



L. BROOKS PATTERSON-COUNTY EXECUTIVE
**OAKLAND COUNTY
PURCHASING DIVISION**

OAKLAND COUNTY DEPARTMENT OF MANAGEMENT AND BUDGET

PURCHASING DIVISION

CONTRACT NUMBER: #1192

Contract Expiration Date: 01/31/2012

This Contract is made between the COUNTY OF OAKLAND, a Michigan Constitutional Corporation, and MICHTEL COMMUNICATIONS, LLC, as further described in the following Table. In this Contract, either Michtel or the County may also be referred to individually as a "Party" or jointly as the "Parties".

COUNTY OF OAKLAND 1200 N. Telegraph Road Pontiac, MI 48341-0047 (herein, the "County")	MICHTEL COMMUNICATIONS, LLC Michigan Corporate I. D. No. 10 West Huron Pontiac, MI 48341 (herein "Michtel")
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INTRODUCTION

- A. The purpose of this Contract is to blanket the County with a wireless internet service. Citizens, business entities, and governmental entities will all benefit from this wireless internet service. The citizens of the County will be more prepared to fill high-tech jobs; business entities will be better prepared to compete in the global market; and governmental entities, including Oakland County and other municipalities located in Oakland County, will realize increased efficiencies when providing services to their citizens. Michtel shall install, operate, manage, own, and maintain the wireless internet service. The County shall not be responsible for any costs or fees associated with the installation, operation, management, ownership, and/or maintenance of the wireless internet service.
- B. On April 29, 2005, a Request for Qualifications (RFQ) was released seeking proposals for Countywide wireless internet service.

- C. On May 25, 2005, a pre-bid meeting was held for those entities interested in responding to the RFQ, with proposals to the RFQ due on June 27, 2005.
- D. On June 27, 2005, Michtel submitted a proposal to the RFQ.
- E. Michtel was selected to provide the County-wide wireless internet service.
- F. As more fully described in this Contract, Michtel shall own, install, operate, manage, and maintain the wireless internet service.
- G. Michtel shall retain all revenue generated from and associated with the wireless internet service.
- H. The County shall receive no money, revenue, or in-kind services generated from or associated with the wireless internet service.
- I. This Contract is organized and divided into the following "Section" or "Sections" for the convenience of the Parties.

SECTION 1. CONTRACT DOCUMENTS AND DEFINITIONS

SECTION 2. CONTRACT EFFECTIVE DATE AND TERMINATION

SECTION 3. SCOPE OF WORK

SECTION 4. FINANCIAL RESPONSIBILITIES

SECTION 5. ASSURANCES AND WARRANTIES

SECTION 6. INDEMNIFICATION

SECTION 7. GENERAL TERMS AND CONDITIONS

In consideration of the mutual promises, obligations, representations, and assurances in this Contract, the Parties agree to the following:

§1. CONTRACT DOCUMENTS AND DEFINITIONS

The following words and expressions when printed with the first letter capitalized as shown herein, whether used in the singular or plural, possessive or non-possessive, and/or either within or without quotation marks, shall be defined and interpreted as follows:

- 1.1. "Michtel Employee" means without limitation, any employees, officers, directors, members, managers, trustees, volunteers, attorneys, and representatives of Michtel, and also includes any Michtel contractors, subcontractors, independent contractors,



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contractor's suppliers, subsidiaries, joint ventures or partners, and/or any such persons, successors or predecessors, employees, (whether such persons act or acted in their personal, representative or official capacities), and/or any and all persons acting by, through, under, or in concert with any of the above. "Michtel Employee" shall also include any person who was a Michtel Employee at anytime during the term of this contract but, for any reason, is no longer employed, appointed, or elected in that capacity.

- 1.2. "Claims" means any alleged losses, claims, complaints, demands for relief or damages, suits, causes of action, proceedings, judgements, deficiencies, liability, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are imposed on, incurred by, or asserted against the county, or for which the county may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.
- 1.3. "County" means the County of Oakland, a Municipal and Constitutional Corporation, its departments, divisions, authorities, boards, committees, and "County Agent" as defined below.
- 1.4. "County Agent" means all elected and appointed officials, directors, board members, council members, commissioners, employees, volunteers, representatives, and/or any such persons' successors (whether such person act or acted in their personal representative or official capacities), and/or any persons acting by, through, under, or in concert with any of them. "County Agent" shall also include any person who was a "County Agent" anytime during the term of this Contract but, for any reason, is no longer employed, appointed, or elected and serving as an Agent.
- 1.5. "Day" means any calendar day, which shall begin at 12:00:01 a.m. and end at 11:59:59 p.m.
- 1.6. "Contract Documents" This Contract includes and fully incorporates herein all of the following documents and their properly promulgated amendments:
 - 1.6.1. Exhibit I: Scope of Work
 - 1.6.2. Exhibit II: Wireless Oakland Advisory Board
 - 1.6.3. Exhibit III: License Agreement for Public Assets
 - 1.6.4. Exhibit IV: Map Book
 - 1.6.5. Exhibit V: County Servicemark

- 1.7. "Wireless Oakland Advisory Board" means the Board that provides advice, recommendations, and suggestions regarding the installation, operation, management, and maintenance of the wireless internet service.
- 1.8. "Wireless Oakland Initiative" means the wireless internet service that will blanket the entire County which will be provided, owned, and operated by a contractor selected by the County.
- 1.9. "Public Asset(s)" means any real or personal property including, but not limited to, structures, facilities, antennae, and/or land, owned by the County.

§2. CONTRACT EFFECTIVE DATE AND TERMINATION

- 2.1. The effective date of this Contract shall be February 8, 2006, and unless otherwise terminated or canceled as provided below, it shall end at 11:59 p.m. on the "Contract Expiration Date" shown on the first page of this Contract. This Contract may be renewed for three (3) additional terms of three (3) years each prior to the Contract Expiration or prior to the expiration of each renewal term by either Party providing notice of its intent to renew to the other Party thirty (30) Days before Contract expiration or expiration of the renewal term. Notwithstanding the above, under no circumstances shall this Contract be effective and binding until and unless:
 - 2.1.1. This Contract is signed by a Michtel Employee, legally authorized to bind Michtel; and
 - 2.1.2. This Contract is signed by an authorized agent of the Oakland County Purchasing Division, as provided for on the signature page of this Contract, who shall be the final signatory to this Contract.
- 2.2. The County may terminate and/or cancel this Contract (or any part thereof) upon one hundred and eighty (180) Days written notice to Michtel, if Michtel defaults in any obligation contained herein, and within the one hundred and eighty (180) Day notice period Michtel has failed or has not attempted to cure any such default. The effective date of termination and/or cancellation and the specific alleged default shall be clearly stated in the written notice.
- 2.3. Under no circumstances shall the County be liable for any future loss of income, profits, any consequential damages or any loss of business opportunities, revenues, or any other economic benefit Michtel may have realized but for the termination and/or cancellation of this Contract. The County shall not be obligated to pay Michtel any cancellation or termination fee if this Contract is cancelled or terminated.
- 2.4. Michtel may terminate and/or cancel this Contract (or any part thereof) upon one hundred and eighty (180) Days written notice to the County, if the County defaults in any obligation contained herein, and within the one hundred and eighty (180) Day notice period the County has failed or has not attempted to cure any such default. The effective

date of termination and/or cancellation and the specific alleged default shall be clearly stated in the written notice.

§3. SCOPE OF WORK

- 3.1. Michtel and the County shall perform all services identified and itemized in Exhibit I, Scope of Work.
- 3.2. Michtel shall provide the County and the Wireless Oakland Advisory Board with an implementation schedule for wireless internet service for the remaining areas of the County, the areas not covered by Exhibit IV, within sixty (60) Days of execution of the Contract by both Parties.
- 3.3. Michtel shall provide wireless internet service pursuant to this Contract to the areas in the Municipalities outlined in the map book attached as Exhibit IV by April 30, 2006.
- 3.4. Michtel shall retain all revenue generated from and associated with the wireless internet service.
- 3.5. The County shall receive no money, revenue, or in-kind services generated from or associated with the wireless internet service.
- 3.6. Within ninety (90) Days of execution of the Contract by both Parties, Michtel shall provide the County with information and evidence that demonstrates that Michtel has the financial ability to complete the implementation of the Wireless Oakland Initiative. The County, in its sole and reasonable discretion, shall determine if the information and evidence provided by Michtel is satisfactory.
- 3.7. Michtel shall accept and review advice, recommendations, and suggestions from the Wireless Oakland Advisory Board regarding the installation, operation, management, and maintenance of the wireless internet service, when such advice, recommendations, and/or suggestions are received by Michtel from the Wireless Oakland Advisory Board. The structure and organization of the Wireless Oakland Advisory Board are set forth in Exhibit II.

§4. FINANCIAL RESPONSIBILITIES

- 4.1. Under no circumstances shall the County or municipalities participating in the Wireless Oakland Initiative be responsible for any cost, fee, fine, penalty, or direct, indirect, special, incidental or consequential damages incurred or suffered by Michtel in connection with or resulting from Michtel's performance of work under this Contract.
- 4.2. This Contract does not authorize any in-kind services by either Party, unless expressly provided herein.

§5. **ASSURANCES AND WARRANTIES**

- 5.1. Service Warranty. Michtel warrants that all services performed hereunder will be performed in a manner that complies with all applicable laws, statutes, regulations, ordinances, and professional standards.
- 5.2. Business and Professional Licenses. Michtel will obtain and maintain at all times during the term of this Contract all applicable business and professional licenses necessary to provide the contracted services.
- 5.3. Equipment and Supplies. Michtel is responsible for providing all equipment and supplies to perform the work required by this Contract.
- 5.4. Taxes. Michtel shall pay, its own local, state and federal taxes, including without limitation, social security taxes, and unemployment compensation taxes. The County shall not be liable to or required to reimburse Michtel for any federal, state and local taxes or fees of any kind.
- 5.5. Michtel's Incidental Expenses. Michtel shall be solely responsible and liable for all costs and expenses incident to the performance of all work required by this Contract including, but not limited to, any professional dues, association fees, license fees, fines, taxes, and penalties.
- 5.6. Michtel Employees.
 - 5.6.1. Michtel shall employ and assign qualified Michtel Employees as necessary and appropriate to provide the Work under this Contract. Michtel shall ensure all Michtel Employees have all the necessary knowledge, skill, and qualifications necessary to perform the required services and possess any necessary licenses, permits, certificates, and governmental authorizations as may required by law.
 - 5.6.2. Michtel shall solely control, direct, and supervise all Michtel Employees with respect to all Michtel obligations under this Contract. Michtel will be solely responsible for and fully liable for the conduct and supervision of any Michtel Employee.
 - 5.6.3. All Michtel Employees shall wear and display appropriate county-provided identification at all times while working on County premises.
 - 5.6.4. All Michtel Employees assigned to work under this Contract may, at the County's discretion, be subject to a security check and clearance by the County.
- 5.7. Michtel Employee-Related Expenses. All Michtel Employees shall be employed at Michtel's sole expense (including employment-related taxes and insurance) and Michtel warrants that all Michtel Employees shall fully comply with and adheres to all of the terms of this Contract. Michtel shall be solely and completely liable for any and all applicable Michtel Employee's federal, state, or local payment withholdings or contributions and/or any and all Michtel Employee related pension or welfare benefits

plan contribution under federal or state law. Michtel shall indemnify and hold the County harmless for all Claims against the County by any Michtel Employee, arising out of any contract for hire or employer-employee relationship between Michtel and any Michtel Employee, including, but not limited to, Worker's Compensation, disability pay or other insurance of any kind.

- 5.8. Full Knowledge of Service Expectations and Attendant Circumstances. Michtel warrants that before entering into this Contract, it had a full opportunity to review the proposed services, and review all County requirements and/or expectations under this Contract. Michtel is responsible for being adequately and properly prepared to execute this Contract. Michtel has satisfied itself in all material respects that it will be able to perform all obligations under the Contract as specified herein.
- 5.9. Independent Contractor. Nothing in this Contract is intended to establish an employer-employee relationship between the County and either Michtel or any Michtel Employee. All Michtel Employees assigned to provide services under this Contract by Michtel shall, in all cases, be deemed employees of Michtel and not employees, agents or sub-contractors of the County.

§6. **INDEMNIFICATION**

6.1. Indemnification.

- 6.1.1. Michtel shall indemnify and hold the County and/or municipalities participating in the Wireless Oakland Initiative harmless from any and all Claims which are incurred by or asserted against the County by any person or entity, alleged to have been caused or found to arise, from the acts, performances, errors, or omissions of Michtel or Michtel's Employees, including, without limitation, all Claims relating to injury or death of any person or damage to any property.
- 6.1.2. Michtel shall have no rights against the County for any indemnification (e.g., contractual, equitable, or by implication), contribution, subrogation, and/or any other right to be reimbursed by the County except as expressly provided herein.
- 6.1.3. Michtel waives and releases all actions, liabilities, loss and damage including any subrogated rights it may have against the County based upon any Claim brought against the County suffered by a Michtel Employee.

§7. **GENERAL TERMS AND CONDITIONS**

- 7.1. While Michtel retains the right to perform services at any time, Michtel must obtain prior permission by the County for access to Public Assets after the County's regular business hours.

- 7.2. Cumulative Remedies. A Party's exercise of any remedy shall not preclude the exercise of any other remedies, all of which shall be cumulative. A Party shall have the right, in its sole discretion, to determine which remedies are to be exercised and in which order.
- 7.3. Survival of Terms and Conditions. The following terms and conditions shall survive and continue in full force beyond the termination and/or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their very nature:
"ASSURANCES AND WARRANTIES";
"INDEMNIFICATION";
"Damage Clean Up To County Property and/or Premises";
"Audit";
"Severability";
"Governing Law/Consent To Jurisdiction And Venue"; and
"Survival of Terms And Conditions".
- 7.4. No Third Party Beneficiaries. Except as provided for the benefit of the Parties, this Contract does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to be indemnified, right to be subrogated to the Parties' rights in this Contract, and/or any other right, in favor of any other person or entity.
- 7.5. Compliance with Laws. Michtel shall comply with all federal, state, and local laws, statutes, ordinances, regulations, insurance policy requirements, and requirements applicable to its activities under this Contract.
- 7.6. Permits and Licenses. Michtel shall be responsible for obtaining and maintaining throughout the term of this Contract all licenses, permits, certificates, and governmental authorizations necessary to perform all of its obligations under this Contract and to conduct business under this Contract. Upon request by the County, Michtel shall furnish copies of any permit, license, certificate or governmental authorizations necessary to provide services under this Contract.
- 7.7. Discrimination. Michtel shall not discriminate against any employee or applicant for employment because of sex, race, religion, color, national origin, or handicap in violation of State and Federal law.
- 7.7.1. Michtel shall promptly notify the County of any complaint or charge filed and/or determination by any Court or administrative agency of illegal discrimination by Michtel.
- 7.7.2. The County, in its discretion, may consider any illegal discrimination described above as a breach of this Contract and may terminate or cancel this Contract immediately with notice.

- 7.8. Reservation of Rights. This Contract does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the County.
- 7.9. Force Majeure. Notwithstanding any other term or provision of this Contract, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include, without limitation, acts of God, fire, explosion, vandalism, any law, order, regulation, direction, action, or request of the United States government or of any other government, national emergencies, insurrections, riots, wars, strikes, lockouts, work stoppages, or other labor difficulties. Reasonable notice shall be given to the affected Party of any such event. Michtel is expected, through insurance or alternative temporary or emergency service arrangements, to continue its obligations under this contract in the event of a reasonably anticipated, insurable business risk such as business interruption and/or any insurable casualty or loss.
- 7.10. Conflict of Interest. Pursuant to Public Act 317 and 318 of 1968, as amended (MCL 15.321, et seq.), no contracts shall be entered into between the County, including all agencies and departments thereof, and any County Agent. To avoid any real or perceived conflict of interest, Michtel shall identify any Michtel Employee or relative of Michtel's Employees who are presently employed by the County. Michtel shall give the County notice if there are any County Agents or relatives of County Agents who are presently employed by Michtel.
- 7.11. Damage and Clean up to County Property and/or Premises. Michtel shall be responsible for any damage to any County or municipal property, its premises, or a County Agent that is caused by Michtel or Michtel's Employees. If damage occurs, Michtel shall make necessary repairs and/or replacements to the damaged property to the satisfaction of the County. If the damage cannot be completed to the County's satisfaction, Michtel shall reimburse the County the actual cost for repairing or replacing the damaged property. Michtel shall be responsible for assuring that all County and municipal sites are restored to their original condition after work performed under this Contract is complete.
- 7.12. Use of Confidential Information. Michtel and/or Michtel Employees and the County shall not reproduce, provide, disclose, or give access to Confidential Information to any third party, or to any Michtel Employee or County Agent not having a legitimate need to know any such information and data, and shall not use the Confidential Information for any purpose other than performing its services under this Contract. Notwithstanding the foregoing, a Party may disclose the Confidential Information if required or permitted by law, statute or other legal process; provided that the Party (i) gives the other Party prompt written notice of an impending disclosure, (ii) provides reasonable assistance to the other

Party in opposing or limiting the disclosure, and (iii) makes only such disclosure as is permitted, compelled, or required.

7.12.1. This Contract imposes no obligation upon a Party with respect to any Confidential Information which it can establish by legally sufficient evidence: (i) was in the possession of, or was known by the Party, prior to its receipt from the other Party, without an obligation to maintain its confidentiality; or (ii) is obtained by a Party from a third party having the right to disclose it, without an obligation to keep such information confidential.

7.12.2. As used in this Contract, Confidential Information means all information that a Party is required or permitted by law to keep confidential, including but not limited to, County GIS data.

7.13. Michtel Use of County Licensed Software. In order for Michtel to perform its services under this Contract, the County may permit Michtel or Michtel Employees to access certain copyrighted Software licensed to the County. Michtel or Michtel Employees shall not: transfer, remove, use, copy, or otherwise provide or make available any such copyrighted Software or Documentation to any other person or entity, for any purpose, without the prior written consent of the County and/or the licensor. Furthermore, neither Michtel nor Michtel Employees shall produce a source listing, decompile, disassemble, or otherwise reverse engineer any copyrighted Software. Neither Michtel nor Michtel Employees shall use any copyrighted software contrary to the provisions of any applicable Software license agreement or state or federal law.

7.14. Michtel Use of County Servicemark.

7.14.1. The County grants Michtel the non-exclusive right to use its servicemark, specifically the servicemark listed in Exhibit V, on any and all publications, whether print or electronic format, related to or associated with the Wireless Oakland Initiative. Permission to use the servicemark extends to use on Michtel's website.

7.14.2. Michtel shall only use the servicemark in Exhibit V for the purposes described in this Contract and not for any other purpose.

7.14.3. Michtel acknowledges that the County has certain rights in the servicemark listed in Exhibit V and that Michtel has no right, title, or interest in this servicemark.

7.14.4. The servicemark covered under this Section shall be provided to Michtel at no cost.

7.14.5. Michtel permission to use the servicemark in Exhibit V shall cease when the Contract is terminated and/or cancelled. Upon termination and/or cancellation

of this Contract, Michtel shall not display the servicemark on its website or distribute or print any publication (in any format) displaying or containing the servicemark.

7.15. Linking to County Website.

7.15.1. Michtel may link to the County Website subject to the following conditions:

7.15.1.1. Neither Michtel nor Michtel's Website shall not create a frame, browser, or border environment around any of the content of the County's Website.

7.15.1.2. Neither Michtel nor Michtel's Website shall reproduce or copy the content on the County's Website.

7.15.1.3. County trademarks or servicemarks may not be placed on Michtel's Website without the County's prior written permission.

7.15.2. Michtel permission to link to the County Website shall cease when the Contract is terminated and/or cancelled or when one of the conditions listed in this Section is breached. Upon termination and/or cancellation of this Contract of the conditions listed in this Section, Michtel shall immediately stop linking to the County Website.

7.16. Project Managers. Each Party shall designate an employee or agent to act as a Project Manager. The Project Managers shall serve as a contact point for all matters related to the services to be performed under this Contract. Michtel's Project Manager shall coordinate with the County's Project Manager. Michtel shall provide the name and qualifications of its Project Manager and an alternate. In addition to a Project Manager, Michtel shall designate an employee or agent to act as a Network Engineer and an Executive Sponsor (an individual dedicated to overseeing the Wireless Oakland Initiative and reporting to the Wireless Oakland Advisory Board) during the term of this Contract

7.17. Dispute Resolution. All disputes arising under or relating to the execution, interpretation, performance, or nonperformance of this Contract involving or affecting the Parties may first be submitted to the respective Project Managers for possible resolution. The Project Managers may promptly meet and confer in an effort to resolve such dispute. If the Project Managers cannot resolve the dispute in five (5) Days, the dispute may be submitted to the signatories of this Contract or their successors in office. The signatories of this Contract may meet promptly and confer in an effort to resolve such dispute.

7.18. Access and Records. Michtel will maintain accurate books and records in connection with the services provided under this Contract for 36 months after end of this Contract, and provide the County with reasonable access to such book and records.

- 7.19. Audit. Michtel shall allow the County's Auditing Division, or an independent auditor hired by the County, to perform Contract compliance audits with the authority to access all pertinent records and interview any Michtel Employee throughout the term of this Contract, and for a period of three years after termination or cancellation of this Contract.
- 7.19.1. Michtel shall explain any audit finding, questionable costs, or other Contract compliance deficiencies to the County within forty-five (45) days of receiving the final audit report. Michtel's response shall include all necessary documents and information that refute the final audit report. Failure by Michtel to respond in writing within 45 days shall be deemed acceptance of the final audit report.
- 7.20. Delegation /Subcontract/Assignment. Michtel shall not delegate, assign, or subcontract any obligations or rights under this Contract or this entire Contract without the prior written consent of the County.
- 7.20.1. The rights and obligations under this Contract shall not be diminished in any manner by assignment, delegation or subcontract.
- 7.20.2. Any assignment, delegation, or subcontract by Michtel and approved by the County, must include a requirement that the assignee, delegee, or subcontractor will comply with the rights and obligations contained in this Contract.
- 7.20.3. Michtel shall remain primarily liable for all work performed by any subcontractors or delegees. Michtel shall remain liable to the County for any obligations under the Contract not completely performed by any Michtel delegee or subcontractor.
- 7.20.4. Should a subcontractor or delegee fail to provide the established level of service and response, Michtel shall contract with another agency for these services in a timely manner. Any additional costs associated with securing a competent subcontractor or delegee shall be the sole responsibility of Michtel.
- 7.20.5. In the event that a Petition in Bankruptcy is filed and there is an assignment of this Contract by a Court, the County may declare this Contract null and void.
- 7.21. No Implied Waiver. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any right or remedy under this Contract shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Contract. No waiver of any term, condition, or provision of this Contract, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Contract. No waiver by either Party shall subsequently affect its right to require strict performance of this Contract.
- 7.22. Severability. If a court of competent jurisdiction finds a term, condition, or provision of this Contract to be illegal or invalid, then the term, condition, or provision shall be deemed severed from this Contract. All other terms, conditions, and provisions of this Contract shall remain in full force and effect. Notwithstanding the above, if Michtel's



L. BROOKS PATTERSON-COUNTY EXECUTIVE
**OAKLAND COUNTY
PURCHASING DIVISION**

promise to indemnify or hold the County harmless is found illegal or invalid, Michtel shall contribute the maximum it is permitted to pay by law toward the payment and satisfaction of any Claims against the County.

7.23. Captions. The section and subsection numbers, captions, and any index to such sections and subsections contained in this Contract are intended for the convenience of the reader and are not intended to have any substantive meaning and shall not be interpreted to limit or modify any substantive provisions of this contract. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this contract shall be deemed the appropriate plurality, gender or possession as the context requires.

7.24. Notices. Notices given under this Contract shall be in writing and shall either be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given when one of the following occur: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

7.24.1. If notice is sent to Michtel, it shall be addressed to:

Michtel Communications, LLC
Tony Yangouyian, General Manager
10 West Huron
Pontiac, MI 48342

7.24.2. If notice is sent to the County, it shall be addressed to:

Oakland County Purchasing Division
Manager
1200 N. Telegraph Road, Building 34 East
Pontiac, MI 48341

And

Oakland County Chief Information Officer
1200 North Telegraph Road, Building 49 West
Pontiac, MI 48341

7.24.3. Either Party may change the address or individual to which notice is sent by notifying the other party in writing of the change.

7.25. Contract Modifications or Amendments. Any modifications, amendments, recessions, waivers, or releases to this Contract must be in writing and agreed to by both Parties.



L. BROOKS PATTERSON-COUNTY EXECUTIVE
OAKLAND COUNTY
PURCHASING DIVISION

Unless otherwise agreed, the modification, amendment, recession, waiver, or release shall be signed by an expressly authorized Michtel Employee and by the same person who signed the Contract for the County or other County Agent as authorized by the Oakland County Board of Commissioners.


- 7.26. Governing Laws/Consent to Jurisdiction and Venue. This Contract shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Contract shall be brought in the Sixth Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above. The choice of forum set forth above shall not be deemed to preclude the enforcement of any judgement obtained in such forum or taking action under this Contract to enforce such judgement in any appropriate jurisdiction.
- 7.27. Entire Contract. This Contract represents the entire Contract and understanding between the Parties. This Contract supersedes all other prior oral or written understandings, communications, agreements or Contracts between the Parties. The language of this Contract shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.



L. BROOKS PATTERSON-COUNTY EXECUTIVE
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PURCHASING DIVISION

The undersigned executes this Contract on behalf of Michtel and the County, and by doing so legally obligates and binds Michtel and the County to the terms and conditions of this Contract.

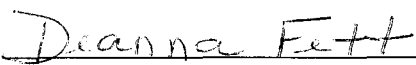
FOR MICHTEL:

BY:  DATE: 2/8/06

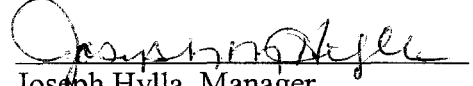
Tony Yangouyan appeared in person before me this day and executed this Contract on behalf of Michtel and acknowledged to me under oath that Tony Yangouyan has taken all actions and secured any and all necessary approvals and authorizations and has the requisite authority from Michtel to fully and completely obligate and bind Michtel to the terms and conditions of this Contract and also acknowledged to me under oath having been provided with copies and having read and reviewed the Contract.

Subscribed and sworn to before me on this 8th day of Feb, 2006.

DEANNA FETT
NOTARY PUBLIC, OAKLAND
COUNTY, MICHIGAN
MY COMMISSION EXPIRES
MAY 9, 2010


Notary Public
OAKLAND, County, Michigan
My Commission Expires: 5-9-2010

FOR THE COUNTY:

BY:  DATE: 2/8/2006
Joseph Hylla, Manager,
Oakland County Purchasing Department

APPROVED AS TO SCOPE OF WORK:

BY:  DATE: 2/8/06
Phillip R. Bertolini
Contract Administrator

drf

EXHIBIT I
Scope of Work

1. Michtel shall install, operate, manage, own, and maintain a wireless internet service for the entire geographic region of the County including, but not limited to, the wireless network architecture, design, and hardware procurement services, hardware installation, ISP connectivity, network operation, monitoring and maintenance services, marketing, and customer/technical support services for the wireless internet service users.
2. Michtel shall provide a portion of the bandwidth of the wireless internet service to all residents, businesses, and visitors of the County at no cost (“free internet service”). Initially, the upload and download speeds of this free internet service shall be 128 kilobits per second per user; however, the Parties acknowledge that the speed of the free internet service may vary slightly due to circumstances outside the control of Michtel. So as to remain competitive in the marketplace, the speed of the free internet service shall be reviewed by Michtel in conjunction with the Wireless Oakland Advisory Board annually. Accordingly, the Wireless Advisory Board shall provide recommendations to Michtel regarding whether the speed of the free internet service should be increased.
3. The wireless internet service shall support “consumer-based” technologies. The wireless internet service shall support the current IEEE standards. Migrations to future consumer based technologies shall be reviewed with the Wireless Oakland Advisory Board.
4. The wireless internet service shall support, but not be limited to, access from desktop computers, laptop computers, tablet computers, handheld devices, mobile phones, or other devices with appropriate wireless protocols.
5. Michtel shall provide access to the wireless internet service through a standard captive portal with a single log-in database that provides a uniform user experience throughout the County.
6. The wireless internet service shall incorporate network restrictions and other measures to provide security for users including, but not limited to, measures to protect users from common security threats including denial of services, port scanning, viruses, spam, and phishing.
7. The wireless internet service shall be available “open-air” (Outdoors) and “in-building” along exterior walls which may require the use of an omni-directional antenna that may be purchased from a consumer technology retailer.
8. In exchange for the free internet service, the County, where possible, shall provide access to its Public Assets, at no cost to Michtel, for placement of equipment to operate the wireless internet service; however, Michtel shall still be responsible for costs or fees associated with municipal permits or inspection, unless waived by the municipality. Access to Public Assets shall be accomplished via a license agreement

which is attached as Exhibit III to this Contract. A separate license agreement shall be executed for each Public Asset utilized by Michtel for the wireless internet service.

9. In exchange for the free internet service, the County shall facilitate access to assets owned by municipalities in the County which have chosen to participate in the Wireless Oakland Initiative. Access to municipal-owned assets shall be accomplished via a license agreement similar to the license agreement attached as Exhibit III. It is anticipated that the County and the municipalities participating in the Wireless Oakland Initiative will enter into an Interlocal Agreement deeming the County an agent of the municipality for the sole purpose of licensing municipal-owned assets. The County, as an agent of the municipality, shall execute a separate license for each municipal-owned asset utilized by Michtel for the wireless service.
10. Michtel shall comply with all federal, state, and local laws, regulations, ordinances, rules, and policies regarding use of Public Assets, municipal-owned assets, and privately-owned assets.

EXHIBIT II

Wireless Oakland Advisory Board

1. The purpose of the Wireless Oakland Advisory Board shall be to:
 - a. Provide advice, recommendations, and suggestions regarding the installation, operation, management, and maintenance of the wireless internet service and the captive portal; and
 - b. Create, regularly review, and amend, when necessary, the Wireless Oakland Advisory Board Bylaws.

2. The Wireless Oakland Advisory Board shall consist of the following persons:
 - a. The Oakland County Chief Information Officer or similar position at the County, if there is no Chief Information Officer, who shall be the chairperson of the Wireless Oakland Advisory Board;
 - b. A representative from the owner/operator of the wireless internet service;
 - c. A representative from Automation Alley;
 - d. A representative from a university, college, or community college in Oakland County;
 - e. A representative from a K-12 educational institution;
 - f. Seven individuals representing cities, villages, and townships in Oakland County;
 - g. Five representatives from private business;
 - h. Three representatives from the Oakland County Board of Commissioners.
 - i. Two citizens appointed by the County Executive; and
 - j. A representative from the Road Commission for Oakland County.

3. The members of the first/initial Wireless Oakland Advisory Board shall be selected and appointed by the Oakland County Executive except for the representatives from the cities, villages, and townships which shall be selected and appointed to the first/initial Wireless Oakland Advisory Board by the seven pilot municipalities. When subsequent vacancies occur or membership terms expire, new members shall be appointed pursuant to the Wireless Oakland Advisory Board Bylaws.

4. The Wireless Oakland Advisory Board shall meet at least quarterly. Proper notice of the meetings shall be sent to all members at least seven (7) calendar days before the meeting is scheduled.

EXHIBIT III

Public Assets License Agreement

This License Agreement ("License") is made ___ day of _____, 20___ between the County of Oakland, a Michigan Constitutional Corporation, located at 1200 North Telegraph Road, Pontiac, Michigan 48341 ("County"), and Michtel Communications, LLC, located at 10 West Huron, Pontiac, Michigan 48342 ("Licensee").

The Parties agree to the following terms and conditions:

1. **Definitions.** The following words and expressions used throughout this License, whether used in the singular or plural, within or without quotation marks, or possessive or non-possessive, shall be defined, read, and interpreted as follows:
 - 1.1. Agreement means the terms and conditions of this License, the Attachments attached hereto, and any other mutually agreed to written and executed modification, amendment, or addendum to this License.
 - 1.2. Claim means any alleged loss, claim, complaint, demand for relief or damages, cause of action, proceeding, judgment, deficiency, liability, penalty, fine, litigation, costs, and/or expenses, including, but not limited to, reimbursement for attorney fees, witness fees, court costs, investigation expenses, litigation expenses, and amounts paid in settlement, which are imposed on, incurred by, or asserted against the County or Municipality, as defined herein, whether such Claim is brought in law or equity, tort, contract, or otherwise.
 - 1.3. Contract means the contract between the County and Licensee and all the properly promulgated amendments.
 - 1.4. County means Oakland County, a Municipal and Constitutional Corporation including, but not limited to, all of its departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons' successors.
 - 1.5. Day means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
 - 1.6. Equipment means the access points or their equivalents used to operate the wireless internet service and that will be placed on the Public Assets.
 - 1.7. Licensee means Michtel Communications, LLC, 10 West Huron, Pontiac, Michigan 48342, and all employees, subcontractors, and agents of Licensee.
 - 1.8. Public Assets means the real or personal property owned by the County and specifically described as **[insert description of Public Asset]**.
 - 1.9. Wireless Oakland Initiative means the wireless internet service that will blanket all of Oakland County which will be provided, owned, operated, and maintained Licensee.

2. **Grant of License.** The County grants a non-exclusive license to use the Public Asset solely for the purposes set forth in this Agreement.
3. **Term.** The term of this License shall be until the earlier of the following:
 - 3.1. December 31, 2012; or
 - 3.2. When the Equipment has not been used to provide wireless internet service by Licensee for a period of ninety (90) consecutive Days; or
 - 3.3. When Licensee, at its election and with or without cause, delivers written notice of termination to County at least one-hundred and eighty (180) Days prior of the date of such termination;
 - 3.4. Upon either Licensee or the County giving written notice to the other of the occurrence or existence of a default by the other Party under the License or the Contract and the defaulting Party fails to cure, or commence good faith efforts to cure, such default within sixty (60) Days after delivery of such notice; or
 - 3.5. Unless the County grants a written extension, one year from the effective date of this License if Licensee has not started the construction and installation of the Equipment and two (2) years from the effective date of this License, if by such time construction and installation of the Equipment is not complete.
4. **Use.**
 - 4.1. Licensee shall use the license provided under this License for providing wireless internet service as more fully described in the Contract.
 - 4.2. Licensee and its Equipment may not unduly burden or interfere with the present or future use of the Public Asset. Except as otherwise provided by law, the County may not unduly burden or interfere with or authorize third parties to unduly burden or interfere with Licensee's Equipment. Licensee's Equipment shall not endanger or injure persons or property in or about the Public Asset. If the County reasonably determines that any portion of the Equipment constitutes an undue burden or interference, due to changed circumstances, Licensee, at its sole expense, will modify the Equipment or take such other actions as the County may determine is in the public interest to remove or alleviate the burden, and Licensee will do so within a reasonable time period.
 - 4.3. **Restoration of Public Asset.** Licensee will immediately, subject to seasonal work restrictions, restore, at Licensee's sole expense, in a manner approved by the County, any portion of the Public Asset that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Equipment to a reasonably equivalent, or at Licensee's option, a better condition. In the event that Licensee fails to make such repair within a reasonable time, the County may make the repair and Licensee will pay the costs the County incurs for such repair.
 - 4.4. **Removal of Equipment.** Within ninety (90) Days of termination of this License, Licensee shall remove all Equipment on the Public Asset and restore the Public Asset according to Section 4.3. In the event, Licensee fails to remove the Equipment within

the ninety (90) day period, the County may remove such Equipment and Licensee shall pay all costs, to the County associated with the removal.

- 4.5. Marking. Licensee will mark the Equipment pursuant to the County's requirements, including but not limited to, rules, regulations, and policies. The Licensee will use its best efforts to have the Equipment blend in with the surroundings and minimize visibility of the Equipment.
 - 4.6. Installation and Maintenance. The construction, installation, and maintenance of the Equipment shall only be performed pursuant to permit plans approved by the County, prior to such construction, installation or maintenance. Licensee will install and maintain the Equipment in a safe condition.
 - 4.7. Relocation. If the County requests Licensee to relocate, protect, support, disconnect, or remove its Equipment because of street or utility work, or other public projects, Licensee will relocate, protect, support, disconnect, or remove its Equipment, at its sole cost and expense, for the duration of the work or project. The work shall be completed within a reasonable time.
 - 4.8. Public Emergency. The County has the right to sever, disrupt, or otherwise destroy the Equipment of Licensee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, the County will attempt to provide notice to Licensee. Public emergencies are any condition, which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, terrorism, etc. Licensee is responsible for repair, at its sole cost and expense, of any of its Equipment damaged pursuant to any such action taken by the County under this Section.
 - 4.9. Access. The County may impose certain reasonable restrictions on the access to the Public Assets in accordance with its customs, rules, or regulations.
5. General Terms.
- 5.1. Compliance with Laws. Licensee must comply with all laws, statutes, ordinances, rules, policies, and regulations (including but not limited to tax statutes) regarding the construction, installation, and maintenance of its Equipment, whether federal, state or local, now in force or which may be promulgated. Before any installation is commenced, Licensee must secure all necessary permits, licenses and approvals from governmental entities as may be required by law. Licensee shall be responsible for all costs or fees associated with obtaining all applicable permits, licenses, and governmental approvals. Licensee must comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) the National Electric Code (latest edition), and the International Construction Code (latest edition).
 - 5.2. Identification. All personnel of Licensee who have as part of their normal duties contact with the public will wear on their clothing a clearly visible identification card bearing Licensee's name, their name and photograph. Licensee will account for all identification cards at all times. Every service vehicle of Licensee will be clearly

identified as such to the public, for example, a magnetic sign with Licensee's name and telephone number.

5.3. Indemnification.

5.3.1. Indemnity. Licensee shall release, defend, indemnify, protect, and hold harmless the County from any and all Claims arising out of or resulting from the acts or omissions of Licensee, or anyone claiming by or through them which are associated with this License.

5.3.2. Notice, Cooperation. The County will notify Licensee promptly in writing of any Claim. The County will cooperate with Licensee in every reasonable way with respect to the defense of any such Claim.

5.3.3. Settlement. The County will not settle any Claim subject to indemnification without the advance written consent of Licensee, which consent may not unreasonably be withheld. Licensee has the right to defend or settle, at its own expense, any Claim against the County for which Licensee is responsible.

5.4. Insurance.

5.4.1. Coverage Required. Licensee must obtain all insurance as set forth below and file certificates evidencing it with the County. Such insurance must be maintained in full force and effect until the end of the Term.

- Commercial general liability insurance, including products and completed operations liability, independent contractors liability, contractual liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than \$5,000,000.00.
- Liability insurance for sudden and accidental environmental contamination with minimum limits of \$1,000,000.00 and providing coverage for claims discovered within three (3) years after the term of the policy.
- Automobile liability insurance including automobile no-fault and hired and non-hired automobiles in an amount not less than \$5,000,000.00.
- Workers' compensation insurance with statutory limits, employer's liability insurance with \$1,000,000.00 limits, and any applicable Federal insurance of a similar nature.
- The coverage amounts set forth above may be met by a combination of underlying or primary and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy must provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy

carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverage for any reason during the Term, or, when longer, for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.

- Prior to execution of the License by the County, Contractor shall provide evidence of the insurance coverage required herein; thereafter, Licensee will annually provide the County with a certificate of insurance evidencing such coverage.
- All insurance policies, other than environmental contamination, will be written on an occurrence basis and not on a claims-made basis and the insurance policies shall contain a general aggregate per project.

- 5.4.2. Additional Insured. The County shall be named as an additional insured on all policies other than worker's compensation and employer's liability. All insurance policies will provide that they may not be canceled, materially changed or not renewed unless the insurance carrier provides sixty (60) Days prior written notice to the County.
- 5.4.3. Qualified Insurers. All insurance will be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers will be rated A+ or better by A.M. Best Licensee.
- 5.4.4. Deductibles. The insurance policies required by this section shall not have deductibles in excess of \$50,000. Licensee will indemnify and save harmless the County from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished.
- 5.4.5. Contractors. Licensee's contractors and subcontractors working on the Public Asset will carry in full force and effect all insurance coverages required by this Agreement. In the alternative, Licensee, at its expense, may provide such coverage for any or all its contractors or subcontractors by adding them to Licensee's policies.
- 5.4.6. Insurance Primary. Licensee's insurance coverage shall be primary and non-contributory over any other valid insurance or self-insurance carried by either the County.
- 5.4.7. Subrogation. The Licensee's insurance policies providing coverage for real and/or personal property shall contain a waiver of subrogation by which the insurance carrier waives all of such carrier's rights to proceed against the County. Licensee releases the County from any claims by them or anyone claiming through or under them by way of subrogation for damage caused by or resulting from risks insured under any insurance policy carried by Licensee.

- 5.5. Fees/Costs. Licensee is still subject to all municipal construction permitting requirements (including but not limited to fees and costs), unless such fees or costs are waived by the applicable governmental entity and/or the County.
- 5.6. Assignment. Licensee shall not assign the License, unless prior written approval is received from the County.
- 5.7. Notices.
- 5.7.1. Notices. All notices under this License must be given as follows:
- If to County:
 - If to Licensee:
- 5.7.2. Change of Address. Licensee and County may change its address or personnel for the receipt of notices at any time by giving notice to the other as set forth above.
- 5.8. Bond. Licensee shall supply a bond payable to the County which shall be executed by a corporation authorized to contract as a surety in the State of Michigan and which is on the United States Treasury list. The amount of the bond shall be \$100,000.00 and shall ensure the performance of all requirements of this License. Prior to execution of the License by the County, Licensee shall provide evidence of the bond required herein. This bond shall be renewed annually and the amount of the bond shall be reviewed annually by the County and Licensee to determine if the amount should be increased or decreased based upon the number of Public Assets utilized. Evidence of such bond shall be provided to the County upon request. The bond shall provide that it may not be canceled, materially changed or not renewed unless the corporation provides sixty (60) Days prior written notice to the County.
- 5.9. Interpretation and Severability. The provisions of this License are liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision of this License be held unconstitutional, invalid, overbroad or otherwise unenforceable, such holding may not be construed as affecting the validity of any of the remaining conditions of this License. If any provision in this License is found to be partially overbroad, unenforceable, or invalid, Licensee and County may nevertheless enforce such provision to the extent permitted under applicable law.
- 5.10. Governing Law. This License is governed by the laws of the State of Michigan.
- 5.11. Discrimination. The Licensee shall not discriminate against their employees, agents, applicants for employment, or another persons or entities with respect to hire, tenure, terms, conditions, and privileges of employment, or any matter directly or indirectly related to employment in violation of any federal, state or local law.
- 5.12. Reservation of Rights. This License does not, and is not intended to waive, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Municipality or the County.
- 5.13. No Implied Waiver. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this License shall constitute a waiver of those rights with regard to any existing or subsequent breach of this License. No

waiver of any term, condition, or provision of this License, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this License. No waiver by either Party shall subsequently affect its right to require strict performance of this License.

- 5.14. Captions. The section and subsection numbers, captions, and any index to such sections and subsections contained in this License are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this License. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this License shall be deemed the appropriate plurality, gender or possession as the context requires.
- 5.15. Modifications or Amendments. Any modifications, amendments, recessions, waivers, or releases to this License must be in writing and agreed to by both Parties.
- 5.16. Entire Agreement. This License represents the entire agreement and understanding between the Parties. This License supersedes all other oral or written agreements between the Parties. The language of this License shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

IN WITNESS WHEREOF, _____ acknowledges that he/she has been authorized to execute this License on behalf of Licensee and hereby accepts and binds Licensee to the terms and conditions of this License.

EXECUTED: _____ DATE: _____

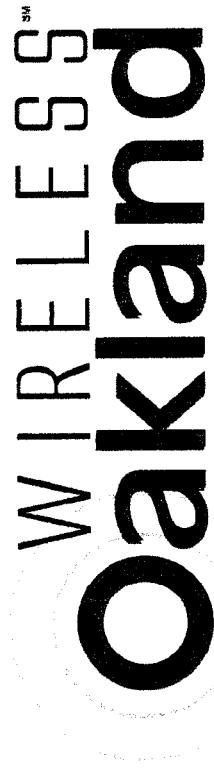
WITNESSED: _____ DATE: _____

IN WITNESS WHEREOF, _____ acknowledges that he has been authorized to execute this License on behalf of Oakland County, and hereby accepts and binds Oakland County to the terms and conditions of this License.

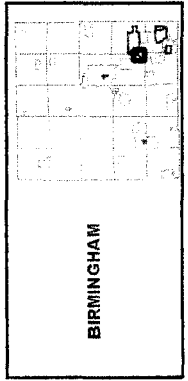
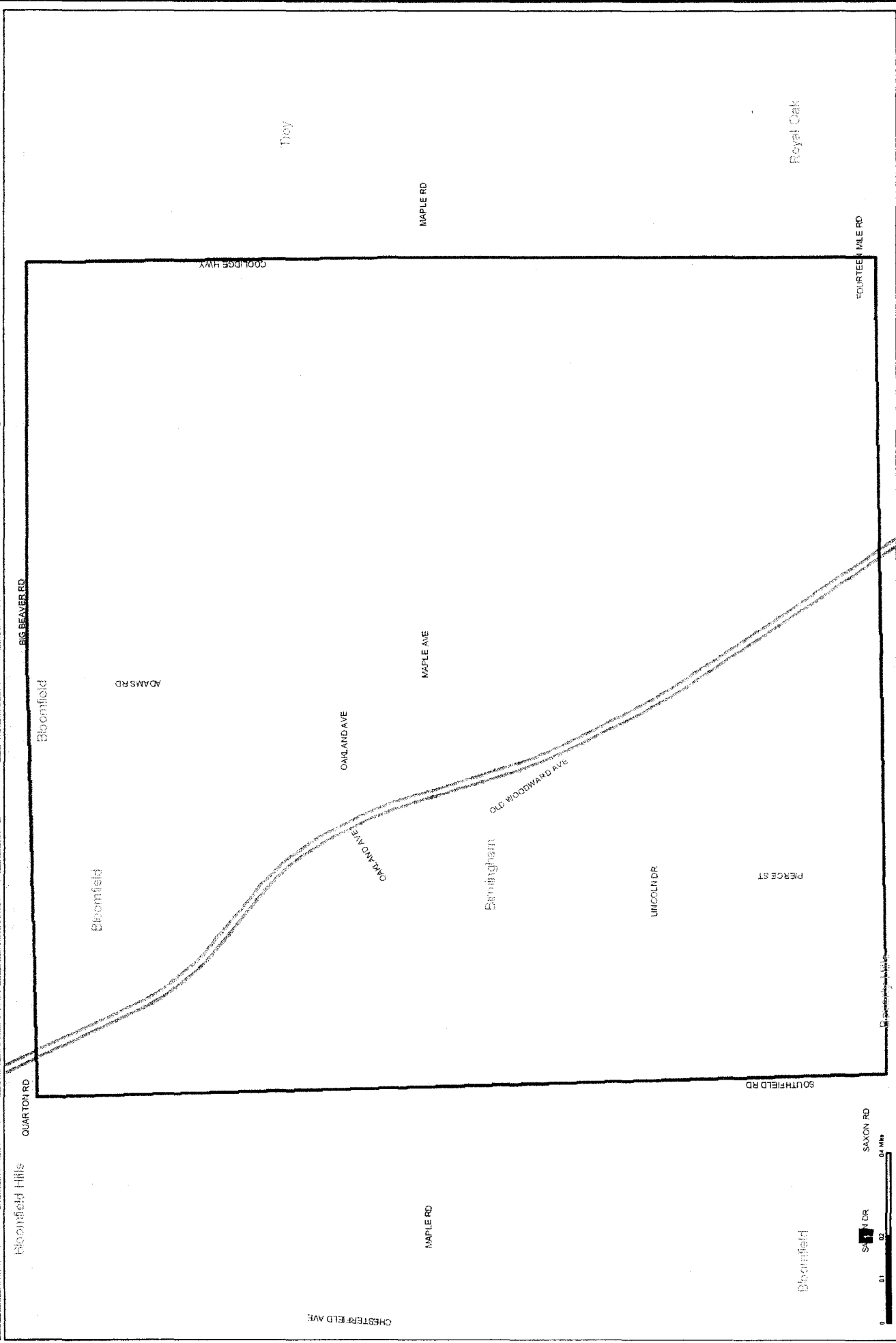
EXECUTED: _____ DATE: _____

WITNESSED: _____ DATE: _____

EXHIBIT IV



Wireless Oakland Pilot Communities



Proposed Pilot Area

TWELVE MILE RD

DEOUNDRÉ RD

HEIGHTS DR

Madison Heights

PROGRESS DR

JOHN R RD

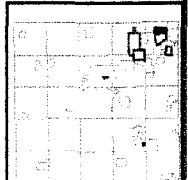
LINCOLN AVE

STEPHENSON HWY

CAMPBELL RD

Royal Oak

ELEVEN MILE RD



MADISON HEIGHTS

Proposed Pilot Area



Hamington Woods

TEN MILE RD

SCOTIA RD

COULDS HWY

Oak Park

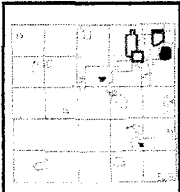
CHURCH ST

CHURCH ST

NINE MILLERD

Southfield

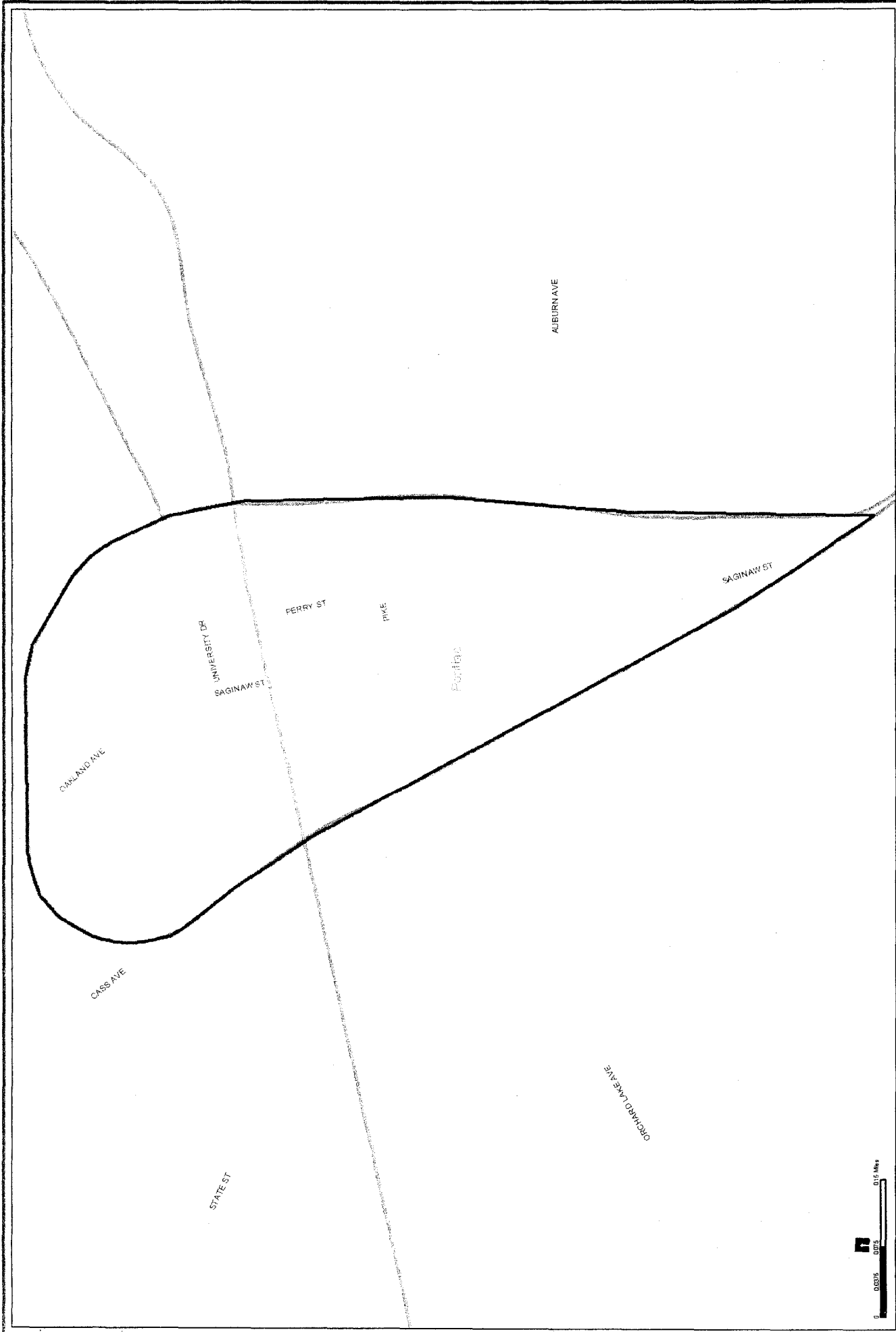
MOUNT VERNON ST



OAK PARK

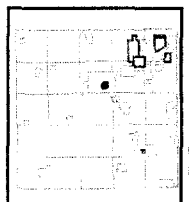
Proposed Pld. Area



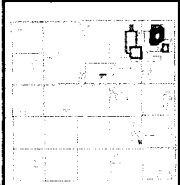
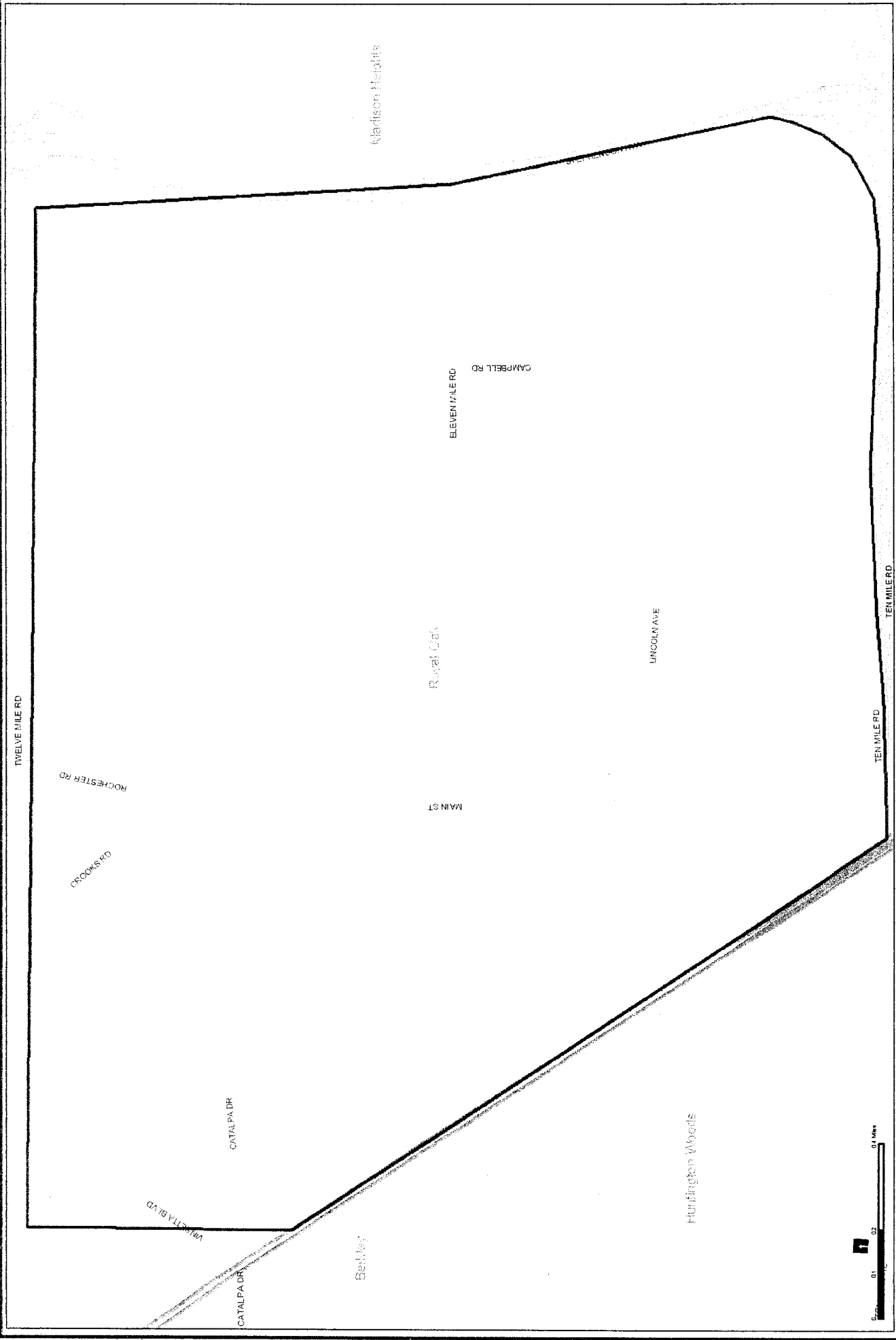


Proposed Pilot Area

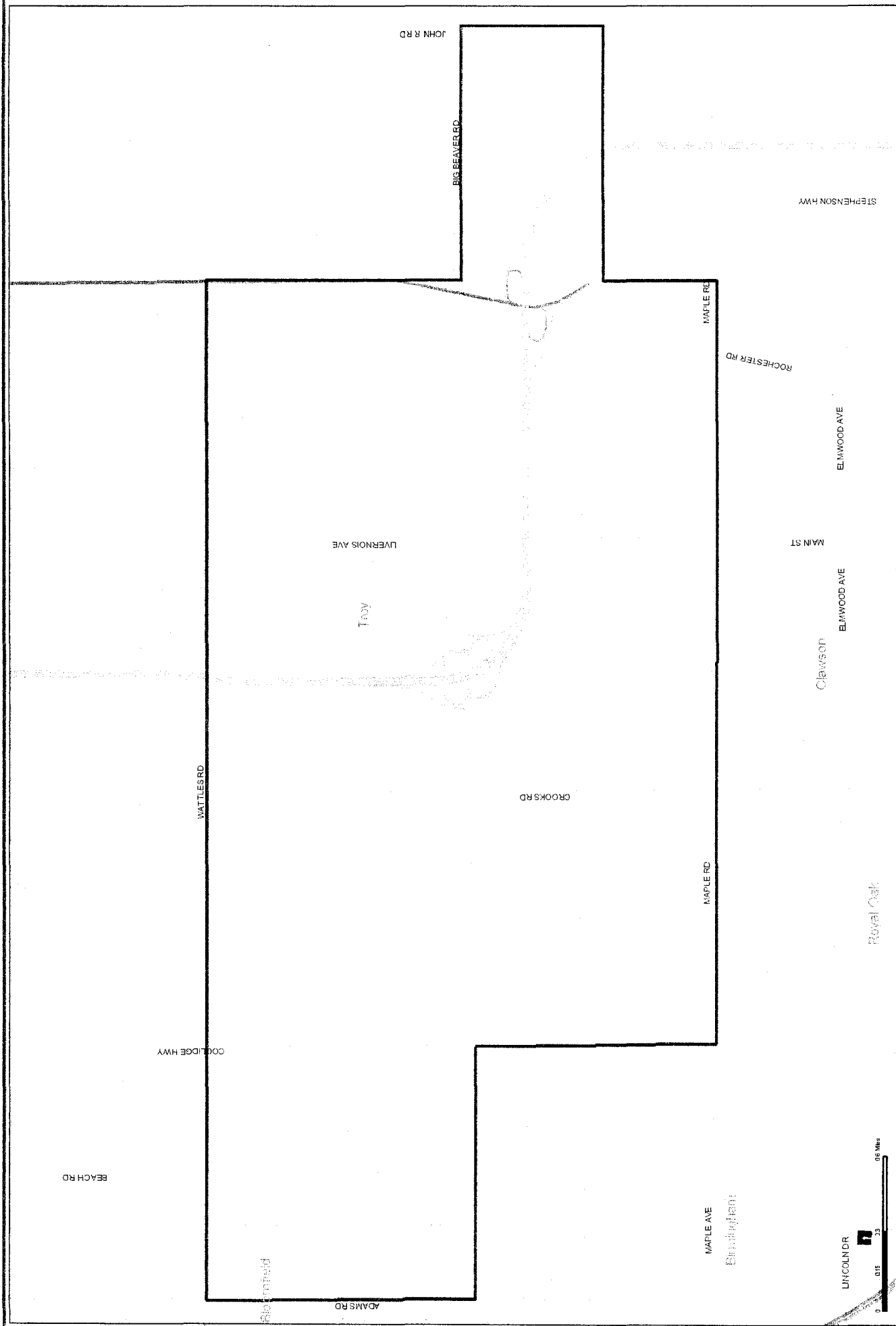
0 100 200 FEET
0.15 0.30 MILES



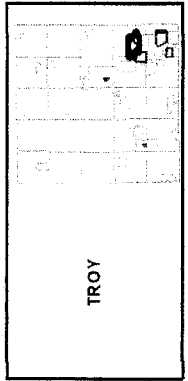
PONTIAC



ROYAL OAK



Proposed Pilot Area



0 0.15 0.30 0.45 Miles

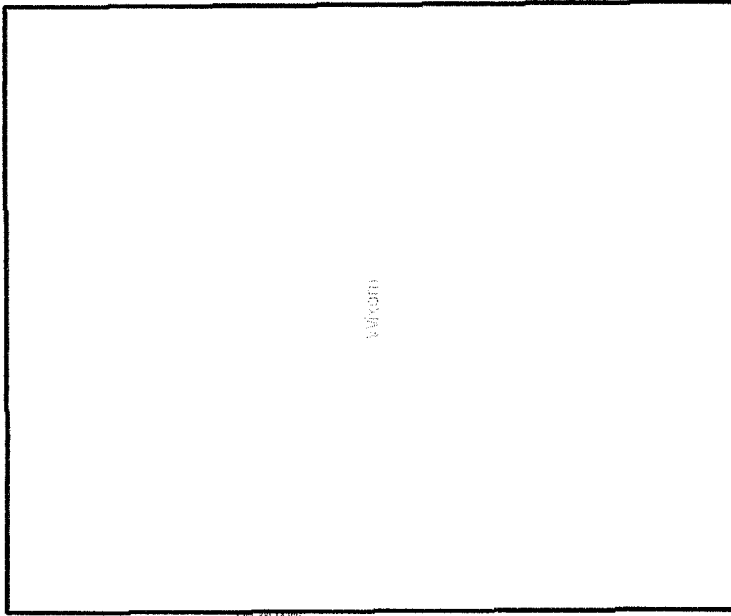
UNCOLNDR

MAPLE AVE
Brighton

TROY

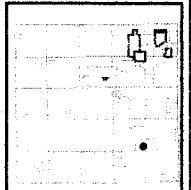
MAPLE RD

PONTIAC TRAIL



WIXOM

WIXOM RD



WIXOM

Proposed Pilot Area



EXHIBIT V

The logo consists of two concentric circles. The inner circle is solid black, and the outer circle is a thin, dotted black line.

WIRELESS
Oakland