

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH
AND WIRELESS-NETS, LTD., FOR ALTERNATIVE
EQUIPMENT TEST / EVALUATION**

This Professional Services Agreement ("Agreement") is entered into this 19th day of June, 2006, between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida ("City"), having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and Wireless-Nets, Ltd., a limited liability corporation ("Consultant"), whose address is 685 North Enon Road, Yellow Springs, Ohio 45387.

SECTION 1
DEFINITIONS

Agreement: This Agreement between the City and Consultant.

City Manager: The Chief Administrative Officer of the City.

Consultant: For the purposes of this Agreement, Consultant shall be deemed to be an independent Consultant, and not an agent or employee of the City.

Services: All services, work and actions by the Consultant performed pursuant to or undertaken under this Agreement, as described in Section 2.

Fee: Amount paid to the Consultant to cover the costs of the Services as more specifically described in Section 3.

SECTION 2
SCOPE OF SERVICES

2.1 SERVICES

Consultant will provide testing and evaluation services for assisting the City of Miami Beach with the deployment of a City-wide municipal wireless (Wi-Fi) network solution. This testing and evaluation will determine the effectiveness of a proposal by IBM for providing Wi-Fi coverage in the Middle Beach area, which does not have enough mounting assets available for supporting the Tropos mesh node solution being installed throughout other parts of the City.

Consultant will be conducting the testing after IBM has installed the test system that implements the alternative equipment. This testing is similar to the pilot testing that Consultant completed for the City in February 2006. The testing will determine whether or not the installed alternative equipment and solution meets contracted technical requirements, such as outdoor/indoor signal coverage, performance, and security. In cases where requirements are not met, Consultant will provide recommendations on how to mitigate the underlying problems.

2.2 DELIVERABLES

The services contemplate the following two deliverables:

- **Test Plan:** The test plan will describe the test criteria, approach, steps and schedule. The test plan will be provided to the City one week prior to initiating the onsite testing.
- **Evaluation Report:** The evaluation report will identify which contracted technical requirements were met, including supporting test results. This document will also explain possible underlying problems and solutions. The report will be provided to the City within five (5) days after completing the onsite testing

2.3 CITY'S RESPONSIBILITIES

1. The City will designate a project manager to act as the point-of-contact with Consultant during the engagement.
2. The City will provide timely feedback, key decisions and review of deliverables from Consultant as required supporting the engagement.

2.4 DURATION AND EXTENT OF AGREEMENT

The term of this Agreement shall commence upon execution of this Agreement, by all parties hereto, and shall terminate no later than three (3) months from the date thereof, or when all Services outlined in Section 2.1 and Deliverables outlined in Section 2.2 are accepted by the City, whichever occurs last.

2.5 AUDIT AND INSPECTIONS

At any time during normal business hours and as often as the City may deem necessary, Consultant shall make available to the City and/or such representatives as the City may deem to act on its behalf, to audit, examine and make audits of all of its contracts, invoices, materials, records and other data relating to all matters covered by this Agreement. Consultant shall maintain any and all records necessary to document compliance with the provisions of this Agreement.

2.6 ACCESS TO RECORDS

Consultant agrees to allow access during normal business hours to all financial records to the City and/or such authorized representatives as it may deem to act on its behalf, and agrees to provide such assistance as may be necessary to facilitate financial audit by the City or its representatives when deemed necessary to insure compliance with applicable accounting and financial standards. Consultant shall allow access during normal business hours to all other records, forms, files, and documents which have been generated in performance of this Agreement, to those personnel as may be designated by the City.

2.7 ASSIGNMENT, TRANSFER OR SUBCONSULTING

The Consultant shall not sub-consult, assign, or transfer any work under this Agreement without the prior written consent of the City. Neither this Agreement nor any term nor provision hereof or right hereunder shall be assignable by any parties nor any attempt to make such assignment shall be void.

2.8 SUB-CONSULTANTS

The Consultant shall be liable for the Consultant's services, responsibilities and liabilities under this Agreement and the services, responsibilities and liabilities of sub-Consultants, and any other person or entity acting under the direction or controls of the Consultant. When the term "Consultant" is used in this Agreement, it shall be deemed to include any sub-Consultants and any other person or entity acting under the direction or control of Consultant. All sub-Consultants must be approved of in writing prior to their engagement by Consultant.

2.9 OWNERSHIP OF DOCUMENTS

The Consultant shall transfer all ownership rights for any and all deliverables contemplated under this Agreement to the City at the time said deliverable is submitted to the City.

**SECTION 3
COMPENSATION FOR SERVICES**

3.1 COST OF SERVICES

Consultant shall be compensated for the Services to be provided herein in the fixed fee amount of \$24,500 (which includes travel expenses). Said fee shall be paid upon satisfactory completion of the transfer of the Deliverables to City.

3.2 INVOICING

Consultant shall mail all Invoices to:

City of Miami Beach
1100 Washington Avenue
Information Technology Department
Miami Beach, Florida 33139
Attn: Gladys Acosta

With a copy to:

City of Miami Beach
1700 Convention Center Drive
Accounts Payable Department
Miami Beach, Florida 33139
Attn: Ramon Suarez

3.3 METHOD OF PAYMENT

As a condition to payment, Consultant shall submit an invoice to the City, outlining the Services (and deliverables) completed within ten (10) days of the approval by the City of an appropriately filed invoice, the City shall provide Consultant with a check for payment of the approved amount. Payments shall only be made for approved invoices for Services satisfactorily performed.

SECTION 4 **TERMINATION, SUSPENSION AND SANCTIONS**

4.1 TERMINATION FOR CAUSE

If the Consultant shall fail to fulfill in a timely manner, or otherwise violate any of the covenants, agreements, or stipulations material to this Agreement, the City shall thereupon have the right to terminate the Services then remaining to be performed. Prior to exercising its option to terminate for cause, the City shall notify the Consultant of its violation of the particular terms of this Agreement and shall grant Consultant three (3) days to cure such default. If such default remains uncured after three (3) days, the City, upon three (3) days' notice to Consultant, may terminate this Agreement and the City shall be fully discharged from any and all liabilities, duties and terms arising out of/ or by virtue of this Agreement.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by any breach of the Agreement by the Consultant. The City, at its sole option and discretion, shall additionally be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce the City's right and remedies against the defaulting party. The City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees. To the extent allowed by law, the defaulting party waives its right to jury trial and its right to bring permissive counter claims against the City in any such action.

4.2 TERMINATION FOR CONVENIENCE OF THE CITY

THE CITY MAY ALSO, FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE THE SERVICES THEN REMAINING TO BE PERFORMED AT ANY TIME DURING THE TERM HEREOF BY GIVING WRITTEN NOTICE TO CONSULTANT OF SUCH TERMINATION, WHICH SHALL BECOME EFFECTIVE FIFTEEN (15) DAYS FOLLOWING RECEIPT BY THE CONSULTANT OF THE WRITTEN TERMINATION NOTICE. IF THE AGREEMENT IS TERMINATED BY THE CITY AS PROVIDED IN THIS SUBSECTION, CONSULTANT SHALL BE PAID FOR ANY SERVICES SATISFACTORILY PERFORMED, AS DETERMINED BY THE CITY AT ITS DISCRETION, UP TO THE DATE OF TERMINATION.

4.3 TERMINATION FOR INSOLVENCY

The City also reserves the right to terminate the Agreement in the event the Consultant is placed either in voluntary or involuntary bankruptcy or makes an assignment for the benefit of creditors.

4.4 SANCTIONS

In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the City shall impose such sanctions as the City or the State of Florida may determine to be appropriate, including but not limited to, withholding of payments to the Consultant under the Agreement until the Consultant complies and/or cancellation, termination or suspension of the Services.

SECTION 5 **INDEMNIFICATION AND LITIGATION**

5.1 INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City and its officers, employees and agents, from and against any and all actions, claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the Consultant, its employees, agents, sub-Consultants, or any other person or entity acting under Consultant's control, in connection with the Consultant performance of the Services pursuant to this Agreement; and to that extent, the Consultant shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals. The parties agree that one percent (1%) of the total compensation to the Consultant for performance of the Services under this Agreement is the specific consideration from the City to the Consultant for the Consultant's Indemnity Agreement.

The Consultant's obligation under this Subsection shall not include the obligation to indemnify the City of Miami Beach and its officers, employees and agents, from and against any actions or claims which arise or are alleged to have arisen from negligent acts or omissions or other wrongful conduct of the City and its officers, employees and agents. The parties each agree to give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects the other party.

5.2 LITIGATION JURISDICTION/VENUE/JURY TRIAL WAIVER

This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. By entering into this Agreement, Consultant and the City expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement. Consultant shall specifically bind its employees, sub-Consultants, and agents to the provisions of this Agreement. This Agreement shall be construed in accordance with the laws of the State of Florida.

5.3 LIMITATION OF CITY'S LIABILITY

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Consultant hereby expresses its willingness to enter into this Agreement with Consultant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$1,000.

Accordingly, and notwithstanding any other term or condition of this Agreement, Consultant hereby agrees that the City shall not be liable to the Consultant for damages in an amount in excess of \$1,000 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes.

5.4 ATTORNEY'S FEES

In the event that any party to this Agreement should seek legal or administrative recourse to enforce the terms of this Agreement, the breaching party shall be obligated to pay the prevailing party the reasonable attorney's fees and costs incurred by the prevailing party.

SECTION 6 GENERAL PROVISIONS

6.1 PUBLIC ENTITY CRIMES

Prior to commencement of the Services, the Consultant shall file a State of Florida Form PUR 7068, Sworn Statement under Section 287.133(3)(a) Florida Statute on Public Entity Crimes with the City's Procurement Division.

6.2 EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, and national origin, place of birth, marital status, sexual orientation or physical handicap. The Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, color, religion, ancestry, sex, age, national origin, place of birth, marital status, physical handicap, or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or termination; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

6.3 CONFLICT OF INTEREST

The Consultant herein agrees to adhere to and be governed by all applicable Miami-Dade County Conflict of Interest Ordinances and Ethics provisions, as set forth in the Miami-Dade County Code, and as may be amended from time to time; and by the City of Miami Beach Charter and Code; both of which are incorporated by reference herein as if fully set forth herein.

The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirectly which should conflict in any manner or degree with the performance of the Services. The Consultant further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by the Consultant. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising there from.

SECTION 7 **NOTICES**

7.1 METHOD AND LOCATION OF DELIVERY OF NOTICE

All notices and communications in writing required or permitted hereunder, except for those of cancellation of assignments which are governed by subsection 2.2 above, may be delivered personally to the representatives of the Consultant and the City listed below or may be mailed by U.S. Certified Mail, return receipt requested, postage prepaid, or by a nationally recognized overnight delivery service.

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

TO CONSULTANT: Wireless-Nets, Ltd.
 Attn: Jim Geier
 685 North Enon Road
 Yellow Springs, Ohio 45387

TO CITY: City of Miami Beach
 Attn: Gladys Acosta
 1100 Washington Avenue
 Miami Beach, Florida 33139
 (305) 673-7040

Notice may also be provided to any other address designated by the party to receive notice if such alternate address is provided via U.S. certified mail, return receipt requested, hand delivered, or by overnight delivery. In the event an alternate notice address is properly provided, notice shall be sent to such alternate address in addition to any other address which notice would otherwise be sent, unless other delivery instruction as specifically provided for by the party entitled to notice.

7.2 EFFECTIVE DATE OF NOTICE

Notice shall be deemed given on the day on which personally served, or the day of receipt by either U.S. certified mail or overnight delivery.

**SECTION 8
ENTIRE AGREEMENT, AMENDMENT, SEVERABILITY**

8.1 ENTIRETY OF AGREEMENT

The City and the County agree that this is the entire Agreement between the parties. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Title and Paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

8.2 CHANGES AND ADDITIONS

This Agreement cannot be modified or amended without the express written consent of the parties. No modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

8.3 SEVERABILITY

If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

8.4 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: Mania E. Mantunez
for Robert Parcher
City Clerk

By: For JMG
Jorge M. Gonzalez
City Manager

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

On this 19th day of June 2006, before me personally appeared, Robert M. Stough, as Acting City Manager of the City of Miami Beach, who is personally know to me or produced as identification and who did take an oath and deposes and says, that they/he/she executed the above instrument and they/he/she acknowledged to me that they/he/she executed the same.

Kerry Hernandez
NOTARY PUBLIC

MY COMMISSION EXPIRES:



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature]
City Attorney
Date: 6/8/06

FOR CONSULTANT:

ATTEST:

By: Deaist M. Wrobel
Signature
Deaist M. Wrobel
Print Name/Title
Administration

WIRELESS-NETS, LTD.
By: James T. Geier
Signature
James T. Geier
Print Name/Title Principal Consultant

Corporate Seal

Ohio
STATE OF ~~FLORIDA~~)
 Clark) 88
COUNTY OF ~~MIAMI-DADE~~)

On this 16th day of June 2006, before me personally appeared, James T. Geier, as Principal Consultant of Wireless-Nets, Ltd., who is personally know to me or produced OH ID # m 072636 as identification and who did/did not take an oath and deposes and says, that he/she executed the above instrument and he/she acknowledged to me that he/she executed the same with lawful authority to do so.

Leah J. Hill
NOTARY PUBLIC

MY COMMISSION EXPIRES:



LEAH J. HILL
Notary Public, State of Ohio
My Commission Expires
5-24-2007

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