

AMENDMENT ONE  
TO  
AIRPORT WIRELESS NETWORK CONCESSION AGREEMENT  
BILLINGS LOGAN INTERNATIONAL AIRPORT TERMINAL BUILDING  
BY AND BETWEEN  
CITY OF BILLINGS, MONTANA  
AND  
OPTI-FI NETWORKS

W I T N E S S E T H

WHEREAS, the City of Billings, Montana, (hereinafter City), owner and operator of the Billings Logan International Airport, Billings, Montana (hereinafter Airport) and Opti-Fi Networks (hereinafter Opti-Fi) entered into the Airport Wireless Network Concession Agreement, Billings Logan International Airport Terminal Building (hereinafter the Agreement) for the term commencing November 1, 2005 and ending on October 31, 2010, and

WHEREAS, on November 1, 2008, Boingo Wireless, Inc. (hereinafter Boingo) entered into a purchase agreement with Parsons Transportation Group Inc. and ARINC Incorporated pursuant to which Boingo purchased 100% of the membership interests of Opti-Fi, and whereby Opti-Fi subsequently continued operations as a wholly owned subsidiary of Boingo, and

WHEREAS, Opti-Fi has continued the contractual relationship with the City, without any interruption to the Agreement and the service provided thereunder, with said service

provided under the Boingo label, and

WHEREAS, the City and Opti-Fi both desire to amend the Agreement to update the information for notice to each party, insurance requirements, and the sections on monthly reporting and rate schedules; suspend the performance bond requirement; and extend the term of the Agreement for an additional twelve (12) months, commencing November 1, 2010 and ending at midnight on October 31, 2011.

NOW THEREFORE, in consideration for the continued payment of concession fees and any other fees and charges, as specified in the Agreement, the parties hereto covenant and agree to amend said Agreement, effective November 1, 2010 as follows:

## ARTICLE II

### TERM OF AGREEMENT

The term of the Concession Agreement shall be for a period of six (6) years commencing on November 1, 2005 and ending on October 31, 2011.

During the time of war or declared national emergency, the City shall have the right to lease the landing area and any part thereof to the United States Government for military use. If any such lease is executed, any provisions of this instrument that are inconsistent with the provisions of the lease to the Government shall be suspended, provided that the term of the Agreement shall be automatically extended by the amount of the period of suspension.

## ARTICLE III

### CONCESSION FEES AND PAYMENTS

Concessionaire shall pay to the City for the rights and privileges herein granted the percentage of the annual Gross Sales revenue derived from the Wi-Fi Network Concession:

<u>FOR THE PERIOD</u>	<u>PERCENTAGE OF GROSS SALES</u>
11/01/05 thru 10/31/06	<u>20%</u>
11/01/06 thru 10/31/07	<u>20%</u>
11/01/07 thru 10/31/08	<u>20%</u>
11/01/08 thru 10/31/09	<u>20%</u>
11/01/09 thru 10/31/10	<u>20%</u>
11/01/10 thru 10/31/11	<u>20%</u>

B. The Concessionaire shall provide a detailed statement of Gross Sales revenues from the Concession for the preceding month of operation no later than fifteen (15) days following the end of each month. This monthly report must be in a form acceptable to the City, may upon request by Concessionaire, be submitted electronically or via facsimile transmission, and contain those items the City deems appropriate. The monthly report shall include at a minimum, the following: a monthly breakdown of Gross Sales according to:

- 1) The daily/hourly (ad hoc) access plan,
- 2) The monthly/subscriber (roaming) access plan,
- 3) The concourse access, and the current rates charged for each type of service.

Additionally, Concessionaire will provide a monthly usage report by either providing the City with access to an online reporting system, or upon request by Concessionaire, via an electronic or facsimile transmitted usage report; said monthly usage report shall contain those items the City deems appropriate, to include at a minimum the monthly breakdown of usage in number of sessions and session time, according to

- 1) The daily/hourly (ad hoc) access plan,
- 2) The monthly/subscriber (roaming) access plan,
- 3) The concourse access, and the average length of session per each type of usage.

On a quarterly basis, the Concessionaire shall provide a revenue report and remit to the City the percentage due for the preceding three (3) calendar months, to be computed using the percentage as identified for each Concession Agreement Year as set forth herein above. A sample of the quarterly revenue report is attached as Exhibit A and made a part hereof.

## ARTICLE VII

### SCHEDULE OF RATES

The Concessionaire shall submit to the City, at least thirty (30) days in advance, written notification regarding any changes to any ad-hoc (daily or hourly passes) transaction fees charged by the Concessionaire at the Airport. The Concessionaire may adjust the transaction fees charged at the Airport to a lower rate and may adjust the transaction fees for Concessionaire's network-wide subscription products and WISP roaming rates without the City's approval. However, any rate increase or rate structure change for ad-hoc (daily or hourly passes) charged by the Concessionaire at the Airport will require written notice and approval of such revision from the Director. The current rates charged shall also be specified on each monthly report of Gross Sales, usage and percentage of Gross Sales due.

ARTICLE XII

INSURANCE AND INDEMNIFICATION

B. Insurance. Concessionaire shall provide and keep in force for the term of the Agreement a commercial general liability policy (occurrence form only), providing coverage for personal injury, bodily injury, death, property damage, and product liability, in amounts not less than \$750,000 per claim, and \$1,500,000 per occurrence.

The commercial general liability policy shall be endorsed to name the CITY OF BILLINGS as a **PRIMARY ADDITIONAL INSURED**. The City of Billings general liability policy will be excess and non-contributory. In addition, Concessionaire shall procure and maintain in force during the term of this Agreement, liability insurance applicable to the ownership, maintenance, use, or operation of any automobile, mobile equipment, or other ground vehicle at the Airport (including owned, non-owned, or hired) in an amount not less than \$750,000 per claim, and \$1,500,000 per occurrence and naming the City of Billings as an additional primary insured; statutory Worker's Compensation insurance; and other policies of insurance reasonably required by the City. Concessionaire shall also provide and keep in force fire and extended coverage insurance upon all Concessionaire's furnishings, fixtures, and equipment utilized in connection with its operations, and shall furnish the City with evidence that such coverage has been procured and is being maintained in full force and effect during the term hereof. The policy or policies shall be endorsed to provide thirty (30) days advance written notification to the City of any reductions in the policy coverage, cancellations, or other adverse amendments to the policy or policies impacting the risks covered. At the time of execution of this

Agreement, and annually thereafter, Concessionaire shall furnish a Certificate of Insurance showing that the required insurance is in force, and copies of the policy endorsements specific to the City. Insurance coverage shall be maintained with insurance underwriters authorized to do business in the State of Montana and that are satisfactory to the City.

If, in the City's opinion, the minimum limits of the insurance coverage herein required become inadequate during the term of this Agreement, Concessionaire agrees that it will increase such minimum limits by reasonable amounts on request of the City.

### ARTICLE XIII

#### PERFORMANCE BOND

The requirement of the City for Concessionaire to furnish to the City a performance bond in the amount of \$10,000 for each year of the Agreement, is hereby suspended effective November 1, 2010.

### ARTICLE XVIII

#### GENERAL PROVISIONS

F. Notices. Notices to the City provided for herein shall be sufficient if sent by certified mail, postage prepaid, addressed to:

Director of Aviation  
Billings Logan International Airport  
1901 Terminal Circle, Room 216  
Billings, MT 59105

and notices to Concessionaire, if sent by certified mail, postage prepaid, addressed to:

Opti-Fi Networks  
10960 Wilshire Boulevard, Suite 800  
Los Angeles, CA 90024  
Attn: David Kim, General Counsel

FURTHER, all other terms and conditions of the Agreement by and between the City of Billings and Opti-Fi Networks commencing on the 1st day of November 2005, remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hand this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

ATTEST:

CITY OF BILLINGS

BY \_\_\_\_\_  
CITY CLERK

BY \_\_\_\_\_  
MAYOR

APPROVED AS TO FORM

OPTI-FI NETWORKS

BY \_\_\_\_\_  
CITY ATTORNEY

BY \_\_\_\_\_  
EDWARD ZINSER, PRESIDENT

# Opti-Fi, LLC

## Remittance of Wi-Fi Rent to

### Billings Logan International Airport - BIL

#### Summary – Third Quarter 2010

<u>Gross Revenue</u>	<u>July</u>	<u>August</u>	<u>September</u>	<u>Total</u>
Wi-Fi Revenue (Ad Hoc)	\$ -	\$ -	\$ -	\$ -
Concourse Revenue	-	-	-	-
Roaming Revenue	-	-	-	-
Private Services	-	-	-	-
Sponsorship Revenue *	-	-	-	-
TOTAL GROSS Revenue This Statement	-	-	-	-
<b>Total Revenue Share Due (20%)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>*Sponsorship Description:</b>	<b><u>Rates for this Period of Performance</u></b>			
	Adhoc - Daily	N/A		
	Adhoc - Hourly	\$		
	Roaming	\$		
	Concourse	\$		