

TERMINATION AGREEMENT

This TERMINATION AGREEMENT (“**Agreement**”) is effective as of the ___ day of July, 2008, (the “**Effective Date**”) by and among the City of Anaheim, a municipal corporation (the “**City**”), and EarthLink, Inc. a Delaware corporation (“**EarthLink**”). The City and EarthLink are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

BACKGROUND

WHEREAS, the City entered into a Franchise Agreement with EarthLink dated December 20, 2005 (the “**Franchise Agreement**”), a Rooftop Lease dated March 9, 2006, including Schedule 1 adding City Peaking Plant thereto dated April 12, 2007 (collectively the “**Rooftop Lease**”), and a Fiber Optics Lease Agreement by and between the City of Anaheim, California and EarthLink, Inc. dated March 28, 2006 (the “**Fiber Optics Lease**”) to allow EarthLink the right to install, maintain and operate a wireless broadband network in the City (the “**Network**”); and

WHEREAS, the Parties have determined to terminate the Franchise Agreement, the Rooftop Lease and the Fiber Optics Lease (collectively referred to as the “**Network Agreements**”) and to release each other from all rights and obligations arising from the Network Agreements as described in more detail below;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration whose receipt and sufficiency are acknowledged, the Parties agree as follows:

1. Termination of Network Agreements and Removal of Network Equipment.

A. Termination of Franchise Agreement and Surrender of Franchise. The Parties agree that, effective on September 30, 2008 (the “Franchise Termination Date”), the Franchise Agreement will terminate in its entirety, EarthLink will surrender its Franchise, and (i) except for any obligations of EarthLink that have arisen, or which may arise, under Section 21. INDEMNIFICATION and (ii) under Section 23. INSURANCE, and (iii) except as specifically set forth in this Agreement, no Party shall have any further rights or obligations pursuant to the Franchise Agreement.

B. Removal of Network Equipment. EarthLink shall promptly, safely, carefully and at its own cost remove any and all Network equipment as defined in Exhibit B – Network Description of the Franchise Agreement, including without limitation Wi-Fi nodes and equipment, radios, antennas or such other comparable equipment, installed by EarthLink from all City property, including without limitation streetlight poles and traffic signal poles, (“Network Equipment”) and return City property to the condition in which the property existed immediately prior to EarthLink’s installation. Such work shall be conducted (i) in compliance with all applicable state and local laws and regulations, including, without limitation, the Anaheim Public Utilities Department’s Rules, Rates and Regulations as amended from time to time, as well as traffic laws and regulations, including, without limitation, those set forth as California DOT standards and in accordance with the Statement of Work, Plans and Specifications set forth in the

Franchise Agreement and (ii) in compliance with Exhibit 1. EarthLink shall complete the removal of all Network Equipment from City property and shall pay all City Utility bills associated with the operation and/or use of the Network Equipment, including, without limitation, the Pole Attachment Fees, Electricity Fees, and Fiber Connectivity Fees, by a date no later than the Franchise Termination Date. If EarthLink inadvertently fails to remove radios, antennas, or other such comparable equipment by the Franchise Termination Date, the City will notify EarthLink of such inadvertent failure to remove such Network Equipment in writing at such time EarthLink shall have ten (10) days from the date of written notification to remove the Network Equipment identified. Should EarthLink fail to remove such Network Equipment, City in its sole and exclusive discretion may remove and dispose of such equipment without risk, exposure, or liability and without further notice to EarthLink. If City removes and disposes of such Network Equipment, EarthLink shall be billed for all reasonable costs incurred by City for such removal and disposal.

C. Termination of Rooftop Lease. The Rooftop Lease will terminate on the earlier of: (i) the Franchise Termination Date or (ii) the date upon which EarthLink certifies in writing to the City that it has removed all of its equipment from City property as described and defined in the Rooftop Lease; and upon payment of all City Utility bills associated with the operation and/or use of the its equipment, including, without limitation, the Electricity Fees and lease fees as set forth in the Rooftop Lease. No Party shall have any further rights or obligations pursuant to the Rooftop Lease after said termination, except for any defense, indemnification, or hold harmless obligations of EarthLink, if any, that have arisen, or that may arise, under the Rooftop Lease.

D. Termination of the Fiber Optics Lease. The Fiber Optics Lease will be terminated in its entirety on the earlier of: (i) the Franchise Termination Date or (ii) the date upon which EarthLink certifies in writing to the City that it has ceased all use of the City property described in the Fiber Optics Lease; and upon payment of all City Utility bills associated with the operation and/or use of the Fiber Optics, including, without limitation, the Electricity Fees and lease fees. No Party shall have any further rights or obligations pursuant to the Fiber Optics Lease after said termination, except for any defense, indemnification, or hold harmless obligations of EarthLink, if any, that have arisen, or that may arise, under the Fiber Optics Lease.

2. Mutual Release.

A. Except as otherwise provided for in this Agreement, effective upon the Franchise Termination Date, the City does hereby remise, release and forever discharge EarthLink, together with its subsidiaries and affiliates, its and each of such subsidiaries' and affiliates' officers, directors, stockholders, managers, members, employees and agents, its and each of such subsidiaries' and affiliates' successors and assigns, the heirs, executors and administrators of such officers, directors, stockholders, managers, members, employees and agents (collectively, the "**EarthLink Parties**"), acting in any capacity whatsoever, of and from any and all manner of actions and causes of actions, suits, debts, claims and demands whatsoever in law or in equity ("**Claims**"), that the City or any of its officers, officials, directors, employees, agents, successors and assigns (collectively with the City, the "**City Parties**") ever had, now have, or hereafter may have by reason of any matter, cause or thing whatsoever that arises from, or relates in any way to, the Franchise Agreement, the Rooftop Lease, the Fiber Optics Lease or the transactions

contemplated thereby, including without limitation any payment obligations that the EarthLink Parties have or may have for any amounts owed to the City Parties, whether billed or unbilled, as of the Effective Date; provided, however, that the release in this Section 2A shall not apply to any Claims by third-parties for bodily injury, personal injury, or damage to third-party property or payment obligations set forth in Section 1;

B. Except as otherwise provided for in this Agreement, effective upon the Franchise Termination Date, EarthLink, on behalf of itself and the other EarthLink Parties, does hereby remise, release and forever discharge the City Parties, acting in any capacity whatsoever, of and from any and all manner of Claims that EarthLink or any of the other EarthLink Parties ever had, now has, or hereafter may have by reason of any matter, cause or thing whatsoever that arises from, or relates in any way to, the Franchise Agreement, the Rooftop Lease, the Fiber Optics Lease or the transactions contemplated thereby provided, including without limitation any payment obligations that the City Parties have or may have for any amounts owed to EarthLink, whether billed or unbilled, as of the Effective Date, provided, however, that the release in this Section 2B shall not apply to any Claims by third-parties for bodily injury, personal injury, or damage to third-party property or payment obligations set forth in Section 1;

3. Governing Law. The validity, construction and enforceability of this Agreement shall be governed in all respects by the internal laws (but not the conflict of law provisions) of the State of California. Any action brought relating to this Agreement shall be brought in any court located in Orange County California, unless otherwise required by Federal law.

4. Binding Effect. This Agreement and the rights and obligations hereunder shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors or assigns.

5. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Signature by facsimile or other electronic method shall be deemed to have full force and effect as if the facsimile or electronic signatures were originals.

[Signature Page Follows]

IN WITNESS WHEREOF, all the parties have caused this Termination Agreement to be executed by their duly authorized representatives as of the Effective Date above written.

CITY OF ANAHEIM

By: _____
Mayor

DATE OF EXECUTION:

ATTEST:

City Clerk

APPROVED AS TO FORM:
JACK L. WHITE, CITY ATTORNEY

By: _____
Cristina L. Talley
Senior Assistant City Attorney

Dated: _____

EARTHLINK, INC.

By: _____
Name: _____
Title: _____

Exhibit 1

ADDITIONAL WORK AND SAFETY REQUIREMENTS

This Exhibit 1 contains minimum requirements and specifications governing use and occupancy of Anaheim's utility poles, traffic light poles and arms, traffic lights, street light poles and arms, and any other such equipment owned by Anaheim or the utilities.

EarthLink's facilities shall be placed, maintained, and removed in accordance with the requirements and specifications of the rules and regulations of the California Public Utilities Commission, including General Order No. 95 (G.O. 95), the National Electrical Code (NEC), the National Electrical Safety Code (N.E.S.C.), the rules and regulations of the Occupational Safety and Health Act (OSHA), all of which are incorporated by reference into this Exhibit 1, and of any governing authority having jurisdiction over the subject matter. Where difference in specifications may exist, the more stringent shall apply.

All requirements of the National Electrical Safety Code referred to in this Agreement shall mean the current edition of such code and shall include any additional requirements of any applicable Federal, State, County or Municipal Code or regulatory body, including the California Public Utilities Commission, with jurisdiction over Anaheim. Reference to either the Safety Code, or to N.E.S.C., have the same meaning.

EarthLink's wiring, cable, equipment and facilities shall be compatible with Anaheim's facilities so as not to damage any facilities of Anaheim.

Upon completion of work, EarthLink shall remove all of its tools, unused materials, wire clippings, cable sheathing and any other similar matter.

EarthLink shall require that all its work crews or any of its contractors and subcontractors: (i) are familiar with all power line rules, requirements, regulations, standards and guidelines under G.O. 95 and N.E.S.C.; (ii) survey the area in which work is to be performed before commencing such work and make a determination that the required work can be completed safely; (iii) survey the area in which work is to be performed before commencing work and make a determination that any electrical power lines are in conformance with G.O. 95 and N.E.S.C.; and (iv) proceed with such work only upon making such determinations. If the work crew determines that such work cannot proceed safely, or if such electrical power lines are not in compliance with either G.O. 95 or N.E.S.C., EarthLink shall immediately notify Anaheim of such condition, in detail, and shall not commence work at such location until so directed by Anaheim. It is understood and agreed by EarthLink that there is no instance in which it is safe or proper for a EarthLink worker (whether working for or on behalf of EarthLink), or a worker's equipment, to come into contact with the electrical current from an energized electrical power line. Consequently, any such contact by EarthLink (or EarthLink's employees, agents, representatives, contractors or subcontractors, or the employees, agents, or

representatives of such contractors or subcontractors) shall be deemed an unsafe act, or failure to act, under the meaning of this Agreement.

EMERGENCY CONDITIONS

EarthLink shall immediately notify Anaheim at its Public Utilities Department (Phone No. 714-765-3330) of any emergency situation related to Anaheim's utility poles, traffic lights, or street lights, or EarthLink's facilities.

WI-FI RADIO REMOVAL PROCEDURE FROM STREET LIGHT POLES

- * Estimated Number of Wi-Fi Nodes and Gateways on Street Light Poles: 983

- * "Cobra-head" Light Poles- EarthLink to:
 - Remove its connector powering the Wi-Fi radio from the top of the light fixture.
 - Re-install the photo-eye in the light fixture's socket
 - Cover the photo-eye long enough to switch the light on.

- * "Traditionaire" Light Poles - EarthLink to:
 - Remove the hard-wired Wi-Fi radio power leads from the wire-nuts atop the light fixture.
 - Re-connect the light fixture power leads in the wire nuts
 - Furnish and install a replacement cover to re-seal the wiring enclosure's opening
 - Cover the light fixture's photo-eye long enough to switch the light on.

- * Report any unresolved light fixture problems to Anaheim for follow-up

- * EarthLink to provide to Anaheim a weekly status report on planned and completed Wi-Fi radio removals