



# City of Villa Park

March 24, 2009

Agenda Item #: 22

## City Council Meeting

New Business

From: Jarad Hildenbrand, ACM

Reviewed by: Don Powell, Interim City Manager

Fiscal Impact: \$ N/A

Budgeted: Yes  No  N/A

CEQA: Yes  No  N/A

Title: **CONSIDERATION OF AGREEMENT WITH ONEFI TECHNOLOGY**

### Agenda Item Summary:

This item is the consideration of the current license agreement with OneFi Technology regarding wireless internet.

### Discussion of Agenda Item:

The City of Villa Park entered into a license agreement with OneFi Technology (OneFi) on April 22, 2008 for the placement of wireless communication equipment on the roof of City Hall to allow for the Villa Park Towne Centre to benefit from free wireless services.

On August 28, 2008 OneFi installed the equipment and the wireless signal was clear and strong from all points of the Towne Centre. In approximately October/November 2008, the signal became inactive. Over the last couple of months, City staff sent several emails and placed numerous telephone calls to representatives at OneFi. OneFi has not responded.

At this time, staff recommends that the City Council terminate license agreement based on lack of performance. Pursuant to Section 3 of the license agreement, the City retains the right to terminate with or without cause at any time in its sole and absolute discretion.

### Fiscal Impact and Information:

Not applicable.

### California Environmental Quality Act (CEQA) Information:

Not applicable.

### Staff Recommendation:

Staff recommends that the City Council terminate subject licence agreement on the basis of lack of performance.

### Recommended Actions:

That the City Council Receive an Update on OneFi and Make Findings Thereto.

### Attachments:

1. Agreement with OneFi Technology.

## LICENSE AGREEMENT

This License Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2008 (the "Effective Date"), by and between the CITY OF VILLA PARK, a municipal corporation ("City"), and OneFi Technology, a \_\_\_\_\_ ("OneFi") (City and OneFi being collectively referred to herein as the "Parties").

### RECITALS:

A. City is the owner in fee of that certain real property on which City Hall is located at 17855 Santiago Blvd. in the City of Villa Park, County of Orange, State of California (the "Site"), which real property is more particularly described in the legal description attached hereto as Exhibit A.

B. OneFi has offered to install and maintain equipment on the roof of City Hall that provides a wireless broadband internet connection (the "Project") to individuals and entities within a certain proximity to the Site. OneFi has agreed to install and maintain the Project at no cost to the City.

C. The Parties agree that development and operation of the Project on the Site and the provision of a wireless broadband internet connection are in the vital and best interests of City and the welfare of its residents. The Parties further agree that, without this License Agreement, the City's ability to achieve the important public purposes to be served by the Project would be lost.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and conditions set forth in this License Agreement, City and OneFi agree as follows:

### COVENANTS:

#### 1. Grant of Nonexclusive License for Project Equipment

City hereby agrees to grant to OneFi a nonexclusive license to a portion of the roof of City Hall on the Site in locations approved by the City for the purpose of installing, maintaining, and operating Wimax equipment for a wireless LAN Station (the "Project Equipment"). The materials included within the Project Equipment are identified on Exhibit B attached hereto. The Project and Project Equipment shall not unreasonably interfere with communication equipment or other devices of the City or its residents. OneFi shall be responsible for the cost of construction, installation, maintenance, repair, and replacement of the Project and Project Equipment. OneFi shall be solely responsible for the provision of electricity, broadband access, or other services or requirements for the Project Equipment. The City shall have no responsibility for the Project or Project Equipment. The City shall provide OneFi access to the Site on an as-needed basis after OneFi notifies City of the need for access to the Site. The grant of this nonexclusive license does not prevent the City from providing rights to other internet providers or similar businesses. City shall retain full ownership, management, and control of City Hall and the Site and OneFi shall have no right, title, or interest in City Hall or the Site

4. Restrictions on Assignment

OneFi shall not assign its rights hereunder to any other person or entity without the express prior written approval of City, which approval may be granted, conditioned, or withheld in City's sole and absolute discretion.

5. Indemnity

City and its officers, employees and agents shall have no liability with respect to the acts or omissions of OneFi, its agents and contractors, that are undertaken or result from this License Agreement or relate in any manner to the construction, placement, maintenance, operation, or removal of the Project Equipment or Project. OneFi agrees to indemnify, defend, and hold harmless City and its officers, employees, and agents or any person acting in concert with any of them (collectively, the "City Indemnitees") from and against any and all claims, liabilities, and losses arising out of any such acts or omissions, whether for personal injury or death, property damage, economic loss, or otherwise, and regardless of whether City shall be negligent. This indemnity shall survive the expiration or earlier termination of the License Agreement.

6. Insurance

OneFi shall provide commercial general liability insurance coverage for the performance of its obligations under this License Agreement and placement of its Project Equipment on City Hall in a form and type acceptable to City in the coverage amount of \$1,000,000(?). OneFi shall add the City and its officers, agents and employees as additional insureds under the required insurance. OneFi shall provide worker's compensation insurance as required by law. The City may require, in its sole discretion, that OneFi provide additional types and forms of insurance at City's sole and reasonable discretion based upon the nature of the Project. Insurance shall be placed with carriers authorized and admitted to do business in the State of California with a current A.M. Best's rating of A- or better and a financial size of VII or greater. The Certificate of Liability Insurance shall be submitted on Accord form 25-S (or other form acceptable to the City) in the amounts listed above and said certificate shall be modified to require that the City be given 30 days written notice by certified mail of any cancellation or reduction in available limits or changes in the terms of coverage.

7. Bonds

OneFi shall provide the City with security in the amount of \$(100,000?) to guarantee that the Project Equipment will be removed from City Hall and that any damage to City Hall or the Site will be repaired. The security shall be in a form acceptable to the City, and may include at the City's discretion a performance bond, letter of credit, or cash deposit.

8. OneFi's Assumption Of Risk

OneFi understands and consent that it is fully assuming the risk of installing its Project Equipment on the roof of City Hall on the Site and that the City will not be responsible for any damage or theft of the Project Equipment.

9. No Relationship Between The Parties

Formal notices, demands and communications between the Parties shall be sufficiently given if personally delivered or if dispatched by registered or certified mail, postage prepaid, return receipt requested, as follows:

To City:  
City Manager  
City of Villa Park  
P.O. Box 5007  
Antioch, CA 94531-5007

To OneFi:  
OneFi Technology  
Attn: XXX  
2366 N. Glassell  
Building 'A'  
Orange, CA 92865

17. Defaults, Extensions of Time for Performance, and Litigation

Failure or delay by a party to perform any of its obligations set forth in this License Agreement constitutes a default under this License Agreement. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Any failure or delay by a party in giving a notice of default or in asserting any of its rights and remedies as to any default shall not constitute a waiver of any default, nor shall it change the time of default, nor shall it deprive such party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert, or enforce any such rights or remedies. A waiver of one default shall not constitute a waiver of any subsequent or similar default. Proper venue for any action shall be in an appropriate court in Orange County, California. In any action between the Parties with respect to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which it may be entitled.

18. Counterpart Signatures/Corporate Authority

This License Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. The individual signing this License Agreement warrants that it has the authority to execute the License Agreement on behalf of the entity it purports to represent.

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE SITE**

That certain real property located in the City of Villa Park, County of Orange, State of California, and described as follows:

XXX

A.P. No.: XXX