

INDEFEASIBLE RIGHT OF USE AGREEMENT

THIS INDEFEASIBLE RIGHT OF USE AGREEMENT (the “Agreement”) is made and dated as of _____, 2009, by and between Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc., a Delaware corporation, having a place of business at 10 River Park Plaza, St. Paul, MN 55107 (hereinafter referred to as “Comcast”), and the City of Minneapolis, a city in the state of Minnesota (hereinafter referred to as “the City”). Comcast and the City may, at times, be referred to as a “Party” or collectively referred to as the “Parties” as the context requires.

RECITALS

WHEREAS, Comcast and the City were among the parties to a Settlement Agreement and Mutual Release executed July 24, 2006 (“Settlement Agreement”), which provided in part for Comcast, subject to the limitations contained therein, to provide the City with certain facilities and infrastructure to be used as part of the City’s independent institutional network. *See* City Pet. 271337, ¶ 8.;

WHEREAS, as part of the consideration to the City, negotiated pursuant to the City’s proprietary powers, and pursuant to paragraph 8(a) of the Settlement Agreement, Comcast agreed to give the City at Comcast’s option, either (i) an indefeasible right to use (at no charge for 99 years); (ii) a long-term nominal renewable lease (\$1.00/year for 99 years); or (iii) to the extent the elements are operationally and physically separate from any of Comcast’s facilities, outright ownership by the City (at no charge), of the existing “alternative network”; and

WHEREAS, Comcast has chosen to grant an indefeasible right of use for the “Alternative Network”, as described in Exhibit A, attached hereto and incorporated herewith, to the City.

NOW THEREFORE, in consideration of the foregoing, and of the promises and covenants contained in this Agreement, the parties agree as follows:

1. Term. The Effective Date of this Agreement shall be January 1, 2006. The Agreement shall continue for a period of Ninety Nine (99) years from the Effective Date, unless terminated earlier as set forth in this Agreement.

2. Payments. Except as otherwise expressly provided in this Agreement, Comcast shall not charge the City for the indefeasible right to use the Alternative Network.

3. Use of Alternative Network.

3.1 Subject to the terms and conditions of this Agreement, and subject to the limitations imposed under the Settlement Agreement (including those use limitations specifically set forth in Section 1), a copy of which is attached hereto as Exhibit B and incorporated into this Agreement, Comcast hereby makes available to the City, for exclusive use by the City, the Alternative Network.

3.2 Upon request from Comcast, the City shall provide an annual report identifying and certifying the City's authorized non-commercial users of the Alternative Network. Comcast shall have the right to verify the fiber connection points outside the physical site termination panels for all users on the Alternative Network to validate the City's report. If there are discrepancies found, both parties shall use the Dispute Resolution procedure under paragraph 18 of the Settlement Agreement to resolve the matter. The report shall be provided no later than January 31 for the previous calendar year.

4. Splicing and Attachment. The City may not, nor permit others to, splice additional facilities to the Alternative Network. The City may request that Comcast splice or attach additional City facilities to the Alternative Network, provided that the use is consistent with Paragraph 1 of the Settlement Agreement. The City shall pay Comcast's actual costs of any splice or attachment contemplated herein. Provided that the City's request is technically feasible, Comcast shall not unreasonably deny the request.

5. Maintenance of Alternative Network.

Throughout the term of this Agreement, the City shall be responsible for paying Comcast's actual cost of maintenance for the Alternative Network and Comcast shall, at the City's request, perform requested maintenance to the Alternative Network. Comcast shall only perform this maintenance if first requested by the City, however, in emergency conditions, such as an emergency resulting from a windstorm or an unplanned fiber cut, Comcast is authorized, when conducting its own emergency work, to effect similar emergency repair work on the Alternative Network, and the City will reimburse Comcast for its actual costs to conduct these repairs to the Alternative Network. In those cases where the Alternative Network is not co-located with Comcast system plant on a strand or in conduit, Comcast Fiber shall be repaired as a first priority and the Alternative Network shall be repaired as a second priority. The City shall pay Comcast for maintenance charges within forty five (45) days following receipt of the invoice. The City may not, nor permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any of the Alternative Network or equipment installed by Comcast, except with the written consent of Comcast, which consent shall be at Comcast's sole. Comcast further agrees to comply with all underground locates as required by the Minnesota Gopher One system.

Response to all network problems shall occur at all hours (24x365). Specifically, when Comcast receives a trouble call or alarm, either by internal monitoring or by City staff, Comcast's network operations center will make best efforts to ensure that appropriate technical support shall respond within 10 minutes after receiving a call related to a network problem (under Normal Operating Conditions, the initial page to the technician on call will be within the 10 minute time frame.) Comcast shall then work continuously until the problem is resolved. In any event, Comcast shall have no liability to the City for such delay in service restoration.

6. Compliance with Laws. Comcast shall comply with all applicable laws and Codes for all maintenance of the Alternative Network, and shall in any event construct and maintain the Alternative Network consistent with generally accepted engineering practices.

7. Relocation. Any relocation of the Alternative Network shall be in accordance with Minneapolis Code Chapter 429.

8. Title.

8.1 All right, title and interest in all the Alternative Network shall at all times during and after the Term of this Agreement remain exclusively with Comcast or Comcast's successors in interest.

8.2 The City shall retain sole and exclusive title to any facilities installed by it. The City shall hold and be responsible for all operating authorities for its facilities and for the services provided by it, including, without limitation, its use of the Alternative Network.

9. Liens and Encumbrances. Neither party, directly or indirectly, shall create or impose any lien on the property of the other party, or on the rights or title relating thereto, or any interest therein, or in this Agreement. Each party will promptly, at its own expense, take such action as may be necessary to duly discharge any lien created by it on the property of the other. However, nothing in this Agreement shall be so construed as to prohibit the owner of any facilities from permitting the creation or imposition of a lien or security interest on facilities that it owns provided such lien does not affect the rights of the other party hereto.

10. Representations and Warranties. Comcast hereby represents, warrants and covenants as follows:

(a) Comcast is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, is duly authorized to do business in the state of Minnesota and has full organizational power and authority to execute, deliver and perform the terms of this Agreement.

(b) Comcast has clear and unencumbered title to the Alternative Network and shall retain clear and unencumbered title throughout the term of this Agreement.

(c) In the event that Comcast assigns its ownership in any way to the Alternative Network, this Agreement shall survive all closings and continue to bind all successors in interest and shall not be terminated unless expressly agreed upon in writing by the City.

(d) Comcast warrants that it has and shall maintain in full force and effect during the term and any extended term of this Agreement all necessary federal, State and local authorizations, permits and licenses to: (i) construct, operate and maintain the Alternative Network; and (ii) provide the Alternative Network to the City.

(e) In the event of all or any portion of the Alternative Network are made inoperable and beyond feasible repair due to a casualty or other force majeure event (as described herein), Comcast shall commence reconstruction within a commercially reasonable time, or within 120 days, in accordance with section 5, above.

(f) Neither the execution and delivery of this Agreement nor the performance of or compliance with the terms and conditions hereof will conflict with any statute, ordinance or regulation to which Comcast is subject.

(g) No representation or warranty by Comcast contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make the statements contained in any such representation or warranty, in light of the circumstances under which it was made, not misleading.

11. Representations and Warranties of the City. The City represents and warrants that the City will only use the Alternative Network in compliance with this Agreement and the Settlement Agreement.

12. Indemnification

12.1 Subject to Minnesota Statutes, municipal limits on liability and all immunities the City may enjoy, including the limitation of payment to only those liabilities that the City would have if it was acting by itself and could assert all of its immunities, the City shall indemnify and hold harmless Comcast, its employees, officers and directors, and its Affiliates and employees, officers and directors thereof, from any liability (including reasonable attorneys' fees) for damages arising out of, or resulting from, the City's use of the Alternative Network, or from the use by any Person authorized by the City to use the Alternative Network.

12.2 Comcast shall indemnify, defend and hold harmless the City, and its officers, boards, committees, commissions, elected and appointed officials, employees, and agents from and against all direct liability (including reasonable attorneys' fees), damages and penalties which they may legally be required to pay as a result of: (i) Comcast's material default under this Agreement; and (ii) Comcast's unauthorized transmission of a signal over either of the Alternative Network, or as a result of Comcast's unauthorized modification of City signals.

13. Events of Default. In the event of a default, the parties shall follow section 18 of the Settlement Agreement.

14. Insurance Coverage. Each Party shall, at its own expense, secure and maintain in force, throughout the term of this Agreement, General Liability Insurance, with competent and qualified issuing insurance companies, including the following coverages: Product Liability; Hazard of Premises/Operations (including explosion, collapse and underground coverages); Independent Contractors; Products and Completed Operations; Blanket Contractual Liability (covering the liability assumed in this Agreement); Personal Injury (including death); and Broad Form Property Damage in policy or policies of insurance such that the total available limits to all insureds will not be less than \$2,000,000 Combined Single Limit for each occurrence and \$2,000,000 aggregated for each annual period. Such insurance may be provided in policy or policies, primary and excess, including the so-called Umbrella or Catastrophe forms. Additionally, the City shall maintain in effect, with insurance companies of recognized responsibility, at its own expense, (i) "All Risk" property insurance coverage with limits

sufficient to cover the full replacement cost of the City property with no co-insurance, (ii) Business Interruption coverage on an actual loss sustained basis, and (iii) such other insurance as may be required by any applicable franchise and/or pole attachment or conduit license agreements, as applicable. All policies required by this Article shall, to the extent possible, be endorsed to show the other party, its parent and affiliates and its and their directors, officers, agents, servants, employees and independent contractors as additional insureds, as their interests may appear; require the insurance companies to notify the other party at least thirty (30) days prior to the effective date of any cancellation or material modification of such policies; waive all rights of recovery for property damage to a party's property, under subrogation or otherwise, against the other party, its parent and affiliates and its and their directors, officers, agents, servants, employees and independent contractors; and shall specify that the policy shall apply without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except that the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered, and only one deductible shall apply regardless of the number of insureds covered. Notwithstanding the above, the City shall have the option to self insure in the amounts and for the categories listed above.

15. Limitation of Liability.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, COVER, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, AS A RESULT OF THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR IN ANY WAY RELATED TO THIS AGREEMENT. FURTHERMORE, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, (1) THE ENTIRE AGGREGATE LIABILITY OF COMCAST TO THE CITY FOR ANY AND ALL CLAIMS ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT SHALL BE LIMITED TO PROVEN DIRECT DAMAGES, AND THE RIGHT TO TERMINATE THE AGREEMENT. The provisions of this Article shall survive termination of this Agreement insofar as claims filed prior to the expiration of any applicable statute of limitations.

16. Disclaimer of Warranties.

THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: THE ALTERNATIVE NETWORK ARE PROVIDED "AS IS" AND "WHERE IS", AND COMCAST EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE CONDITION OR LIFESPAN OF THE ALTERNATIVE NETWORK. FURTHER, COMCAST SHALL HAVE NO OBLIGATION TO MAINTAIN, REPAIR, UPGRADE OR REPLACE THE ALTERNATIVE NETWORK IN

THE EVENT THAT IT FUNCTIONS IMPROPERLY OR CEASES TO FUNCTION. FURTHER, COMCAST MAKES NO WARRANTY OR REPRESENTATION WITH RESPECT TO ITS ABILITY TO MAINTAIN IN PLACE AUTHORIZATIONS FOR ANY PORTION OF PRIVATE RIGHT-OF-WAY OCCUPIED BY THE ALTERNATIVE NETWORK.

17. Notice. Unless otherwise agreed to by the parties, any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee, deposited in the United States mail, postage prepaid, certified mail, return receipt requested, or sent by overnight mail addressed as follows, or to such other address as the receiving party specifies in writing:

(a) Notices to the City shall be mailed to:

Comcast of Arkansas/Florida/Louisiana/ Minnesota/Mississippi/Tennessee, Inc.
10 River Park Plaza
St. Paul, MN 55107
Attn: Regional Vice President

with a copy to:

Comcast Cable Communications, LLC
1500 Market Street
Philadelphia, PA 19102
Attn.: Government Affairs Department

(b) Notices to the City shall be mailed to:

Director of the Department of Communications
City of Minneapolis
350 South Fifth Street
Room 300M
Minneapolis, MN 55415

with a copy to:

Office of the City Attorney
350 South Fifth Street
Room 210
Minneapolis, MN 55415

18. Definitions. For purposes of this Agreement, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and reference to either gender includes both genders. Unless otherwise expressly stated, words

not defined herein shall be given the meaning set forth in applicable law and, if not defined therein, the words shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary, and not mandatory.

18.1 "Agreement" shall mean this agreement, and any mutually agreed upon amendments, exhibits or appendices hereto.

18.2 "Alternative Network" shall mean those facilities described fully on Exhibit A, attached hereto and incorporated herewith, consisting of a two fiber count within Comcast sheath of additional fibers and coaxial cable and amplifiers, interconnecting the following locations as they exist on May 15, 2009: Henry High School, Edison High School, the Minneapolis School Administration Building, North Community High School, City Hall, South High School, the Fire Training Center, Roosevelt High School, Washburn High School, and the Southwest Secondary School.

18.3 "Authorized Users" shall mean Persons authorized by the City to use the Alternative Network.

18.4 "City" or "the City" shall mean the City of Minneapolis, Minnesota, and any official, agency, or department thereof.

18.5 "City Code" shall mean the Minneapolis Code of Ordinances, as amended from time to time.

18.6 "City Council" means the governing body of the City.

18.7 "Comcast" shall mean Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc., and its lawful and permitted successors, assigns and transferees.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument; and in pleading or proving any provision of this Agreement, it shall not be necessary to produce more than one complete set of such counterparts.

20. Captions. All headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of the Agreement. Whenever used herein the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

21. Governing Law and Binding Effect. This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Minnesota. This Agreement shall bind and inure to the benefit of each of the parties and their successors and permitted assigns.

22. Waivers and Amendments. This Agreement may not be amended nor shall any waiver, change, modification, consent or discharge be effected, except by an instrument in writing adopted, in the case of an amendment, by each party and, in the case of a waiver, consent or discharge, executed by the party against whom enforcement of such instrument is sought. Any consent by either party to, or waiver of, a breach by the other party shall not constitute a waiver or consent to any subsequent or different breach. If either party shall fail to enforce a breach or this Agreement by the other party, such failure to enforce shall not be considered a consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

23. No Third Party Beneficiaries. For purposes of this Agreement, including its intended operation and effect, the parties specifically agree and contract that: (1) the Agreement only affects matters/disputes between the parties to this Agreement and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in a contractual relationship with the City or Comcast, or both; and (2) the terms of this Agreement are not intended to release, either by contract or by operation of law, any third person or entity from obligations owed by them to either the City or Comcast.

24. Entire Agreement. With the exception of the Settlement Agreement, this Agreement, including the recitals and schedule herein, contains the entire agreement of the parties regarding the subject matter hereof and supersedes all other agreements, oral or written, heretofore made with respect to the subject matter hereof and the transactions contemplated hereby.

25. Recitals. The recitals herein are incorporated by reference into this Agreement and are made a part hereof.

26. Assignment. This IRU Agreement and any rights or duties hereunder shall not be assigned by either party without the express written consent of the other party.

27. Binding on Successors. Except as otherwise provided herein, this IRU Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

28. Severability. In the event any one (1) or more of the provisions of this Agreement shall for any reason be held to be invalid or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and shall remain in effect and binding upon the parties, unless such change materially alters either parties ability to perform the material obligations of this Agreement, in which case the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

29. Force Majeure. Neither party shall be liable for any failure of performance (including any delay in restoration of service) hereunder due to causes beyond its reasonable control including, but not limited to, acts of God, fire, explosion, vandalism, storm, or other similar catastrophes; any law, order, regulation, direction, decision, action or request of the United States government or the State of Minnesota; insurrection; riots or other civil disturbances; or wars.

30. Termination. The City in its sole discretion may terminate this IRU Agreement, by notice given in the manner contained herein.

31. Condemnation and Casualty.

31.1 Condemnation. If all or any portion of the Alternative Network are taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, either Party shall be entitled to terminate this Agreement with respect to such Alternative Network upon sixty (60) days' prior written notice to the other Party. In such event, both parties shall be entitled, to the extent possible under applicable law, to participate in any condemnation proceedings to seek to obtain compensation by either joint or separate awards for the economic value of their respective interests in the Alternative Network.

31.2 Casualty. If all or any portion of the Alternative Network are made inoperable and beyond feasible repair because of a casualty or other force majeure event, either Party shall be entitled to terminate this Agreement with respect to the Alternative Network affected by such casualty or other force majeure event upon sixty (60) days' prior written notice to the other Party. In such event, both parties shall be entitled to seek to recover the economic value of their respective interests in the Alternative Network (i) under any insurance policy carried by either party or any third party, or (ii) in either joint or separate actions, from any third party that may be legally responsible for causing such casualty.

32. Additional Termination Rights.

32.1 If, as a consequence of any official act by the City, Comcast should fail to obtain, lose, or fail to obtain renewal of, any approval, consent, authorization, license, certificate, franchise or permit required to provide the Alternative Network, or if such approval, consent, authorization, license, certificate, franchise or permit is suspended for a period longer than one hundred eighty (180) days and not renewed, , Comcast may, without further liability to the City, terminate this Agreement as it relates to the affected Alternative Network upon one hundred eighty (180) days' prior written notice to the City.

32.2 Should the City, in consultation with Comcast, determine that any of the facilities comprising the Alternative Network have ended their economically useful life, the City shall have the right to terminate this Agreement with respect to the Alternative Network upon sixty (60) days' prior written notice to the other Party. In the event 75% of the facilities comprising the Alternative Network have been terminated because they have ended their economically useful life, then either Party may terminate the Agreement in its entirety upon one hundred eighty (180) days' prior written notice to the other Party.

32.3 Should the City for any other reason decide not to retain the use of said Alternative Network, the City shall have the right to abandon its use by written notice to Comcast. Within ninety (90) days of such notice, the City shall remove all of its equipment and any other property from the Alternative Network.

33. Successors and Assigns. This Agreement, and the terms, covenants, warranties and conditions hereof, shall be binding upon and inure to the benefit of the parties hereto and their respective authorized heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns. Unless otherwise expressly stated herein, nothing in this Agreement shall be construed as an authorization or right of any party to transfer or assign its rights in or delegate its duties under this Agreement without the prior written consent of the other party, except that any consent of the City to the transfer or change of control of the Franchise Ordinance shall be deemed a consent to the transfer or assignment of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

**Comcast of Arkansas/Florida/Louisiana/
Minnesota/Mississippi/Tennessee, Inc.**

Dated: _____

By _____

Its _____

CITY OF MINNEAPOLIS
Department Responsible for Administering and
Monitoring Agreement

Dated: _____

By _____
Steven Bosacker
Its City Coordinator

Finance Officer or Designee

Approved as to form:

Peter W. Ginder, Deputy City Attorney

EXHIBIT A
Description of the Alternative Network

Alternative Network Map attached as Exhibit A.