

**AGREEMENT BETWEEN THE CITY OF MINNEAPOLIS,  
A HOME RULE CHARTER CITY,,  
AND THE MINNEAPOLIS TELECOMMUNICATIONS  
NETWORK, A MINNESOTA NONPROFIT CORPORATION**

**AGREEMENT**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2011, between: THE CITY OF MINNEAPOLIS, a Home Rule Charter City, and the MINNEAPOLIS TELECOMMUNICATIONS NETWORK, a Minnesota Nonprofit Corporation.

**WITNESSETH:**

**WHEREAS**, the City of Minneapolis, a Home Rule Charter City (hereinafter referred to as "City") has granted a cable communication franchise to Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc., a wholly owned subsidiary of Comcast Corporation (Hereinafter referred to as "Comcast"); and

**WHEREAS**, the City has enacted a franchise ordinance, 2009 – OR - 191, which is codified as Appendix H, Chapter 1, of the Minneapolis Code of Ordinances (hereinafter referred to as "Code"); and

**WHEREAS**, Comcast has executed an Acceptance of the franchise ordinances; and,

**WHEREAS**, Comcast has agreed in its cable communications franchise to provide certain Access Channels to the City to be used for Public, Educational, and Governmental programming and has further agreed to provide certain monetary support to the City in the form of a "PEG Fee"; and

**WHEREAS**, the Minneapolis Telecommunications Network, d/b/a Minneapolis Telecommunications Network (MTN) ("MTN") is a non-profit corporation that was originally organized in 1983 by the City under Minnesota Statutes, Chapter 317; and

**WHEREAS**, the Secretary of State for the State of Minnesota has certified that MTN's Articles of Incorporation were recorded with the Minnesota State Department on December 13, 1983, and that MTN is legally recognized under the Laws of Minnesota (City Pet. 229811); and

**WHEREAS**, MTN filed amended Articles of Incorporation with the City on July 24, 1992 (City Pet. 256458), and later filed it with the Secretary of State on October 16, 1992; and

**WHEREAS**, in order to provide for the continued existence of MTN (a corporation created by a political subdivision before 1997), the City, pursuant to Minnesota Statutes, Section 465.719, subd. 2, enacted a resolution on July 25, 2003 providing for the continued existence of MTN (City Resolution 2003R-352); and

**WHEREAS**, a certified copy of City Resolution 2003R-352 was filed with the Secretary of State pursuant to Minnesota Statutes, Section 465.719, subd. 2 (City Pet.268938); and

**WHEREAS**, Article II of MTN's Articles of Incorporation articulates the purpose of MTN: and

**WHEREAS**, since 1983, the City has contracted with MTN to operate the dedicated Public Access channels provided by Comcast and its predecessors in interest (City Contract Number 6544) and in return the City has provided funding to MTN; and

**WHEREAS**, the City and MTN now desire to enter into this agreement outlining, among other things, certain rights and obligations each may have relative to the operation of the City's Public Access channels.

**NOW THEREFORE**, in consideration of these premises and in consideration of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and MTN hereby agree, as follows:

**ARTICLE I**  
**Rules of Interpretation**

**Section 1.01. Rules of Interpretation.**

- (a) This Agreement shall be interpreted in accordance with the laws of the State of Minnesota.
- (b) The words "hereof" or "herein" and words of similar import, without reference to a particular section or article, refer to this Agreement as a whole and not to any particular section or article thereof.
- (c) The City's Cable Officer shall be the City's Communications Director or designee appointed by the Communications Director.
- (d) The headings and articles and sections are for convenience only and shall not affect the construction of this Agreement.
- (e) Quarterly or quarter shall mean four consecutive periods of three months beginning on January 1st of each calendar year.
- (f) MTN, for purposes of this Agreement, shall be empowered to act and shall be considered to have acted, when so authorized, pursuant to the authority of the voting members of the Board of Directors and all duly authorized officers, employees, agents and contractors who act under the control, supervision and direction of the voting members of the Board of Directors of MTN, and not as a result of any relationship between City and MTN.
- (g) Unless the context clearly requires otherwise, the singular shall include the plural and vice versa.
- (h) This Agreement shall be construed, whenever possible, to be in full compliance with applicable federal, state and local laws and regulations.
- (i) In the event that there are any discrepancies or conflicts between the Code, Appendix H, Chapter 1 and this Agreement, the provisions of the Code, including any amendments thereto hereinafter made, shall prevail. The Code, or any amendments thereto hereinafter made, shall supersede any inconsistent provision in this Agreement.

**ARTICLE II**  
**Incorporation by Reference**

**Section 2.01. Incorporation by Reference.**

The material set forth below shall be incorporated into this Agreement by reference, as if fully set forth herein, as follows:

- (a) The provisions of the cable franchise or as it may be amended from time to time for incorporation into the Code, Appendix H, Chapter 1, are incorporated herein by reference and made part hereof. Amendments to the Code shall be incorporated herein by reference as if fully set forth herein, without further action of the parties hereto.
- (b) The Articles of Incorporation for MTN, City Pet. 256458, filed with the Minnesota Secretary of State in 1992, are incorporated herein by reference and made part hereof.
- (c) The provisions of the Minneapolis Code of Ordinances, § 139.50 dealing with discrimination, affirmative action and women and minority business enterprises, as well as all other applicable federal, state and local laws or regulations relating to discrimination, affirmative action and women and minority business enterprises are incorporated herein by reference and made part hereof.
- (d) The provisions of the Minneapolis Code of Ordinances, § 24.220 et seq., dealing with prevailing wages are, to the extent applicable, incorporated herein by reference and made part hereof.
- (e) Minnesota Statutes, § 238.084, Subd. 1 (z), is incorporated herein by reference and made part hereof.

**ARTICLE III**  
**Purpose of Agreement and Performance Requirements**

**Section 3.01. Purpose of Agreement.**

It is understood by the parties hereto that Comcast has agreed to provide certain Public, Educational, and Governmental Access Channels and certain monetary support in the form of a “PEG Fee” to the City. The purpose of this Agreement is to authorize MTN to operate the City’s Public Access Channels and to define the rights and obligations of the parties hereto, as set out herein for the operation of the Public Access Channels. It is also the purpose of this Agreement to require MTN to perform all requirements of Minnesota Statutes § 238.084, subd. 1(z) and to meet the performance standards contained herein. This Agreement does not affect the Educational and Governmental Access Channels of the City.

**Section 3.02 Performance Requirements of MTN Services**

In consideration for the funding provided by the City to MTN, pursuant to this Agreement, MTN shall provide the following services:

- (a) Operate the Public Access Channels.**

For the term of this Agreement, MTN is designated to operate the City's three (3) public access channels (currently located on channels 16, 17, and 75) on Comcast's cable communications system, consistent with applicable law and the cable franchise.

**(b) Maintain and Operate a Public Access Center**

MTN shall maintain and operate, in accordance with best industry practices, a fully equipped and staffed public access production studio facility with related office space (the "Studio"). The Studio shall be open for citizens of the City to use during normal operating hours and by appointment. The Studio shall be located within the corporate boundaries of the City.

**(c) Access to Facilities**

MTN shall provide access to the equipment, facilities, and services provided herein on a non-discriminatory basis to all City residents and other organizations with their principal place of business located in the City for non-commercial programming purposes on a first-come, first served non-discriminatory basis pursuant to the operating policies of MTN.

**(d) Education and Training for Residents**

MTN shall provide training, equipment and channel time to City residents, without discrimination with regard to content of users' speech.

**(e) Develop Operating Policies and Procedures**

MTN shall develop policies and procedures for use and operation of the public access equipment, facilities, and channels and file such policies and procedures with the City, consistent with applicable law, the cable franchise and this Agreement.

**(f) Compliance with Laws, Rules and Regulations**

MTN shall administer the public access channels and facilities in compliance with applicable laws, rules, regulations, and in compliance with the cable franchise (2009-Or-191).

**(g) Maintenance of Equipment**

MTN shall provide regular maintenance and repair of all video equipment purchased with funds received pursuant to this Agreement and/or donated, loaned, or leased to MTN by the City. It will be the responsibility of MTN to ensure that access users who wish to use MTN's facilities have the skills necessary to properly operate video production and editing equipment.

**(h) Copyright Issues**

Prior to cablecasting any programming over the cable communications system, MTN shall require all users of MTN's facilities to agree in writing that they shall make all appropriate arrangements to obtain all rights to all material cablecast and clearances from broadcast stations, networks, sponsors, music licensing organizations' representatives, and without limitation from the foregoing, any and all other persons necessary to transmit its or their program material over the public access channels that are operated and managed by MTN. MTN shall maintain for the applicable statute of limitations for the City's inspection, upon reasonable notice by the City, copies of all such user agreements. MTN

shall own the copyright of any programs which it may choose from time to time to produce. Copyright of programming produced by the public shall be held by such person who produces said programming.

**(i) MTN Productions**

MTN shall cablecast 340 hours of original public access programming per month.

**(j) Playback/Cablecast**

MTN shall provide for the playback/cablecasting of programs on the City's public access channels. MTN shall cablecast an average of 86 non-repetitive hours of local original and outside programming per week. MTN shall cablecast no more than 418 hours of replayed programming per week. All programming shall be non-commercial in nature. Failure of playback of programming shall not exceed five percent. MTN staff will schedule channel time in a first-come, nondiscriminatory manner that will maximize fairness and diversity of expression, and will ensure that no person or group monopolizes channel time to the disadvantage of others. MTN will use discretion to ensure access for new channel users, standalone programs, series of limited duration, and special events. MTN will ensure that residents and organizations in Minneapolis will have the highest priority in using the public access channels. MTN will also ensure fair access for the presentation of alternative views and ideas, consistent with the Ordinances of the City of Minneapolis, Federal and State Laws. MTN shall throughout each day display a credit stating "Partial funding for the operation of this channel is provided by the City of Minneapolis." Such credit shall also state that the opinions expressed on the public access channel are the sole responsibility of the program producers.

**(k) Promotion**

MTN shall use its best efforts to promote the use and benefit of the City's public access channels to cable subscribers, the public, public access users and Comcast through the public access channels, other media, printed material, public speaking engagements, web site, newsletter, program guide, video bulletin boards, and any other means of publicity to increase members. MTN will evaluate the success of these efforts on an annual basis and state them in the annual report.

**(l) Non-Involvement of City in Programming Decisions**

The City shall have no editorial control over, involvement in or responsibility for the content or scheduling of public access programming. MTN shall make all decisions to accept, schedule and cablecast public access programming.

**(m) Agreements with other Cities and Fundraising**

Nothing in this Agreement shall prohibit MTN from entering into public access agreements with other public entities. Such joint agreements are encouraged so long as they do not conflict with this Agreement including the provision on priority for City residents in services and use of equipment funded by the City. Agreements with other public entities shall include provisions that are reasonably commensurate with the funding provided by the City. MTN shall notify and provide the City a copy of any such agreements upon 30 days of execution. MTN may also during the course of this Agreement receive supplemental funds from other sources, including but not limited to fundraising activities.

**(n) User Fees**

MTN may charge a reasonable user fee to users of the public access facilities.

**(o) Coordination with Comcast**

MTN shall maintain communications with Comcast as needed to ensure continued carriage of public access programming on the cable communications system in the event of channel changes and/or equipment changes and to coordinate transmittal of signals into the cable communications system. MTN may request the City to assist MTN with the coordination with Comcast.

**(p) Government Access Productions**

MTN will provide equipment and staff, up to 6 times per year, for location shoots requested by the city. City staff will oversee the requested productions. If the request is a live production, city staff will notify MTN 40 days in advance of the live meeting.

**(q) Other Activities**

MTN may undertake other public access programming activities and services as deemed appropriate by MTN and consistent with this Agreement.

**ARTICLE IV  
Method of Transferring Funds from the City to MTN**

**Section 4.01.**

The MTN shall, on at least an annual basis, and no later than May 31<sup>st</sup> of the year preceding, adopt a budget that includes a report identifying MTN's training and access objectives for the next calendar year and submit a budget request to City's Cable Officer, which shall be subject to the approval of the Minneapolis City Council and the Mayor in accordance with Chapter 3, Section 1 of the Minneapolis City Charter.

**Section 4.02**

During the term of this Agreement the City may review the MTN's previously approved Budget and channel allocation and withdraw approval for any previously approved budget item or items and channel allocation, or otherwise modify, change or reallocate any approved item or items in MTN's previously approved budget and channel allocation without MTN's consent or approval and without recourse by MTN, if the City finds:

- 1) MTN has not substantially complied with the material terms of this Agreement; and/or,
- 2) there has been a material change in the legal, technical or financial qualifications of MTN that would substantially impair the continued provision of service by them;
- 3) the services provided by MTN have not generally met standards intended by City and Comcast with the Franchise Ordinance; and/or
- 4) MTN has been found to be in noncompliance with Minnesota Statutes regarding access channels; and/or

5) the City and Comcast have agreed to modifications or amendments to the Code, Appendix H, Chapter 1 relevant to this Agreement; and/or

6) MTN has been found guilty and convicted of committing any felony offense.

**Section 4.03**

Upon approval of the MTN's budget by the City, the City's finance officer shall transfer, on a quarterly basis, if available, funds to the MTN to meet approved MTN budget items from PEG Fees provided by Comcast to the City.

**Section 4.04**

The City Finance Officer shall keep all PEG Fees provided by Comcast pursuant to Code, Appendix H, Chapters 1, in a segregated account within the general fund bearing interest at the rate of return for the entire general portfolio computed by the Treasury Division of the Finance Department, pending disbursement of said funds.

**Section 4.05**

All funds transferred to the MTN by the City's Finance Officer shall be from the Finance Officer's segregated account, described above, unless disbursements from other City funds are specifically authorized by the City. In the event that there are insufficient funds in the segregated account maintained by the City's finance officer to fully meet the MTN's approved budget, at the time of City approval of said budget, the City's financial officer shall transfer any unpaid budgeted MTN funds to the MTN, upon receipt of those funds from Comcast.

**Section 4.06**

MTN shall not spend any sums provided by the City except upon authorization in accordance with the terms of this Agreement.

**ARTICLE V  
Use of Funds by MTN**

**Section 5.01**

All funds received by MTN from the City shall be used for the production of public access cable programming, consistent with the Franchise.

**ARTICLE VI  
Deposit of MTN Funds**

All funds paid to MTN by the City shall be deposited in a bank located in Minneapolis, Minnesota. The City's Cable Officer shall be notified of each bank used by MTN. Where possible, all funds provided to MTN by the Company through the City shall be placed in an interest bearing account.

**ARTICLE VII  
Disbursement of Funds by MTN, Bonding**

**Section 7.01**

All funds provided to MTN by the City shall be disbursed, as follows:

(a) The Chairman or Treasurer of MTN or a person authorized by the Chairman or Treasurer of MTN shall sign checks issued by the MTN for amounts of less than \$5,000.00.

(b) The Chairman and Treasurer of MTN shall both sign MTN checks exceeding \$5,000.00.

**Section 7.02**

Any person authorized by MTN's board of directors to transact any business on behalf of the MTN and/or to receive or pay monies on behalf of MTN shall immediately execute and furnish a fidelity bond inuring to the benefit of the City and MTN, with sufficient sureties thereon, in the amount of One Hundred Thousand Dollars (\$100,000.00). Said bond shall be purchased from a company licensed to do business in the State of Minnesota and shall be subject to approval by MTN and by the City Attorney. Said bond shall be filed with the City's Finance Officer. The City's Finance Officer shall not transmit funds to MTN pursuant to Article IV hereof, until said bond or bonds have been approved and filed.

**ARTICLE VIII**  
**Accounting Provisions**

**Section 8.01**

MTN shall maintain financial records and enforce sufficient internal controls in accordance with generally accepted accounting principles (GAAP) for all funds received and disbursed, irrespective of source.

**Section 8.02**

MTN shall forward a report to the City on a quarterly basis, detailing all revenues received and all expenditures made by MTN and the purpose for each such expenditure for the preceding quarter, irrespective of the source of revenues, no later than sixty (60) days after the close of each quarter of MTN.

**Section 8.03**

MTN shall designate an independent certified public accountant to audit their financial activities on an annual basis.

**Section 8.04**

MTN shall submit an audit of all MTN revenues and expenditures to the City, accompanied by an unqualified opinion signed by the certified public accountant selected by the MTN, on an annual basis, within one hundred twenty (120) days of the end of each fiscal year.

**Section 8.05**

MTN shall permanently maintain all records, books, checks, statements, bills, etc. so as to enable the City to independently audit MTN, as the City may desire from time to time. MTN shall retain all

records pertinent to expenditures incurred under this Agreement for a period of six years after the resolution of all audit findings. Records for non-expendable property acquired with funds under this Agreement shall be retained for six years after final disposition of such property.

**Section 8.06**

MTN shall permit the City, upon reasonable notice and during normal business hours, to examine and copy all of its books, records, papers and documents upon request of the City or the City's Cable Officer. MTN shall designate a person or persons to accompany the City's representative for the foregoing purposes. Said person or persons shall be readily available to the City.

**Section 8.07**

MTN shall provide the City, within thirty (30) days of a request by the City's governing body, with any other reports, records or books requested by the City. If additional expenditures are required by MTN as a result of a request by the City's governing body, the City will authorize MTN to utilize MTN reserves to pay for the additional expenditures.

**ARTICLE IX  
Purchase and Title of Equipment**

**Section 9.01**

MTN shall own all equipment and facilities acquired by it and purchased with funds provided pursuant to this Agreement or otherwise from the City, except that upon termination or non-renewal of this Agreement all such equipment or facilities shall become property of the City. MTN shall be responsible for maintenance of all equipment and facilities owned, leased, or loaned to it under this Agreement or purchased with funds pursuant to this Agreement, or otherwise provided from the City.

**Section 9.02**

To secure all of its obligations under this Agreement, MTN hereby grants to City a security interest in all of the assets and interests owned or hereafter acquired by MTN with funds provided by the City, and the proceeds thereof, including but not limited to, MTN deposit accounts and inventory, and all equipment and fixtures, that are or were acquired with funds provided by the City. MTN agrees to take all steps reasonably necessary to perfect and enforce the City's security interest, including the execution and processing of financing statements and continuation statements under the state uniform commercial code. MTN will also notify any institution with whom it now or hereafter maintains any deposit account of the existence of the City's security interest in the account.

**Section 9.03**

Upon the dissolution of MTN, MTN shall, subject to the approval of the City, transfer all assets of MTN representing City-funded equipment and facilities, and/or the proceeds of either to the City, or at the City's option, to such organization or organizations designated by the city to manage public access.

**Section 9.04**

MTN shall, in accordance with generally accepted accounting procedures, maintain detailed records of all equipment or other capital assets and shall submit an inventory to the City's Cable Officer of all equipment and other capital assets within one week of January 1 and June 1 of each year.

## **ARTICLE X General Contract Monitoring and Performance Provisions**

### **Section 10.01 Contract Monitoring**

The Cable Officer shall administer and monitor the terms, conditions and performance of this Agreement on behalf of the City. MTN shall designate one or more persons to administer and monitor the terms, conditions and performance of this Agreement.

### **Section 10.02 Performance Requirements**

MTN shall meet all obligations under this Agreement and shall also meet all requirements of Minnesota Statutes § 238.084, Subd. 1(z). The City shall meet all obligations under this Agreement.

### **Section 10.03 Reporting**

MTN shall, by April 1<sup>st</sup> of the year following the close of each fiscal year, provide the City with a detailed summary of the previous year's activities in producing public access programming and MTN's compliance with Section 10.02 and shall include the following:

- (a) Current copies of MTN's Articles of Incorporation, Bylaws, and a current and complete list of MTN's Board of Directors;
- (b) Year-end financial statements audited by an independent certified public accountant, detailing the expenditures of funding provided by the City and the balance of MTN's bank account(s);
- (c) Statistics on programming and services provided, including but not limited to the following:
  - i. Programming statistics on a per-channel basis for year-to-date, including number of hours and programs of first-run local programming, number of hours and programs of first-run outside programming, total hours of programming cablecast by week for quarter, and cablecast failure rate.
  - ii. Training statistics for public access for the year-to-date, including course schedules, attendance, and recruiting efforts.
  - iii. Use of Equipment and facilities for the year-to-date.
  - iv. Report on equipment and facilities maintenance and repair activities. MTN will also maintain in this report a list of complaints from members regarding equipment condition.
  - v. Report on number of visitors to MTN web site.

- vi. Report on promotions conducted during the year and their effectiveness, as required by Section 3.02 (k).

(d) Evidence of adequate of insurance;

(e) A current copy of all schedules of video and audio equipment in MTN's custody. Included in this report will be; make, model, serial number, purchase date, price, life expectancy and location of all equipment.

(f) Any other reasonable and appropriate documents and information requested by the City;

(g) MTN will have program tracking-reports available upon request from City staff. These reports will include program submission totals/month. Tracking the programs created by MTN staff, members at MTN, in a foreign language, produced in the twin cities area, produced in Minneapolis, but not at MTN, produced in Minnesota, but out of twin cities area, and programs sponsored by a member.

(h) MTN will maintain a complete record of the names and addresses of all persons, groups, organizations or other entities that request access time and/or access cable casting equipment. Such records will be maintained in the public inspection file and will be available for public inspection at the MTN official place of business during regular business hours or by appointment. All records required herein, including requests for access channel time, shall be maintained for a period of at least two years.

#### **Section 10.04**

The City Council's Ways and Means Budget Committee or the City's governing body shall have the right to request additional information to determine MTN's compliance with sections 10.02 and 10.03.

### **ARTICLE XI Reservation of Rights by City**

#### **Section 11.01**

The City of Minneapolis reserves the right, at its discretion, from time to time, to determine whether MTN is performing its purposes in a manner satisfactory to the City, and if it is not, the City without recourse by MTN, may receive and reallocate all or a portion of the channel capacity, budget appropriations, including facilities, equipment and other capital assets purchased previously with such appropriations, to another entity, including Comcast.

#### **Section 11.02.**

The language contained in Section §11.01 and 11.04 shall be included in any contract entered into by MTN.

#### **Section 11.03**

Copies of all contracts or agreements entered into by MTN shall be filed with the City's Cable Officer.

#### **Section 11.04**

The MTN shall not enter into contracts or agreements committing channel capacity, funds, facilities, equipment or other capital assets for a period of time in excess of the term of this Agreement, without approval of the City Council and Mayor. Said approval shall not be unreasonably withheld.

**Section 11.05**

In the event the City exercises its option pursuant to §11.01, MTN agrees that it will assign existing contracts or agreements, appropriations, channel capacity, facilities, equipment, other capital assets, etc., to the City or its designee and/or return unused funds to the City or its designee, within such time limits as the City may require, and in accordance with such terms and/or conditions as the City may require.

**Section 11.06**

In the event of cancellation, termination or non-renewal of the Agreement, all MTN's rights and obligations hereunder shall, at the City's request, be deemed assigned to the City or the City's qualified designee or assignee or to any qualified interim operating authority designated by City for uses consistent with the cable franchise. MTN agrees, warrants and guarantees that it will execute all documents needed to accomplish this assignment. MTN agrees that it will fully assist the City or its designee in providing for an orderly transition of duties and responsibilities pursuant to the terms of this Agreement in the event of any assignment of rights pursuant hereto.

The City may require and MTN agrees, if requested, to continue to fulfill all the terms of this Agreement pending assignment of MTN's rights, pursuant to this Agreement, to the City, its designee or an interim operating authority.

**Section 11.07**

The City reserves the right to amend the cable franchise, Code, and Appendix H, Chapter 1, without MTN's consent.

**Section 11.08**

Costs of enforcing this Agreement, including attorney fees, costs and disbursements may be assessed against MTN, at the City's discretion.

**ARTICLE XII  
Indemnification and Insurance**

**Section 12.01**

MTN shall indemnify, keep and save the City free and harmless for claims arising out of the MTN's operation and responsibilities under the Agreement. In the event that suit shall be brought or that recourse or damages sought against either the City or the Comcast, or both, either independently or jointly with MTN, MTN shall indemnify the City and/or the Comcast and pay such judgment with all costs, including reasonable attorneys' fees, and hold the City and/or the Comcast harmless. MTN shall continuously throughout the duration of this Agreement maintain liability insurance with a company licensed to do business in the State of Minnesota, naming the city and the company as additional insureds, with regard to all claims or damages set forth herein in a minimum amount of:

- (a) Workers Compensation insurance that meets the statutory obligations with Coverage B-Employers Liability limits of at least \$100,000 each accident, \$500,000 disease - policy limit and \$100,000 disease each employee.
- (b) Commercial General Liability insurance with limits of at least \$2,000,000 general aggregate, \$2,000,000 products - completed operations \$2,000,000 personal and advertising injury, 100,000 each occurrence fire damage and \$10,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured.
- (c) Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with limits of at least \$500,000 per accident.
- (d) Technology Liability Insurance for the duration of this agreement providing coverage for, but not limited to, Technology and Internet Errors & Omissions, Security and Privacy Liability, and Electronic Media Liability. If written on a Claims-Made basis, policy must provide an extended reporting period and have a retroactive date that on or before the date of this Agreement or the date Contractor commences work, whichever is earlier.
- (e) Two million dollars (\$2,000,000.00) for damages arising from programming errors or omissions, including copyright infringement, misappropriation of literary property or program format, defamation, or invasion of privacy; and
- (f) One million dollars (\$1,000,000.00) in broadcasters' errors and omissions insurance.

The insurance policy or policies obtained by the MTN in compliance with this section must be approved by the City Attorney and maintained by the City's Finance Officer. Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of MTN. Any policy deductibles or retention shall be the responsibility of MTN. MTN shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect MTN's interest or provide adequate coverage. Evidence of coverage is to be provided on a City-approved Insurance Certificate. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. MTN shall require any of its subcontractors, if sub-contracting is allowable under this Agreement, to comply with these provisions.

**Section 12.02**

MTN shall maintain a worker's compensation insurance policy with a company licensed to do business in Minnesota for all employees, in accordance with Minn. Stat., Chapter 176. The parties hereto specifically agree that employees of MTN are not employees of the City.

**ARTICLE XIII  
Miscellaneous**

**Section 13.01. Addresses for Notices.**

All notices or other filings to be given by either party to the other hereunder shall be in writing and deemed to have been given when delivered personally or when deposited in the United States mail, registered or certified postage prepaid, addressed as follows:

- (a) To the City:  
Cable Officer  
City of Minneapolis  
Room 317M City Hall  
Minneapolis, Minnesota 55415
  
- (b) To MTN:  
Chairperson of Board  
MTN  
125 S.E. Historic Main St #244  
Minneapolis, MN, 55414

or addressed to any such party at such other address as such party shall hereafter furnish by notice to the other party, or in accordance with language contained elsewhere herein.

**Section 13.02. Waivers.**

No waiver by the City or MTN of any default hereunder shall operate as a waiver of any other default or to the same default on a future occasion. No delay on the part of the City or MTN in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or future exercise thereof or the exercise of any other right or remedy.

**Section 13.03. Remedies Cumulative.**

The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies which the City or MTN would otherwise have.

**Section 13.04. Duration of Agreement.**

This agreement shall be for in effect between January 28, 2011 and December 31, 2011 and thereafter may be renewed or extended with the consent of the parties hereto.

**Section 13.05. Independent Contractor.**

Parties understand and agree that MTN is an independent contractor and that no relationship of principal/agent or employer/employee exists between the City and MTN. If in the performance of this Agreement any third persons are employed by MTN, such persons shall be entirely and exclusively under the control, direction and supervision of MTN. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by MTN and the City shall have no right or authority over such persons or terms of employment.

**Section 13.06. Assignment and Subletting.**

Neither this Agreement nor any interest herein shall be assigned or transferred by MTN, except as expressly authorized in writing by the City.

**Section 13.07. Time.**

Time is of the essence in this Agreement and for the performance of all covenants and conditions in this Agreement.

**Section 13.08. Entire Agreement.**

This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements whether written or oral, including City Contract Number 6544. This Agreement may be amended only by written agreement and no purported oral amendment to this Agreement shall be valid.

**Section 13.09. Equal Opportunity Statement.**

Contractor agrees to comply with the provisions of all applicable federal, state and City of Minneapolis statutes, ordinances and regulations pertaining to civil rights and nondiscrimination including, without limitation, Minnesota Statutes, Section 181.59 and Chapter 363A, and Minneapolis Code of Ordinances, Chapter 139, incorporated herein by reference.

**Section 13.10. Non-Discrimination.**

MTN will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affection preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

If required by the City, MTN shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, MTN shall, in all solicitations or advertisements for employees placed by or on behalf of MTN, state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or status as disabled veteran or veteran of the Vietnam eras, 1991 Gulf and current Afghanistan and Iraq wars, and comply in all other aspects with the requirements of the Minneapolis Code of Ordinances, Chapter 139.

**Section 13.11. Disability Compliance Requirements.**

All Contractors hired by the City of Minneapolis are required to abide by the regulations of the U.S. Americans with Disabilities Act of 1990 (ADA) which prohibits discrimination against individuals with disabilities. MTN will not discriminate against any employee or applicant for employment because of their disability and will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, discharge, compensation and fringe benefits, classification, referral and training. The ADA also requires Contractors associated with the City to provide qualified applicants and employees with disabilities with reasonable accommodation that does not impose undue hardship. Contractors also agree to post in a conspicuous place, accessible to employees and applicants, notices of their policy

on non-discrimination. The above requirements also apply to the Minnesota Human Rights Act, Minnesota Statutes Chapter 363A.

In the event of MTN's noncompliance with the non-discrimination clauses of this Agreement, this Agreement may be canceled, terminated, or suspended, in whole or part, and MTN may be declared ineligible by the Minneapolis City Council from any further participation in city contracts in addition to other remedies as provided by law.

**Section 13.12. Billboard Advertising.**

City Code of Ordinance 109.470, prohibits the use of City and City-derived funds to pay for billboard advertising as a part of a City project or undertaking.

**Section 13.13. Data Practices.**

MTN agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. MTN must immediately report to the City any requests from third parties for information relating to this Agreement. The City agrees to promptly respond to inquiries from MTN concerning data requests. MTN agrees to hold the City, its officers, and employees harmless from any claims resulting from MTN's unlawful disclosure or use of data protected under state and federal laws.

**Section 13.14. Living Wage Ordinance.**

MTN shall comply with the "Minneapolis Living Wage and Responsible Public Spending Ordinance", (<http://www.ci.minneapolis.mn.us/procurement/Ch38LivingWage.pdf>) Chapter 38 of the City's Code of Ordinances (the "Ordinance").

**Section 13.15. Code of Ethics.**

In so far as it relates to its relationship with the City created by this Agreement, MTN agrees to comply with the City's Code of Ethics, as codified at Minneapolis Code of Ordinances, Title 2, Chapter 15. Contractor certifies that to the best of its knowledge all City employees and officers participating in this Agreement have also complied with Title 2, Chapter 15 of that Ordinance as it related to their relationships between the City and MTN created by this Agreement. Compliance with the Code of Ethics by MTN will be in its potential role as an "interested person," "lobbyist," and not as a "local official" or "local employee" (except to the extent that a Contractor representative or member of its board of directors is already a City official or employee). It is agreed by the Parties that any violation of the Code of Ethics constitutes grounds for the City to void this Agreement. All questions relative to this section shall be referred to the City and shall be promptly answered.

**Section 13.16. Equal Benefits Ordinance.**

Minneapolis Code of Ordinances, Section 18.200, relating to equal benefits for domestic partners, applies to each contractor and subcontractor with 21 or more employees that enters into a "contract", as defined by the ordinance, that exceeds \$100,000. The categories to which the ordinance applies are personal services; the sale or purchase of supplies, materials, equipment or the rental thereof; and the construction, alteration, repair or maintenance of personal property. The categories to which the ordinance does not apply include real property and development contracts.

Please be aware that if a “contract”, as defined by the ordinance, initially does not exceed \$100,000, but is later modified so the Agreement does exceed \$100,000, the ordinance will then apply to the Agreement. A complete text of the ordinance is available at:

[http://www.ci.minneapolis.mn.us/procurement/docs/equal\\_benefits\\_ordinance.pdf](http://www.ci.minneapolis.mn.us/procurement/docs/equal_benefits_ordinance.pdf).

It is MTN’s and subcontractor’s responsibility to review and understand the requirements and applicability of this ordinance.

**Section 13.17. Small & Underutilized Business Program (SUBP) Requirements.**

Contractor must comply with the Small & Underutilized Business Program (SUBP), as detailed in Chapter 423 of the Minneapolis Code of Ordinances. The SUBP Ordinance applies to any construction/development project in excess of one hundred thousand dollars (\$100,000) and any contract for the provision of goods and services in excess of fifty thousand dollars (\$50,000). Should MTN find an opportunity to contract with other business concerns to complete portions of the task solicited, we ask that they would entertain contracts with businesses owned by women or minority persons.

**CITY OF MINNEAPOLIS**  
Department Responsible for Administering and  
Monitoring Agreement

**Dated:** \_\_\_\_\_

By \_\_\_\_\_  
Sara Dietrich  
Its Communications Director/Cable Officer

\_\_\_\_\_  
Finance Officer or Designee

Approved as to form:

\_\_\_\_\_  
Peter W. Ginder, Deputy City Attorney

**MINNEAPOLIS TELECOMMUNICATIONS  
NETWORK, INC.**

**Dated:** \_\_\_\_\_

By \_\_\_\_\_  
Chair

By \_\_\_\_\_  
Treasurer