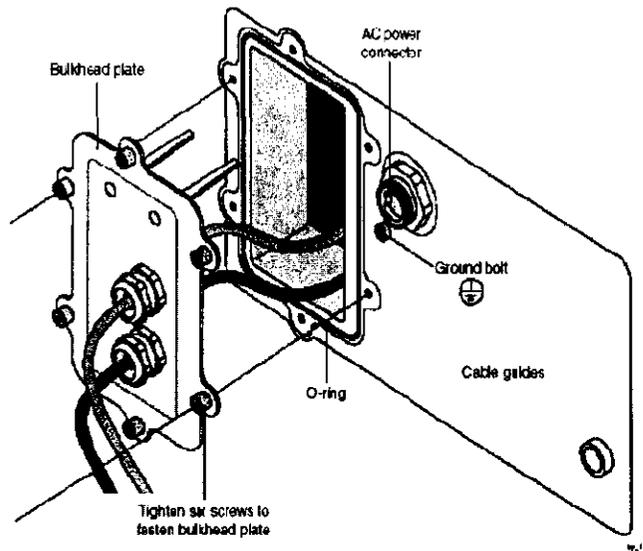
1. Orientate the mounting arm onto the desired side of the Tropos 5210 Sun Shield, and mount with the three long screws into the corresponding holes.
2. Attach the Canopy SM module to the end of the Mounting Arm with appropriate clamps.

Installing the Canopy SM Mounting arm



3. Verify that the power cable is disconnected on the designated Tropos unit.
4. Remove the connector access cover from the bottom of both the Tropos 5210, and from the Canopy SM.

Connecting Cat 5 Ethernet Cable from Canopy to Tropos Node



5. Run raw-unterminated, shielded Category 5 Ethernet cable appropriate for outdoor use through the Tropos 5210 access cover bulkhead openings, allowing sufficient length to terminate the cables without causing crowding in the connection area.

6. Install (Terminate) cable with a shielded RJ-45 connector, paying careful attention to follow the wiring diagram and connect to the Powered LAN port inside the Tropos 5210.

Inside Tropos radio, connect CAT 5 to LAN port

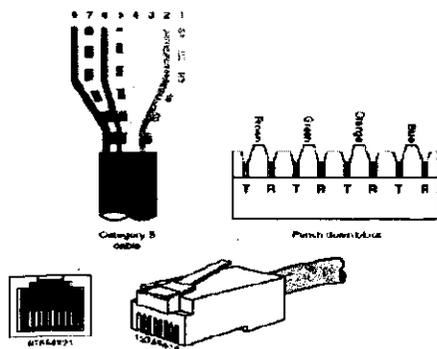
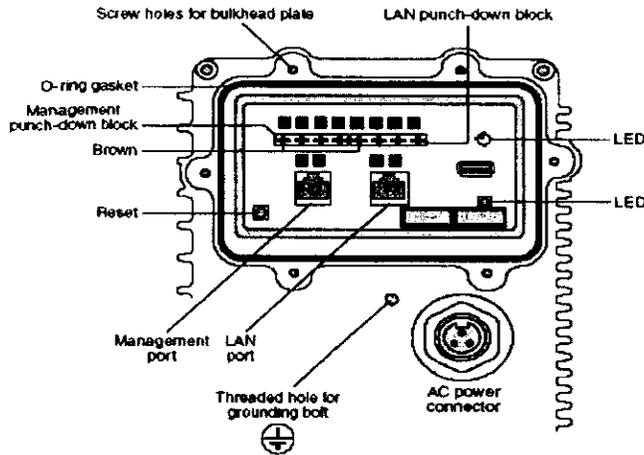


Table 3 RJ45 Pin Descriptions for Data Connection

Pin	T/R	Signal	Color	Description
1	T	TXD-	Orange-White	TX Data 10/100BaseT
2	R	TXD+	Orange	TX Data 10/100BaseT
3		RXD-	Green-White	RX Data 10/100BaseT
4	R	PoC-	Blue	Power output. 0, 12, 24, 43 Vdc (-)
5	T	PoE-	Blue-White	Power output. 0, 12, 24, 43 Vdc (-)
6	R	RXD+	Green	RX Data 10/100BaseT
7	T	PoC+	Brown-White	Power output. 0, 12, 24, 43 Vdc (+)
8	R	PoC-	Brown	Power output. 0, 12, 24, 43 Vdc (+)

7. Properly secure the Access Cover, mount the Tropos 5210 into the sun shield.
8. Connect the other end of the Category 5 cable to the Canopy SM unit
9. Reconnect the Tropos Power and confirm that power to the Tropos 5210 and the Canopy SM unit comes on.
10. Align the Canopy SM to AP tower per instructions on work order.

11. Make Tropos 5210 and Canopy SM ready for use and secure all covers and cable connections.
12. Water proof all cable connection points with approved weatherproofing tape, and secure all cables with approved cable ties.
13. Re-Verify proper street light operation by covering the photocell.
14. Measure the radio height, take two pictures and clean up any trash around installation site.

Inspection List

INSPECTION LIST			
1. Cordon proper safety area	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
2. Confirm you are at the right location and the pole is fit for use	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
3. Record Pole ID	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
4. Record GPS LAT/LONG	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
5. Record Address, Street, X-Street	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
6. Record Type of Install	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
7. Confirmed light works prior to voltage measurement at photo cell socket	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
8. Back plate and sun shield are properly mounted and level	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
9. If Gateway/SM location, Canopy mounting bracket properly installed	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
10. Record Serial Numbers and MAC Addresses	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
11. Tropos 5210 Antennas are secure and weatherproofed	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
12. If a Gateway/SM - ported access cover and cables properly installed	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
13. Tropos 5210 radio unit properly installed in mount	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
14. Canopy SM unit is mounted and cabled	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
15. Tropos Radio power cable properly connected to radio	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
16. Photo cell and power adaptor properly installed on street light	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
17. Verify all power indicator LED are properly illuminated	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
18. Canopy SM antenna properly aligned per work order	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
19. Verify all covers are in place and all connections weather proofed	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
20. Secure all cables with approved tie wraps	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
21. Re-Verify street light operates by covering photocell	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
22. Measure and Record Radio height and verify 2 pictures were taken	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
23. Trash cleaned up and removed upon completion	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
24. Comments/Extra Information			
		Job Completed	
		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Technician: _____		Date: _____	
Phone: _____			

EXHIBIT E
Installed City Pole Use Fees

Installed City Pole Use Fees

Municipal Assets:

EarthLink shall pay the City a flat rate of One Dollar (\$1.00) per Installed City Pole per month for each Installed City Pole as to which EarthLink receives all rights under the Agreement. EarthLink shall pay to the appropriate electric company the electric charges for the Installed City Poles, provided that as a condition to EarthLink's obligations under the Agreement, the electric charges for all Poles shall not exceed the lesser of the flat rate level electricity consumption charge or Two Dollars (\$2.00) per Installed City Pole per month.

EXHIBIT F
Public Benefits and Additional Services Provided by EarthLink

A. Public Benefits

EarthLink shall provide the Public Benefits as set forth in this Section A. The City acknowledges and agrees that the pricing of the Public Benefits is a significant departure from standard pricing for comparable accounts.

1. Wi-Fi Accounts. EarthLink shall provide accounts for the following uses (i) Government Use (ii) Digital Inclusion; and (iii) Student Use (the “Wi-Fi Broadband Accounts”). Customer premises equipment, including without limitation any user equipment or devices for accessing or using the accounts (collectively “CPE”), is not included and not provided by EarthLink for the prices set forth in this Exhibit, including without limitation for any digital inclusion use. EarthLink may provide information or recommendations regarding CPE. EarthLink may provide any CPE for the Wi-Fi Broadband Accounts or otherwise under the Agreement for Government Use Accounts or Digital Inclusion Program Accounts on such terms as EarthLink generally makes available to third parties.

1.1 Wi-Fi Broadband Accounts for Government Use

- 1.1.1 EarthLink shall furnish Wi-Fi Broadband Accounts for Government Use to the City, on a discounted basis as follows: Wi-Fi Broadband Accounts for Government Use shall be assigned by the City for use by elected and appointed officers, officials, employees, contractors and agents of the City. The first five hundred (500) Wi-Fi Broadband Accounts for Government Use that are used by the City during a billing period will be free. The City may purchase additional Wi-Fi Broadband Accounts for Government Use, at the City’s sole option, for the price of Ten Dollars (\$10) per month per account. The Wi-Fi Broadband Accounts for Government Use shall provide wireless data transmission and Internet access with a commercially reasonable efforts data transmission rate of at least approximately 1.0 Mbps downstream / 1.0 Mbps upstream, and dynamic IP addresses; provided EarthLink shall provide the Wi-Fi Broadband Accounts for Government Use the service availability it provides to EarthLink retail customers that purchase the standard unlimited access wi-fi product. EarthLink retains the right to make changes to the EarthLink retail services and services offered to the Wi-Fi Broadband Accounts for Government Use at its reasonable discretion (subject to the general requirements of the previous sentence). In addition, EarthLink shall offer to the City an access product with a feature set designed to support low aggregate data consumption on an intermittent basis. This access product will be designed for device-only access to the Network. No restriction placed on this access product shall have the effect of limiting the number of transmissions per day or specific times of access per day, beyond reasonable limits intended to protect the integrity of the network.. The

price of this product shall be \$2.00 for 40 MB of aggregate data transmission per month per device.

1.1.2 In the City's sole discretion, the City may bundle its own services, including, but not limited to, email, software, support, Web pages, systems, VPN software, and other services selected by the City with the Wi-Fi Broadband product to the City's end users at the City's cost. The City will be responsible for the cost of CPE and installation services for Wi-Fi Broadband accounts for its end users, and may in its sole discretion, itself provide and/or charge its end users for CPE installation services and ongoing support. The CPE shall be approved and certified by EarthLink to run on the Network and shall not be detrimental to the Network's performance.

1.1.3 If EarthLink discontinues the underlying commercial Service used to provide the Wi-Fi Broadband Accounts for Government Use and replaces it with a product of the same or higher transmission rate, EarthLink shall provide accounts for such replacement product to the City instead under the same terms and conditions.

1.1.4 "Wi-Fi Broadband Accounts for Government Use":

(1) Shall be utilized for municipal government activities and purposes, and shall not be used for non-City activities, such as personal recreational use and shall not be used by students of the public schools of the City;

(2) Shall fall under a wholesale account umbrella which shall be managed by a single designated point of contact within the City;

(3) Shall access the Network through City specific non-broadcast Service Set Identifiers (SSIDs);

(4) Shall be routed by an EarthLink proxy RADIUS server to a designated City RADIUS server for authentication;

(5) Shall be provisioned and maintained by the City and only for use by elected or appointed officers, officials, employees, contractors and agents of the City or of agencies supported wholly or principally by City funds ("City-Related Agencies");

(6) Shall be accounts associated with the City's primary Internet domain name, or such other domains that as a matter of regular practice are managed by the City's IT departments;

(7) Shall receive Tier 3 Network Operations Center (NOC) support via a single interface from the City's Tier 3 NOC to EarthLink's Tier 3 NOC support center;

(8) Shall be billed to the City on a single invoice each month;

(9) Shall not be resold, except to City-Related Agencies; and

(10) Shall include only one login name per account with no simultaneous logins of the same account allowed. EarthLink shall have the right to prevent simultaneous logins or to assess reasonable charges to the City for shared account or simultaneous activity by multiple users or devices using a single account to access the Network.

1.2 Wi-Fi Broadband Accounts for Digital Inclusion Program.

1.2.1 EarthLink shall make available at least two thousand seven hundred (2,700) Wi-Fi Broadband Accounts for individual personal use to residents of the City who are qualified by the City under the requirements set forth in subsection 1.2.2 below, to the extent the City qualifies two thousand seven hundred (2,700) individuals ("Digital Inclusion Program"). These Digital Inclusion Program accounts will be at the price of Nine Dollars and Ninety-Five Cents (\$9.95) per month per account. The Wi-Fi Broadband product shall provide Wi-Fi data transmission and Internet access using commercially reasonable efforts data transmission rate of approximately 1.0 Mbps downstream / 1.0 Mbps upstream data transmission rate (or more) and dynamic IP addresses ("Digital Inclusion Standard Offering"). EarthLink retains the right to modify the services and functionality of the Digital Inclusion Standard Offering (other than by reducing the data transmission rate) or to reduce the cost of the Digital Inclusion Standard Offering. Additionally, EarthLink shall offer the Digital Inclusion Program accounts those services it provides to standard EarthLink retail customers for a price no greater than fifty percent (50%) of the standard (non-promotional) retail price offering ("Digital Inclusion Tiered Offering"). EarthLink retains the right to make changes to the EarthLink retail services and services offered to the Digital Inclusion Tiered Offering accounts at its reasonable discretion (subject to the general requirements of the previous sentence). The Digital Inclusion Standard Offering and the Digital Inclusion Tiered Offering are both part of and made available only through the Digital Inclusion Program.

1.2.2 To qualify under the Digital Inclusion Program, each user shall be an individual resident of the City, who meets eligibility guidelines established by the City, and is qualified by applicable City authorized representatives as meeting and, from time to time as established by the City, continuing to meet such guidelines. EarthLink may, from time to time, request verification by the City of the qualification status of any or all users then currently receiving service under the Digital Inclusion Program, and EarthLink will not disclose any such information it receives to any third party. EarthLink will not provide CPE for the Digital Inclusion Program Accounts, except on such terms as are available to third parties. The City

will manage the Digital Inclusion Program and qualification of the individual Accounts and users under this program, but the users shall be customers of EarthLink and no commercial or business relationship between a user and the City shall exist by virtue of the user having been provided by EarthLink with a Digital Inclusion Program Account.

1.3 Wi-Fi Broadband Accounts for Student Use

- 1.3.1 EarthLink shall make available free access only within the Network and without EarthLink providing Internet transit or any Internet access, solely for Alexandria City Public Schools (ACPS) students, for at least 2,500 laptop devices owned and controlled by the Alexandria City Public Schools (“ACPS”) while being used by the ACPS student who is assigned that laptop device (“WiFi Broadband Accounts for Student Use”). The City or ACPS may purchase additional Wi-Fi Broadband Accounts for Student Use at the option of either the City or ACPS, for the price of Ten Dollars (\$10.00) per month per account. The Wi-Fi Broadband Accounts for Student Use shall provide wireless data transmission using commercially reasonable efforts data transmission rate of approximately 1.0 Mbps downstream / 1.0 Mbps upstream (or more).
- 1.3.2 The City or ACPS will pay for any circuit, transit and/or cross connect fees from the EarthLink POP to the appropriate demarcation point on the ACPS network. The City and ACPS shall pay for all taxes assessed on these WiFi Broadband Accounts for Student Use.
- 1.3.3 The City agrees to request ACPS' cooperation in making ACPS employees, parents, and students aware of EarthLink's role in providing services under this Agreement.
- 1.3.4 The Wi-Fi Broadband Accounts for Student Use will also have access to the schools' internal Web site via the Walled Garden in the manner specified by ACPS .

1.4 The Wi-Fi Broadband Accounts for Student Use:

- (1) Shall fall under a wholesale account umbrella which shall be managed by a single designated point of contact within the City or ACPS;
- (2) Shall access the Network through City specific non-broadcast Service Set Identifiers (SSIDs);
- (3) Shall be routed by EarthLink via Layer 2 handoff to a designated City and/or ACPS RADIUS servers for authentication;
- (4) Shall be provisioned and maintained by the City only for use by ACPS students;

- (5) No EarthLink account will be directly associated with the accounts;
- (6) Shall receive Tier 3 Network Operations Center (NOC) support via a single interface from the City's Tier 3 NOC to EarthLink's Tier 3 NOC support center;
- (7) Shall be billed (for any charges, as applicable) to the City or to ACPS, as designated by the City, each on a single invoice each month;
- (8) Shall not be resold; and
- (9) Shall include only one login name per account with no simultaneous logins of the same account allowed. EarthLink shall have the right to prevent simultaneous logins or to assess reasonable charges to the City for shared account or simultaneous activity by multiple users or devices using a single account to access the Network.

1.5 EarthLink will provide information regarding device configuration and security standards compatible with the Network. For devices not provided by EarthLink, the City will be responsible for managing configuration and implementation of appropriate security standards for devices accessing the Network in connection with Government Use and Student Use accounts.

1.6 Support Tiers and Responsibilities

The following service standards apply to the Wi-Fi Broadband Accounts for Government Use and the Wi-Fi Broadband Accounts for Student Use.

1.6.1 City Tier 0. EarthLink shall cooperate with City personnel and provision to the City all necessary information (including without limitation "Frequently Asked Questions"), to create Tier 0 end user 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. The City may provide Tier 0 support services for its own end users, customized to the specific services and applications provided by the City.

1.6.2 City Tier 1. The City may provide a Tier 1 level of customer support which shall be available at the City's discretion and shall consist of one-to-one interaction between the City's end users and City help desk or support representatives via email, chat or telephone. The City is expected to provide Tier 1 support services for its own end users, customized to the specific services and applications provided by the City. Service Provider Tier 1 support shall address issues including but not limited to service setup and provisioning issues, City application and services issues, connectivity issues and account and authentication issues. Tier 1 connectivity issues shall be the responsibility of the City.

- 1.6.3 City Tier 2. The City may provide a Tier 2 level of end user support which shall be available at the City's discretion and shall consist of an escalated one-to-one interaction between the City's end users and supervisor level help desk or support representatives.
- 1.6.4 City Tier 3. Tier 3 support shall be at the Network Operations Center (NOC) level and shall addresses problems that could not be resolved at the Tier 2 level. The City's Tier 3 support organization shall represent the primary point of interaction between EarthLink Tier 3 and the City's help desk or support organizations. The City's Tier 3 shall report technical support issues that cannot be resolved by City help desk or support personnel to EarthLink Tier 3 support via a trouble ticketing system that will be made available to the City and shall address connectivity issues due to suspected network outages or failures.
- 1.6.5 EarthLink Tier 3. EarthLink's Network Operations Center (NOC) will be the City's initial point of contact for the escalation of issues related to EarthLink's provision of the City 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 the City. Tier 3 problems will be worked on a peer level basis between the City Network Operations Center and the EarthLink NOC. EarthLink shall create an integration protocol for the City 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 the City visibility into the EarthLink NOC and shall work in good faith to provide proactive communications to the City via emails and outage boards informing the City of any planned maintenance, scheduled and unscheduled network outages.
- 1.6.6 Availability. 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 City Tier 3 NOC personnel and technical support groups to escalate or resolve issues that are attributable to EarthLink and the Network.

1.7 **Billing and Taxes**

- 1.7.1 EarthLink shall bill account charges, if any, and the cost of EarthLink provided support, if any, directly to the City. Any Wi-Fi Broadband Accounts or T1 Alternative accounts made available to the City will appear in EarthLink's operational support systems as wholesale accounts. If EarthLink's provision of Wi-Fi Broadband Accounts or T1 Alternative accounts under this Section results in a sales tax charge to EarthLink, the

City will pay the amount of the sales tax to EarthLink for remittance to appropriate tax authorities. The City will tender to EarthLink a tax exemption certificate(s) or statement(s) covering all wireless internet access service purchases made by the City pursuant to this Agreement.

2. **Parks and Public Spaces Wi-Fi Broadband Service**

- 2.1 **Parks and Public Spaces Wi-Fi Broadband Service.** EarthLink shall provide Wi-Fi data transmission and Internet access to end users in designated parks and public spaces (as designated per subsection 2.4 below) (the “Parks and Public Spaces Wi-Fi Broadband Service”). The throughput of the service, the duration of splash page persistence, the amount of usage by any user (beyond four sessions per 24-hour period) and duration of allowed sessions (beyond two hours per session) for the Parks and Public Spaces Wi-Fi Broadband Service shall be solely determined by EarthLink. EarthLink shall have the right to provide varied speed or incomplete coverage in Parks and Public Spaces, but will work in good faith with the City to minimize such areas and to provide minimum service speeds of 150 kbps (subject to incomplete coverage as described in this Section 5). EarthLink shall have no responsibility to provide CPE or installation services for end users utilizing the Parks and Public Spaces Wi-Fi Broadband Service. EarthLink’s provision of the Parks and Public Spaces Wi-Fi Broadband Service is expressly subject to the Conditions set forth in Sections 2.31 and 11.4 of this Agreement.
- 2.2 **Configuration.** EarthLink shall have the sole right to design the configuration of the Network in parks and public spaces to limit the use of Parks and Public Spaces Wi-Fi Broadband Service by users located in residential households, businesses and institutional premises adjacent to the designated locations throughout the City. The portal page for the Parks and Public Spaces Wi-Fi Broadband Service shall bear the “Wireless Alexandria” logo, or such other identification as the City may reasonably select, in order to identify the service as a free public benefit facilitated by the City.
- 2.3 **Parks and Public Spaces Revenue.** There shall be no charge to any user or to the City for the use of or EarthLink’s provision of the Parks and Public Spaces Wi-Fi Broadband Service. Subject to EarthLink’s compliance with applicable laws and this Agreement, EarthLink shall have at its discretion the right to advertise EarthLink retail products and to publish other content and applications to users utilizing the Parks and Public Spaces Wi-Fi Broadband Service.
- 2.4 The configuration of the facilities needed to provide the Parks and Public Spaces Wi-Fi Broadband Service shall be designed by the City and EarthLink upon mutual agreement from the areas listed below and on the basis described below:
- 2.4.1 All of the sites in all of the parks and public spaces agreed upon will not exceed 5% of the total 16 square miles of the geographic area of the City.

- 2.4.2 EarthLink shall have the right in its discretion to provide lower speed or incomplete coverage in parks and public spaces, or limit the user experience in any areas that overlap into commercially viable areas (such as a place with large number of homes or businesses).
- 2.4.3 If the street lights, poles or other assets necessary to provide an acceptable level of service in any park or public space are owned by an entity other than the City, and the owner does not grant access to street lights, poles or other assets on commercially reasonable terms, then EarthLink is not obligated to provide service in that location; provided, however, that EarthLink shall provide service if the City installs poles or other structures suitable for mounting Approved Equipment in order to provide the necessary level of service. The parties may also discuss terms under which EarthLink may install such mounting structures to serve such location. In addition, if the parties conclude that it is impractical to serve part or all of the location in question or undesirable or not economically viable to install any necessary mounting structures to serve the location, the City may substitute an alternate location, pursuant to Section 2.4.3.
- 2.4.4 Parks and Public Spaces Wi-Fi Broadband Service will be provided in the following locations, provided that the City and EarthLink may mutually agree to designate alternate locations.

African American Heritage Park (500 Holland Lane)
 Armistead Boothe Park (435 Ferdinand Day Drive)
 Ben Brenman Park (5000 Duke Street)
 Braddock Road Metrorail Station (700 N. West Street)
 Cameron Run Park (3699 Eisenhower Avenue)
 Cameron Station Westend Park (Pickett Street & Edsall Road)
 Chinquapin Park (3210 King Street)
 Dora Kelley Park (5700 Sanger Avenue)
 Eisenhower Avenue Metrorail Station (2400 Eisenhower Avenue)
 Ewald Park (4454 Duke Street)
 Fort Ward Park (4401 W. Braddock Road)
 Four Mile Run Park (3700 Commonwealth Avenue)
 Holmes Run Scenic Easement (Beauregard Street and Morgan Street)
 John Adams School Park (5651 Rayburn Avenue)
 Joseph M. Hensley Park (4200 Eisenhower Avenue)
 King Street, between Callahan Drive and the Potomac River, including
 Alexandria Union Station (110 Callahan Drive), the King Street
 Metrorail Station (1900 King Street) and Market Square (301 King
 Street).
 Landmark Mall (5801 Duke Street)
 Minnie Howard Field (3701 W. Braddock Road)
 Mt. Vernon Avenue, between Hume Avenue and E. Braddock Road.
 Potomac River Waterfront and adjacent parks, from Dangerfield Island
 (Marina Drive) to Jones Point Park (Jones Point Drive)

Schuyler Hamilton Jones Skateboard Park (3540 Wheeler Avenue)
Simpson Stadium Park (500 Monroe Avenue)
Stevenson Park (300 Stulz Road)
Van Dorn Street Metrorail Station (5690 Eisenhower Avenue)

2.5 Portal

- 2.5.1 Portal Landing Page. Individuals seeking to access EarthLink's Network in any Designated Public Space who are not subscribers to a commercial service, or have not been assigned a Wi-Fi Broadband Account, shall be directed to the Wi-Fi Broadband Service Portal Landing Page. All end users must agree to the terms and conditions of use for the Network. The Portal Landing Page shall carry the "Wireless Alexandria" or other City-designated logo, and may, at EarthLink's discretion, offer users the opportunity to purchase EarthLink's retail products.
- 2.5.2 Liability for Access – EarthLink shall create appropriate disclaimers, limitations, and protections for the benefit of both Parties from any liability which could result by providing Internet Access to end users via the Network.
- 2.5.3 City Designated Links. The City shall be entitled to determine up to 6 links in the Portal landing and welcome pages in its reasonable discretion for announcements, community notices and/or advertising (the "City Designated Links").
- 2.5.4 Limited Access within Walled Garden. EarthLink shall allow any end user to obtain access by means of the City Designated Links to the underlying sites at no cost and without requiring such end users to log in or subscribe to any service. EarthLink may also make available additional functionality at EarthLink's sole discretion within the Walled Garden. The user must agree to the terms and conditions of use of the Network in order to access the Web sites, applications and utilities in the Walled Garden.

B. T1 Alternative Accounts

EarthLink shall furnish T1 Alternative product accounts to the City, at the City's sole option to purchase, for the price of Two Hundred Dollars (\$200) per month per account, plus a one-time, non-recurring fee for CPE and installation (which may be waived by EarthLink at EarthLink's sole discretion in return for a multiyear agreement commitment by the City) of Five Hundred Dollars (\$500) per account. The T1 Alternative product shall provide point-to-multipoint fixed wireless data transmission and Internet access to municipal buildings and municipal government locations with a commercially reasonable efforts data transmission rate of at least approximately 1.5 Mbps downstream / 1.5 Mbps upstream, and dynamic and static IP addresses (as requested by the City).

C. General.

Use of the Public Benefits and Additional Services may be subject to the then-current EarthLink Service Agreement and Acceptable Use Policy governing access by subscribers to the Network.

9/29/06

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EXHIBIT G
Insurance Coverage Requirements

EarthLink will procure and maintain, at its sole cost and expense, insurance coverage with insurance companies possessing an *A. M. Best's* rating of A-VII or higher that satisfies or exceeds the below minimum:

(a) Workers Compensation and Employers Liability

- Workers Compensation: Statutory limits
- Employers Liability: \$1,000,000 each Accident - Bodily Injury by Accident; \$1,000,000 Each Employee - Bodily Injury by Disease; and \$1,000,000 Policy Limit - Bodily Injury by Disease.

(b) Commercial General Liability Insurance

- Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 personal and advertising injury; \$2,000,000 general aggregate and \$2,000,000 aggregate for products and completed operations. Also EarthLink has a \$1,000,000 umbrella/excess liability policy that is on top of the above coverage. EarthLink is entitled to allow a combination of primary and excess policies to meet these requirements.
- Coverage: Premises liability; Contractual liability; Personal and Advertising Injury liability; Products and Completed Operations;

(c) Commercial Automobile Liability

- Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- Coverage: Owned, non-owned and hired vehicles.

(d) Umbrella or Excess Liability

- Limit of liability: \$1,000,000 per occurrence

EarthLink will submit, at the City's request, certificates of insurance evidencing the required coverages prior to the commencement of work. EarthLink may obtain any part or all of the insurance policies required under this Exhibit with a deductible or self-insured retention chosen by EarthLink, or by a combination of primary and excess policies, without the prior written approval of the City or any other entity. If at the time of commencement of the work under this Agreement, EarthLink self-insures its workers' compensation or automobile liability, EarthLink may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State letter of approval, whichever is appropriate.

The parties agree the insurance (including self-insurance) requirements of this Exhibit are not intended to, and do not, (a) expand or limit the indemnifications made in this Agreement by

EarthLink to the City, if any, or (b) expand or limit EarthLink's liability to the City as provided in this Agreement.

4096 03 00124059.DOC

RIGHT-OF-WAY FRANCHISE AGREEMENT

THIS RIGHT-OF-WAY FRANCHISE AGREEMENT (the "ROW Agreement") is entered into this ____ day of December, 2006, between the City of Alexandria, a municipal corporation of Virginia ("City"), and EarthLink, Inc., a Delaware corporation ("EarthLink").

- A. The City owns and controls certain Public Rights-of-Way, to which EarthLink seeks to obtain access for purposes of installing, maintaining, and operating portions of a wireless broadband network (the "Network").
- B. The City seeks to grant EarthLink the right to use the Public Rights-of-Way for the purpose of installing, maintaining, and operating portions of the Network.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

1.1 "Public Rights-of-Way" means the space in, upon, above, along, across, over, and below the public streets, roads, lanes, courts, ways, alleys, and boulevards, including all public street easements, as the same now exist or may hereafter be established, that are under the legal jurisdiction and physical control of the City.

1.2 "Services" means (i) wireless broadband Internet access provided by EarthLink to its subscribers by means of the Network and using IEEE standards 802.11 and 802.16 (commonly known as "WiFi" and "WiMax") and protocols as required to support the Network, or substantially similar successor technologies such as IEEE standard 802.22; (ii) wireless services provided by EarthLink to its subscribers within the Network using IEEE standards 802.11x and 802.16 or substantially similar successor technologies, but without using the Internet; (iii) any other services that can be provided by means of the Approved Equipment, with the exception of cable services; and (iv) access to the Network by other service providers in order to allow such providers to provide the foregoing wireless broadband Internet access service and wireless services to the subscribers of such other service providers.

2. Use of Public Rights-of-Ways.

2.1 The City hereby grants to EarthLink the permission, on a non-exclusive basis, to access and enter upon the Public Rights-of-Way to attach, install, control, operate, maintain, repair, replace, reattach, reinstall, relocate, remove and upgrade communications equipment comprising portions of EarthLink's Network on and from property located in the Public Rights-of-Way (subject to any authorization or approval of the owner of any such property), all for the limited purpose of providing EarthLink's Services within the City, subject to the terms of this ROW Agreement, and all applicable

laws and regulations.

2.2 For the Term of this ROW Agreement, EarthLink is authorized to use the Public Rights-of-Way to obtain access to property owned by the City and third parties that is located within the Public Rights-of-Way and to which portions of the Network are or will be attached, provided nothing in this Section authorizes EarthLink to attach any equipment to any such property.

2.3 Subject to the obligations of the City and rights granted to EarthLink and other provisions set forth in this ROW Agreement, EarthLink acknowledges that (i) the paramount use of the Public Rights-of-Way dedicated for public use is for the benefit of the public at large, and (ii) its use of the Public Rights-of-Way shall not conflict with the City's uses.

2.4 The permissions granted to EarthLink pursuant to this ROW Agreement shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, claims of title, leases, licenses, permits, permission, and rights (whether recorded or unrecorded) of others in, or that may affect the Public Rights-of-Way, specifically including all rights of the Virginia Department of Transportation ("VDOT"), provided that the City will notify EarthLink of any such rights or obligations that affect EarthLink's access to or use of any Public Rights-of-Way of which the City becomes aware. As of the Effective Date, the City is not aware of any existing rights that would substantially interfere with EarthLink's use of the Public Rights-of-Way as contemplated by this ROW Agreement, but the City has conducted no investigation into the existence of any such rights, and the City makes no representations or warranties regarding the existence of any such rights as of the Effective Date. Nothing in this ROW Agreement shall be deemed to grant, convey, create, or vest any real property interest in EarthLink, including any fee or leasehold interest or easement.

3. Permits.

Any construction, maintenance or other activities including but not limited to, operation, repair, replacement, reattachment, reinstallation, relocation or removal of the Network by EarthLink in the Public Rights-of-Way shall be subject to the City's general permit requirements. The City will not unreasonably withhold or delay provision of any permit requested by EarthLink pursuant to this ROW Agreement in accordance with the City's standard permitting policies generally applicable to all applicants.

4. Notification to City of Work to Be Performed in the Public Rights-of-Way for Initial Installation of Network.

4.1. Prior to EarthLink occupying the Public Rights-of-Way for the initial installation of the Network, EarthLink shall prepare and submit to the City's Department of Transportation and Environmental Services an initial plan which shall: (i) describe or otherwise show the approximate location within each Public Right-of-Way in which the proposed installation is to take place and general maintenance and repair plans; (ii) provide the approximate date(s) on which EarthLink intends to commence installation of EarthLink's equipment in the Public Rights-of-Way and the

approximate date of completion; (iii) describe the Approved Equipment and/or the activity that is to take place in the Public Rights-of-Way to accomplish the installation, maintenance, repair, replacement, reattachment, reinstallation, relocation, and/or removal; (iv) provide a traffic control plan that shall be reviewed and approved by the Director of Transportation and Environmental Services, or his designee provided such approval shall not be unreasonably withheld or delayed; (v) verify that EarthLink has obtained, or will obtain prior to commencing the installation, of the equipment in the Public Rights-of-Way any required permits from any other entity; (including departments or agencies of the City of Alexandria) whose approval is required by law (the "Plan"), and (vi) shall provide other information the Director of Transportation and Environmental Services (the "Director"), or his designee, reasonably requires. The Director or his designee will submit any comments or questions to EarthLink promptly after submission of EarthLink's initial Plan. If the Director does not respond within ten (10) days after EarthLink's submission of the initial Plan, EarthLink may proceed with its installation activities. The Director will not object to any EarthLink equipment to the extent such equipment is deemed "Approved Equipment" under the Franchise Agreement between the parties executed on a date even herewith.

4.2. This initial Plan shall be non-binding, but shall represent a reasonable projection by EarthLink of the activities it anticipates undertaking in the Public Rights-of-Way.

4.3. EarthLink shall within a reasonable time review comments or questions posed by the Director, or his designee, regarding the initial Plan and shall respond within a reasonable time period to any such questions posed by the Director. Each ninety (90) days during the EarthLink installation activities, EarthLink will submit as-built plans describing the locations of the EarthLink's equipment in the Public Rights-of-Way, provided such information is treated as EarthLink's confidential information and will be entitled to treatment as trade secret or confidential information as further described in Section 16.

4.4. The Director shall have the discretion, which is to be reasonably exercised, to determine the dates of the proposed installation of the Network as described in the initial Plan, taking into account both the dates requested by EarthLink and other planned or on-going work in the affected Public Rights-of-Way, provided the Director shall not unreasonably delay the time lines proposed in the Plan and will notify EarthLink as soon as reasonably practicable (and, if possible, prior to approve of the initial Plan) once the Director is aware of potential conflicts or any changes required to the time lines proposed in the Plan. The Director will notify EarthLink as soon as reasonably practical of (i) any other activities by a third party authorized to be in the Public Rights of Way which were unforeseeable at the time the Director reviewed the initial Plan, or (ii) emergency activities by any other government agency or utility or authorized to be in the Public Rights of Way, that may interfere with the planned EarthLink activities. In the event the Director requires any changes to the proposed time line, the Director will cooperate with EarthLink to reissue any outstanding permits for another time mutually agreed upon by the Director and EarthLink. EarthLink agrees that the installation, maintenance, operation, attachment, repair, replacement, reattachment, reinstallation, relocation or removal of the Network in the Public Rights-of-Way shall be done in such locations and in such manner so as not to unreasonably interfere with existing water, gas, sewer pipe, traffic signal, street light and other utilities and conduits in the Public Rights-of-Way, or with

the public's use of the Public Rights-of-Way, and shall, to the maximum degree feasible, be coordinated with any entity performing work or construction in the Public Rights-of-Way.

4.5. EarthLink shall, in connection with any installation, maintenance, operation, attachment, repair, replacement, reattachment, reinstallation, relocation, removal or other activities in the Public Rights-of-Way, comply with all applicable laws and regulations, including all permits required by the City.

4.6. If the City determines that the protection, temporary disconnection, removal, relocation, or reconfiguration of any portion of the Network located in the Public Rights-of-Way is necessary (i) to preserve public health or safety, or (ii) for the construction, repair, relocation or maintenance of a City project for the public welfare (including without limitation any future conversion of overhead to underground utilities), the City will provide EarthLink with written notice as soon as reasonable under the circumstances describing which of EarthLink's facilities are affected and the proposed dates by which the work is to be completed by EarthLink, provided that where immediate action is not required to avoid danger to the public safety or property, the City shall give EarthLink at least thirty (30) days prior written notice. EarthLink shall, at its sole cost and expense, promptly disconnect, remove, relocate, or reconfigure such portion of the Network as mutually agreed upon with the City. The City will use good faith efforts to conduct City projects in a manner to minimize negative impact to the Network. Regardless of anything to the contrary in this Section 4.7, the City will not request EarthLink to remove or relocate the equipment in a manner that deliberately makes it uneconomical for EarthLink to operate the Network and provide services in the City or in a manner that gives any preferences to a subsequent third party offering a similar service. The City warrants to EarthLink that the City will not disturb, move, alter or relocate the equipment placed in the Public Rights-of-Way except as set forth in this ROW Agreement.

5. Maintenance, Repair and Upgrade of the Network.

5.1 EarthLink may perform maintenance, repair or reattachment on the Network from time to time without prior approval of the Director as long as neither the component of the Network being worked on, nor any of the equipment or workers involved in such maintenance, repair or reattachment are located on the travel, parking, curb or sidewalk portion of a Public Right-of-Way, or any other portion of a Public Right-of-Way. At least 30 days prior to performing maintenance, repair or reattachment on the Network while located on the travel, parking, curb or sidewalk portion of a Public Right-of-Way, or any other portion of a Public Right-of-Way, EarthLink: (i) shall inform the Director in writing of the location at which it intends to perform such maintenance, repair or reattachment, (ii) shall provide whatever other information the Director requests, and (iii) shall obtain either a verbal or a written approval of the maintenance, repair or reattachment from the Director. In performing maintenance, repair or reattachment on the Network, EarthLink shall comply with all requirements set forth in the applicable permits or as set forth in the Plan. In addition to and notwithstanding the provisions of this subsection, EarthLink shall maintain in good and safe condition all elements of the Network that it places within the Public Rights-of-Way and shall, in connection with any maintenance, repair or reattachment activity it undertakes, comply with all applicable laws and regulations.

5.2 Notwithstanding anything to the contrary in Section 5.1, EarthLink may perform any maintenance, repair, reattachment, removal, replacement, relocation or upgrade to the Network from time to time without prior approval of the Director to the extent it was described in the maintenance policies or plan previously approved by the Director.

6. EarthLink Shall Not Impede or Inconvenience the General Public.

When engaged in installation, operation, attachment, maintenance, repair, replacement, relocation, removal, reattachment or upgrade of the Network, EarthLink shall comply with this ROW Agreement and the applicable permits and not cause any inconvenience to the general public or the City's work forces, except as authorized by the Director. When performing installation, operation, attachment, maintenance, repair, replacement, relocation, removal, reattachment or upgrade of the Network, EarthLink shall not hinder or impede the flow of traffic to any greater extent than is reasonably necessary. EarthLink shall abide by any requirements set forth in the applicable permits or as mutually agreed upon by the Director and EarthLink in the Plan, including requirements relating to time limitations and the submission of a traffic control plan.

7. Unauthorized Use.

In the event of any use by EarthLink of the Public Rights-of-Way in a manner that is not authorized by this ROW Agreement, EarthLink shall, immediately, upon notice by the City, cease the unauthorized use and remove all facilities associated with the unauthorized use. In addition, if EarthLink does not remedy the violation within one business day of written notice from the City describing the unauthorized use, EarthLink shall pay to the City a sum of five hundred dollars (\$500) for each day that the unauthorized use occurs.

8. Term.

The term of this ROW Agreement shall commence on the Effective Date and shall continue in effect for eight (8) years thereafter. This ROW Agreement may be renewed for three (3) successive four (4) year periods of time, upon mutual agreement of EarthLink and the City. If EarthLink continues to occupy the Public Rights-of-Way at the expiration or termination of this ROW Agreement, the City shall have the right to remove EarthLink's property from the Public Rights-of-Way at any time, without notice, in addition to all other applicable remedies.

9. Permit Fees and Taxes.

EarthLink shall be responsible for all applicable permit fees and taxes.

10. Compensation.

As consideration for the right to occupy and use the Public Rights of Way pursuant to this ROW Agreement, EarthLink shall pay the City an annual fee of five thousand dollars (\$5,000), plus

an annual fee of three dollars and 50/100 (\$3.50) per linear foot of Public Rights of Ways occupied by EarthLink, after the first 1,429 feet ("ROW Fee"). The ROW Fee constitutes full consideration and is the only compensation owed to the City in connection with this ROW Agreement, and no additional compensation, consideration, license fee, franchise fee or other fees are required to receive the permissions set forth in this ROW Agreement. The City has considered other fees charged for access to the Public Rights of Way and determined the ROW Fee is reasonable and non-discriminatory. Notwithstanding the foregoing, if EarthLink becomes a certificated provider of telecommunications service for purposes of Va. Code Ann. § 56-468.1, then the foregoing fee shall no longer apply and the City shall be compensated by means of the Public Rights of Way Use Fee established by Va. Code Ann. § 56-468.1(B). The City shall have no ownership interest in or to EarthLink's equipment located in the Public Rights of Way unless EarthLink has filed a petition in bankruptcy, in which case the City shall have all rights provided for by applicable law.

11. Indemnity.

As respects bodily injury, death, personal injury, or third-party property damage, EarthLink agrees to indemnify, defend with counsel to whom City does not have reasonable objections, and hold harmless City, its appointed and elected officials, officers, employees, agents, and representatives from and against any and all claims, losses, damages, defense costs, or liability, of any kind or nature (collectively referred to hereinafter as "Claims"), resulting from EarthLink's (or EarthLink's contractors' or subcontractors', if any) work performed by, or on behalf of, EarthLink, relative to this Agreement, except to the extent those Claims (a) arise solely out of the gross negligence or willful misconduct of the City for Claims resulting from governmental functions performed by the City, or (b) arise out of the gross negligence or willful misconduct of the City for Claims outside the scope or of not resulting from governmental functions of the City. Further, EarthLink agrees to indemnify, defend, with counsel to whom City does not have reasonable objections, and hold harmless City, its appointed and elected officials, officers, employees, agents, and representatives from and against any and all Claims directly or proximately caused by EarthLink's violation of applicable law related to the Network or the Services, except to the extent those Claims (a) arise solely out of the gross negligence or willful misconduct of the City for Claims resulting from governmental functions performed by the City, or (b) arise out of the gross negligence or willful misconduct of the City for Claims outside the scope or of not resulting from governmental functions of the City. EarthLink's obligations under this Section are conditioned upon: 1) that EarthLink shall have been promptly informed of an actual Claim or written notice of a potential Claim and shall have been furnished a copy of each communication, notice or other action related to the alleged Claim, 2) that the City shall cooperate with EarthLink to provide information and assistance necessary to defend or settle the suit or proceeding, and 3) that EarthLink shall be given sole control of the defense (including the right to select counsel), at its sole expense, and the sole right to compromise and settle any suit or proceeding, provided EarthLink will not compromise or settle any suit that admits the liability of the City without the City's prior approval. EarthLink shall be responsible for all attorney's fees and other costs of defending against any alleged Claim, and shall have the right to select counsel. The obligations set forth in this Indemnification provision (i) shall be in effect without regard to whether or not City, EarthLink, or any other person maintains, or fails to maintain, insurance coverage, or a self-insurance program, for any such Claims; and (ii) shall

survive the termination of this Agreement. Nothing herein shall prevent EarthLink's insurer(s) from satisfying EarthLink's obligations under this Section.

12. Limitation of Liability.

NEITHER EARTHLINK NOR THE CITY SHALL 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 shall not be liable for direct damages under this ROW Agreement and any other agreement between the parties in an amount that, in the aggregate, exceeds the amounts received by EarthLink from the City and subscribers for the Network during the immediately preceding twelve (12) months except for damages caused by loss of life, bodily injury, or damage to property.

13. Assignment and Sublicensing.

The City shall not assign this ROW Agreement, or any portion of it, without the prior written permission of EarthLink. EarthLink can assign this ROW Agreement to an entity that is wholly owned or wholly controlled by EarthLink or by a wholly-owned affiliate of EarthLink (each to be referred to as an "Affiliated Entity") without the prior consent of the City. EarthLink can also assign this ROW Agreement pursuant to the sale of all or substantially all of the assets or stock of EarthLink or pursuant to the sale of all or substantially all of the assets or operations of the division of EarthLink that is operating the Network or pursuant to the sale of the Network; provided that if such assignment is not to an Affiliated Entity, then EarthLink must first obtain the City's prior written consent, such consent not to be unreasonably withheld. EarthLink may authorize its contractors and agents to exercise the rights and obligations granted to EarthLink provided EarthLink will be responsible for such contractors' and agents' compliance with this ROW Agreement, provided that under such agreements overall control of the activities in the Public Rights of shall remain with EarthLink.

14. Parties Bear Their Own Costs.

Except as expressly set forth herein, each of EarthLink and the City shall pay their own costs of performing hereunder. EarthLink shall not owe the City for the services of City employees unless described expressly on an attached Exhibit or EarthLink has executed on paper a written agreement specifying the charges EarthLink agrees to pay and the work to be performed by City employees.

15. Notice.

15.1 Except as otherwise set forth herein, all notices given or which may be given pursuant to this ROW Agreement must be in writing and transmitted by (i) telecopy and, on the same day, first class United States mail or (ii) nationally recognized over night delivery service postage pre-paid as follows:

To the City at: City of Alexandria
301 King Street, Suite 3230
Alexandria, VA 22314
Attn: E-Government Manager
Facsimile: 703-997-6445

With a copy to: City of Alexandria
301 King Street, Suite 1300
Alexandria, VA 22314
Attn: City Attorney
Facsimile: 703-838-4810

and to EarthLink at: EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, Georgia 30309
Attention: General Counsel
Facsimile: 404-287-4905

With a copy to: EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, Georgia 30309
Attention: President, Municipal Wireless
Facsimile: 404-892-7616

Either party may change its address by written notice to the other party. Notice may also be provided to such other address as either Party may from time to time designate in writing.

15.2 Notice shall be deemed received on the next business day if it is sent by telecopy and first class mail, or the date of delivery or refusal of delivery if it is sent by over night delivery service.

16. Confidentiality.

To the extent permitted by applicable law the City will not disclose any of the Confidential Information of EarthLink during the Term and for a period of three (3) years after the Term ends. If applicable law requires disclosure of EarthLink's Confidential Information or the terms and conditions of this ROW Agreement then the City will promptly give EarthLink written notice and assist EarthLink in limiting the disclosure to only those portions of that Confidential Information as is necessary to be disclosed according to applicable law. "Confidential Information" of EarthLink means the business plans, financial information and technical information about the Network and the customers of EarthLink and its vendors that are confidential or otherwise trade secrets under applicable law. In addition, the City's obligation not to disclose the trade secrets of EarthLink will

continue as long as they are trade secrets under applicable law.

17. Dispute Resolution.

Except as otherwise provided in this ROW Agreement, any dispute between the Parties or default by either party which arises during the Term of this ROW Agreement, shall be subject to the following administrative remedy:

17.1 Both Parties shall attempt to resolve any controversy claim, problem, default, or dispute ("Dispute") arising out of, or related to, this ROW Agreement through good faith consultation in the ordinary course of business.

17.2 In the event that a Dispute is not resolved by the project managers of each Party, either Party may upon written notice to the other 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 either Party within fifteen (15) calendar days of the Parties' 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 ten (10) business days of the Request for Internal Resolution. Project managers and senior management for each Party shall be the General Market Manager and Vice President, Municipal Networks respectively, for EarthLink, and the City Project Manager and the City Manager or City Manager's designee respectively, for the City, and their respective successors in office. The project managers and senior management may be changed by notice given by the Party changing its personnel.

17.3 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. If the Parties do not successfully resolve the Dispute by senior management, then the Party finding the senior management resolution unsatisfactory shall provide written notice to the other Party, demanding mediation ("Request for Mediation"). The Request for Mediation may not be given prior to the first meeting of senior management, or fifteen (15) business days after the request for Internal Resolution, whichever is earlier, and shall not be given any later than forty-five (45) calendar days following the completion of the first senior management meeting. The Request for Mediation shall set forth all of the issues that Party deems outstanding that must be submitted to mediation. The Party in receipt of the Request for Mediation shall respond within twenty (20) calendar days listing any issues it deems appropriate for submission to the Mediator. All of the requirements of Dispute Resolution and Mediation as described in this Article 9 shall be referred to collectively as the "Resolution Procedures".

17.4 Any Disputes shall be mediated within forty-five (45) calendar days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available, except that those for which the remedy requested is injunctive relief or other equitable remedies shall be mediated within ten (10) business days.

17.5 A mediator shall not have any employment, engagement or other interest in either party. If the parties cannot agree upon a mediator within five (5) business days of the submission of a Request for Mediation then the mediator shall be appointed by the local office of the American Arbitration Association upon request of either party.

17.6 The costs of mediation shall be borne by the Parties equally.

17.7 Each party agrees that any threatened or actual failure of the other party to comply with its obligations hereunder may cause immediate irreparable harm to the non-defaulting party for which there is no adequate remedy at law. Accordingly, each party agrees that the non-defaulting party will be entitled to an order for specific performance and to injunctive relief from a court of competent jurisdiction as remedy for any such threatened or actual default. Nothing in this ROW Agreement, 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 comply with the provisions of this ROW Agreement, and not to take actions that violate its obligations under this ROW Agreement; provided, that such order shall not prevent EarthLink from operating the Network and maintaining the Approved Equipment on the City Property, except on account of expiration of the Term or in the event of termination in compliance with this ROW Agreement and applicable law for a Major Default after full completion of all Resolution Procedures and a court order is issued as provided herein; and provided further that such order for specific performance and injunction shall not require either party to pay or expend any sums in excess of the liability limitation set forth herein.

18. Miscellaneous.

18.1 This ROW Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendment to this ROW Agreement must be in writing and executed by both parties.

18.2 This ROW Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.

18.3 This ROW Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

18.4 If one or more of the provisions of this ROW Agreement shall be held by a court of competent jurisdiction in a final judicial decision to be void, voidable, or unenforceable, then such provisions shall be deemed severable from the remaining provisions of this ROW Agreement and shall in no way affect the validity of the remaining provisions of this ROW Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this ROW Agreement as of the date aforesaid.

CITY:

City of Alexandria, a municipal corporation of
Virginia

By: _____

James K. Hartmann, City Manager

Date: _____

EARTHLINK:

EarthLink, Inc.

By: _____

Printed Name: _____

Title: _____

Date: _____



<tfs@uprising.net>

12/07/2006 07:34 PM

Please respond to
<tfs@uprising.net>

To <alexvamayor@aol.com>, <macdonaldcouncil@msn.com>,
<timothylovain@aol.com>, <councilmangaines@aol.com>,
<council@krupicka.com>, <delpepper@aol.com>,

cc

bcc

Subject: COA Contact Us: wireless!

7
12-16-06

COA Contact Us: wireless!

Time: [Thu Dec 07, 2006 19:34:33] IP Address: [68.106.146.235]

Response requested:

First Name: timothy
Last Name: scanlon
Street Address: 7412 Colshire Drive apt 3
City: mclean
State: va
Zip: 22102
Phone: 703-827-8269
Email Address: tfs@uprising.net
Subject: wireless!

I wanted to drop you folks a note to thank you for setting up wireless in the city.

I am a former resident of Alexandria, and live in Fairfax now. I lived in Alex. from the early 80's to 90, and have seen a lot of change to the city in the past 20 years.

This change is one of the most important the city has made. Please do not underestimate the long term impact that bridging the digital divide for your citizens.

In one fell swoop, you're making things a LOT better for all the people in the city for who access to the internet is a difficult issue. Financially, having net access is critical for working adults and the elderly. For children and teenagers, the long term good that will come from this shouldn't be discounted. You should look closely to see if school test scores catch a 'bump' in the next 2 years, they probably will.

Comments: Speaking in bread and butter terms though, for many families and working adults, net access has still been an 'optional' thing due to broadband

costs, wireless is a great solution for that, and what the city is doing puts it to good use. Often when families most need internet access, it's one of the things that goes out the door over putting food on the table. This will substantially end that problem. My statement doesn't exactly capture the frequency or the severity of that problem, but please be assured it's far more of an issue than is visible to the casual outsider. In order to substantiate that claim, I might suggest a few calls to Earthlink's billing department to speak to them about the 'digital slide' that comes from economic hardship.

I expect this to be very healthy for the city in the long term, and not just one of attracting geeks.

Tim Scanlon

ORDINANCE NO. 4469

AN ORDINANCE to grant to Earthlink, Inc., its successors and assigns a franchise, under certain conditions, permitting the grantee to use the public right-of-way and on other public property in the City of Alexandria, for the design, construction, maintenance, and operation of a citywide wireless network for internet access and other purposes, for the benefit of residents, businesses and government in the City.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That this Franchise is hereby granted to Earthlink, Inc., hereinafter referred to as "Grantee," its successors and assigns, to permit the Grantee to design, construct, maintain, and operate a citywide wireless network for internet access and other purposes, using the public right-of-way and other public property in the City.

Section 2. That the said Franchise is awarded to the Grantee after public notice and invitation for bids, as required by law, pursuant to Section 2 of Ordinance No. 4447, and after the invitation for bids was duly closed and all bids were fully and carefully investigated and evaluated.

Section 3. That the Grantee be, and hereby is, granted a Franchise for eight years to design, construct, maintain, and operate a citywide wireless network for internet access and other purposes, for the benefit of residents, businesses and government in the City. The Grantee shall strictly comply with the terms of this Ordinance and with the Franchise Agreement and Right-of-Way Franchise Agreement attached hereto and incorporated fully herein by reference, together with all applicable laws and regulations of the City of Alexandria, the Commonwealth of Virginia and the United States, and any regulatory agency having jurisdiction, including, without limitation, with the following conditions:

1. Each year an updated map of all facilities within the City, existing and proposed, showing locations, scheduled construction and service dates, and such additional information as the city manager may specify in his reasonable discretion, shall be filed with the City's Department of Transportation and Environmental Services.
2. All necessary permits shall be obtained for each and every excavation or installation, including but not limited to boring in and/or under a public right-of-way or other public place.
3. In the event the relocation, construction, reconstruction, maintenance or repair by the City, the Commonwealth of Virginia or the Washington Metropolitan Area Transit Authority of any facilities or services is necessary or desirable, and it is necessary to alter or relocate, either permanently or temporarily, any of the Grantee's property in the public right-of way or other public property in order to accomplish same, the Grantee will, after reasonable notice, move, alter or relocate its property at its own cost and expense, and should the Grantee fail to comply with such notice, its property may be removed, altered or relocated by the City,

state or Washington Metropolitan Area Transit Authority at the cost of the Grantee and without liability for any resulting damage. The Grantee will do everything reasonably necessary, in a timely manner, to prevent any delays in construction projects of the City, the state or the Washington Metropolitan Area Transit Authority.

4. This Franchise may be assigned or transferred; provided, however, that no such assignment or transfer shall be effective without the prior written consent of the City, which consent will not be unreasonably withheld.

5. The Grantee will obtain liability insurance to the satisfaction of the city attorney, which insurance shall name the City as an additional insured.

6. The Grantee will not use the privileges granted by this Franchise to provide the functional equivalent of a cable system or cable service as defined in sections 9-3-17 and 9-3-18 of the Alexandria City Code.

7. In exchange for the privileges granted by this Franchise, the City shall have free use of the network for municipal governmental purposes.

8. In exchange for the privileges granted by this Franchise, the general public shall have free use of the network for wireless internet access in the outdoor areas and public facilities in the City designated in the Franchise Agreement.

9. At such time as the City may require underground installation of existing overhead facilities in any area covered by this Franchise, the Grantee will, at its sole cost and expense, relocate its facilities underground in accordance with the provisions of the City's underground utilities ordinance, to the extent underground location of such facilities is technically feasible.

10. The Grantee shall protect all property of the City or any other person during any work of designing, constructing, maintaining, or operating its system in or adjacent to the public right-of-way or other public place, and shall fully restore, in kind, any property damaged or destroyed during any such work. In the event the Grantee and any property owner are unable to agree on a remedy, the Grantee agrees to abide by the determination of the City as to compensation or restoration.

11. That nothing in this Franchise shall be construed to obligate the City to continue its franchise with any other franchisee who owns or uses the poles to be used by the Grantee, nor shall this Franchise increase or strengthen the rights that other franchisees may have. The City shall have no liability to the Grantee for exercising any rights the City may have in general or under its franchises with other franchisees, regardless of the effect of such exercise on the Grantee.

12. The Grantee shall remove its property at its own expense at the expiration or termination of this Franchise or any extension hereof.

Section 4. That the city manager be and hereby is authorized to execute such documents as may be required to effectuate the Franchise hereby granted.

Section 5. That the city clerk be and hereby is authorized to attest the execution of said documents and to affix thereon the official seal of the City of Alexandria, Virginia.

Section 6. That this ordinance shall become effective on the date and at the time of its final passage.

WILLIAM D. EUILLE,
Mayor

Attachment: Franchise Agreement
Right-of-Way Franchise Agreement

Final Passage: December 16, 2006

FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") is made and entered into as of this ____ day of December, 2006 ("Effective Date"), by and between The City of Alexandria ("City"), and EarthLink, Inc., a Delaware corporation ("EarthLink"). The City and EarthLink may be referred to herein individually as a "Party", and collectively as the "Parties."

BACKGROUND

- A. The City owns, operates and maintains certain street light, traffic signal poles, and the associated support arms and connecting hardware, as described on the attached **Exhibit A** (collectively "City Owned Poles").
- B. The City owns, operates and maintains certain buildings and other real property as specifically described on the attached **Exhibit B** (collectively "City Premises"). The City Owned Poles and City Premises shall be jointly referred to as "City Property."
- C. The City seeks to grant EarthLink the right to use the City Property for the construction, maintenance, operation and upgrade of a City-wide wireless broadband system, for the benefit of residents, businesses and government in the City.
- D. EarthLink desires to attach its radios, antennae, gateways, wires, cables, fibers, filters, amplifiers and other equipment, and switching, processing, monitoring, transmission and distribution components of its broadband wireless system, comprised of the equipment described on Exhibit C, and substantially similar equipment as further described in Section 1.5 hereof (collectively "Approved Equipment") to City Property for the purpose of installing, operating and maintaining a wireless broadband network in the City ("Network").
- E. EarthLink desires to offer wireless broadband services by means of the Network as more fully described in Section 1.2 hereof (the "Services") to residential, business and municipal customers in the City.

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

1. SCOPE OF AGREEMENT

- 1.1 Construction of Network. EarthLink shall establish, construct, own, operate, upgrade and maintain the Network in accordance with this Agreement. EarthLink itself may perform the work required to install and maintain its Approved Equipment, to operate the Network, and to meet its other obligations under this Agreement, and EarthLink may also use contractors or agents for such purposes, provided that EarthLink shall remain responsible for compliance with all of the terms of this Agreement.

- 1.2 Non-Exclusive Permission. The City hereby grants to EarthLink the permission, on a non-exclusive basis, to attach, install, control, operate, maintain, repair, replace, reattach, reinstall, relocate, and remove Approved Equipment on and from City Property, all for the limited purpose of providing EarthLink's Services within the City, subject to the terms of this Agreement, and all applicable laws and regulations. Access to the City Property shall be subject to the terms of the licenses required by this Agreement to access City Property and any required permits. The "Services" shall consist of (i) wireless broadband Internet access provided by EarthLink to its subscribers by means of the Network and using IEEE standards 802.11 and 802.16 (commonly known as "WiFi" and "WiMax") and protocols as required to support the Network, or substantially similar successor technologies such as IEEE standard 802.22; (ii) wireless services provided by EarthLink to its subscribers within the Network using IEEE standards 802.11x and 802.16 or substantially similar successor technologies, but without using the Internet; (iii) any other services that can be provided by means of the Approved Equipment, with the exception of cable services; and (iv) access to the Network by other service providers in order to allow such providers to provide the foregoing wireless broadband Internet access service and wireless services to the subscribers of such other service providers. EarthLink may use the Network to provide cable services in the City if EarthLink has first obtained a franchise or other applicable authorization from the City, in accordance with applicable law. For purposes of this section, the term "cable services" shall be defined as it is under the Communications Act of 1934, as amended. Except as otherwise provided in this Agreement, EarthLink shall obtain and maintain in force all licenses, permits, intellectual property rights and other permission required for it to construct and operate the Network and provide the Services.
- 1.3 Use of Approved Equipment. EarthLink's Approved Equipment shall be used exclusively by EarthLink solely for the rendering of Services. This provision shall not be construed to prohibit EarthLink from selling access to the Network to other service providers on a wholesale basis, for the direct provision or resale of Services to end users. In operating the Network, EarthLink is committed to in good faith provide an open access system on which third parties can provide services enabled by the Network that may be competitive with each other and EarthLink. In setting pricing and other obligations for service providers, EarthLink shall treat similarly situated service providers in a similar manner, which may include the requirement for reciprocal access to the service provider's networks.

- 1.4 Subject to Rights of City and Others; No Property Interest. The permissions granted to EarthLink pursuant to this Agreement shall be: (i) exercised by EarthLink at EarthLink's sole risk and expense; (ii) subject to the rights of the City to use and permit others to use City Property, provided that any future grant of such rights does not have the effect of substantially defeating the purposes of this Agreement; and (iii) subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, claims of title, leases, licenses, permits, permission, and rights (whether recorded or unrecorded) of others in, or that may affect the City Property, specifically including all rights of the Virginia Department of Transportation ("VDOT"), provided the City will notify EarthLink of any such rights or obligations that affect EarthLink's access to or use of any City Property of which the City becomes aware. As of the Effective Date, the City is not aware of any existing rights that would substantially interfere with EarthLink's use of the City Property as contemplated by this Agreement and the applicable Exhibits, but the City has conducted no investigation into the existence of any such rights, and makes no warranties or representations regarding the existence of any such rights as of the Effective Date. This Agreement grants a mere license with respect to the right to occupy any particular City Pole or City Premises. Nothing in this Agreement shall be deemed to grant, convey, create, or vest any real property interest in EarthLink, including any fee or leasehold interest or easement.
- 1.5 Only Approved Equipment may be attached to City Property. Approved Equipment shall be installed in a manner substantially similar to the installation specifications and configurations shown in the drawings and photographs in Exhibit C. Any installation method or configuration that is not substantially similar to an installation method or configuration described in Exhibit C shall not be employed without the prior written permission of the City, such permission not to be unreasonably withheld or delayed. In determining whether an installation method is substantially similar, the City may consider whether such method causes materially greater damage to City Property than the existing method. EarthLink may amend Exhibit C to include new or different equipment that is substantially similar to Approved Equipment already in use by submitting information to replace or supplement information in Exhibit C and requesting the City's approval of such changes, which shall not be unreasonably withheld or delayed. If EarthLink does not receive any response from the City within ninety (90) days of written notice to the City, then such installation method, configuration or equipment will be deemed approved by the City and Exhibit C shall be deemed modified. If EarthLink installs any equipment other than Approved Equipment, EarthLink shall promptly remove such equipment at its sole cost and expense upon notice from the City, or the City may do so at EarthLink's sole cost and expense.
- 1.6 Installation on Private Property. Equipment to be installed on private property shall comply with all generally applicable City ordinances and regulations, including, but not limited to, the City's Zoning Ordinance.
- 1.7 Co-location. Nothing in this Agreement shall be deemed to obligate the City to grant EarthLink permission to use any particular facility or property not covered

by this Agreement. The City reserves the right to enter into other agreements for the same or different services and the right to enter into co-location agreements with other persons or entities including, but not limited to, telecommunications and information services providers, for use of City Property subject to the City's obligations under this Agreement. No other person or entity shall be permitted to co-locate any facilities with Approved Equipment or City Property until such person or entity first enters into a separate agreement with the City.

2. **USE OF CITY PROPERTY**

- 2.1 General Permit. The City hereby grants to EarthLink a general permit for construction required or appropriate in order to install and maintain the Approved Equipment on City Property ("General Permit"). The General Permit shall authorize EarthLink to install Approved Equipment without obtaining individual permits governing such installations, provided that EarthLink complies with all requirements of applicable City Code provisions, regulations and standard permit conditions governing construction and safety standards and procedures. The General Permit does not authorize EarthLink to perform any construction or other activity in the public rights-of-way without first obtaining a Right-of-Way permit from the City. In addition, EarthLink may be required to obtain a lane closure permit, submit a maintenance of traffic plan and secure additional permits and approvals as required by the Virginia Work Area Protection Manual, effective January 1, 1996, as amended, and other applicable local, state and federal laws and regulations.
- 2.2 Placement on City Poles. The City hereby grants to EarthLink a license to place Approved Equipment on the City Poles at any time during the Term of this Agreement, subject to applicable zoning requirements. "Installed City Poles" shall refer to any City Pole on which Approved Equipment is actually installed pursuant to this Agreement. EarthLink will submit an installation plan for the initial construction of the Network in connection with the permitting process. EarthLink's installation(s) shall be performed in such a manner as not to interfere with the street light services of the City or the operation of traffic signals. Within ninety (90) days after the completion of all installation on the City Poles that EarthLink then intends to install, EarthLink shall give written notice to the City designating the City Poles on which EarthLink has installed Approved Equipment ("Placement Notice"). Each Placement Notice shall include, in hard copy and electronic format, a full set of as-built drawings, showing in detail the exact location of EarthLink's facilities on City Property, and clearly identifying each of the City Poles and City Premises to which such facilities have been attached. The City will not object to Placement Notices provided that the items described in the notice are otherwise Approved Equipment.
- 2.3 Intentionally Left Blank.
- 2.4 Use of City Premises. The City hereby grants to EarthLink a license during the Term to install Approved Equipment directly on the City Premises described on

Exhibit B, and to operate and maintain Approved Equipment at those locations, subject to applicable zoning requirements. EarthLink shall execute a separate license with respect to each of the City Premises, each in the form attached as Exhibit B. EarthLink shall be entitled to access the City Premises for purposes of installation, inspection, repair, removal and upgrade of Approved Equipment on the terms specified in each individual license. The City Manager or his designee is hereby authorized to execute individual licenses in the form of further Exhibit Bs adding additional City Premises and Approved Equipment without the necessity of further approvals by the City Council so long as the terms of such licenses are consistent with Exhibit B. The City will promptly inform all appropriate City representatives and employees and security personnel about the access rights necessary or appropriate to ensure timely access to Approved Equipment located on City Premises.

- 2.5 No Exclusivity. EarthLink shall not have the exclusive right to use or occupy any City Poles or City Premises. EarthLink agrees that, for purposes of the City Property only and the FCC's Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000: (i) EarthLink's rights to use City Property pursuant to this Agreement or any individual site license do not constitute a direct or indirect ownership or leasehold interest; (ii) none of the City Property that EarthLink has the right to use pursuant to this Agreement or any individual site license is within the exclusive use or control of EarthLink; and (iii) no provision of this Agreement or any individual site license impairs the installation, maintenance, or use of any Approved Equipment.
- 2.6 No Interference. EarthLink shall, at its own expense, install, operate, and maintain Approved Equipment on City Property in a good and workmanlike manner and in accordance with applicable City, state and federal laws, ordinances and regulations, including, without limitation, any applicable regulations of the Federal Communications Commission.
- 2.6.1 EarthLink shall inspect, construct, and maintain the Approved Equipment in a manner that will not cause unreasonable physical interference to City and other tenants or licensees of the City Premises, including without limitation the operation or use of any portion of the sanitary sewers, storm sewers and drains, water mains, gas mains, poles, or other City Property, except to the extent contemplated by a permit or other applicable license. EarthLink shall also avoid physically blocking the transmissions of radio equipment operated by the City.
- 2.6.2 EarthLink is not obligated to conduct any tests, studies or investigations. EarthLink shall operate the Approved Equipment in a manner that will not cause harmful radio frequency interference ("RF Interference") to the City and other tenants or licensees of the City Premises. All operations by EarthLink shall be in compliance with all Federal Communications Commission ("FCC") requirements and all other applicable laws, codes, rules and regulations.

- 2.6.3 Subsequent to the installation of the Approved Equipment, City shall, to the extent practicable without limiting the City's ability to conduct its activities in accordance with its normal practices, attempt to avoid causing RF Interference to or physically blocking the signals of Approved Equipment. The City shall also inform new tenants of City Property on which Approved Equipment has been installed of the existence and location of such Approved Equipment and shall obligate each new tenant in its lease to operate its equipment in compliance with all applicable FCC regulations, to use commercially reasonable efforts not to cause RF Interference or to cause physical interference with the Approved Equipment installed on the Premises, and, if the new tenant causes RF Interference to the Approved Equipment, to participate in the interference resolution process described in Section 2.6.4.
- 2.6.4 In the event either party suffers from RF Interference as a result of the actions of the other party, the affected party shall give the other party written notice of the nature of RF Interference, including any studies that demonstrate or may have been performed in connection with such RF Interference. The parties shall then meet and mutually cooperate to determine the cause of the RF Interference and agree on a method for eliminating the RF Interference, or reducing it to an acceptable level. Notwithstanding the foregoing, in the event that the RF Interference continues for more than ten (10) days and causes material harm to EarthLink's operation of the Network, the Installed City Pole Fees or other payments due from EarthLink with respect to Approved Equipment affected by RF Interference shall abate proportionately on a per diem basis for each day after such ten-day period. In addition, during any period in which EarthLink suffers from RF Interference, EarthLink will not be required to provide the Public Benefits within the geographic area directly affected by the RF Interference, or, to the extent the RF Interference affects EarthLink's ability to provide Public Benefits in a manner other than geographic coverage, EarthLink may alter or reduce the Public Benefits in a manner reasonably related to the effects of the RF Interference on EarthLink's ability to provide the Public Benefits. Additionally, if such material RF Interference continues for a period of ninety (90) days and the parties are unable to agree on a mutually satisfactory resolution of the problem, EarthLink shall have the right to terminate the applicable Exhibit B and/or this Agreement immediately upon notice to City. Similarly, if the actions of EarthLink cause RF Interference to City facilities which materially affects the operation of such facilities for a period of ninety (90) days and the parties are unable to agree on a mutually satisfactory resolution of the problem, the City shall have the right to terminate the applicable Exhibit B and/or this Agreement immediately upon notice to City. Upon termination of any Exhibit B in connection with this Section 2.6, EarthLink will not be required to provide

the Public Benefits to the extent directly impacted by the termination of the applicable Exhibit B.

2.6.5 Subject to the City's obligations set forth in Section 2.6.3 and 2.6.4, the City shall have no liability to EarthLink for RF Interference caused by any third party, provided that the foregoing provisions shall not affect EarthLink's rights regarding the procedure for resolving RF Interference in this Agreement, including, without limitation, EarthLink's right to terminate a site license or this Agreement. The City shall exercise its best efforts to assist in the resolution of any dispute regarding RF Interference caused by the activities of an occupant of City property other than EarthLink or the City.

- 2.7 Substitution. At any time during the Term, EarthLink shall have the right to install, maintain and use Approved Equipment described in its Placement Notice and any upgraded Approved Equipment later installed on City Poles or City Premises. If EarthLink determines that a designated City Pole cannot or should not be used for the Network, during installation or thereafter, EarthLink may install Approved Equipment on another City Pole. In such event, EarthLink shall notify the City, by an amended Placement Notice ("Amended Placement Notice"), within thirty (30) days after the installation of Approved Equipment on the substitute City Pole. The City will not object to an Amended Placement Notice, provided that the items described in the notice are otherwise Approved Equipment.
- 2.8 Addition of City Poles. At any time during the Term of this Agreement, EarthLink shall be entitled to place additional, upgraded, or replacement Approved Equipment on any City Poles, and to modify the location of existing Approved Equipment and to designate additional City Poles for installation of Approved Equipment by following the notification procedure set forth in this Agreement and the aggregate total number of Installed City Poles shall be adjusted accordingly.
- 2.9 Reduction of City Poles. At any time during the Term of this Agreement, EarthLink shall be entitled to remove any of EarthLink's Approved Equipment from any or all of the Installed City Poles and the aggregate number of Installed City Poles and the applicable Installed City Pole Use Fees shall be reduced accordingly. If EarthLink removes any Approved Equipment from any of the Installed City Poles, then EarthLink shall, within thirty (30) days after such removal, give notice thereof to the City, specifying the Installed City Poles vacated and the location thereof, as well as the date of removal. Such removal by EarthLink or a removal by the City as permitted herein shall immediately terminate EarthLink's obligation for payment of the Installed City Pole Use Fee and other rental charges for the applicable Installed City Poles after the removal occurred and the sums due for such previously Installed City Poles will be pro-rated through the date of such removal. The rights granted by this Section 2.9 shall not be exercised in a way that would defeat the intent of this Agreement.

- 2.10 Replacement. In the event any Installed City Poles are to be replaced, repaired, altered or made incapacitated by power interruption or other reasons, the City shall give EarthLink reasonable advance written notice which shall be at least thirty (30) days advance written notice, except as described in Section 2.11. If the City removes, repairs or alters Installed City Poles in such a way that EarthLink is required to remove and/or reinstall the Approved Equipment on such Installed City Poles as contemplated in this Agreement, then EarthLink shall be entitled to reinstall on any other City Pole chosen by EarthLink as soon as EarthLink elects and the City shall not charge EarthLink any fees for obtaining approval of any substitute Installed City Poles. EarthLink may elect to relocate, replace or transfer Approved Equipment from all, some or none of the affected Installed City Poles to replacement City Poles. If EarthLink elects not to replace or relocate Approved Equipment from any Installed City Poles, the Installed City Pole Use Fee for those Installed City Poles will terminate effective upon the earlier of removal of the Approved Equipment or removal of the Installed City Pole.
- 2.11 Emergency. In case of an emergency or a Force Majeure Event (as defined below), the City may remove Approved Equipment as required, if the City determines it is necessary to protect public safety or public property from imminent danger. In the event of an emergency, the City shall make reasonable efforts to give EarthLink oral notice of the nature of the emergency and the reasons that the Approved Equipment must be removed before the removal takes place. In any event, the City shall notify EarthLink of the nature of the emergency and the reasons that the Approved Equipment must be removed as soon as reasonably practical. The City shall store and protect any equipment removed by the City until it is reclaimed by EarthLink.
- 2.12 Damaged Pole. If an Installed City Pole is fully or partially destroyed or damaged, and as a result thereof EarthLink is unable to conduct its operations on such Installed City Pole in a manner that is functionally equivalent to EarthLink's operations before such event, EarthLink will so notify the City in writing once EarthLink becomes aware of such destruction or damage. The City shall give EarthLink reasonable notice of whether or not the City intends to repair, rebuild or restore the applicable Installed City Pole. If the City removes an Installed City Pole on which EarthLink has installed Approved Equipment for any reason then the City shall give EarthLink reasonable notice and protect and return to EarthLink the Approved Equipment installed on those Installed City Poles. In either event EarthLink shall be entitled to install Approved Equipment on a substitute Installed City Pole determined by EarthLink. The City shall permit the substitute City Pole installation. EarthLink shall be entitled to a pro-rata abatement of the Installed City Pole Use Fee for the affected Installed City Pole(s) for the number of twenty-four (24) hour periods it is unable to conduct its normal operations from the affected Installed City Pole or the substitute Installed City Pole.
- 2.13 Removal of Previous Installations. If in the course of installing Approved Equipment EarthLink finds third party equipment on a City Pole that appears to be abandoned or no longer in operation, EarthLink shall notify the City. If the

presence of such existing equipment would interfere with the installation or operation of Approved Equipment, EarthLink may request authority from the City to remove the existing equipment, and shall only remove the existing equipment upon receipt of such authority. If failure to grant such authority would make installation or operation of Approved Equipment on a City Pole impractical, EarthLink shall inform the City of the consequences, and the parties shall discuss alternatives.

2.14 Right to Inspect. The City shall have the right to make periodic inspections at the City's discretion and cost as conditions may warrant. Such inspections shall not be charged to EarthLink. Failure of the City to make any inspections shall not delay EarthLink or the Network installation. Except as otherwise provided in this Agreement, EarthLink is not obligated to obtain any inspections before proceeding as provided hereunder.

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2.16 Compensation for Installed City Poles and City Premises.

2.16.1 Compensation for City Poles. As compensation for the right to occupy City Poles, EarthLink shall pay in arrears to the City a fee ("Installed City Pole Use Fee") for the right to access and use the Installed City Owned Poles in the amount and when described on the attached **Exhibit E** commencing on the first day of the first calendar month after the entire Network becomes operational with customers who are paying for the services of the Network after all pilots and testing is completed ("Commencement Date"). The Installed City Pole Use Fee shall be calculated based on the number of Installed City Poles determined as of the date that is thirty (30) days prior to each payment date so the amount owed will increase and decrease as the number of Installed City Poles increases and decreases. EarthLink shall pay to the City the Installed City Pole Use Fee in arrears for each previous month, and shall make such payments annually within forty-five (45) days of the last day of each anniversary of the Effective Date

2.16.2 Compensation for City Premises. EarthLink shall pay a license fee with respect to each of the City Premises on which it installs Approved Equipment, in the amount specified in Exhibit B. The fee shall be owed for a specific location only for as long as the Approved Equipment is in fact located on that Premises and only for the number of devices that are so installed and maintained. The license fees for use of City Premises shall be due and payable at the same time as the Installed City Pole Use Fee.

2.16.3 Generally. As further compensation for the right to occupy City Poles and City Premises regardless of whether any City Pole or City Property is utilized, during the Term EarthLink shall pay the City an annual fee

calculated as follows: the greater of (i) thirty seven thousand five hundred dollars (\$37,500), or (ii) one percent of EarthLink's total receipts collected and received by EarthLink for the retail access services provided via the Network in the City, less any amounts paid for digital inclusion accounts or paid by the City to EarthLink for any of the Public Benefits or Additional Services ("Access Revenue Fee"). 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. The City acknowledges that the fees described in this Section 2.16, and the Public Benefits described in Exhibit F constitute full consideration and are the only compensation owed to the City in connection with this Agreement or any Site License Agreement, and no additional compensation, consideration, license fee, franchise fee or other fees required to receive the permissions set forth in this Agreement will be owed to the City even if the City elects not to purchase or use such Public Benefits. EarthLink will remit the remainder of the Access Revenue Fee within forty-five (45) days after EarthLink's books are audited for the relevant calendar year.

- 2.17 Intentionally Left Blank.
- 2.18 Intentionally Left Blank.
- 2.19 No Relief from Taxes. The fees required by this Agreement shall be in addition to, and not in lieu of, all taxes required by the City, and all other amounts EarthLink may be required to pay the City by law, ordinance, or other agreement.
- 2.20 Costs and Expenses Borne by EarthLink. EarthLink shall bear all costs incurred by EarthLink in connection with the planning, design, construction, repair, modification, disconnection, attachment, installation, control, operation, maintenance, reattachment, reinstallation, relocation, removal, and replacement of the Network by EarthLink or as otherwise authorized by this Agreement. EarthLink shall be responsible for, and shall bear all costs of, damage to, repair of, or deterioration of, the Network due to repair, maintenance, or force majeure. As between EarthLink and the City, EarthLink agrees to bear such costs except to the extent the damage results solely from the gross negligence or willful misconduct of the City, its officers, employees, or agents.
- 2.21 Late Payment. Any amounts not paid within sixty (60) days of EarthLink's receipt of an invoice will incur interest at a rate of ten (10%) percent per annum until paid.
- 2.22 No Waiver. Acceptance by either the City or EarthLink of any payment, or EarthLink's use of the City Property, shall not be deemed a waiver by the City or EarthLink of any breach of this Agreement by the other party.
- 2.23 Repair of Damaged City Property. EarthLink promptly shall repair, replace, or refinish, at EarthLink's sole cost and expense, any City Pole or other City Property

that is damaged materially in function or in form during the attachment, installation, maintenance, reattachment, reinstallation, relocation, removal, and replacement of the Network or as a result of acts of EarthLink or its contractors or agents in connection with the operation of the Network. Without limiting any other remedies available to the City, if EarthLink fails to repair, replace, or refinish such damage or disturbance within a reasonable amount of time after notice from the City detailing damage caused by EarthLink or its contractors or agents then the City may, in its sole discretion, but without any obligation to do so, repair, replace or refinish the damage or disturbance. In the event that the City undertakes the repair, replacement, or refinishing as a result of EarthLink's failure to do so after allowing EarthLink a reasonable amount of time to do so, EarthLink promptly shall, upon receipt of an invoice for such costs and expenses, reimburse the City for all reasonable and actual costs and expenses incurred in the repair, replacement or refinishing. For purposes of this section, the term "refinish" means to restore affected property to a condition as good as or better than its condition at the time of commencement of the work that led to the damage to City Property, reasonable wear and tear excepted.

- 2.24 City Required Removal/Relocation of EarthLink's Facilities from City Property for reasons other than Emergency. If the City determines that the protection, temporary disconnection, removal, relocation, or reconfiguration of any Approved Equipment on City Property is necessary (i) to preserve public health or safety, or (ii) for the construction, repair, relocation or maintenance of a City project for the public welfare (including without limitation any future conversion of overhead to underground utilities resulting in the removal of a City Pole), the City will provide EarthLink with written notice as soon as reasonable under the circumstances describing which of EarthLink's facilities are affected and the proposed dates by which the work is to be completed by EarthLink, provided that where immediate action is not required to avoid danger to the public safety or property, the City shall give EarthLink at least thirty (30) days prior written notice. EarthLink shall, at its sole cost and expense, promptly disconnect, remove, relocate, or reconfigure such portion of the Network as mutually agreed upon with the City. The City will use good faith efforts to conduct City projects in a manner to minimize negative impact to the Network. Regardless of anything to the contrary in this Section 2.24, the City will not request EarthLink to remove or relocate the Approved Equipment in a manner that deliberately makes it uneconomical for EarthLink to operate the Network and provide services in the City or in a manner that gives any preference to a subsequent third party offering a similar service. Where any removal or relocation is required, the City will use its best efforts to provide alternate City Property on which to place the Approved Equipment that will enable EarthLink to comply with its obligations to provide the Public Benefits. If suitable alternative City Property cannot be located for the placement of such Approved Equipment, or if any City required removal or relocation materially adversely affects the Network or EarthLink's ability to provide the Public Benefits, EarthLink will not be liable or responsible to provide the Public Benefits to the extent directly impacted by the excluded City Property, provided that EarthLink has requested that the parties meet

to review the impacted Public Benefits pursuant to the dispute resolution process set forth in Section 9, and subject to the outcome of that process. The City warrants to EarthLink that the City will not disturb, move, alter or relocate the Approved Equipment placed on City Property except as set forth in this Agreement.

- 2.25 Network Control Center; On-Line Access. EarthLink's network control center operator shall be available to the staff of the City Department of Transportation and Environmental Services, twenty-four (24) hours a day, seven (7) days a week, for the reporting to EarthLink by the City of problems or complaints resulting from the attachment, installation, control, operation, maintenance, reattachment, reinstallation, relocation, removal, and replacement of EarthLink's facilities. The City may contact the network control center operator at a telephone number provided by EarthLink from time to time regarding such problems or complaints. EarthLink will monitor the Network and provide the City with information related to outages or service problems pursuant to EarthLink's designated communication process as described in the applicable operational guide.
- 2.26 Non-use of EarthLink's Facilities on City Property. EarthLink will provide the City with information on a quarterly basis describing any Approved Equipment installed on City Property or that has been out of service for a period of six (6) months or more. EarthLink is not required to submit such report if no Approved Equipment is required to be reported. Within ninety (90) days after EarthLink's receipt of written notice from the City to remove such facilities, EarthLink shall promptly remove the facilities at EarthLink's cost and expense, if EarthLink has not already done so. If EarthLink fails to remove any abandoned facilities as described in this Section, then the City shall be entitled to remove the facilities from City Property. EarthLink shall reimburse the City for its reasonable and actual costs and expenses for removals pursuant to this Section.
- 2.27 Maintenance of EarthLink's Facilities. EarthLink shall ensure that EarthLink's facilities are maintained at all times in safe condition and installed in a good and workmanlike manner. EarthLink shall use reasonable care in installing, relocating, removing, repairing, and replacing EarthLink's facilities.
- 2.28 Removal and Reduction of Fees. The removal by EarthLink or the City of all Approved Equipment from any City Property shall immediately terminate EarthLink's obligation for payment of any applicable fees or charges with respect to such City Property and any sums due with respect to such City Property will be pro-rated through the date of such removal.
- 2.29 Emergency Contact Information. The City shall provide EarthLink a 24-hour contact phone number to enable EarthLink to report any concerns regarding the Approved Equipment, the Network, or City Property. In the event that EarthLink reports such concerns to the City, the City shall promptly respond to such call(s).

- 2.30 Notice of Interruption to Service. The City shall give EarthLink a minimum of thirty (30) days advance written notice of any non-emergency work which will affect the Approved Equipment, City Property, or the Network.
- 2.31 Conditions of Performance. The obligations of EarthLink hereunder shall be subject to, and conditioned upon, the following conditions (“Conditions”). If any of the following Conditions have not been satisfied by a date that is one hundred and eighty (180) days after the Effective Date of this Agreement, EarthLink will notify the City of that fact, including which Conditions remain unsatisfied;- if any such outstanding Conditions have not been resolved within an additional ninety (90) days (“Initial Conditions Termination Date”), EarthLink shall have the option, at that time, to terminate this Agreement by giving ten (10) days prior written notice. If EarthLink does not exercise the foregoing termination right at the time of the Initial Conditions Termination Date, the right shall be deemed waived and EarthLink shall be bound by all of the terms and conditions of the Agreement for the remainder of the Term.
- 2.31.1 This Agreement has been approved and fully executed by all Parties by fully authorized representatives.
- 2.31.2 The City Council shall have taken all the actions required by law to authorize the City to enter into this Agreement and grant to EarthLink the rights to use the City Property provided in this Agreement and no approval of any other local governing body is required.
- 2.31.3 The City Zoning Commission, the State Corporation Commission, and the Federal Communications Commission and any other governing body shall have taken any other actions required by law pertaining to approval of the installation and operation of the Network and the Approved Equipment as such may be required to grant EarthLink the rights necessary to install the Network.
- 2.31.4 The applicable electric providers have agreed they will furnish electricity service to the Approved Equipment installed on City Poles or any other location installation is required in the City to provide the Network upon commercially reasonable rates, terms and conditions and in a manner that the Parties agree complies with applicable laws and regulations.
- 2.31.5 EarthLink is able to obtain signed leases or license agreements for all of the towers and rooftop lease sites (other than City Premises) to install all of the backhaul antennae, radio and fiber optic and broadband service necessary to operate the Network.
- 2.31.6 The owners or authorized representatives of the poles other than the City have granted EarthLink the right to attach the Approved Equipment on poles in a manner that the Parties agree complies with applicable laws and regulations and upon commercially reasonable rates, terms and conditions.

2.31.7 EarthLink is not prohibited from constructing and operating the Network, or performing substantially all of the services or exercising substantially all of the rights set forth in this Agreement.

2.31.8 EarthLink has obtained all applicable permits, licenses, and authorizations from the State, and the federal government for the installation and operation of the Network, and such authorizations have not been terminated or revoked.

3. **USE OF ELECTRICITY**

3.1 Allowed Use. The City receives Electrical Service (as defined below) from the electric utilities serving the City Poles (collectively "Electric Utility"). Subject to applicable tariffs or agreement with the Electric Utility, electrical power to operate Approved Equipment may be taken from the power sources connected to the City Poles. The City will cooperate with EarthLink to obtain permission from the Electric Utility for EarthLink to use the electricity from the City Poles.

3.2 Availability. The City acknowledges that any City Poles which are not supplied electrical power 24 hours per day or which are otherwise not suitable for EarthLink's use under this Agreement (collectively "Unsuitable Poles") are excluded from this Agreement and EarthLink will not be required to offer service coverage in areas containing such Unsuitable Poles. The City cannot and will not guarantee an uninterrupted supply of power, nor can it guarantee the quality of power provided by the Electric Utility. Notwithstanding anything to the contrary, EarthLink's performance under this Agreement requires an adequate supply of electricity 24 hours per day every day. EarthLink shall not be deemed to be in default or required to provide Network service during such time and in such areas as are directly affected by the lack of electrical power. If 24 hour electricity is not reliably available for a material number of Installed City Poles and/or those that are designated as potential Installed City Poles for the Approved Equipment then EarthLink shall be entitled, but not obligated, to terminate this Agreement and all payment obligations hereunder.

3.3 Electricity Costs. The City shall not be responsible for any payment or payments to the Electric Utility or any other electricity provider for electrical usage by EarthLink, except to the extent an agreement to supply the necessary electrical power is executed between the City and the Electric Utility or to the extent the obligation to pay is passed through the City to EarthLink through an agreement between the City and the Electric Utility. EarthLink shall be responsible for all payments for use of electrical power, including but not limited to power usage, metering and any other electric utility services required for the operation of the Network, except as provided otherwise in a written agreement signed by the City and EarthLink. The obligations of EarthLink hereunder are conditioned on EarthLink obtaining continuous electrical service in sufficient capacity and quality and upon terms and electrical rates that are reasonably satisfactory to EarthLink or, at the option of EarthLink, the City agreeing to provide electricity through the City

for sums equal to a flat rate negotiated between EarthLink and the City for the cost of the electrical consumption of EarthLink's Approved Equipment being served that is in an amount that is acceptable to EarthLink ("Electrical Service"). If the City or EarthLink does not obtain from the Electric Utility an agreement to provide such Electrical Service during the term of this Agreement then EarthLink is entitled at any time prior to obtaining such an Agreement to terminate this Agreement and all obligations to continue providing the implementation of Network services hereunder. EarthLink may continue to implement the Network without waiving this condition and the right to terminate as provided above.

4. **EARTHLINK SERVICES PROVIDED TO CITY**

- 4.1 Public Benefits. EarthLink shall provide to the City the services described in Exhibit F (the "Public Benefits") on the terms described therein. EarthLink, at its sole discretion, may also offer other services, products, applications, content, and other Internet access services to the City (the "Additional Services"). The City shall retain the sole option to purchase the Additional Services.
- 4.2 Optional. If the City elects not to use or purchase any of the Public Benefits then this Agreement shall continue and the City will not be entitled to any additional payments or compensation in lieu thereof. The City acknowledges that the Public Benefits and the fees provided for in Section 2.16 constitute full consideration and are the only compensation owed to the City in connection with this Agreement or any Site License Agreement, and no additional compensation, consideration, license fee, franchise fee or other fees required to receive the permissions set forth in this Agreement will be owed to the City even if the City elects not to purchase or use such Public Benefits.
- 4.3 Future Products. Because of the significant investment by EarthLink in the present wireless Network, EarthLink desires the opportunity to provide additional wireless broadband services to the City. Therefore, if during the Term of this Agreement, the City desires from time to time to consider additional wireless Internet protocol (IP) applications to serve municipal operations only ("New Network") then before the City enters with any provider into any bids or contract(s) related to such New Network, the City shall: (1) give EarthLink notice of such desire to implement a New Network and provide all relevant details and answer all reasonable questions of EarthLink; and (2) give EarthLink the opportunity to propose solutions and terms that build on EarthLink's Network; and (3) evaluate the modification/inclusion within this Network Agreement of the EarthLink solution(s) as the preferred approach to meeting the City's service delivery objective. Notwithstanding the above, EarthLink is under no obligation to propose or provide an EarthLink solution and EarthLink retains the option to decide whether to propose other solutions.

5. **PROGRAM MANAGEMENT**

EarthLink will at all times during the Term of this Agreement maintain a program manager responsible for implementing and operating the Network. The Parties shall meet at an agreed upon schedule to discuss ongoing operation of the Network including ongoing compliance with the Agreement. EarthLink and the City shall maintain and update a list of all open issues and resolutions throughout the Term of this Agreement. The City and EarthLink may mutually agree upon additional meetings.

6. **OTHER AUTHORIZATIONS**

The authorizations granted in this Agreement shall be non-exclusive and nothing contained in this Agreement shall be construed to limit, alter, or waive the right of the City to enter into agreements authorizing persons or entities other than EarthLink to access and use City Property to install any form of communications equipment or for any other purpose. The City shall give EarthLink prompt prior written notice of any applications received by the City from others requesting permission to install devices similar to the Approved Equipment on the City Poles or Premises. Nothing in this Agreement shall be deemed to obligate the City to grant EarthLink permission to use any particular facility, or property, or right-of-way not covered by this Agreement, including, without limitation, the City's public rights-of-way.

7. **NO PARTNERSHIP OR ENDORSEMENT**

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 City and EarthLink. Nothing contained herein shall be deemed to constitute an endorsement of EarthLink or EarthLink's products or services by the City.

8. **THIRD PARTY RIGHTS**

The City shall be responsible for identifying and notifying holders of third party rights on designated City Property of EarthLink's use thereof.

9. **DISPUTE RESOLUTION**

Except as otherwise provided in this Agreement, any dispute between the Parties or default by either party which arises during the Term of this Agreement, shall be subject to the following administrative remedy:

- 9.1 Internal Resolution. Both Parties shall attempt to resolve any controversy claim, problem, default, or dispute ("Dispute") arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. The Parties shall also rely on this mechanism to determine how to modify EarthLink's obligations pursuant to Sections 2.24 and 15. In the event that a Dispute is not resolved by the project managers of each Party, either Party may upon written notice to the other 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 either Party within fifteen (15) calendar days of the Parties' 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 ten (10) business days of the Request for Internal Resolution. Project managers and senior management for each Party shall be the General Market Manager and Vice President, Municipal Networks respectively, for EarthLink, and the City Project Manager and the City Manager or City Manager's designee respectively, for the City, and their respective successors in office. The project managers and senior management may be changed by notice given by the Party changing its personnel.

- 9.2 Notice. 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. If the Parties do not successfully resolve the Dispute by senior management, then the Party finding the senior management resolution unsatisfactory shall provide written notice to the other Party, demanding mediation ("Request for Mediation"). The Request for Mediation may not be given prior to the first meeting of senior management, or fifteen (15) business days after the request for Internal Resolution, whichever is earlier, and shall not be given any later than forty-five (45) calendar days following the completion of the first senior management meeting. The Request for Mediation shall set forth all of the issues that Party deems outstanding that must be submitted to mediation. The Party in receipt of the Request for Mediation shall respond within twenty (20) calendar days listing any issues it deems appropriate for submission to the Mediator. All of the requirements of Dispute Resolution and Mediation as described in this Article 9 shall be referred to collectively as the "Resolution Procedures".
- 9.3 Mediation. Any Disputes shall be mediated within forty-five (45) calendar days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available, except that those for which the remedy requested is injunctive relief or other equitable remedies shall be mediated within ten (10) business days.
- 9.4 Mediator. A mediator shall not have any employment, engagement or other interest in either party. If the parties cannot agree upon a mediator within five (5) business days of the submission of a Request for Mediation then the mediator shall be appointed by the local office of the American Arbitration Association upon request of either party.
- 9.5 Costs. The costs of mediation shall be borne by the Parties equally.
- 9.6 Equitable Relief. Each party agrees that any threatened or actual failure of the other party to comply with its obligations hereunder may cause immediate irreparable harm to the non-defaulting party for which there is no adequate remedy at law. Accordingly, each party agrees that the non-defaulting party will be entitled

to an order for specific performance and to injunctive relief from a court of competent jurisdiction as remedy for any such threatened or actual default. Nothing in this Agreement, 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 comply with the provisions of this Agreement, and not to take actions that violate its obligations under this Agreement; provided, that such order shall not prevent EarthLink from operating the Network and maintaining the Approved Equipment on the City Property, except on account of expiration of the Term or in the event of termination in compliance with this Agreement and applicable law for a Major Default after full completion of all Resolution Procedures and a court order is issued as provided herein; and provided further that such order for specific performance and injunction shall not require either party to pay or expend any sums in excess of the liability limitation set forth herein.

10. ASSIGNMENTS

The City shall not assign this Agreement, or any portion of it, without the prior written permission of EarthLink. EarthLink can assign this Agreement to an entity that is wholly owned or wholly controlled by EarthLink or by a wholly-owned affiliate of EarthLink (each to be referred to as an "Affiliated Entity") without the prior consent of the City. EarthLink can also assign this Agreement pursuant to the sale of all or substantially all of the assets or stock of EarthLink or pursuant to the sale of all or substantially all of the assets or operations of the division of EarthLink that is operating the Network or pursuant to the sale of the Network; provided that if such assignment is not to an Affiliated Entity, then EarthLink must first obtain the City's prior written consent, such consent not to be unreasonably withheld. EarthLink may enter into one or more agreements for installation of Approved Equipment, operation of the Network, or both with one or more entities ("Operating Companies"), provided that under such agreements overall control of the Network shall remain with EarthLink. Approved Equipment may be subject to security interests of vendors or of lenders to Operating Companies. The City shall have no ownership interest in or to Approved Equipment, unless the Approved Equipment has been abandoned and taken over by the City as provided for in Section 2.26, or EarthLink has filed a petition in bankruptcy, in which case the City shall have all rights provided for by applicable law.

11. TERM, RENEWAL, AND TERMINATION

- 11.1 Effective Date and Term. This Agreement shall become effective on the Effective Date and shall continue in effect for eight (8) years after the Commencement Date (collectively with Renewals Terms "Term").
- 11.2 Renewal. Upon the end of the first twelve (12) years of the Term, the Term may be renewed for three (3) successive four (4) year periods of time, upon mutual agreement of EarthLink and the City.

- 11.3 Major Default. In the event that either Party fails to pay undisputed sums due and payable hereunder (“Monetary Default”) within ninety (90) days after a default notice of nonpayment is delivered to by such Party to the other Party, then such Party (the “Non-defaulting Party”) may terminate this Agreement upon providing the other Party (the “Defaulting Party”) ninety (90) days prior written notice of its intent to terminate this Agreement. If the Non-defaulting Party pays the sum or disputes the amount due, within such ninety (90) day period, then such termination notice shall not be effective and this Agreement will not terminate. In the event that a Party commits a Major Default hereunder that is not a Monetary Default (also a “Defaulting Party”) and does not cure such Major Default within one hundred and twenty (120) days after the other Party (also a Non-defaulting Party) has delivered a default notice describing the Major Default to the Defaulting Party, then the Non-defaulting Party may terminate this Agreement upon providing Defaulting Party one hundred and twenty (120) days prior written notice of the Non-defaulting Party’s intent to terminate this Agreement. If the Defaulting Party cures the Major Default, within such one hundred and twenty (120) day period, such termination notice shall not be effective and this Agreement will not terminate. When used herein “Major Default” shall mean that the Defaulting Party has violated an obligation under this Agreement, that is not a Monetary Default, that has resulted in actual direct damages to the Non-defaulting Party (expressly not including damages of any other third parties) in excess of \$10,000.00 that has not been reimbursed by the Defaulting Party or by insurance proceeds of some party. If there is a dispute concerning whether a Monetary Default exists or whether the Defaulting Party has committed a Major Default then in either case this Agreement, the Term and the rights of the Defaulting Party shall not be terminated until a court of competent jurisdiction has ordered that a Monetary Default has occurred and continued past all applicable notice and cure periods or that the Defaulting Party has committed a Major Default that has continued past all applicable notice and cure periods, as applicable, and the Defaulting Party has not paid such sums to cure the Monetary Default or cured the Major Default, as applicable, within thirty (30) days after such order has been signed and issued by such court. If the Dispute Resolution Process results in agreement between the parties that there is a plan to cure the Major Default that will be in the best interests of all parties then prior to terminating this Agreement both parties shall exercise reasonable efforts to implement such plan in accordance with such terms as the parties have agreed upon. EarthLink should be considered in Major Default of this Agreement for any failure if the failure is caused in whole or in part by the failure of another party or by an act or omission of a third party.
- 11.4 Termination by EarthLink. Notwithstanding anything to the contrary in this Agreement, the City recognizes that certain issues may adversely impact EarthLink’s ability to continue to operate, maintain, upgrade and provide the Network and the Public Benefits. Therefore, each party agrees EarthLink is entitled to terminate this Agreement by giving as much notice as is reasonably practicable under the circumstances using reasonable efforts to provide at least thirty (30) days prior written notice to the City, if at any time during the Term any

of the following events occur and EarthLink's operation, maintenance or upgrade of the Network or provision of Services is adversely impacted in a material manner.

- 11.4.1 Any local, state or federal government authority or agency (i) shall have taken any action requiring any approval for the continued operation, upgrade or maintenance of the Network, Approved Equipment or provision of Services that significantly impairs the continued operation, upgrade or maintenance, (ii) prohibits or takes action that significantly impairs the operation, upgrade or maintenance of the Network or the Approved Equipment, (iii) does not issue or terminates or revokes applicable permits, licenses, and authorizations from the City, state, and the federal government or agency for the operation, maintaining or upgrading of the Network.
 - 11.4.2 The applicable electric provider has ceased or given notice it will cease furnishing electricity service to the Approved Equipment installed in the City and used to provide the Network upon commercially reasonable rates, terms and conditions and in a manner that the Parties agree complies with applicable laws and regulations.
 - 11.4.3 The owners of towers, rooftop sites, poles or other assets used to install the backhaul antennae, radio and fiber optic and broadband service necessary to operate the Network cease any grant to allow EarthLink access of, use of and attachment to such tower, rooftop site, pole or other asset in a manner that complies with applicable laws and regulations and upon commercially reasonable rates, terms and conditions, and EarthLink's operation, maintenance or upgrade of the Network or provision of the wireless services is adversely impacted in a material manner and EarthLink is unable to obtain the right to use substitute towers, rooftop sites, poles or other assets in a manner that complies with applicable laws and regulations and upon commercially reasonable rates, terms and conditions.
 - 11.4.4 EarthLink is prohibited from operating, maintaining or upgrading the Network, or performing substantially all of the services or exercising substantially all of the rights set forth in this Agreement.
 - 11.4.5 EarthLink may also terminate this Agreement in the event of a Monetary Default or a Major Default, pursuant to Section 11.3.
- 11.5 Removal Obligations. Upon termination of this Agreement or upon expiration of the Term, EarthLink, at its own expense, shall remove the Approved Equipment from City Property within nine (9) months of said date of termination or expiration

and return City Property to the condition in which the property existed immediately prior to EarthLink's installation, with normal wear, tear and evidence of installation excluded. If EarthLink fails to remove the Approved Equipment from the City Property within nine (9) months thereafter, the City may remove any of the Approved Equipment so remaining, and shall be reimbursed for the equipment and labor costs actually incurred in connection with removing the Approved Equipment within thirty (30) days of returning such Approved Equipment to EarthLink or making such Approved Equipment available to EarthLink for pickup at a safe storage facility within the City limits or at such other mutually agreed upon location.

11.6 Termination by City. Notwithstanding any other provision of this Agreement, the City has the right to terminate this Agreement in the following circumstances:

11.6.1 If EarthLink has failed to provide the Public Benefits, in whole or in part, pursuant to the terms of this Agreement, the City may terminate this Agreement after giving EarthLink reasonable notice and opportunity to cure. Prior to exercising this right, the City shall comply with the procedures in Section 9.1, which shall constitute such notice and opportunity to cure, provided that in no event shall the City terminate this Agreement under this Section 11.6.1 in fewer than sixty (60) days from EarthLink's receipt of the written notice described in Section 9.1. The City may, in its sole discretion, choose to refer the dispute to mediation pursuant to Section 9.2, but shall have no obligation to do so. The City Manager shall have full authority to exercise all of the City's rights under this Section.

11.6.2 The City may also terminate this Agreement in the event of a Monetary Default or a Major Default, pursuant to Section 11.3.

11.7 Termination of City Poles and Other Assets. In addition to any termination rights granted hereunder to EarthLink, EarthLink shall be entitled to terminate this Agreement with respect to any or all of the City Poles in the Network, any or all of the Approved Equipment located on the City Premises and the sums owed hereunder for Installed City Poles, City Premises as applicable, shall be reduced proportionately as of the effective date of such termination, provided such termination will not relieve EarthLink's obligations to provide the Public Benefits as set forth in Exhibit F. In such case EarthLink shall disconnect and remove from the Installed City Poles and/or City Premises that are terminated the Approved Equipment within eighteen (18) months thereafter or the City will be entitled to remove them as described above.

11.8 Survival. Any payment obligations or other liability that accrued prior to the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. 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.

12. NOTICE

12.1 Addresses. Except as otherwise set forth herein, all notices given or which may be given pursuant to this Agreement must be in writing and transmitted by (i) telecopy and, on the same day, first class United States mail or (ii) nationally recognized over night delivery service postage pre-paid as follows:

To the City at: City of Alexandria
301 King Street, Suite 3230
Alexandria, VA 22314
Attn: E-Government Manager
Facsimile: 703-997-6445

With a copy to: City of Alexandria
301 King Street, Suite 1300
Alexandria, VA 22314
Attn: City Attorney
Facsimile: 703-838-4810

and to EarthLink at: EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, Georgia 30309
Attention: General Counsel
Facsimile: 404-287-4905

With a copy to: EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, Georgia 30309
Attention: President, Municipal Wireless
Facsimile: 404-892-7616

Either party may change its address by written notice to the other party. Notice may also be provided to such other address as either Party may from time to time designate in writing.

12.2 Effective Date of Notice. Notice shall be deemed received on the next business day if it is sent by telecopy and first class mail, or the date of delivery or refusal of delivery if it is sent by over night delivery service.

13. INSURANCE

EarthLink shall maintain in full force and effect the insurance policies described in the attached **Exhibit G**.

14. **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.

15. **FORCE MAJEURE**

The time for performance by the City or EarthLink of any term, provision, or covenant of this Agreement, except for the payment of the Access Revenue Fees or other fees owed under this Agreement, shall be deemed extended by time lost due to delays resulting from acts of God, acts of terrorism, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not within the reasonable control of the City or EarthLink, as the case may be (collectively, "Force Majeure Events"). If a Force Majeure Event renders it impossible or commercially unreasonable for EarthLink to provide the Public Benefits in all or a portion of the City or to use any City Property in connection with the Network or Services, and such Force Majeure Event continues for or cannot be remedied in a commercially reasonable manner within ninety (90) days (unless the Parties mutually agree in writing to a longer period to cure), either party may request the effect of such Force Majeure Event be reviewed pursuant to Section 9.1, provided that if no resolution is mutually agreed upon pursuant to Section 9.1, then the parties may either continue with the dispute resolution procedures set forth in Sections 9.2-9.4 or either party may terminate any affected City Property or Public Benefits from this Agreement or terminate this Agreement provided any such termination will be reasonably proportional to the effect caused by the Force Majeure Event.

16. **REPRESENTATIONS AND WARRANTIES OF THE CITY**

The City represents and warrants that: (a) the City and the officials of the City executing this Agreement are authorized to grant to EarthLink all of the rights granted herein; (b) all necessary and appropriate authorizations and approvals have been obtained by the City and the officials of the City signing this Agreement; (c) there is not any regulation, ordinance or law that would permit the City to terminate this Agreement except as is expressly stated herein; and (d) this Agreement does not conflict with or violate any other agreement, regulation, ordinance or law that is binding upon the City.

17. **PARTIES BEAR THEIR OWN COSTS**

Except as expressly set forth herein, each Party shall pay their own costs of performing hereunder. This Agreement and the Exhibits state the only charges and sums that EarthLink is required to pay during the Term for installation, attachment, maintenance, and use of the City Poles, the City Premises and Electrical Services. Except as otherwise set forth in this Agreement, EarthLink shall not owe the City for the services of City employees unless described expressly on an attached Exhibit or EarthLink has executed on paper a written agreement specifying the charges EarthLink agrees to pay and the work to be performed by City employees.

18. **LIMITATION OF LIABILITY**

NEITHER EARTHLINK NOR THE CITY SHALL 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 shall not be liable for direct damages under this Franchise Agreement and any other agreement between the parties in an amount that, in the aggregate, exceeds the amounts received by EarthLink from the City and subscribers for the Network during the immediately preceding twelve (12) months except for damages caused by loss of life, bodily injury, or damage to property.

19. **INDEMNIFICATION**

- 19.1 As respects bodily injury, death, personal injury, or third-party property damage, EarthLink agrees to indemnify, defend with counsel to whom City does not have reasonable objections, and hold harmless City, its appointed and elected officials, officers, employees, agents, and representatives from and against any and all claims, losses, damages, defense costs, or liability, of any kind or nature (collectively referred to hereinafter as "Claims"), resulting from EarthLink's (or EarthLink's contractors' or subcontractors', if any) work performed by, or on behalf of, EarthLink, relative to this Agreement, except to the extent those Claims (a) arise solely out of the gross negligence or willful misconduct of the City for Claims resulting from governmental functions performed by the City, or (b) arise out of the gross negligence or willful misconduct of the City for Claims outside the

scope or of not resulting from governmental functions of the City. Further, EarthLink agrees to indemnify, defend, with counsel to whom City does not have reasonable objections, and hold harmless City, its appointed and elected officials, officers, employees, agents, and representatives from and against any and all Claims directly or proximately caused by EarthLink's violation of applicable law related to the Network or the Services, except to the extent those Claims (a) arise solely out of the gross negligence or willful misconduct of the City for Claims resulting from governmental functions performed by the City, or (b) arise out of the gross negligence or willful misconduct of the City for Claims outside the scope or of not resulting from governmental functions of the City. EarthLink's obligations under this Section are conditioned upon: 1) that EarthLink shall have been promptly informed of an actual Claim or written notice of a potential Claim and shall have been furnished a copy of each communication, notice or other action related to the alleged Claim, 2) that the City shall cooperate with EarthLink to provide information and assistance necessary to defend or settle the suit or proceeding, and 3) that EarthLink shall be given sole control of the defense (including the right to select counsel), at its sole expense, and the sole right to compromise and settle any suit or proceeding, provided EarthLink will not compromise or settle any suit that admits the liability of the City without the City's prior approval. EarthLink shall be responsible for all attorney's fees and other costs of defending against any alleged Claim, and shall have the right to select counsel. The obligations set forth in this Indemnification provision (i) shall be in effect without regard to whether or not City, EarthLink, or any other person maintains, or fails to maintain, insurance coverage, or a self-insurance program, for any such Claims; and (ii) shall survive the termination of this Agreement. Nothing herein shall prevent EarthLink's insurer(s) from satisfying EarthLink's obligations under this Section.

19.2 Infringement Indemnity.

19.2.1 EarthLink will indemnify the City, 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 Network, or if EarthLink believes infringement is likely, then EarthLink will (a) procure the right to use the System Operations in the Network free of any liability for infringement, (b) replace or modify the System Operations in the Network with a non-infringing substitute otherwise complying substantially with the specifications for the Network; 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 Network or otherwise procure the right to continue using the System Operations in the Network then EarthLink will be entitled to remove the infringing System Operations from the Network and obtain substitutes that will result in the Network performing substantially as required herein. "System Operations" means (i) the Network or any portion thereof (ii) products and services as 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 Network, and (iii) operation and design (including attaching devices to City Poles) of the Network.

19.2.2 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 Network 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 the City 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 the City will reimburse EarthLink for its reasonable expenses (including reasonable litigation costs and attorneys fees) incurred therein.

19.2.3 THE FOREGOING CONTAINS THE SOLE AND EXCLUSIVE LIABILITY FOR EARTHLINK'S AND ITS SUPPLIERS' INDEMNITY AGAINST INFRINGEMENT IN THIS SECTION 19.2 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.

20. NO WARRANTIES

THE ONLY WARRANTIES CONCERNING THE PUBLIC BENEFITS AND THE NETWORK AND OTHER DELIVERABLES (EXCEPT FOR EXPRESS WARRANTIES INCLUDED IN ANY AMENDMENT OR EXHIBIT SIGNED IN WRITING BY EARTHLINK AND THE CITY, IF ANY) PROVIDED UNDER THIS AGREEMENT ARE THOSE CONTAINED HEREIN, AND ARE MADE FOR THE BENEFIT OF THE CITY 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, TITLE, NON-INFRINGEMENT OR OTHERWISE. EARTHLINK ALSO SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS RELATED TO THE INTERNET; SECURITY-RELATED FEATURES OF THE NETWORK AND/OR PUBLIC BENEFITS. EARTHLINK CANNOT GUARANTEE COMPLETE SECURITY VIA THE INTERNET OR THE NETWORK OR PUBLIC BENEFITS 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 FOR THE CONDUCT OF SUBSCRIBERS USING OR ACCESSING THE NETWORK OR PUBLIC BENEFITS.

21. CONFIDENTIALITY

To the extent permitted by applicable law the City will not disclose any of the Confidential Information of EarthLink during the Term and for a period of three (3) years after the Term ends. If applicable law requires disclosure of EarthLink's Confidential Information or the terms and conditions of this Agreement then the City will promptly give EarthLink written notice and assist EarthLink in limiting the disclosure to only those portions of that Confidential Information as is necessary to be disclosed according to applicable law. "Confidential Information" of EarthLink means the business plans, financial information and technical information about the Network and the customers of EarthLink and its vendors that are confidential or otherwise trade secrets under applicable law. In addition, the City's obligation not to disclose the trade secrets of EarthLink will continue as long as they are trade secrets under applicable law.

22. REASONABLE TREATMENT

Notwithstanding anything to the contrary, the City agrees not to withhold unreasonably or delay any approvals or other actions or approvals necessary or appropriate for EarthLink to exercise the rights and to perform as permitted herein. 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 an unreasonable City delay. The City further agrees that EarthLink will not be in breach of this Agreement for EarthLink's failure to comply with ordinances and other requirements of the City to the extent they are not applied in a reasonable and nondiscriminatory manner of general application, provided that, if EarthLink asserts that any such ordinance or other

requirement has not been applied in a reasonable and nondiscriminatory manner, EarthLink has challenged or has notified the City of its intent to formally challenge the City's application of any such ordinance or other requirement in an appropriate forum.

23. MISCELLANEOUS

- 23.1 Applicable Law and Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Virginia. The courts of the City of Alexandria, Virginia, shall be the proper fora for any disputes arising hereunder.
- 23.2 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.
- 23.3 Integrated Document. This Agreement, together with its Exhibits and City Ordinances No. 4477 and ~~XXXX~~, constitutes the entire agreement between the Parties with respect to the subject matter hereof. Except as set forth herein, there are no promises, representations or understandings between the parties of any kind or nature whatsoever with respect to the subject matter hereof.
- 23.4 Amendments. This Agreement may be amended from time to time only by amendments that are written and executed on paper by both Parties to this Agreement.
- 23.5 Counterparts. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.
- 23.6 Public Announcements: The City agrees, subject to any public disclosure law requirements, not to make public statements, press releases, publications, or claims about the Network's status, completion, future plans, performance or pricing that constitutes or includes EarthLink's Confidential Information. When appropriate and practical, in the City's sole discretion, the City will give EarthLink an opportunity to review and/or approve written press releases proposed to be issued by the City about the Network. The City will not host or arrange for press visits to the facilities of EarthLink or its contractors without first obtaining the prior written consent of EarthLink.
- 23.7 Marketing Support: The City shall assist EarthLink in marketing subscriptions to the Network to the employees of the City.
- 23.8 Benefit to Public. Subject to the obligations of the City and rights granted to EarthLink and other provisions set forth in this Agreement and any License Exhibit or amendment executed by EarthLink and the City in connection with this Agreement, EarthLink acknowledges that (i) the paramount use of City Property dedicated for public use is for the benefit of the public at large, and (ii) its use of City Property shall not conflict with the City's uses.

- 23.9 No Waiver of Sovereign Immunity. Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by City pursuant to this Agreement, nor any document which arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the City, or of its elected and appointed officials, officers and employees, to the extent applicable.
- 23.10 Compliance with Laws. In addition to all requirements contained herein, in the exercise of the permission granted by this Agreement, EarthLink shall comply with all applicable federal, state and local laws, ordinances, business license requirements, regulations, orders, directives, rules and policies now in force or as hereafter enacted, adopted or promulgated.
- 23.11 Severability. If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial decision to be void, voidable, or unenforceable, then such provisions shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining provisions of this Agreement.
- 23.12 Recitals. The Recitals are incorporated into this Agreement by reference.
- 23.13 Radio Frequency Radiation Assessment. EarthLink represents that the radio frequency radiation of the Approved Equipment complies with the permissible exposure limits set forth in Federal Communications Commission regulations at 47 C.F.R. §§ 1.1307 (b) and 1.1310, or as amended.

IN WITNESS WHEREOF, the Parties 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 Effective Date.

THE CITY OF ALEXANDRIA

Signed: _____

Name: _____

Title: _____

Date: _____

EARTHLINK, INC.

Signed: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
City Pole Assets

SITE LICENSE AGREEMENT

THIS SITE LICENSE AGREEMENT (the "License") is entered into this ___ day of _____, 20___, between the City of Alexandria, a municipal corporation of Virginia ("Licensor"), and EarthLink, Inc., a Delaware corporation ("Licensee").

- A. Licensee and Licensor have entered into a Franchise Agreement dated as of _____ 2006 (the "Franchise Agreement"), pursuant to which Licensee will build and operate a wireless broadband network in the City of Alexandria (the "Network").
- B. In the Franchise Agreement, Licensor has agreed to make certain sites owned by Licensor available to Licensee for the installation of Approved Equipment, as defined in the Franchise Agreement, subject to individual license agreements.
- C. Licensor and Licensee have agreed that one such suitable site is located at [INSERT NAME OF BUILDING, IF ANY, AND ADDRESS] (the "Building").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Terms Subject to Franchise Agreement.

Licensor and Licensee are entering into this License pursuant to Section 2.4 of the Franchise Agreement, which provides that Licensor has granted Licensee a license to install Approved Equipment subject to individual license agreements consistent with Exhibit B-1 of the Franchise Agreement, and that each such license agreement shall constitute an exhibit to the Franchise Agreement. This License is subject to all of the terms of the Franchise Agreement and constitutes an integral part thereof.

2. Premises.

Licensor hereby licenses to Licensee exterior space on the roof of the Building, space either adjacent to or on the roof of the Building, and interior space in the Building as described in Exhibit 1 attached hereto (the "Premises") for use on a non-exclusive basis. Licensee shall have the right to attach, erect, install, maintain and operate Approved Equipment and additional personal property of the Licensee necessary for the use and operation of the Approved Equipment, including, without limitation, computer equipment, equipment panels, cabling, cabinets, emergency power systems and other personal property as listed on Exhibit 2 hereof (which shall also constitute Approved Equipment for purposes of this License), in the number, configuration, size, and location(s) also described on Exhibit 2 hereof, which will be updated to reflect actual as-built installation within a reasonable amount of time after such installation is completed. Licensor has or will obtain all approvals of third parties that are required for Licensor to grant the license rights as provided herein.

3. License Only; No Exclusivity.

3.1 This License creates a license only and Licensee acknowledges that Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Building or Premises by virtue of this License or Licensee's use of the Premises pursuant hereto. In connection with the foregoing, the parties further acknowledge that in no event shall the relationship between Licensor and Licensee be deemed to be a so-called landlord-tenant relationship and that in no event shall either party be entitled to avail itself of any rights afforded to landlords or tenants respectively under the laws of the jurisdiction in which the Building is located. In the event of any sale, assignment or transfer of the

Building or Licensor's interest therein, Licensor's obligations under this License shall thereafter be automatically binding upon the grantee, assignee or other transferee of such interest, and any such grantee, assignee or transferee, by accepting such interest, shall be deemed to have assumed Licensor's obligations hereunder and be entitled to receive Licensor's benefits hereunder. A lease of the entire Building shall be deemed a transfer within the meaning of the foregoing sentence. This License is not and does not grant an easement.

3.2 Licensor reserves the right to license other portions of the Property to other parties during the term of this License. Licensor also reserves the right to enter upon the Premises at any time. Licensor also reserves the right to require Licensee to move its Approved Equipment to another location in or on the Building, or to another Licensor-owned property, subject to the terms of Section 2.24 and other relevant provisions of the Franchise Agreement. Licensee shall not have the exclusive right to use or occupy the Premises. Licensee agrees that, for purposes of the Premises and the FCC's Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000: (i) Licensee's rights to use the Premises pursuant to this License do not constitute a direct or indirect ownership or leasehold interest; (ii) none of the Premises that Licensee has the right to use pursuant to this License is within the exclusive use or control of Licensee; and (iii) no provision of this Agreement or any individual site license impairs the installation, maintenance, or use of any Approved Equipment.

4. Term.

4.1 The initial term of this License shall commence on the date Licensee commences construction or installation of Approved Equipment on the Premises (the "Commencement Date"). The Licensee shall have no right to occupy the Premises until the Commencement Date. The Term of this License shall expire on the same date as the Franchise Agreement. Notwithstanding any other provision of this License, this License shall terminate upon the expiration or termination of the Franchise Agreement.

4.2 Licensee shall have the right to extend this License to coincide with the term of the Franchise Agreement, in the event the Franchise Agreement is renewed or extended in accordance with its terms. Each such additional time period shall be called a Renewal Term.

5 License Fee.

From and after the occurrence of the Commencement Date until the commencement of a Renewal Term, Licensee shall pay Licensor annually, in advance, the sum of five hundred dollars (\$500) monthly for each antennae pole/cluster on a rooftop or tower ("License Fee"). Any tripod based mounting or multiple connections to a roof or tower shall be considered one connection point of one antennae pole/cluster, and additional poles or antennae that may be attached to that antennae pole/cluster are not subject to additional charge. The License Fee shall increase annually during the Initial Term and any Renewal Term, effective as of each anniversary of the Commencement Date, by an amount equal to three and one-half percent (3.5%) per annum above the amount of the License Fee in effect immediately prior to such increase. The License Fee shall be payable annually in advance without offset or deduction, except as provided herein. If the term commences on other than the first day of a month, the License Fee shall be prorated for that first month for the number of days from the Commencement Date to the end of the month. If, at any time, Licensee fails to make timely payment when due of the monthly License Fee, interest shall accrue on the past due amount at the rate of 18% per annum or the maximum allowable by law, whichever is less, until paid in full. This right is in addition to all rights of Licensor to

terminate this License pursuant to Section 11 herein. All sums payable by Licensee under this License, whether or not stated to be License Fees or additional License Fees, shall be collectible by Licensor as License Fees, and upon default in payment thereof Licensor shall have the same rights and remedies as for failure to pay License Fees (without prejudice to any other right or remedy available therefor).

6 Permitted Use.

The Premises may be used for attaching, erecting, installing, mounting, maintaining, and operating Approved Equipment for the purposes authorized by the Franchise Agreement ("Permitted Use"). Licensor agrees to cooperate with Licensee, at Licensee's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Licensee's intended use of the Premises ("Approvals").

7 Interference.

7.1 Licensee shall, at its own expense, install, operate, and maintain the Approved Equipment on the Premises in a good and workmanlike manner and in accordance with applicable local, state and federal laws, ordinances and regulations, including, without limitation, any applicable regulations of the Federal Communications Commission ("FCC"). Licensee shall inspect, construct, and maintain the Approved Equipment in a manner that will not cause unreasonable physical interference to Licensor and other tenants or licensees of the Building, including without limitation the operation or use of any portion of the sanitary sewers, storm sewers and drains, water mains, gas mains, poles, or other property of Licensor, except to the extent contemplated by a permit or other applicable license. Licensee shall also avoid physically blocking the transmissions of radio equipment operated by Licensor.

7.2 Licensee is not obligated to conduct any tests, studies or investigations. Licensee shall operate the Approved Equipment in a manner that will not cause harmful radio frequency interference ("RF Interference") to Licensor and other tenants or licensees of the Building. All operations by Licensee shall be in compliance with all FCC requirements and all other applicable laws, codes, rules and regulations.

7.3 Subsequent to the installation of the Approved Equipment, Licensor shall, to the extent practicable without limiting Licensor's ability to conduct its activities in accordance with its normal practices, attempt to avoid causing RF Interference to or physically blocking the signals of Approved Equipment. Licensor shall also inform new tenants of the Building of the existence and location of the Approved Equipment and shall obligate each new tenant in its lease to operate its equipment in compliance with all applicable FCC regulations, to use commercially reasonable efforts not to cause RF Interference or to cause physical interference with the Approved Equipment installed on the Premises, and, if the new tenant causes RF Interference to the Approved Equipment, to participate in the interference resolution process described in Section 7.4.

7.4 In the event either party suffers from RF Interference as a result of the actions of the other party, the affected party shall give the other party written notice of the nature of RF Interference, including any studies that demonstrate or may have been performed in connection with such RF Interference. The parties shall then meet and mutually cooperate to determine the cause of the RF Interference and agree on a method for eliminating the RF Interference, or reducing it to an acceptable level. Notwithstanding the foregoing, in the event that the RF Interference continues for more than ten

(10) days and causes material harm to Licensee's operation of the Network, the Installed City Pole Fees or other payments due from Licensee with respect to Approved Equipment affected by RF Interference shall abate proportionately on a per diem basis for each day after such ten-day period. In addition, during any period in which Licensee suffers from RF Interference, Licensee will not be required to provide the Public Benefits (as defined in the Franchise Agreement) within the geographic area directly affected by the RF Interference, or, to the extent the RF Interference affects Licensee's ability to provide Public Benefits in a manner other than geographic coverage, Licensee may alter or reduce the Public Benefits in a manner reasonably related to the effects of the RF Interference on Licensee's ability to provide the Public Benefits. Additionally, if such material RF Interference continues for a period of ninety (90) days and the parties are unable to agree on a mutually satisfactory resolution of the problem, Licensee shall have the right to terminate this Agreement immediately upon notice to Licensor. Similarly, if the actions of Licensee cause RF Interference to Licensor's facilities which materially affects the operation of such facilities for a period of ninety (90) days and the parties are unable to agree on a mutually satisfactory resolution of the problem, the Licensor shall have the right to terminate this Agreement immediately upon notice to Licensee. Upon termination of this Agreement in connection with this Section 7.4, Licensee will not be required to provide the Public Benefits to the extent directly impacted by the termination of this Agreement.

7.5 Subject to Licensor's obligations set forth in Sections 7.3 and 7.4, Licensor shall have no liability to Licensee for RF Interference caused by any third party, provided that the foregoing provisions shall not affect Licensee's rights regarding the procedure for resolving RF Interference in this Agreement, including, without limitation, Licensee's right to terminate this License. Licensor shall exercise its best efforts to assist in the resolution of any dispute regarding RF Interference caused by the activities of an occupant of the Building other than Licensee or Licensor.

8 Improvements; Utilities.

8.1 Prior to installing Approved Equipment on the Premises, Licensee shall submit detailed engineering plans and specifications of the planned installation to Licensor for Licensor's written approval, which approval shall not be unreasonably withheld, delayed or conditioned. Such plans and specifications are attached hereto as Exhibit 3 which will be updated to reflect the actual as-built installation within a reasonable amount of time after such installation is completed. Licensor's review of Licensee's plans shall include a review of the appearance of the Approved Equipment. Licensor's approval of any installation is not a representation that such installation of the Approved Equipment is in compliance with all applicable governmental laws, ordinances, rules and regulations or that such facilities will not cause interference with other communications systems, if any, then in operation on the Building. Licensee hereby confirms and agrees that its Approved Equipment shall be installed and operated solely within the Premises.

8.2 All work by Licensee shall be performed in compliance with applicable laws and ordinances. During Licensee's construction of its Approved Equipment, Licensee shall have, and Licensor hereby grants to Licensee, a temporary construction easement to use portions of the Building reasonably necessary for the storage of materials and staging of construction. Licensee and its contractors and subcontractors shall be solely responsible for the transportation, storage and safekeeping of materials and equipment used in the performance of any work, for the removal of waste and debris resulting there from on a daily basis, and for any damage caused by them to any installations or work

performed by Licensee's contractors and subcontractors. Upon completion of construction, Licensee shall remove any items stored or placed by Licensee in such temporary easement area and return such area to Licensor in the condition existing prior to construction.

8.3 Licensee is not authorized to contract for or on behalf of Licensor for work on, or the furnishing of materials to the Premises or any other part of the Building, and Licensee shall discharge of record by payment, bond or otherwise, within ten (10) days subsequent to the date of its receipt of notice thereof from Licensor, any mechanic's, laborer's or similar lien filed against the Premises or the Building for work or materials claimed to have been furnished at the instance of Licensee. The Approved Equipment shall remain the exclusive property of Licensee during the term of this License, and Licensee shall have the right to remove all or any portion of the Approved Equipment at any time during the term of this License or following the term of this License as hereinafter provided.

8.4 Licensee will notify Licensor prior to commencing Licensee's installation work in the Building. Licensee shall not commence installation work until Licensee, at its own cost and expense, has delivered to Licensor a certificate of insurance confirming that comprehensive general liability insurance as required under Exhibit G of the Franchise Agreement, covering the risk during the course of performance of Licensee's installation, has been obtained and is in place.

8.5 All installation and other work to be performed by Licensee hereunder will be done in such a manner so as not to interfere materially with, delay or impose any additional expense upon Licensor in maintaining the Building. In no event will Licensor be required to consent to any installation or other work by Licensee which would physically affect any part of the Building outside the Premises (other than with respect to the temporary construction easement described in Section 8.2 hereof, which shall be subject to Licensee's duty to restore such area as provided therein). Licensee shall repair any damage caused by Licensee to Licensor's Property.

8.6 Following any termination or expiration of this License, Licensee shall use commercially reasonable efforts to remove all of the Approved Equipment within ninety (90) days of such expiration or earlier termination. In performing such removal, Licensee shall restore the Premises and any personal property and fixtures thereon to as good a condition as they were in prior to the installation or placement of the Approved Equipment, normal wear and tear excepted. If Licensee fails to remove such Approved Equipment within such ninety (90) day period, Licensor may remove and dispose of the Approved Equipment within the next succeeding ninety (90) day period, and Licensee shall reimburse Licensor for the reasonable costs actually incurred in such removal within thirty (30) days of returning such Approved Equipment to Licensee or making such Approved Equipment available to EarthLink for pickup at a safe storage facility within the City limits or at such other mutually agreed upon location. In the event of termination of this License as a consequence of termination of the Franchise Agreement, Section 11.5 of the Franchise Agreement shall control.

8.7 Licensee shall, at Licensee's expense, keep and maintain the Premises in commercially reasonable condition and repair during the term of this License. Licensee agrees to maintain the Approved Equipment in proper operating condition and within industry accepted safety standards. Except as otherwise provided in this License or in the Franchise Agreement, all installations and operations of the Approved Equipment by Licensee shall comply in all material respects with all applicable rules and regulations of the FCC and all applicable federal, state, and local codes and regulations. Licensor assumes no responsibility for the licensing, operation or maintenance of the Approved Equipment.

8.8 Licensee has the right to erect, maintain and operate the Approved Equipment using existing utility lines, transmission lines, electronic equipment, radio transmitting and receiving antennae and supporting equipment and structures thereto. In connection therewith, Licensee and its contractors have the right to do all work necessary to prepare, install, erect, and maintain the Approved Equipment and to alter the Premises for the Approved Equipment, if any, and all work shall be performed in accordance with the specifications set forth on Exhibit 3 or as mutually agreed upon with the City's designated contact for the Premises. All of Licensee's construction and installation work shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner. In performing work pursuant to this License, Licensee shall be entitled to use any labor and other service providers and contractors it determines without restriction. Title to the Approved Equipment shall be held by Licensee. All of the Approved Equipment shall remain Licensee's personal property and are not fixtures. Notwithstanding the foregoing, if the Approved Equipment has been abandoned or Licensee has filed a petition in bankruptcy, Licensor shall have all rights provided for by applicable law.

8.9 Licensee shall have the right to draw electricity and other utilities from the existing utilities on the Premises or in the Building subject to Section 3.3 of the Franchise Agreement and Exhibit 3 hereof. Among other things, Exhibit 3 shall specify any modifications to the Building or the Premises Licensee shall be permitted to make, at its own expense, in connection with Licensee's requirements for utility service, including, without limitation, such matters as use of a standby power generator, installation of a separate electric meter, or alterations to the electric grounding system in the Building.

8.10 Licensee shall not move any of the Approved Equipment to other locations in or on the Building without the approval of Licensor, which approval will not be unreasonably delayed or withheld and will not be subject to additional charge. Licensee is entitled to remove Approved Equipment from the Premises and Licensee is entitled to replace the Approved Equipment with new or different equipment that is substantially similar to Approved Equipment already in use by submitting information to replace or supplement information in Exhibit 2 and requesting Licensor's approval of such changes, which shall not be unreasonably withheld or delayed. If Licensee does not receive any response from Licensor within ninety (90) days of written notice to Licensor, then such installation method, configuration or equipment will be deemed approved by Licensor and Exhibit 2 shall be deemed modified. If Licensee installs any equipment other than Approved Equipment, Licensee shall promptly remove such equipment at its sole cost and expense upon notice from Licensor, or Licensor may do so at Licensee's sole cost and expense, subject to applicable provisions of the Franchise Agreement. Licensor shall not remove or disconnect any of the Approved Equipment except as permitted by the Franchise Agreement, including, without limitation, Sections 2.11, 11.5, and 11.7 thereof.

9 Compliance with Laws.

Licensee agrees that the installation, operation and maintenance of the Approved Equipment shall at all times, and at Licensee's expense, comply with all applicable governmental laws and regulations. If any such laws or regulations require that Licensee modify or revise any then-existing installation, operation or maintenance of the Approved Equipment, then Licensee shall promptly make such modifications or revisions at Licensee's sole expense.

10 Access.

Licensee and its Authorized Personnel shall be entitled to access to the Premises on the following basis: **[INSERT DAYS, HOURS AND OTHER TERMS OF ACCESS]** There shall be no charge for access beyond the License Fee. Licensor grants to Licensee and its Authorized Personnel a non-exclusive license for pedestrian ingress and egress through the Building to the Premises and, if appropriate, a license for vehicular access to the Building. For purposes hereof, "Authorized Personnel" shall mean only authorized employees, engineers, technicians, agents, and subcontractors of Licensee. Licensee may obtain access to the Building and the Premises for lenders, guests and invitees so long as such persons are under the direct supervision of Authorized Personnel, upon prior notice to Licensor's designated representative for the Building. Licensor shall provide Licensee with the name and contact information of the designated representative and shall promptly inform Licensee of any change in the identity of the designated representative. All access to the Premises by Licensee shall be subject in each instance to the reasonable security requirements and reasonable rules and regulations from time to time in effect at the Property; Licensor shall provide written notice of any changes in such requirements and regulations to the extent practicable. Notwithstanding the foregoing, in the event that the access of any of Licensee's Authorized Personnel to the Premises is prevented for more than seven (7) days, the License Fee shall abate proportionately on a per diem basis for each day after such seven (7) day period.

11 Termination by Licensor.

Licensor may terminate this License if:

11.1 Licensee has defaulted in the payment when due of any License Fees or other sum of money specified hereunder to be paid by Licensee, and Licensee does not remedy such default within ninety (90) days after written notice thereof from Licensor; or

11.2 Licensee has defaulted in the performance of any other of the terms, conditions or covenants contained in this License to be performed or observed by Licensee and Licensee does not remedy such default within ninety (90) days after written notice thereof is given to Licensee or, if such default cannot be remedied in such period, Licensee does not, within twenty (20) days after such notice from Licensor, commence such efforts or acts as shall be necessary to remedy the default and continue to prosecute such efforts and/or acts to completion with reasonable diligence.

12 Termination by Licensee.

12.1 Licensee, for any reason at its discretion, may terminate this License at any time by giving a written termination notice at least ninety (90) days prior to the designated termination date, in which event the License Fees or other sums due hereunder shall be paid until that termination date and no further sums will be owed thereafter. In addition, Licensee is entitled to terminate this License on lesser notice if otherwise entitled to do so under the terms of the Franchise Agreement, and in any event this License shall terminate immediately upon termination of the Franchise Agreement. Termination of this License alone shall not relieve the Licensee of the obligation to provide the Public Benefits in accordance with the Franchise Agreement, except as provided in Section 7.4 of this License or any applicable provision of the Franchise Agreement.

12.2 Upon termination in accordance with this Section, Licensee shall surrender and vacate the Premises immediately.

13 Taxes.

The fees required by this Agreement shall be in addition to, and not in lieu of, all taxes required by the City, and all other amounts EarthLink may be required to pay the City by law, ordinance, or other agreement. Licensee shall not be responsible for any real property taxes attributable to the Building, but Licensee shall be responsible for personal property taxes assessed on the Approved Equipment.

14 Insurance, Release and Hold Harmless.

14.1 Licensee shall, at Licensee's sole cost and expense, procure and continue in force during the term of this License, including any Renewal Term, all insurance required by the Franchise Agreement.

14.2 Licensee shall require that its contractors (and any subcontractors) produce, prior to commencing any installation, repair, or maintenance work on the Premises, a certificate of original insurance policy evidencing that all insurance required by the Franchise Agreement is maintained.

14.3 Licensee agrees to indemnify, defend, and hold harmless Licensor and Licensor's appointed and elected officials, officers, employees, agents, and representatives, in accordance with the terms of Section 19 of the Franchise Agreement.

15 Notices.

All notices, requests, demands and other communications hereunder shall be in writing and shall be personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

To the City at: City of Alexandria

Alexandria, VA 22314

Attn: _____

Facsimile: _____

With a copy to:

City of Alexandria

301 King Street, Suite 1300

Alexandria, VA 22314

Attn: City Attorney

Facsimile: 703-838-4810

If to Licensee, to:

EarthLink, Inc.
1375 Peachtree Street
Atlanta, Georgia 30309
Attention: General Counsel

With copies to:

EarthLink, Inc.
1375 Peachtree Street
Atlanta, Georgia 30309
Attention: Director of Strategic Sourcing

or to such other address as each party may designate for itself by like notice given in accordance with this Section 15. Notices will be deemed to have been given upon either receipt or rejection. Unless or until either of the respective addresses is changed by notice in writing sent to the other party as set forth above, thereafter to the address contained in such notice.

16 Title and Authority.

Licensor warrants that (i) it has full right, power and authority to execute this License and has the power to grant all rights hereunder; (ii) it has good and marketable title to the Building free and clear of any liens, mortgages, restrictions or other encumbrances that will interfere with Licensee's Permitted Use of the Premises; and (iii) its execution and performance of this License will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, license or other agreement binding on Licensor.

17 Hazardous Substances.

Licensee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. Licensor represents, warrants and agrees (1) that neither Licensor nor, to Licensor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Premises in violation of any law or regulation, and (2) that Licensor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. Licensor and Licensee each agree to defend, indemnify and hold harmless the other and the other's appointed and elected officers and officials, partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, asbestos-containing material, PCB, any substance known by the Commonwealth of Virginia to cause cancer and/or reproductive toxicity, and/or

any substance, chemical, or waste that is identified as hazardous, toxic or dangerous in any federal, state or local law or regulation. This paragraph shall survive the termination of this License.

18 Assignment and Sublicensing.

Licensor shall not assign this Agreement, or any portion of it, without the prior written permission of Licensee. Licensee can assign this Agreement to an entity that is wholly-owned or controlled by Licensee or by a wholly-owned affiliate of Licensee (each to be referred to as an "Affiliated Entity") without the prior consent of Licensor. Licensee can also assign this License pursuant to the sale of all or substantially all of the assets or stock of Licensee or pursuant to the sale of all or substantially all of the assets or operations of the division of Licensee that is operating the Network or pursuant to the sale of the Network; provided that if such assignment is not to an Affiliated Entity, then Licensee must first obtain Licensor's prior written consent, such consent not to be unreasonably withheld. Licensee may enter into one or more agreements for installation of Approved Equipment, operation of the Network, or both with one or more entities ("Operating Companies"), provided that under such agreements overall control of the Network shall remain with EarthLink. Approved Equipment may be subject to security interests of vendors or of lenders to Operating Companies. Licensee shall not grant any sublicense of any of its rights under this License.

19 Successors and Assigns.

This License shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

20 Miscellaneous.

20.1 Reasonable Treatment. Each party agrees to furnish to the other, within ten (10) business days after request, such truthful, customary and reasonable estoppel information as the other may reasonably request. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this License, such party shall not unreasonably condition, delay or withhold its approval or consent.

20.2 Entire Agreement. This License constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements, except for the Franchise Agreement and its exhibits and ancillary agreements. There are no representations or understandings of any kind not set forth herein. Any amendment to this License must be in writing and executed by both parties.

20.3 Governing Law. This License shall be construed in accordance with the laws of the Commonwealth of Virginia.

20.4 Severability. If any term of this License is found to be void or invalid, such invalidity shall not affect the remaining terms of this License, which shall continue in full force and effect.

20.5 Emergency. Licensor shall notify Licensee as soon as reasonably practicable in the event of an emergency that Licensor has reason to believe adversely impacts the use of the Approved Equipment.

20.6 No Liens. Licensee will not permit any mechanics' or materialmen's or other liens on the Building or the property surrounding the Building for any labor or material furnished at Licensee's request pursuant to this License ("Licensee Lien"). If a Licensee Lien has been filed against the Building and a final judgment on the Licensee Lien is adverse to Licensor, Licensee shall pay the determined amount of Licensee Lien with full costs, fees and charges, thereby releasing such Licensee Lien. Licensee shall have the right to contest the validity, nature or amount of any such Licensee Lien, but upon the final determination of such questions, shall immediately pay any adverse judgment rendered with all proper costs and charges and shall have the lien released at its own expense. Licensor waives any lien rights it may have concerning the Approved Equipment, and Licensee has the right to remove the same at any time without Licensor's consent. The Approved Equipment shall not be considered fixtures.

20.7 Waiver of Licensor's Lien. Licensor acknowledges that Licensee may enter into financing arrangements, including promissory notes and financial and security agreements, for the financing of the Approved Equipment ("Collateral") with a third party financing entity. Licensor (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Licensee Fees due or to become due, and that such Collateral may be removed at any time without recourse to legal proceedings.

20.8 Condemnation. If Licensor receives notification of any condemnation proceedings affecting the Building, Licensor will provide notice of the proceeding to Licensee within ten (10) days of Licensor receiving notice. If a condemning authority takes all of the Building, or a portion sufficient, in Licensee's reasonable determination, to render the Sites unsuitable for Licensee, this License will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, to the extent that any awards to Licensee will not diminish Licensor's recovery. Licensor will refund to Licensee any License Fees paid for the period after such termination.

20.9 Destruction. Licensor will provide notice to Licensee of any casualty affecting the Building within ten (10) days of such casualty. Licensor will notify Licensee as soon as possible for any casualty or other event that damages the Sites or the Approved Equipment or, to Licensor's knowledge, prevents the Approved Equipment from operating properly. If any part of the Approved Equipment or Building is damaged by casualty so that the Approved Equipment cannot operate properly ("Destruction"), License Fees shall abate until the Sites and the Approved Equipment are repaired and operating commercially again. Neither Licensor nor Licensee is obligated to re-build or repair the damages of such Destruction. If either party elects not to repair the damages of Destruction, then that party may terminate this License by providing written notice, which termination will be effective as of the date of such Destruction. Upon such termination, Licensor will refund to Licensee any License Fees paid for the period after Destruction. If Destruction occurs, Licensor agrees to use its reasonable efforts to permit Licensee to place temporary transmission and reception facilities on the Building without assessment of any License Fee, until the Sites and Approved Equipment are repaired and operational.

20.10 Repairs. Licensee shall not be required to make any repairs to the Building unless such repairs shall be necessitated by reason of the default of Licensee, or as otherwise required by the Franchise Agreement. Licensor shall maintain and repair all portions of the Building other than the Approved Equipment in a proper operating and reasonably safe condition. Any maintenance or repair work to or near the Premises shall be coordinated with Licensee and shall be conducted in such a manner

as to prevent interference with the Approved Equipment, if Licensor reasonably anticipates that such work may affect Licensee's access to the Approved Equipment.

20.11 Building and Safety Requirements. During the Term of this License, Licensor shall maintain the Building in compliance with all applicable state and federal building codes, statutes, orders, ordinances and regulations.

20.12 Marking and Lighting Requirements. Licensor shall cooperate with Licensee with respect to compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC. Should Licensee be cited because the Building is not in compliance due to Licensor's operations and actions or inactions in or on the Building, and should Licensor fail to cure the conditions of noncompliance, Licensee may, in addition to any other remedies, cure the conditions of noncompliance at Licensor's expense, which amounts may be deducted from License Fees.

20.13 No Third Party Beneficiaries. This License shall not create for, nor give to, any third party any claim or right of action against either party to this License that would not arise in the absence of this License.

20.14 Waiver and Remedies. The failure of either party to enforce any provision of this License or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its party of any such provision but the same shall nevertheless be and remain in full force and effect. This License shall be subject to the remedies and dispute resolution procedures set forth in the Franchise Agreement. The remedies expressly provided in this License shall be in addition to any other remedies available at law or in equity.

20.15 Counterparts. This License may be executed in duplicate counterparts, each of which shall be deemed an original.

20.16 Headings. Section headings of this License are inserted only for reference and in no way define, limit, or describe the scope or intent of this License nor affects its terms or provisions.

21 Mortgage Subordination.

This License is and shall be subject and subordinate to all ground or underlying leases of the Building and to all mortgages, deeds of trust and similar security documents which may now or hereafter be secured upon the Property, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any lessor or mortgagee, but in confirmation of such subordination, Licensee shall execute, within fifteen (15) days after request, any certificate that Licensor may reasonably require acknowledging such subordination. Notwithstanding the foregoing, the party holding the instrument to which this License is subordinate shall have the right to recognize and preserve this License in the event of any foreclosure sale or possessory action, and in such case, this License shall continue in full force and effect at the option of the party holding the superior lien and Licensee shall attorn to such party and shall execute, acknowledge and deliver any instrument that has for its purpose and effect the confirmation of such attornment. Notwithstanding the foregoing, the subordination set forth above shall be subject to the terms of any SNDA which may be entered into by and between Licensee, Licensor and Licensor's mortgagee.

22. Warranty of Title and Non-Disturbance. Each party represents and warrants to the other that: (i) that such party has full right to make and perform this License; (ii) the making of this License and the performance thereof will not violate any laws, ordinance, restrictive covenants or other agreements under which such party is bound; and (iii) all persons signing on behalf of such party were authorized to do so by appropriate corporate or partnership action. Licensor represents and warrants that Licensor owns the Building in fee simple or has the right under a ground lease to grant the rights granted to Licensee herein.

23. Parties Bear Their Own Costs. Except as expressly set forth herein, each party shall pay its own costs of performing hereunder. This License, the Franchise Agreement, and the Exhibits state the only charges and sums that Licensee is required to pay during the Term for installation, attachment, maintenance, and use of the Approved Equipment and for electricity usage.

24. Limitation of Liability. THE PARTIES EXPRESSLY AGREE THAT LICENSOR AND LICENSEE 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 Licensee and Licensor shall not be liable for direct damages in an amount in excess of the amount of License Fees paid by Licensee hereunder during the immediately preceding twelve (12) months, except for damages caused by loss of life, bodily injury, or damage to property.

IN WITNESS WHEREOF, the parties hereto have executed this License as of the date aforesaid.

LICENSEE:

City of Alexandria, a municipal corporation of Virginia

By: _____

James K. Hartmann, City Manager

Date: _____

LICENSEE:

EarthLink, Inc.

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT 1

PREMISES

The Premises shall consist of the following:

1. Ground space measuring approximately _____' in length by _____' in width.

[An as-built drawing depicting the Premises shall replace this Exhibit].

EXHIBIT 2

APPROVED EQUIPMENT

[INSERT LIST OF APPROVED EQUIPMENT TO BE USED AT THIS SITE.]

EXHIBIT 3
INSTALLATION PLANS AND SPECIFICATIONS

4096 03'00124058.DOC

EXHIBIT C
Approved Communication Equipment

Device Power Consumption Profiles

Tropos 5210

Norm Volts	Amp Rating	Rating %	Op. Hrs.	KWh/Mo Billing
110V	0.13	100%	731	10.60
220V	0.08	100%	731	12.43
480V	0.04	100%	731	13.52

Motorola Canopy 900 MHz Subscriber Module and Tropos 5210 with Connectorized Antenna

Norm Volts	Amp Rating	Rating %	Op. Hrs.	KWh/Mo Billing
110V	0.20	100%	731	16.08
220V	0.11	100%	731	17.91
480V	0.05	100%	731	19.01

Motorola Canopy 5.2 GHz Advantage Subscriber Module and Tropos 5210

Nom Volts.	Amp Rating	Rating %	Op. Hrs	kWh/Mo Billing
110V	0.20	100%	731	16.08
220V	0.11	100%	731	17.91
480V	0.05	100%	731	19.01

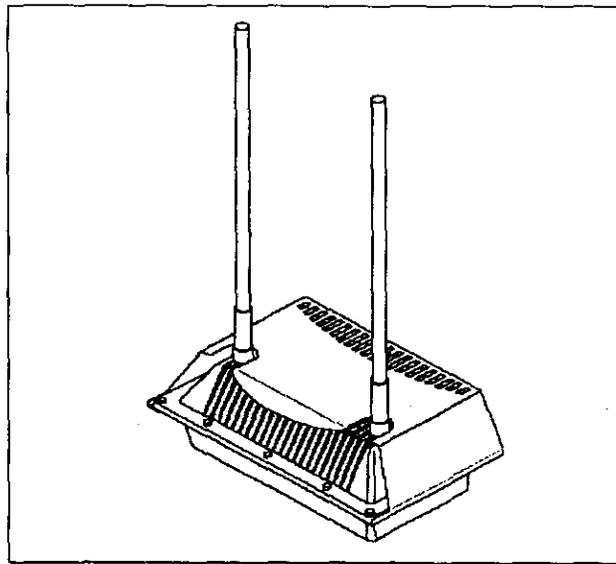
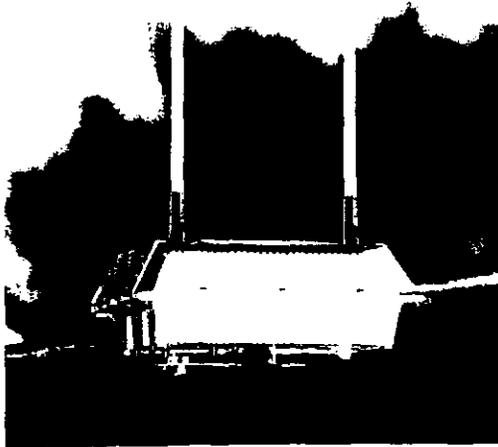
Motorola Canopy 5.7 GHz Advantage Subscriber Module and Tropos 5210

Nom Volts.	Amp Rating	Rating %	Op. Hrs	kWh/Mo Billing
110V	0.20	100%	731	16.08
220V	0.11	100%	731	17.91
480V	0.05	100%	731	19.01

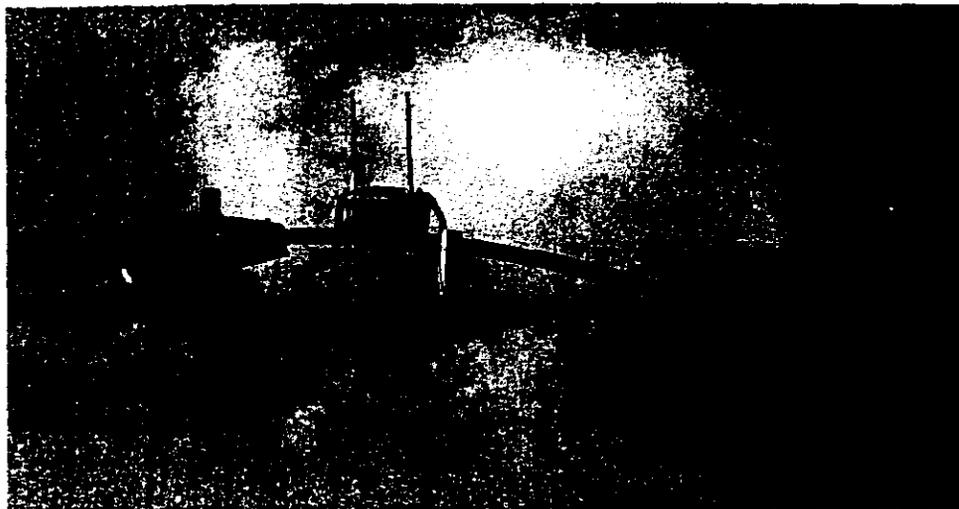
The following pictures are typical of EarthLink's radio installations. However, these do not represent the complete range of mounting options or equipment combinations that may be required to support a specific situation. Additionally, new product enhancements may include a modified look or system specifications. EarthLink is entitled to use different mounts.

Device Images and Installation Methods

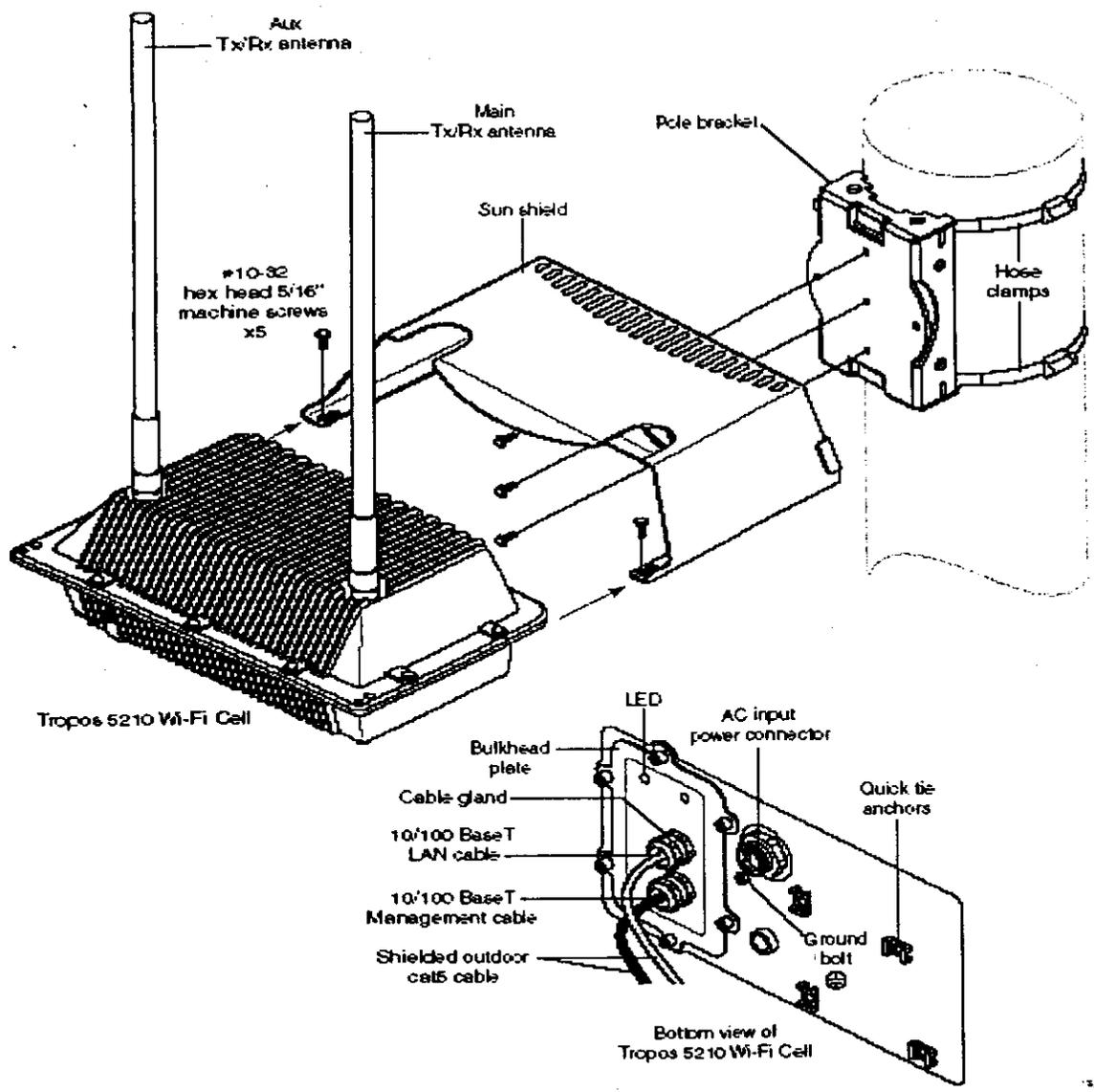
Images, Diagrams and Specifications for the Tropos 5210 Outdoor MetroMesh Router



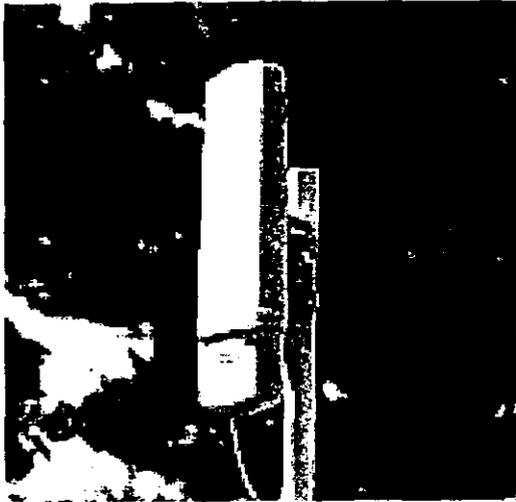
Tropos 5210 Wi-Fi Node with Attached Motorola Canopy Subscriber Module



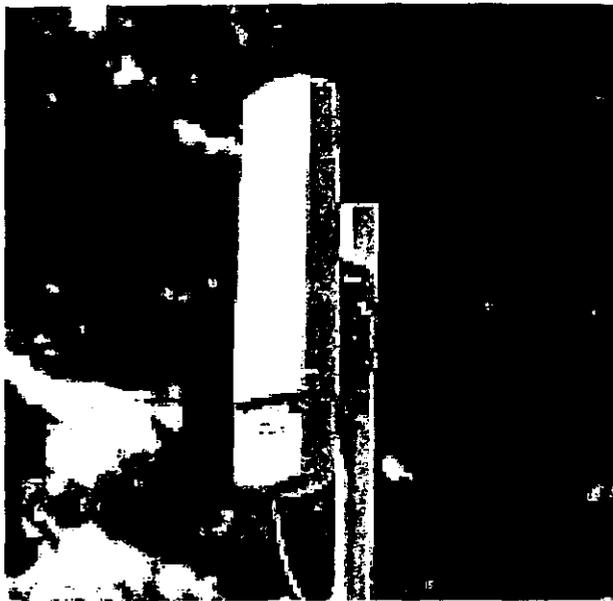
Tropos 5210 Wi-Fi Cell Exploded View



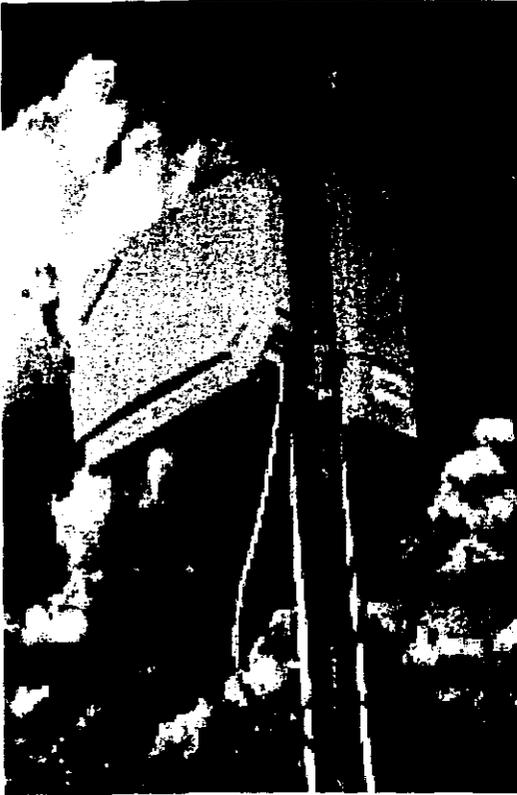
**Images, Diagrams and Specifications for the Motorola Canopy Advantage 5.7 GHz
Subscriber Module**



**Images, Diagrams and Specifications for the Motorola Canopy Advantage 5.2 GHz
Subscriber Module**



Images, Diagrams and Specifications for the Motorola Canopy 900 MHz Subscriber Module with Connectorized Antenna



Pole Top Installation Process

PART 1 Install the Tropos 5210 Wi-Fi cell

NOTE: Complete all documentation required per Checklist and/or Work Order

1. Select a mounting location. You can attach the Tropos 5210 cell to any streetlight arm with diameter 1.75" to 10". Correctly, install mount plate to pole with supplied clamps. (Diameters less than 8" use inside slots, 8"> use outside slots.)
2. Slip the flat portion of the hose clamp under the inside lip of the pole bracket.
3. Use the hose clamps to attach the pole bracket to the streetlight. Depending upon the diameter of the pole, you may need to use 2 small clamps, 2 large clamps, or 2 pairs of large clamps joined together.
4. Attach the sun shield of the cell to the structure with three 5/16-inch machine screws. Insert one screw through the hole in the center back of the sun shield and the other two screws through the curved slot tracks.

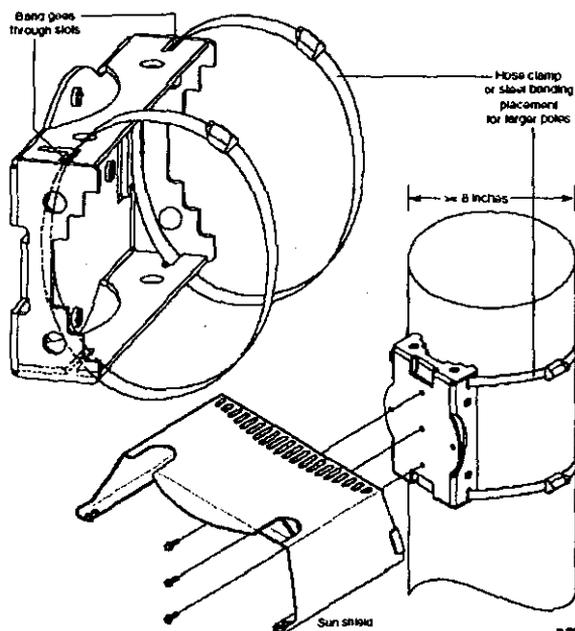
5. Level the sun shield by rotating the unit along the curved slot tracks. 2 built-in levels are located on the shield. Level both directions, and then tighten all screws and clamps.

6. Apply two drops of Loctite Threadlocker 242 to the base of the antenna connector thread, mount the antennas to Tropos 5210 per included instructions, and weatherproof with approved outdoor tape.

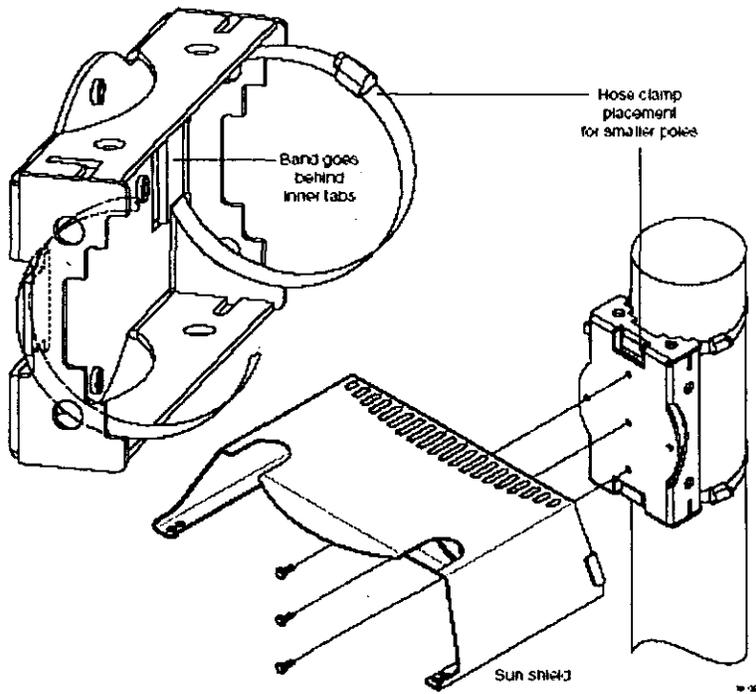
7. Slide the Tropos 5210 cell into place and secure it at the end with two #10-32 hex head machine screws. NOTE If this is to be a Gateway unit, see additional instructions in Part 2 to install data cable and access cover before mounting 5210

8. Follow steps for Connecting City Pole Power.

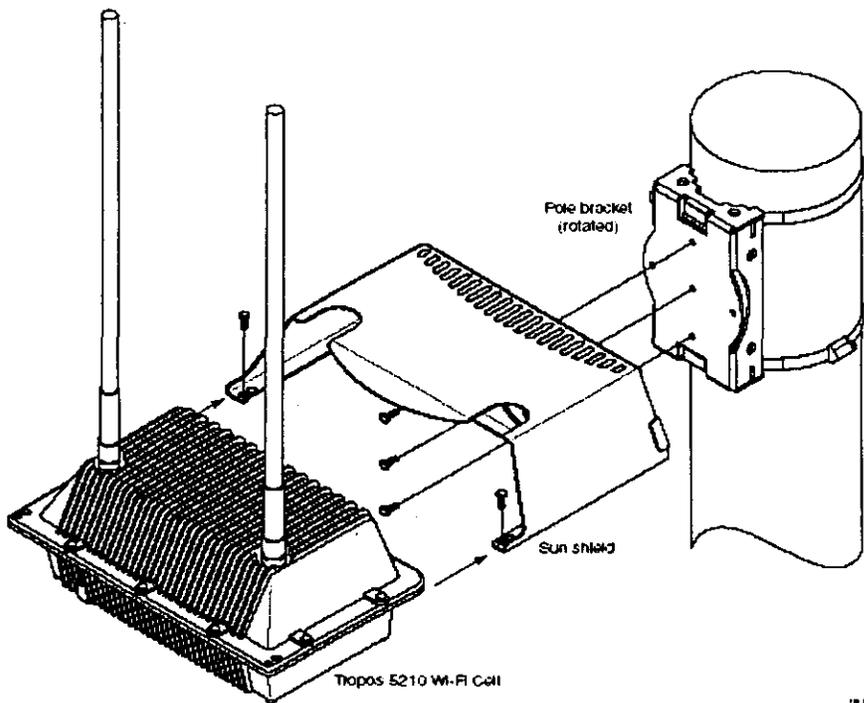
Proper Use of Hose Clamps - Large Poles (≥ 8 Inches)



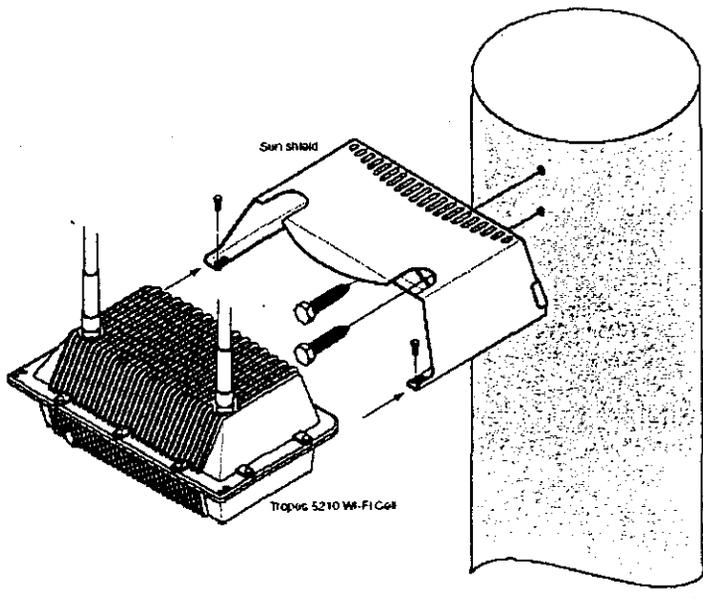
Proper Use of Hose Clamps - Small Poles (< 8 Inches)



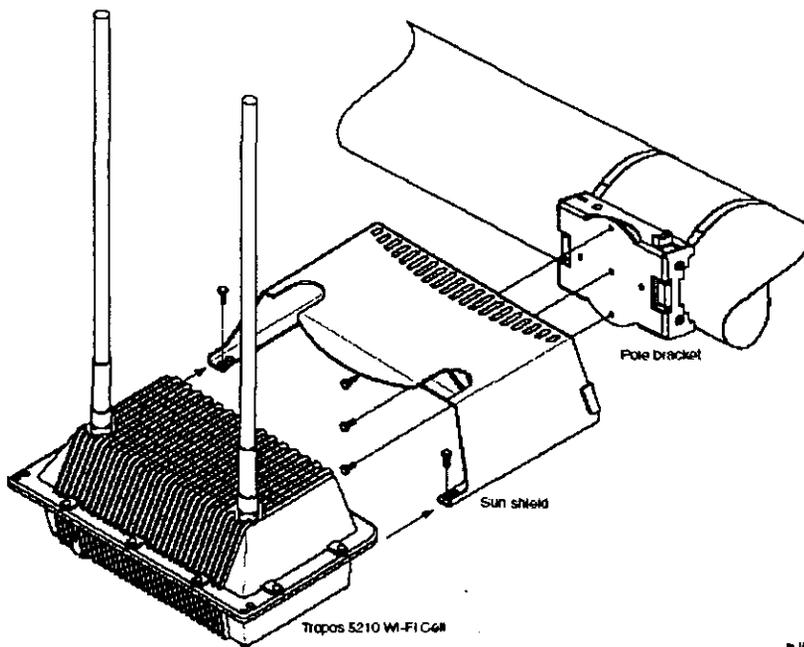
Metal Pole Mounting



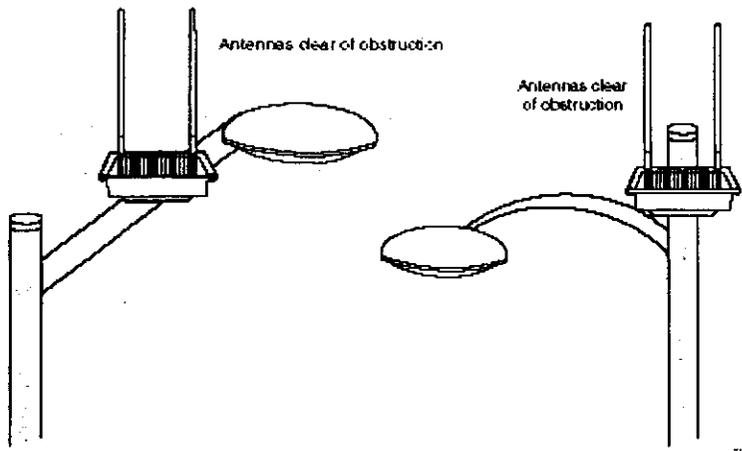
Wood Pole Mounting



Street Light Arm Mounting



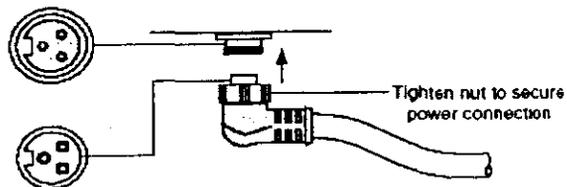
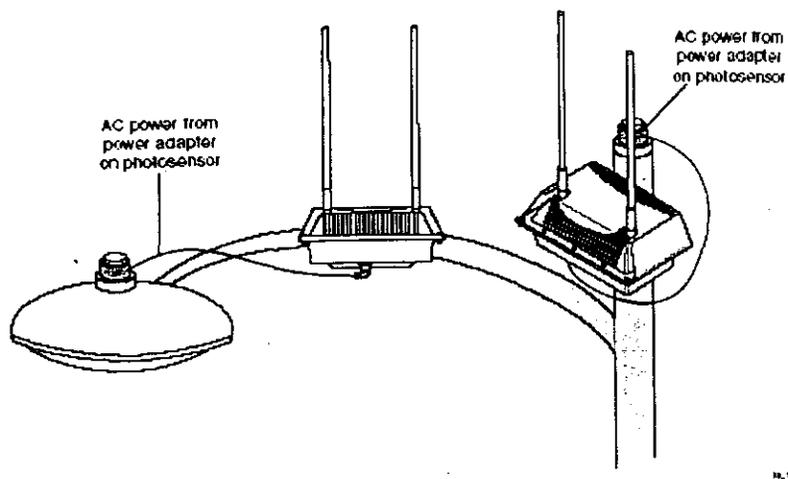
Example Tropos 5210 Mounting Location - Antennas Facing Upward



Connect device to a streetlight power source:

1. Cover photocell to verify light works prior removing, also note North Arrow direction.
2. Remove photocell and verify that the service voltage is 90-480 VAC 50/60 Hz
3. Connect the photosensor to the top of the NEMA 3 prong plug adaptor.
4. Connect the NEMA 3 prong plug from the Tropos 5210 to the photosensor connector on the streetlight.
5. Check orientation of photosensor's North Arrow and realign if needed.
6. Connect the AC plug to the Tropos 5210 and tighten hand-tight.
7. Confirm that power to the Tropos 5210 comes on observe power LED.
8. Weather proof all connection points, and Secure cables with approved cable ties.
9. RE-Verify streetlight operation by covering the photocell.
10. Complete all documentation to include GPS coordinates, Pole Location information, Street and Cross-Street, installation checklists, radio documentation and any electronic data collection that may be required.

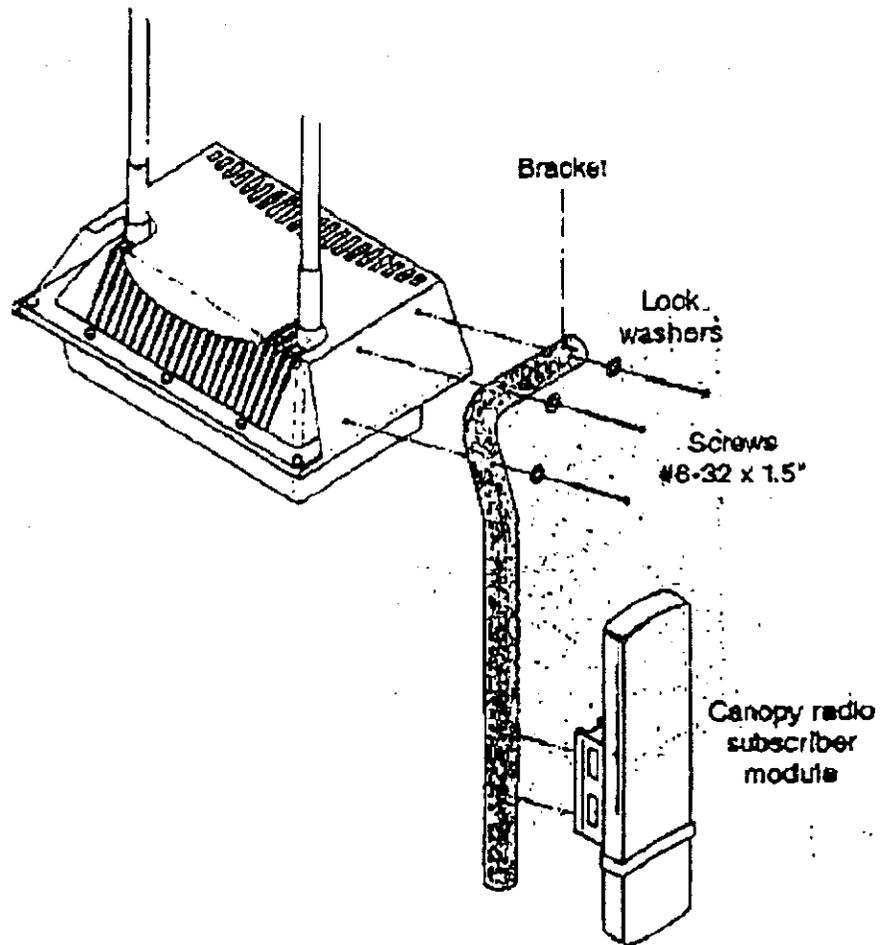
Connecting Streetlight Power



Install the Canopy SM Mounting arm

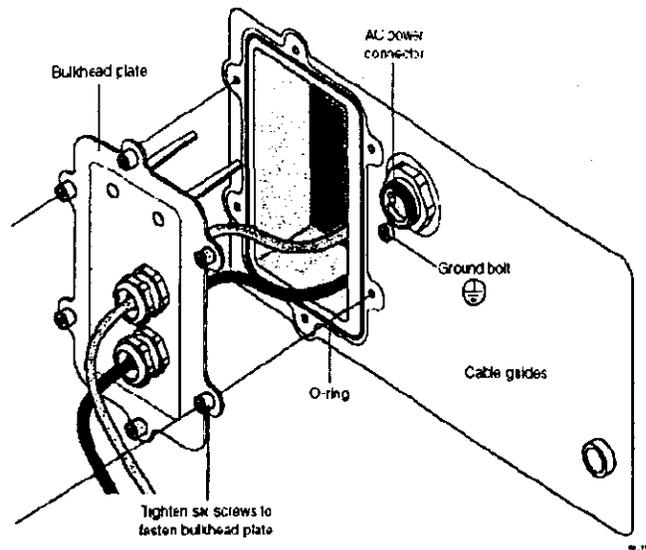
1. Orientate the mounting arm onto the desired side of the Tropos 5210 Sun Shield, and mount with the three long screws into the corresponding holes.
2. Attach the Canopy SM module to the end of the Mounting Arm with appropriate clamps.

Installing the Canopy SM Mounting arm



3. Verify that the power cable is disconnected on the designated Tropos unit.
4. Remove the connector access cover from the bottom of both the Tropos 5210, and from the Canopy SM.

Connecting Cat 5 Ethernet Cable from Canopy to Tropos Node



5. Run raw-unterminated, shielded Category 5 Ethernet cable appropriate for outdoor use through the Tropos 5210 access cover bulkhead openings, allowing sufficient length to terminate the cables without causing crowding in the connection area.
6. Install (Terminate) cable with a shielded RJ-45 connector, paying careful attention to follow the wiring diagram and connect to the Powered LAN port inside the Tropos 5210.

Inside Tropos radio, connect CAT 5 to LAN port

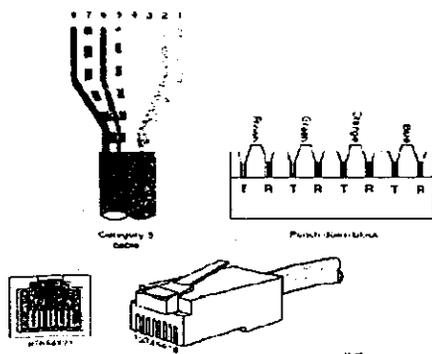
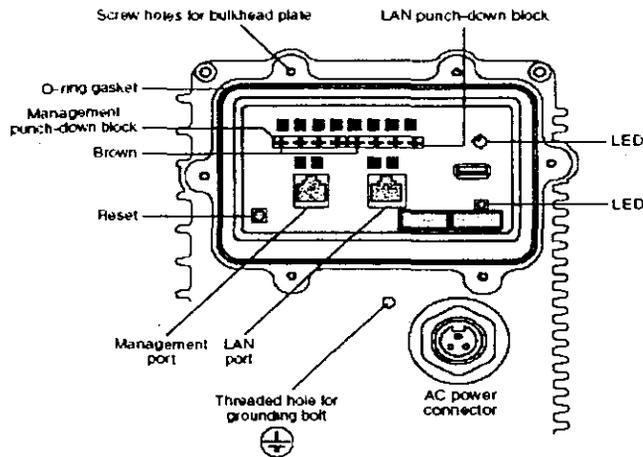


Table 3 RJ45 Pin Descriptions for Data Connection

Pin	T/R	Signal	Color	Description
1	T	TX ⁺	Orange-White	TX Data 10/100BaseT
2	R	TX ⁻	Orange	TX Data 10/100Base I
3	-	RXD ⁻	Green-White	RX Data 10/100Base I
4	R	Po ⁺	Blue	Power Output, 0, 12, 24, 43 Vdc (+)
5	-	PoE ⁻	Blue-White	Power Output, 0, 12, 24, 43 Vdc (+)
6	R	RXD ⁺	Green	RX Data 10/100BaseT
7	T	Po ⁻	Brown-White	Power output, 0, 12, 24, 43 Vdc (-)
8	R	Po ⁺	Brown	Power Output, 0, 12, 24, 43 Vdc (-)

7. Properly secure the Access Cover, mount the Tropos 5210 into the sun shield.
8. Connect the other end of the Category 5 cable to the Canopy SM unit
9. Reconnect the Tropos Power and confirm that power to the Tropos 5210 and the Canopy SM unit comes on.
10. Align the Canopy SM to AP tower per instructions on work order.

11. Make Tropos 5210 and Canopy SM ready for use and secure all covers and cable connections.
12. Water proof all cable connection points with approved weatherproofing tape, and secure all cables with approved cable ties.
13. Re-Verify proper street light operation by covering the photocell.
14. Measure the radio height, take two pictures and clean up any trash around installation site.

Inspection List

INSPECTION LIST			
1. Cordon proper safety area	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
2. Confirm you are at the right location and the pole is fit for use	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
3. Record Pole ID	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
4. Record GPS LAT/LONG	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
5. Record Address, Street, X-Street	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
6. Record Type of Install	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
7. Confirmed light works prior to voltage measurement at photo cell socket	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
8. Back plate and sun shield are properly mounted and level	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
9. If Gateway/SM location, Canopy mounting bracket properly installed	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
10. Record Serial Numbers and MAC Addresses	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
11. Tropos 5210 Antennas are secure and weatherproofed	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
12. If a Gateway/SM - ported access cover and cables properly installed	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
13. Tropos 5210 radio unit properly installed in mount	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
14. Canopy SM unit is mounted and cabled	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
15. Tropos Radio power cable properly connected to radio	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
16. Photo cell and power adaptor properly installed on street light	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
17. Verify all power indicator LED are properly illuminated	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
18. Canopy SM antenna properly aligned per work order	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
19. Verify all covers are in place and all connections weather proofed	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
20. Secure all cables with approved tie wraps	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
21. Re-Verify street light operates by covering photocell	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
22. Measure and Record Radio height and verify 2 pictures were taken	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
23. Trash cleaned up and removed upon completion	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
24. Comments/Extra Information			
		Job Completed	
		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Technician	Phone:	Date:	

EXHIBIT E
Installed City Pole Use Fees

Installed City Pole Use Fees

Municipal Assets:

EarthLink shall pay the City a flat rate of One Dollar (\$1.00) per Installed City Pole per month for each Installed City Pole as to which EarthLink receives all rights under the Agreement. EarthLink shall pay to the appropriate electric company the electric charges for the Installed City Poles, provided that as a condition to EarthLink's obligations under the Agreement, the electric charges for all Poles shall not exceed the lesser of the flat rate level electricity consumption charge or Two Dollars (\$2.00) per Installed City Pole per month.

EXHIBIT F
Public Benefits and Additional Services Provided by EarthLink

A. Public Benefits

EarthLink shall provide the Public Benefits as set forth in this Section A. The City acknowledges and agrees that the pricing of the Public Benefits is a significant departure from standard pricing for comparable accounts.

1. Wi-Fi Accounts. EarthLink shall provide accounts for the following uses (i) Government Use (ii) Digital Inclusion; and (iii) Student Use (the "Wi-Fi Broadband Accounts"). Customer premises equipment, including without limitation any user equipment or devices for accessing or using the accounts (collectively "CPE"), is not included and not provided by EarthLink for the prices set forth in this Exhibit, including without limitation for any digital inclusion use. EarthLink may provide information or recommendations regarding CPE. EarthLink may provide any CPE for the Wi-Fi Broadband Accounts or otherwise under the Agreement for Government Use Accounts or Digital Inclusion Program Accounts on such terms as EarthLink generally makes available to third parties.

1.1 Wi-Fi Broadband Accounts for Government Use

- 1.1.1 EarthLink shall furnish Wi-Fi Broadband Accounts for Government Use to the City, on a discounted basis as follows: Wi-Fi Broadband Accounts for Government Use shall be assigned by the City for use by elected and appointed officers, officials, employees, contractors and agents of the City. The first five hundred (500) Wi-Fi Broadband Accounts for Government Use that are used by the City during a billing period will be free. The City may purchase additional Wi-Fi Broadband Accounts for Government Use, at the City's sole option, for the price of Ten Dollars (\$10) per month per account. The Wi-Fi Broadband Accounts for Government Use shall provide wireless data transmission and Internet access with a commercially reasonable efforts data transmission rate of at least approximately 1.0 Mbps downstream / 1.0 Mbps upstream, and dynamic IP addresses; provided EarthLink shall provide the Wi-Fi Broadband Accounts for Government Use the service availability it provides to EarthLink retail customers that purchase the standard unlimited access wi-fi product. EarthLink retains the right to make changes to the EarthLink retail services and services offered to the Wi-Fi Broadband Accounts for Government Use at its reasonable discretion (subject to the general requirements of the previous sentence). In addition, EarthLink shall offer to the City an access product with a feature set designed to support low aggregate data consumption on an intermittent basis. This access product will be designed for device-only access to the Network. No restriction placed on this access product shall have the effect of limiting the number of transmissions per day or specific times of access per day, beyond reasonable limits intended to protect the integrity of the network.. The

price of this product shall be \$2.00 for 40 MB of aggregate data transmission per month per device.

1.1.2 In the City's sole discretion, the City may bundle its own services, including, but not limited to, email, software, support, Web pages, systems, VPN software, and other services selected by the City with the Wi-Fi Broadband product to the City's end users at the City's cost. The City will be responsible for the cost of CPE and installation services for Wi-Fi Broadband accounts for its end users, and may in its sole discretion, itself provide and/or charge its end users for CPE installation services and ongoing support. The CPE shall be approved and certified by EarthLink to run on the Network and shall not be detrimental to the Network's performance.

1.1.3 If EarthLink discontinues the underlying commercial Service used to provide the Wi-Fi Broadband Accounts for Government Use and replaces it with a product of the same or higher transmission rate, EarthLink shall provide accounts for such replacement product to the City instead under the same terms and conditions.

1.1.4 "Wi-Fi Broadband Accounts for Government Use":

(1) Shall be utilized for municipal government activities and purposes, and shall not be used for non-City activities, such as personal recreational use and shall not be used by students of the public schools of the City;

(2) Shall fall under a wholesale account umbrella which shall be managed by a single designated point of contact within the City;

(3) Shall access the Network through City specific non-broadcast Service Set Identifiers (SSIDs);

(4) Shall be routed by an EarthLink proxy RADIUS server to a designated City RADIUS server for authentication;

(5) Shall be provisioned and maintained by the City and only for use by elected or appointed officers, officials, employees, contractors and agents of the City or of agencies supported wholly or principally by City funds ("City-Related Agencies");

(6) Shall be accounts associated with the City's primary Internet domain name, or such other domains that as a matter of regular practice are managed by the City's IT departments;

(7) Shall receive Tier 3 Network Operations Center (NOC) support via a single interface from the City's Tier 3 NOC to EarthLink's Tier 3 NOC support center;

(8) Shall be billed to the City on a single invoice each month;

(9) Shall not be resold, except to City-Related Agencies; and

(10) Shall include only one login name per account with no simultaneous logins of the same account allowed. EarthLink shall have the right to prevent simultaneous logins or to assess reasonable charges to the City for shared account or simultaneous activity by multiple users or devices using a single account to access the Network.

1.2 Wi-Fi Broadband Accounts for Digital Inclusion Program.

1.2.1 EarthLink shall make available at least two thousand seven hundred (2,700) Wi-Fi Broadband Accounts for individual personal use to residents of the City who are qualified by the City under the requirements set forth in subsection 1.2.2 below, to the extent the City qualifies two thousand seven hundred (2,700) individuals ("Digital Inclusion Program"). These Digital Inclusion Program accounts will be at the price of Nine Dollars and Ninety-Five Cents (\$9.95) per month per account. The Wi-Fi Broadband product shall provide Wi-Fi data transmission and Internet access using commercially reasonable efforts data transmission rate of approximately 1.0 Mbps downstream / 1.0 Mbps upstream data transmission rate (or more) and dynamic IP addresses ("Digital Inclusion Standard Offering"). EarthLink retains the right to modify the services and functionality of the Digital Inclusion Standard Offering (other than by reducing the data transmission rate) or to reduce the cost of the Digital Inclusion Standard Offering. Additionally, EarthLink shall offer the Digital Inclusion Program accounts those services it provides to standard EarthLink retail customers for a price no greater than fifty percent (50%) of the standard (non-promotional) retail price offering ("Digital Inclusion Tiered Offering"). EarthLink retains the right to make changes to the EarthLink retail services and services offered to the Digital Inclusion Tiered Offering accounts at its reasonable discretion (subject to the general requirements of the previous sentence). The Digital Inclusion Standard Offering and the Digital Inclusion Tiered Offering are both part of and made available only through the Digital Inclusion Program.

1.2.2 To qualify under the Digital Inclusion Program, each user shall be an individual resident of the City, who meets eligibility guidelines established by the City, and is qualified by applicable City authorized representatives as meeting and, from time to time as established by the City, continuing to meet such guidelines. EarthLink may, from time to time, request verification by the City of the qualification status of any or all users then currently receiving service under the Digital Inclusion Program, and EarthLink will not disclose any such information it receives to any third party. EarthLink will not provide CPE for the Digital Inclusion Program Accounts, except on such terms as are available to third parties. The City

will manage the Digital Inclusion Program and qualification of the individual Accounts and users under this program, but the users shall be customers of EarthLink and no commercial or business relationship between a user and the City shall exist by virtue of the user having been provided by EarthLink with a Digital Inclusion Program Account.

1.3 Wi-Fi Broadband Accounts for Student Use

- 1.3.1 EarthLink shall make available free access only within the Network and without EarthLink providing Internet transit or any Internet access, solely for Alexandria City Public Schools (ACPS) students, for at least 2,500 laptop devices owned and controlled by the Alexandria City Public Schools ("ACPS") while being used by the ACPS student who is assigned that laptop device ("Wi-Fi Broadband Accounts for Student Use"). The City or ACPS may purchase additional Wi-Fi Broadband Accounts for Student Use at the option of either the City or ACPS, for the price of Ten Dollars (\$10.00) per month per account. The Wi-Fi Broadband Accounts for Student Use shall provide wireless data transmission using commercially reasonable efforts data transmission rate of approximately 1.0 Mbps downstream / 1.0 Mbps upstream (or more).
- 1.3.2 The City or ACPS will pay for any circuit, transit and/or cross connect fees from the EarthLink POP to the appropriate demarcation point on the ACPS network. The City and ACPS shall pay for all taxes assessed on these Wi-Fi Broadband Accounts for Student Use.
- 1.3.3 The City agrees to request ACPS' cooperation in making ACPS employees, parents, and students aware of EarthLink's role in providing services under this Agreement.
- 1.3.4 The Wi-Fi Broadband Accounts for Student Use will also have access to the schools' internal Web site via the Walled Garden in the manner specified by ACPS .

1.4 The Wi-Fi Broadband Accounts for Student Use:

- (1) Shall fall under a wholesale account umbrella which shall be managed by a single designated point of contact within the City or ACPS;
- (2) Shall access the Network through City specific non-broadcast Service Set Identifiers (SSIDs);
- (3) Shall be routed by EarthLink via Layer 2 handoff to a designated City and/or ACPS RADIUS servers for authentication;
- (4) Shall be provisioned and maintained by the City only for use by ACPS students;

- (5) No EarthLink account will be directly associated with the accounts;
- (6) Shall receive Tier 3 Network Operations Center (NOC) support via a single interface from the City's Tier 3 NOC to EarthLink's Tier 3 NOC support center;
- (7) Shall be billed (for any charges, as applicable) to the City or to ACPS, as designated by the City, each on a single invoice each month;
- (8) Shall not be resold; and
- (9) Shall include only one login name per account with no simultaneous logins of the same account allowed. EarthLink shall have the right to prevent simultaneous logins or to assess reasonable charges to the City for shared account or simultaneous activity by multiple users or devices using a single account to access the Network.

1.5 EarthLink will provide information regarding device configuration and security standards compatible with the Network. For devices not provided by EarthLink, the City will be responsible for managing configuration and implementation of appropriate security standards for devices accessing the Network in connection with Government Use and Student Use accounts.

1.6 Support Tiers and Responsibilities

The following service standards apply to the Wi-Fi Broadband Accounts for Government Use and the Wi-Fi Broadband Accounts for Student Use.

1.6.1 City Tier 0. EarthLink shall cooperate with City personnel and provision to the City all necessary information (including without limitation "Frequently Asked Questions"), to create Tier 0 end user 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. The City may provide Tier 0 support services for its own end users, customized to the specific services and applications provided by the City.

1.6.2 City Tier 1. The City may provide a Tier 1 level of customer support which shall be available at the City's discretion and shall consist of one-to-one interaction between the City's end users and City help desk or support representatives via email, chat or telephone. The City is expected to provide Tier 1 support services for its own end users, customized to the specific services and applications provided by the City. Service Provider Tier 1 support shall address issues including but not limited to service setup and provisioning issues, City application and services issues, connectivity issues and account and authentication issues. Tier 1 connectivity issues shall be the responsibility of the City.

- 1.6.3 City Tier 2. The City may provide a Tier 2 level of end user support which shall be available at the City's discretion and shall consist of an escalated one-to-one interaction between the City's end users and supervisor level help desk or support representatives.
- 1.6.4 City Tier 3. Tier 3 support shall be at the Network Operations Center (NOC) level and shall addresses problems that could not be resolved at the Tier 2 level. The City's Tier 3 support organization shall represent the primary point of interaction between EarthLink Tier 3 and the City's help desk or support organizations. The City's Tier 3 shall report technical support issues that cannot be resolved by City help desk or support personnel to EarthLink Tier 3 support via a trouble ticketing system that will be made available to the City and shall address connectivity issues due to suspected network outages or failures.
- 1.6.5 EarthLink Tier 3. EarthLink's Network Operations Center (NOC) will be the City's initial point of contact for the escalation of issues related to EarthLink's provision of the City 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 the City. Tier 3 problems will be worked on a peer level basis between the City Network Operations Center and the EarthLink NOC. EarthLink shall create an integration protocol for the City 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 the City visibility into the EarthLink NOC and shall work in good faith to provide proactive communications to the City via emails and outage boards informing the City of any planned maintenance, scheduled and unscheduled network outages.
- 1.6.6 Availability. 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 City Tier 3 NOC personnel and technical support groups to escalate or resolve issues that are attributable to EarthLink and the Network.

1.7 Billing and Taxes

- 1.7.1 EarthLink shall bill account charges, if any, and the cost of EarthLink provided support, if any, directly to the City. Any Wi-Fi Broadband Accounts or T1 Alternative accounts made available to the City will appear in EarthLink's operational support systems as wholesale accounts. If EarthLink's provision of Wi-Fi Broadband Accounts or T1 Alternative accounts under this Section results in a sales tax charge to EarthLink, the

City will pay the amount of the sales tax to EarthLink for remittance to appropriate tax authorities. The City will tender to EarthLink a tax exemption certificate(s) or statement(s) covering all wireless internet access service purchases made by the City pursuant to this Agreement.

2. Parks and Public Spaces Wi-Fi Broadband Service

- 2.1 Parks and Public Spaces Wi-Fi Broadband Service. EarthLink shall provide Wi-Fi data transmission and Internet access to end users in designated parks and public spaces (as designated per subsection 2.4 below) (the "Parks and Public Spaces Wi-Fi Broadband Service"). The throughput of the service, the duration of splash page persistence, the amount of usage by any user (beyond four sessions per 24-hour period) and duration of allowed sessions (beyond two hours per session) for the Parks and Public Spaces Wi-Fi Broadband Service shall be solely determined by EarthLink. EarthLink shall have the right to provide varied speed or incomplete coverage in Parks and Public Spaces, but will work in good faith with the City to minimize such areas and to provide minimum service speeds of 150 kbps (subject to incomplete coverage as described in this Section 5). EarthLink shall have no responsibility to provide CPE or installation services for end users utilizing the Parks and Public Spaces Wi-Fi Broadband Service. EarthLink's provision of the Parks and Public Spaces Wi-Fi Broadband Service is expressly subject to the Conditions set forth in Sections 2.31 and 11.4 of this Agreement.
- 2.2 Configuration. EarthLink shall have the sole right to design the configuration of the Network in parks and public spaces to limit the use of Parks and Public Spaces Wi-Fi Broadband Service by users located in residential households, businesses and institutional premises adjacent to the designated locations throughout the City. The portal page for the Parks and Public Spaces Wi-Fi Broadband Service shall bear the "Wireless Alexandria" logo, or such other identification as the City may reasonably select, in order to identify the service as a free public benefit facilitated by the City.
- 2.3 Parks and Public Spaces Revenue. There shall be no charge to any user or to the City for the use of or EarthLink's provision of the Parks and Public Spaces Wi-Fi Broadband Service. Subject to EarthLink's compliance with applicable laws and this Agreement, EarthLink shall have at its discretion the right to advertise EarthLink retail products and to publish other content and applications to users utilizing the Parks and Public Spaces Wi-Fi Broadband Service.
- 2.4 The configuration of the facilities needed to provide the Parks and Public Spaces Wi-Fi Broadband Service shall be designed by the City and EarthLink upon mutual agreement from the areas listed below and on the basis described below:
- 2.4.1 All of the sites in all of the parks and public spaces agreed upon will not exceed 5% of the total 16 square miles of the geographic area of the City.

- 2.4.2 EarthLink shall have the right in its discretion to provide lower speed or incomplete coverage in parks and public spaces, or limit the user experience in any areas that overlap into commercially viable areas (such as a place with large number of homes or businesses).
- 2.4.3 If the street lights, poles or other assets necessary to provide an acceptable level of service in any park or public space are owned by an entity other than the City, and the owner does not grant access to street lights, poles or other assets on commercially reasonable terms, then EarthLink is not obligated to provide service in that location; provided, however, that EarthLink shall provide service if the City installs poles or other structures suitable for mounting Approved Equipment in order to provide the necessary level of service. The parties may also discuss terms under which EarthLink may install such mounting structures to serve such location. In addition, if the parties conclude that it is impractical to serve part or all of the location in question or undesirable or not economically viable to install any necessary mounting structures to serve the location, the City may substitute an alternate location, pursuant to Section 2.4.3.
- 2.4.4 Parks and Public Spaces Wi-Fi Broadband Service will be provided in the following locations, provided that the City and EarthLink may mutually agree to designate alternate locations.

African American Heritage Park (500 Holland Lane)
Armistead Boothe Park (435 Ferdinand Day Drive)
Ben Brenman Park (5000 Duke Street)
Braddock Road Metrorail Station (700 N. West Street)
Cameron Run Park (3699 Eisenhower Avenue)
Cameron Station Westend Park (Pickett Street & Edsall Road)
Chinquapin Park (3210 King Street)
Dora Kelley Park (5700 Sanger Avenue)
Eisenhower Avenue Metrorail Station (2400 Eisenhower Avenue)
Ewald Park (4454 Duke Street)
Fort Ward Park (4401 W. Braddock Road)
Four Mile Run Park (3700 Commonwealth Avenue)
Holmes Run Scenic Easement (Beauregard Street and Morgan Street)
John Adams School Park (5651 Rayburn Avenue)
Joseph M. Hensley Park (4200 Eisenhower Avenue)
King Street, between Callahan Drive and the Potomac River, including
 Alexandria Union Station (110 Callahan Drive), the King Street
 Metrorail Station (1900 King Street) and Market Square (301 King
 Street).
Landmark Mall (5801 Duke Street)
Minnie Howard Field (3701 W. Braddock Road)
Mt. Vernon Avenue, between Hume Avenue and E. Braddock Road.
Potomac River Waterfront and adjacent parks, from Dangerfield Island
 (Marina Drive) to Jones Point Park (Jones Point Drive)

Schuyler Hamilton Jones Skateboard Park (3540 Wheeler Avenue)
Simpson Stadium Park (500 Monroe Avenue)
Stevenson Park (300 Stulz Road)
Van Dorn Street Metrorail Station (5690 Eisenhower Avenue)

2.5 Portal

- 2.5.1 Portal Landing Page. Individuals seeking to access EarthLink's Network in any Designated Public Space who are not subscribers to a commercial service, or have not been assigned a Wi-Fi Broadband Account, shall be directed to the Wi-Fi Broadband Service Portal Landing Page. All end users must agree to the terms and conditions of use for the Network. The Portal Landing Page shall carry the "Wireless Alexandria" or other City-designated logo, and may, at EarthLink's discretion, offer users the opportunity to purchase EarthLink's retail products.
- 2.5.2 Liability for Access – EarthLink shall create appropriate disclaimers, limitations, and protections for the benefit of both Parties from any liability which could result by providing Internet Access to end users via the Network.
- 2.5.3 City Designated Links. The City shall be entitled to determine up to 6 links in the Portal landing and welcome pages in its reasonable discretion for announcements, community notices and/or advertising (the "City Designated Links").
- 2.5.4 Limited Access within Walled Garden. EarthLink shall allow any end user to obtain access by means of the City Designated Links to the underlying sites at no cost and without requiring such end users to log in or subscribe to any service. EarthLink may also make available additional functionality at EarthLink's sole discretion within the Walled Garden. The user must agree to the terms and conditions of use of the Network in order to access the Web sites, applications and utilities in the Walled Garden.

B. T1 Alternative Accounts

EarthLink shall furnish T1 Alternative product accounts to the City, at the City's sole option to purchase, for the price of Two Hundred Dollars (\$200) per month per account, plus a one-time, non-recurring fee for CPE and installation (which may be waived by EarthLink at EarthLink's sole discretion in return for a multiyear agreement commitment by the City) of Five Hundred Dollars (\$500) per account. The T1 Alternative product shall provide point-to-multipoint fixed wireless data transmission and Internet access to municipal buildings and municipal government locations with a commercially reasonable efforts data transmission rate of at least approximately 1.5 Mbps downstream / 1.5 Mbps upstream, and dynamic and static IP addresses (as requested by the City).

C. General.

Use of the Public Benefits and Additional Services may be subject to the then-current EarthLink Service Agreement and Acceptable Use Policy governing access by subscribers to the Network.

EXHIBIT G
Insurance Coverage Requirements

EarthLink will procure and maintain, at its sole cost and expense, insurance coverage with insurance companies possessing an *A. M. Best's* rating of A-VII or higher that satisfies or exceeds the below minimum:

(a) Workers Compensation and Employers Liability

- Workers Compensation: Statutory limits
- Employers Liability: \$1,000,000 each Accident - Bodily Injury by Accident; \$1,000,000 Each Employee - Bodily Injury by Disease; and \$1,000,000 Policy Limit - Bodily Injury by Disease.

(b) Commercial General Liability Insurance

- Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 personal and advertising injury; \$2,000,000 general aggregate and \$2,000,000 aggregate for products and completed operations. Also EarthLink has a \$1,000,000 umbrella/excess liability policy that is on top of the above coverage. EarthLink is entitled to allow a combination of primary and excess policies to meet these requirements.
- Coverage: Premises liability; Contractual liability; Personal and Advertising Injury liability; Products and Completed Operations;

(c) Commercial Automobile Liability

- Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- Coverage: Owned, non-owned and hired vehicles.

(d) Umbrella or Excess Liability

- Limit of liability: \$1,000,000 per occurrence

EarthLink will submit, at the City's request, certificates of insurance evidencing the required coverages prior to the commencement of work. EarthLink may obtain any part or all of the insurance policies required under this Exhibit with a deductible or self-insured retention chosen by EarthLink, or by a combination of primary and excess policies, without the prior written approval of the City or any other entity. If at the time of commencement of the work under this Agreement, EarthLink self-insures its workers' compensation or automobile liability, EarthLink may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State letter of approval, whichever is appropriate.

The parties agree the insurance (including self-insurance) requirements of this Exhibit are not intended to, and do not, (a) expand or limit the indemnifications made in this Agreement by

EarthLink to the City, if any, or (b) expand or limit EarthLink's liability to the City as provided in this Agreement.

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RIGHT-OF-WAY FRANCHISE AGREEMENT

THIS RIGHT-OF-WAY FRANCHISE AGREEMENT (the "ROW Agreement") is entered into this ____ day of December, 2006, between the City of Alexandria, a municipal corporation of Virginia ("City"), and EarthLink, Inc., a Delaware corporation ("EarthLink").

- A. The City owns and controls certain Public Rights-of-Way, to which EarthLink seeks to obtain access for purposes of installing, maintaining, and operating portions of a wireless broadband network (the "Network").
- B. The City seeks to grant EarthLink the right to use the Public Rights-of-Way for the purpose of installing, maintaining, and operating portions of the Network.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

1.1 "Public Rights-of-Way" means the space in, upon, above, along, across, over, and below the public streets, roads, lanes, courts, ways, alleys, and boulevards, including all public street easements, as the same now exist or may hereafter be established, that are under the legal jurisdiction and physical control of the City.

1.2 "Services" means (i) wireless broadband Internet access provided by EarthLink to its subscribers by means of the Network and using IEEE standards 802.11 and 802.16 (commonly known as "WiFi" and "WiMax") and protocols as required to support the Network, or substantially similar successor technologies such as IEEE standard 802.22; (ii) wireless services provided by EarthLink to its subscribers within the Network using IEEE standards 802.11x and 802.16 or substantially similar successor technologies, but without using the Internet; (iii) any other services that can be provided by means of the Approved Equipment, with the exception of cable services; and (iv) access to the Network by other service providers in order to allow such providers to provide the foregoing wireless broadband Internet access service and wireless services to the subscribers of such other service providers.

2. Use of Public Rights-of-Ways.

2.1 The City hereby grants to EarthLink the permission, on a non-exclusive basis, to access and enter upon the Public Rights-of-Way to attach, install, control, operate, maintain, repair, replace, reattach, reinstall, relocate, remove and upgrade communications equipment comprising portions of EarthLink's Network on and from property located in the Public Rights-of-Way (subject to any authorization or approval of the owner of any such property), all for the limited purpose of providing EarthLink's Services within the City, subject to the terms of this ROW Agreement, and all applicable

laws and regulations.

2.2 For the Term of this ROW Agreement, EarthLink is authorized to use the Public Rights-of-Way to obtain access to property owned by the City and third parties that is located within the Public Rights-of-Way and to which portions of the Network are or will be attached, provided nothing in this Section authorizes EarthLink to attach any equipment to any such property.

2.3 Subject to the obligations of the City and rights granted to EarthLink and other provisions set forth in this ROW Agreement, EarthLink acknowledges that (i) the paramount use of the Public Rights-of-Way dedicated for public use is for the benefit of the public at large, and (ii) its use of the Public Rights-of-Way shall not conflict with the City's uses.

2.4 The permissions granted to EarthLink pursuant to this ROW Agreement shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, claims of title, leases, licenses, permits, permission, and rights (whether recorded or unrecorded) of others in, or that may affect the Public Rights-of-Way, specifically including all rights of the Virginia Department of Transportation ("VDOT"), provided that the City will notify EarthLink of any such rights or obligations that affect EarthLink's access to or use of any Public Rights-of-Way of which the City becomes aware. As of the Effective Date, the City is not aware of any existing rights that would substantially interfere with EarthLink's use of the Public Rights-of-Way as contemplated by this ROW Agreement, but the City has conducted no investigation into the existence of any such rights, and the City makes no representations or warranties regarding the existence of any such rights as of the Effective Date. Nothing in this ROW Agreement shall be deemed to grant, convey, create, or vest any real property interest in EarthLink, including any fee or leasehold interest or easement.

3. Permits.

Any construction, maintenance or other activities including but not limited to, operation, repair, replacement, reattachment, reinstallation, relocation or removal of the Network by EarthLink in the Public Rights-of-Way shall be subject to the City's general permit requirements. The City will not unreasonably withhold or delay provision of any permit requested by EarthLink pursuant to this ROW Agreement in accordance with the City's standard permitting policies generally applicable to all applicants.

4. Notification to City of Work to Be Performed in the Public Rights-of-Way for Initial Installation of Network.

4.1. Prior to EarthLink occupying the Public Rights-of-Way for the initial installation of the Network, EarthLink shall prepare and submit to the City's Department of Transportation and Environmental Services an initial plan which shall: (i) describe or otherwise show the approximate location within each Public Right-of-Way in which the proposed installation is to take place and general maintenance and repair plans; (ii) provide the approximate date(s) on which EarthLink intends to commence installation of EarthLink's equipment in the Public Rights-of-Way and the

approximate date of completion; (iii) describe the Approved Equipment and/or the activity that is to take place in the Public Rights-of-Way to accomplish the installation, maintenance, repair, replacement, reattachment, reinstallation, relocation, and/or removal; (iv) provide a traffic control plan that shall be reviewed and approved by the Director of Transportation and Environmental Services, or his designee provided such approval shall not be unreasonably withheld or delayed; (v) verify that EarthLink has obtained, or will obtain prior to commencing the installation, of the equipment in the Public Rights-of-Way any required permits from any other entity; (including departments or agencies of the City of Alexandria) whose approval is required by law (the "Plan"), and (vi) shall provide other information the Director of Transportation and Environmental Services (the "Director"), or his designee, reasonably requires. The Director or his designee will submit any comments or questions to EarthLink promptly after submission of EarthLink's initial Plan. If the Director does not respond within ten (10) days after EarthLink's submission of the initial Plan, EarthLink may proceed with its installation activities. The Director will not object to any EarthLink equipment to the extent such equipment is deemed "Approved Equipment" under the Franchise Agreement between the parties executed on a date even herewith.

4.2. This initial Plan shall be non-binding, but shall represent a reasonable projection by EarthLink of the activities it anticipates undertaking in the Public Rights-of-Way.

4.3. EarthLink shall within a reasonable time review comments or questions posed by the Director, or his designee, regarding the initial Plan and shall respond within a reasonable time period to any such questions posed by the Director. Each ninety (90) days during the EarthLink installation activities, EarthLink will submit as-built plans describing the locations of the EarthLink's equipment in the Public Rights-of-Way, provided such information is treated as EarthLink's confidential information and will be entitled to treatment as trade secret or confidential information as further described in Section 16.

4.4. The Director shall have the discretion, which is to be reasonably exercised, to determine the dates of the proposed installation of the Network as described in the initial Plan, taking into account both the dates requested by EarthLink and other planned or on-going work in the affected Public Rights-of-Way, provided the Director shall not unreasonably delay the time lines proposed in the Plan and will notify EarthLink as soon as reasonably practicable (and, if possible, prior to approve of the initial Plan) once the Director is aware of potential conflicts or any changes required to the time lines proposed in the Plan. The Director will notify EarthLink as soon as reasonably practical of (i) any other activities by a third party authorized to be in the Public Rights of Way which were unforeseeable at the time the Director reviewed the initial Plan, or (ii) emergency activities by any other government agency or utility or authorized to be in the Public Rights of Way, that may interfere with the planned EarthLink activities. In the event the Director requires any changes to the proposed time line, the Director will cooperate with EarthLink to reissue any outstanding permits for another time mutually agreed upon by the Director and EarthLink. EarthLink agrees that the installation, maintenance, operation, attachment, repair, replacement, reattachment, reinstallation, relocation or removal of the Network in the Public Rights-of-Way shall be done in such locations and in such manner so as not to unreasonably interfere with existing water, gas, sewer pipe, traffic signal, street light and other utilities and conduits in the Public Rights-of-Way, or with

the public's use of the Public Rights-of-Way, and shall, to the maximum degree feasible, be coordinated with any entity performing work or construction in the Public Rights-of-Way.

4.5. EarthLink shall, in connection with any installation, maintenance, operation, attachment, repair, replacement, reattachment, reinstallation, relocation, removal or other activities in the Public Rights-of-Way, comply with all applicable laws and regulations, including all permits required by the City.

4.6. If the City determines that the protection, temporary disconnection, removal, relocation, or reconfiguration of any portion of the Network located in the Public Rights-of-Way is necessary (i) to preserve public health or safety, or (ii) for the construction, repair, relocation or maintenance of a City project for the public welfare (including without limitation any future conversion of overhead to underground utilities), the City will provide EarthLink with written notice as soon as reasonable under the circumstances describing which of EarthLink's facilities are affected and the proposed dates by which the work is to be completed by EarthLink, provided that where immediate action is not required to avoid danger to the public safety or property, the City shall give EarthLink at least thirty (30) days prior written notice. EarthLink shall, at its sole cost and expense, promptly disconnect, remove, relocate, or reconfigure such portion of the Network as mutually agreed upon with the City. The City will use good faith efforts to conduct City projects in a manner to minimize negative impact to the Network. Regardless of anything to the contrary in this Section 4.7, the City will not request EarthLink to remove or relocate the equipment in a manner that deliberately makes it uneconomical for EarthLink to operate the Network and provide services in the City or in a manner that gives any preferences to a subsequent third party offering a similar service. The City warrants to EarthLink that the City will not disturb, move, alter or relocate the equipment placed in the Public Rights-of-Way except as set forth in this ROW Agreement.

5. Maintenance, Repair and Upgrade of the Network.

5.1 EarthLink may perform maintenance, repair or reattachment on the Network from time to time without prior approval of the Director as long as neither the component of the Network being worked on, nor any of the equipment or workers involved in such maintenance, repair or reattachment are located on the travel, parking, curb or sidewalk portion of a Public Right-of-Way, or any other portion of a Public Right-of-Way. At least 30 days prior to performing maintenance, repair or reattachment on the Network while located on the travel, parking, curb or sidewalk portion of a Public Right-of-Way, or any other portion of a Public Right-of-Way, EarthLink: (i) shall inform the Director in writing of the location at which it intends to perform such maintenance, repair or reattachment, (ii) shall provide whatever other information the Director requests, and (iii) shall obtain either a verbal or a written approval of the maintenance, repair or reattachment from the Director. In performing maintenance, repair or reattachment on the Network, EarthLink shall comply with all requirements set forth in the applicable permits or as set forth in the Plan. In addition to and notwithstanding the provisions of this subsection, EarthLink shall maintain in good and safe condition all elements of the Network that it places within the Public Rights-of-Way and shall, in connection with any maintenance, repair or reattachment activity it undertakes, comply with all applicable laws and regulations.

5.2 Notwithstanding anything to the contrary in Section 5.1, EarthLink may perform any maintenance, repair, reattachment, removal, replacement, relocation or upgrade to the Network from time to time without prior approval of the Director to the extent it was described in the maintenance policies or plan previously approved by the Director.

6. EarthLink Shall Not Impede or Inconvenience the General Public.

When engaged in installation, operation, attachment, maintenance, repair, replacement, relocation, removal, reattachment or upgrade of the Network, EarthLink shall comply with this ROW Agreement and the applicable permits and not cause any inconvenience to the general public or the City's work forces, except as authorized by the Director. When performing installation, operation, attachment, maintenance, repair, replacement, relocation, removal, reattachment or upgrade of the Network, EarthLink shall not hinder or impede the flow of traffic to any greater extent than is reasonably necessary. EarthLink shall abide by any requirements set forth in the applicable permits or as mutually agreed upon by the Director and EarthLink in the Plan, including requirements relating to time limitations and the submission of a traffic control plan.

7. Unauthorized Use.

In the event of any use by EarthLink of the Public Rights-of-Way in a manner that is not authorized by this ROW Agreement, EarthLink shall, immediately, upon notice by the City, cease the unauthorized use and remove all facilities associated with the unauthorized use. In addition, if EarthLink does not remedy the violation within one business day of written notice from the City describing the unauthorized use, EarthLink shall pay to the City a sum of five hundred dollars (\$500) for each day that the unauthorized use occurs.

8. Term.

The term of this ROW Agreement shall commence on the Effective Date and shall continue in effect for eight (8) years thereafter. This ROW Agreement may be renewed for three (3) successive four (4) year periods of time, upon mutual agreement of EarthLink and the City. If EarthLink continues to occupy the Public Rights-of-Way at the expiration or termination of this ROW Agreement, the City shall have the right to remove EarthLink's property from the Public Rights-of-Way at any time, without notice, in addition to all other applicable remedies.

9. Permit Fees and Taxes.

EarthLink shall be responsible for all applicable permit fees and taxes.

10. Compensation.

As consideration for the right to occupy and use the Public Rights of Way pursuant to this ROW Agreement, EarthLink shall pay the City an annual fee of five thousand dollars (\$5,000), plus

an annual fee of three dollars and 50/100 (\$3.50) per linear foot of Public Rights of Ways occupied by EarthLink, after the first 1,429 feet ("ROW Fee"). The ROW Fee constitutes full consideration and is the only compensation owed to the City in connection with this ROW Agreement, and no additional compensation, consideration, license fee, franchise fee or other fees are required to receive the permissions set forth in this ROW Agreement. The City has considered other fees charged for access to the Public Rights of Way and determined the ROW Fee is reasonable and non-discriminatory. Notwithstanding the foregoing, if EarthLink becomes a certificated provider of telecommunications service for purposes of Va. Code Ann. § 56-468.1, then the foregoing fee shall no longer apply and the City shall be compensated by means of the Public Rights of Way Use Fee established by Va. Code Ann. § 56-468.1(B). The City shall have no ownership interest in or to EarthLink's equipment located in the Public Rights of Way unless EarthLink has filed a petition in bankruptcy, in which case the City shall have all rights provided for by applicable law.

11. Indemnity.

As respects bodily injury, death, personal injury, or third-party property damage, EarthLink agrees to indemnify, defend with counsel to whom City does not have reasonable objections, and hold harmless City, its appointed and elected officials, officers, employees, agents, and representatives from and against any and all claims, losses, damages, defense costs, or liability, of any kind or nature (collectively referred to hereinafter as "Claims"), resulting from EarthLink's (or EarthLink's contractors' or subcontractors', if any) work performed by, or on behalf of, EarthLink, relative to this Agreement, except to the extent those Claims (a) arise solely out of the gross negligence or willful misconduct of the City for Claims resulting from governmental functions performed by the City, or (b) arise out of the gross negligence or willful misconduct of the City for Claims outside the scope or of not resulting from governmental functions of the City. Further, EarthLink agrees to indemnify, defend, with counsel to whom City does not have reasonable objections, and hold harmless City, its appointed and elected officials, officers, employees, agents, and representatives from and against any and all Claims directly or proximately caused by EarthLink's violation of applicable law related to the Network or the Services, except to the extent those Claims (a) arise solely out of the gross negligence or willful misconduct of the City for Claims resulting from governmental functions performed by the City, or (b) arise out of the gross negligence or willful misconduct of the City for Claims outside the scope or of not resulting from governmental functions of the City. EarthLink's obligations under this Section are conditioned upon: 1) that EarthLink shall have been promptly informed of an actual Claim or written notice of a potential Claim and shall have been furnished a copy of each communication, notice or other action related to the alleged Claim, 2) that the City shall cooperate with EarthLink to provide information and assistance necessary to defend or settle the suit or proceeding, and 3) that EarthLink shall be given sole control of the defense (including the right to select counsel), at its sole expense, and the sole right to compromise and settle any suit or proceeding, provided EarthLink will not compromise or settle any suit that admits the liability of the City without the City's prior approval. EarthLink shall be responsible for all attorney's fees and other costs of defending against any alleged Claim, and shall have the right to select counsel. The obligations set forth in this Indemnification provision (i) shall be in effect without regard to whether or not City, EarthLink, or any other person maintains, or fails to maintain, insurance coverage, or a self-insurance program, for any such Claims; and (ii) shall

survive the termination of this Agreement. Nothing herein shall prevent EarthLink's insurer(s) from satisfying EarthLink's obligations under this Section.

12. Limitation of Liability.

NEITHER EARTHLINK NOR THE CITY SHALL 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 shall not be liable for direct damages under this ROW Agreement and any other agreement between the parties in an amount that, in the aggregate, exceeds the amounts received by EarthLink from the City and subscribers for the Network during the immediately preceding twelve (12) months except for damages caused by loss of life, bodily injury, or damage to property.

13. Assignment and Sublicensing.

The City shall not assign this ROW Agreement, or any portion of it, without the prior written permission of EarthLink. EarthLink can assign this ROW Agreement to an entity that is wholly owned or wholly controlled by EarthLink or by a wholly-owned affiliate of EarthLink (each to be referred to as an "Affiliated Entity") without the prior consent of the City. EarthLink can also assign this ROW Agreement pursuant to the sale of all or substantially all of the assets or stock of EarthLink or pursuant to the sale of all or substantially all of the assets or operations of the division of EarthLink that is operating the Network or pursuant to the sale of the Network; provided that if such assignment is not to an Affiliated Entity, then EarthLink must first obtain the City's prior written consent, such consent not to be unreasonably withheld. EarthLink may authorize its contractors and agents to exercise the rights and obligations granted to EarthLink provided EarthLink will be responsible for such contractors' and agents' compliance with this ROW Agreement, provided that under such agreements overall control of the activities in the Public Rights of shall remain with EarthLink.

14. Parties Bear Their Own Costs.

Except as expressly set forth herein, each of EarthLink and the City shall pay their own costs of performing hereunder. EarthLink shall not owe the City for the services of City employees unless described expressly on an attached Exhibit or EarthLink has executed on paper a written agreement specifying the charges EarthLink agrees to pay and the work to be performed by City employees.

15. Notice.

15.1 Except as otherwise set forth herein, all notices given or which may be given pursuant to this ROW Agreement must be in writing and transmitted by (i) telecopy and, on the same day, first class United States mail or (ii) nationally recognized over night delivery service postage pre-paid as follows:

To the City at: City of Alexandria
301 King Street, Suite 3230
Alexandria, VA 22314
Attn: E-Government Manager
Facsimile: 703-997-6445

With a copy to: City of Alexandria
301 King Street, Suite 1300
Alexandria, VA 22314
Attn: City Attorney
Facsimile: 703-838-4810

and to EarthLink at: EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, Georgia 30309
Attention: General Counsel
Facsimile: 404-287-4905

With a copy to: EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, Georgia 30309
Attention: President, Municipal Wireless
Facsimile: 404-892-7616

Either party may change its address by written notice to the other party. Notice may also be provided to such other address as either Party may from time to time designate in writing.

15.2 Notice shall be deemed received on the next business day if it is sent by telecopy and first class mail, or the date of delivery or refusal of delivery if it is sent by over night delivery service.

16. Confidentiality.

To the extent permitted by applicable law the City will not disclose any of the Confidential Information of EarthLink during the Term and for a period of three (3) years after the Term ends. If applicable law requires disclosure of EarthLink's Confidential Information or the terms and conditions of this ROW Agreement then the City will promptly give EarthLink written notice and assist EarthLink in limiting the disclosure to only those portions of that Confidential Information as is necessary to be disclosed according to applicable law. "Confidential Information" of EarthLink means the business plans, financial information and technical information about the Network and the customers of EarthLink and its vendors that are confidential or otherwise trade secrets under applicable law. In addition, the City's obligation not to disclose the trade secrets of EarthLink will

continue as long as they are trade secrets under applicable law.

17. Dispute Resolution.

Except as otherwise provided in this ROW Agreement, any dispute between the Parties or default by either party which arises during the Term of this ROW Agreement, shall be subject to the following administrative remedy:

17.1 Both Parties shall attempt to resolve any controversy claim, problem, default, or dispute ("Dispute") arising out of, or related to, this ROW Agreement through good faith consultation in the ordinary course of business.

17.2 In the event that a Dispute is not resolved by the project managers of each Party, either Party may upon written notice to the other 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 either Party within fifteen (15) calendar days of the Parties' 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 ten (10) business days of the Request for Internal Resolution. Project managers and senior management for each Party shall be the General Market Manager and Vice President, Municipal Networks respectively, for EarthLink, and the City Project Manager and the City Manager or City Manager's designee respectively, for the City, and their respective successors in office. The project managers and senior management may be changed by notice given by the Party changing its personnel.

17.3 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. If the Parties do not successfully resolve the Dispute by senior management, then the Party finding the senior management resolution unsatisfactory shall provide written notice to the other Party, demanding mediation ("Request for Mediation"). The Request for Mediation may not be given prior to the first meeting of senior management, or fifteen (15) business days after the request for Internal Resolution, whichever is earlier, and shall not be given any later than forty-five (45) calendar days following the completion of the first senior management meeting. The Request for Mediation shall set forth all of the issues that Party deems outstanding that must be submitted to mediation. The Party in receipt of the Request for Mediation shall respond within twenty (20) calendar days listing any issues it deems appropriate for submission to the Mediator. All of the requirements of Dispute Resolution and Mediation as described in this Article 9 shall be referred to collectively as the "Resolution Procedures".

17.4 Any Disputes shall be mediated within forty-five (45) calendar days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available, except that those for which the remedy requested is injunctive relief or other equitable remedies shall be mediated within ten (10) business days.

17.5 A mediator shall not have any employment, engagement or other interest in either party. If the parties cannot agree upon a mediator within five (5) business days of the submission of a Request for Mediation then the mediator shall be appointed by the local office of the American Arbitration Association upon request of either party.

17.6 The costs of mediation shall be borne by the Parties equally.

17.7 Each party agrees that any threatened or actual failure of the other party to comply with its obligations hereunder may cause immediate irreparable harm to the non-defaulting party for which there is no adequate remedy at law. Accordingly, each party agrees that the non-defaulting party will be entitled to an order for specific performance and to injunctive relief from a court of competent jurisdiction as remedy for any such threatened or actual default. Nothing in this ROW Agreement, 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 comply with the provisions of this ROW Agreement, and not to take actions that violate its obligations under this ROW Agreement; provided, that such order shall not prevent EarthLink from operating the Network and maintaining the Approved Equipment on the City Property, except on account of expiration of the Term or in the event of termination in compliance with this ROW Agreement and applicable law for a Major Default after full completion of all Resolution Procedures and a court order is issued as provided herein; and provided further that such order for specific performance and injunction shall not require either party to pay or expend any sums in excess of the liability limitation set forth herein.

18. Miscellaneous.

18.1 This ROW Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendment to this ROW Agreement must be in writing and executed by both parties.

18.2 This ROW Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.

18.3 This ROW Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

18.4 If one or more of the provisions of this ROW Agreement shall be held by a court of competent jurisdiction in a final judicial decision to be void, voidable, or unenforceable, then such provisions shall be deemed severable from the remaining provisions of this ROW Agreement and shall in no way affect the validity of the remaining provisions of this ROW Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this ROW Agreement as of the date aforesaid.

CITY:

City of Alexandria, a municipal corporation of
Virginia

By: _____

James K. Hartmann, City Manager

Date: _____

EARTHLINK:

EarthLink, Inc.

By: _____

Printed Name: _____

Title: _____

Date: _____