

AGREEMENT

Between the City of Saint Paul and Miller and Van Eaton P.L.L.C.

THIS AGREEMENT made and entered into this ____ day of _____ by and between the City of Saint Paul, Minnesota, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as the CITY and Miller and Van Eaton, P.L.L.C., hereinafter referred to as CONSULTANT, whose address is:

1155 Connecticut Avenue, N.W.
Suite 1000
Washington, DC 20036

WITNESSETH:

WHEREAS, the CITY desires to have assistance and advice in administering and enforcing its cable television franchise, including franchise renewal, and communications-related issues and assistance and advice regarding the effects federal laws and regulations and legislation have upon the same including with respect to its authority to regulate providers of communications services, protect its interests in public property and ensure that the City and its citizens have affordable access to advanced services whether publicly or privately provided, as well as in assessing the effects of convergence and competition; and

WHEREAS, the CONSULTANT is qualified to perform such services;

NOW, THEREFORE, the CITY and CONSULTANT in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, agree as follows:

SECTION 1. Scope of Services. CONSULTANT agrees to perform the following tasks:

- A. Cable Franchise Negotiation
 - 1. Assist City staff in preparing a written plan for the renewal process, accompanied by a timeline, and work with staff to modify the plan as appropriate.
 - 2. Assist City with various review activities, including a community needs assessment, customer satisfaction survey, public meetings, public workshops and education of decision makers and stakeholders.
 - 3. Review existing cable television franchise agreements and suggest additional elements for the City to consider including in any proposal for renewal, utilizing the experiences and solutions of other governmental franchisors across the nation.

4. Work with City to create a negotiation strategy and assist with its execution.
5. Attend and/or assist with negotiations with franchised companies as needed. The City Attorney and staff will provide some of the legal review and may provide drafting of the franchise agreements and ordinance revisions, and will be one of the primary negotiators.
6. Provide guidance and assistance, as needed, regarding various regulatory requirements at the Federal and State level.
7. Attend meetings and events as determined necessary to attend by the Renewal Committee to receive public input and discuss aspects of the proposed franchise agreement with the City, Council, etc.
8. Provide any other subsequently requested input or assessments of potential improvements in cable television franchise regulation, monitoring, and administration.
9. Provide the following items as deliverables:
 - Work Plan with Timeline
 - Negotiation Goals and Strategy Document
 - Completed Franchise and Related Documents
 - Recommended ordinance language
 - Analysis of current franchise to new franchise

B. Ongoing Cable and Telecommunications Consulting

As requested by the City:

1. Provide ongoing advice and guidance regarding aspects related to both the current franchise and to the new cable franchise agreement.
2. Provide ongoing advice and guidance regarding telecommunications and cable law.
3. Provide ongoing advice and guidance on changes in the telecommunications and cable regulatory and industry environment.

SECTION 2. Time for Completion. The services rendered by CONSULTANT shall be commenced upon execution of this Agreement and written notification by the CITY to the CONSULTANT to proceed. Services will be completed in accordance with the schedule mutually agreed upon with the CITY. CONSULTANT shall not proceed with any task without specific authorization from the CITY.

SECTION 3. Changes in Scope of Services. CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes and method of compensation must be authorized in writing in advance by the CITY.

SECTION 4. Delays. In the event there are delays caused by actions of the CITY, or which may be reasonably requested by the CONSULTANT which change the completion date, the CITY will grant to the CONSULTANT reasonable extensions of contract time.

SECTION 5. Principal Project Members. The CITY requires during the terms of this Agreement that CONSULTANT agrees to assign specific members as principal project members and assures that the major work and coordination will remain the responsibility of these individuals.

The CONSULTANT's principal project member is Joseph Van Eaton, who will be assisted by other CONSULTANT members as necessary.

Removal of any principal project member without replacement by equally qualified CONSULTANT(S) is grounds for termination of the project by the CITY.

It is recognized that questions in the day to day conduct of performance pursuant to this Agreement will arise. The City Attorney's designee, Lisa Veith or her successor, is the individual to whom all communications pertaining to the day to day conduct of the Agreement shall be addressed. For other purposes, the CITY has designated Mike Reardon as the Project Manager for this Agreement, and with whom CONSULTANT may communicate on day-to-day issues with permission of the City Attorney's designee.

The CONSULTANT recognizes and agrees that, to the extent that it provides legal consulting services, the final responsibility for providing legal advice to the CITY rests with the City Attorney. Accordingly, CONSULTANT will coordinate any legal advice it provides with the City Attorney and any Assistant City Attorneys assigned to these matters.

SECTION 6. Termination. This Agreement will continue in full force and effect until completion of the project as described herein unless it is terminated at an earlier date by either party.

Either party to this Agreement may terminate it by giving no less than thirty (30) days written notice of the intent to terminate to the other party.

In the event of termination, the CONSULTANT will be paid by the CITY for all services actually, timely, and faithfully rendered up to the receipt of the notice of termination and thereafter until the date of termination. The CONSULTANT will provide all work documents developed up to the time of termination prior to the CITY rendering final payment for service.

SECTION 7. Billings and Payment. That for the CONSULTANT's faithful performance of this Agreement, the CITY agrees to reimburse CONSULTANT in accordance Exhibit A.

The total cost of this contract, unless amended, shall not exceed \$94,000.00.

The CITY assumes that the above amounts shall fully reimburse CONSULTANT for all costs.

CONSULTANT shall submit an itemized invoice each month to the City's Office of Cable Communications. Upon receipt of the invoice and verification of the charges, payment shall be made by the CITY to CONSULTANT within thirty (30) days.

In the event the CONSULTANT fails to comply with any terms or conditions of the contract or to provide in any manner the work or services as agreed herein, the CITY reserves the right to withhold any payment until the CITY is satisfied that corrective action has been taken or completed. This option is in addition to and not in lieu of the CITY's right to termination as provided in other sections of this Agreement.

SECTION 8. Records and Dissemination of Information. The CONSULTANT agrees not to release, transmit, or otherwise disseminate information generated as a result of this project without prior knowledge and written consent of the CITY.

The CONSULTANT agrees to maintain all books, documents, papers, account records, and other evidences pertaining to work performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such material available at its office at all reasonable times during the Agreement period and for five (5) years from the date of the final payment under the contract for audit or inspection by the CITY or other duly authorized representative.

In the event of termination, all documents finished or unfinished, prepared by CONSULTANT under the Agreement, shall be made available by CONSULTANT to the CITY and there shall be no further obligation of the CITY to CONSULTANT except for payment of amounts due and owing for work performed and expenses incurred to the date and time of termination.

In like manner, if the entire Agreement is terminated, all remaining documents on file with CONSULTANT shall also, upon request, be made available to CITY upon receipt of payment of amounts due and owing CONSULTANT for any authorized work.

SECTION 9. Ownership of Documents. All deliverable reports, recommendations, and other materials that result from the CONSULTANT's services under this Agreement shall become the property of the CITY after final payment is made to the CONSULTANT with no right, title, or interest in said reports, recommendations, or materials vesting in CONSULTANT.

SECTION 10. Equal Opportunity Employment. CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, or national origin and will take affirmative

steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin.

This provision shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment advertising, layoff or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.

SECTION 11. Attorney/Client Relationship. CONSULTANT agrees that it is entering into an attorney/client relationship with the City of Saint Paul and that it is bound by the conflict of interest, confidentiality and other obligations that govern such relationships. CITY recognizes that CONSULTANT'S attorneys are not licensed to practice law in the State of Minnesota, the scope of representation by the firm's lawyers under this retainer is limited to matters as to which CONSULTANT is permitted to represent CITY law, regulations or custom.

SECTION 12. Assignment. The CITY and the CONSULTANT each binds itself and its successors, legal representatives, and assigns of such other party, with respect to all covenants of this Agreement; and neither the CITY or the CONSULTANT will assign or transfer their interest in this Agreement without the written consent of the other.

SECTION 13. Independent Contractor. It is agreed by the parties that, at all times and for all purposes within the scope of the Agreement, the relationship of the CONSULTANT to the CITY is that of independent contractor and not that of employee. No statement contained in this Agreement shall be construed so as to find CONSULTANT an employee of the CITY, and CONSULTANT shall be entitled to none of the rights, privileges, or benefits of Saint Paul employees.

SECTION 14. Subcontracting. The CONSULTANT agrees not to enter into any subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the CITY except as spelled out within the terms of its proposal. CONSULTANT agrees that this Agreement shall remain the obligation of Joseph Van Eaton until Agreement is terminated in accordance with Section 6

SECTION 15. Hold Harmless. The CONSULTANT shall indemnify, save and hold harmless, the CITY from alleged damages or injuries arising directly or indirectly from negligent acts or omissions of the CONSULTANT, its principals, employees and subcontractors, in performance of activities under this Agreement. This clause will not be construed to bar any legal remedies the CONSULTANT may have for the CITY's failure to fulfill its obligations under this Agreement or for the CITY's negligence.

SECTION 16. Insurance. CONSULTANT shall provide a Certificate of Insurance that relates to malpractice for damages arising out of the performance of the work required pursuant to this Agreement.

SECTION 17. Services Not Provided For. No claim for services provided by CONSULTANT not specifically provided for in this Agreement shall be honored by the CITY.

SECTION 18. Entire Agreement. It is understood and agreed that the entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters hereof.

SECTION 19. Requirement of a Writing. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties.

SECTION 20. Amendment of Agreement. This Agreement may be amended by further mutual written agreement of the parties thereto.

SECTION 21. Governing Law. This Agreement will be governed and interpreted under the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

CITY OF SAINT PAUL

MILLER & VAN EATON

By: _____
Its: Director, Office of Technology and
Communications

By: _____
Its: _____

By: _____
Its: Cable Officer

By: _____
Its: Director, Office of Financial Services

By: _____
Its: Mayor

Approved as to form:

Assistant City Attorney

The City has also requested a schedule for payments. MVE proposes to bill the City monthly at its hourly rate and monthly for expenses incurred.

A. Cable Franchise Negotiation

The City has requested an estimated fee that covers the Cable Franchise negotiation portion of the scope of the project and all related deliverables. The estimated fee shall indicate (i) the estimated hours, (ii) the hourly rate, per legal staff member, and (iii) the total that will not be exceeded to complete each Scope of Work deliverable. As MVE understands it, the not-to-exceed figure is the amount that will be charged for the work described in this proposal, and cannot be exceeded without the approval of the City. However, MVE is also willing to perform additional work as the City deems necessary at its discounted municipal rates. For example, for attendance at meetings, MVE would charge its hourly rate for work performed (MVE will not charge for air travel time where work is not being performed), plus expenses.

The following chart describes the estimated hours and not-to-exceed totals for each Scope of Work deliverable:

Deliverable	Estimated Hours	Not-To-Exceed Total³
<i>Assist with Written Plan and Timeline.</i>	JVE: 10	\$ 3,000
<i>Negotiation Goals and Strategy Document</i>	JVE: 20 MKS: 12	\$ 8,700
<i>Complete Franchise and Related Documents</i>	JVE: 8 MKS: 24	\$ 7,800
<i>Recommended Ordinance Language</i>	JVE: 8	\$ 7,800

³ These totals do not include expenses. We anticipate that any travel to St. Paul on short notice would cost approximately \$300 in airfare, and \$200 in other daily costs.

MILLER & VAN EATON, P.L.L.C.

Deliverable	Estimated Hours	Not-To-Exceed Total³
	MKS: 24	
<i>Comparison of Current and New Franchises</i>	JVE: 2 MKS: 6	\$ 1,950
Deliverable Total		\$29,250

In the following section, we discuss the estimated costs of these deliverables and the other tasks within the scope of work.

Assist with Written Plan and Timeline

As discussed above, we propose an in-person meeting with the St. Paul renewal committee and a separate meeting with other stakeholders as appropriate. We assume that the meetings will require approximately five hours of work; drafting the draft time line and strategic document will require about three hours of work; a follow-up phone call will require one hour of work; and necessary revisions another hour of work. The time and cost can be reduced if the initial calls are by telephone. In that case, we expect the total time to be about 10 hours (four hours of telephone calls). The cost may be reduced further to the extent that we are able to build on work performed for the City. All billable work will be performed by Joseph Van Eaton. Matt Schettenhelm will likely participate by phone at no charge to the City.

Assist with Needs Assessment Activities

The cost of this task will depend on the extent to which the City requires our services, but generally this work requires roughly 30-40 hours over the renewal process. MVE is not often required to attend community meetings, but is available to do so.

MILLER & VAN EATON, P.L.L.C.

*Review Existing Franchise Agreements;
Assist To Create Negotiation Strategy*

We estimate that the review of the existing agreement will require no more than five hours of work, approximately three hours by Matt Schettenhelm and two by Joseph Van Eaton.

We would work then with the City to discuss the assessment and to identify renewal goals. Recent experience suggests this may require a series of calls to discuss key issues. We assume four two-hour calls involving the committee and Joseph Van Eaton and Matthew Schettenhelm (only Mr. Van Eaton's time will be charged). MVE will then develop a negotiation strategy document, work that will require approximately five hours by Mr. Schettenhelm and five hours by Mr. Van Eaton. This will be followed by a further call to discuss the draft, and development of a final document. This should require approximately four hours by Mr. Van Eaton and four hours by Mr. Schettenhelm. This assumes we are able to complete a discussion regarding the bullet points and negotiation strategy in four hours, with four hours for document revision.

Assist with Franchise Negotiation and Drafting

While the cost of this work will depend on the extent to which the City requires the firm's assistance, as a rule of thumb, MVE finds that each day of effective negotiation requires six-eight hours of preparation; followed by eight hours of actual negotiation; followed by six-eight hours where goals and strategies are re-assessed and counter-proposals are developed. MVE would charge at its discounted hourly rate for work performed, plus expenses. As a rule of thumb, the City may assume that each day of negotiation will cost approximately \$8000. This will make it important for the City to establish firm guidelines with Comcast for conduct of negotiations to keep costs under control. The City should assume, however, that at least five negotiating sessions will be required. We also caution the City that Comcast has been engaged in extensive delaying tactics in other communities.

MILLER & VAN EATON, P.L.L.C.

While much language is likely to be developed through the negotiating process, at the end of that process, MVE will prepare final franchise documents and proposed amendments to the City's ordinance. For each the franchise agreement and the ordinance, this process is likely to require up to four days of work, 24 hours by Mr. Schettenhelm, and eight hours by Mr. Van Eaton. Some of this time is likely to require discussion with attorneys for Comcast.

B. *Ongoing Cable and Telecommunications Consulting*

MVE will also provide ongoing cable and telecommunications consulting support to the City. MVE will provide this service at the discounted municipal hourly rates set forth above. These rates are guaranteed through June 2012.