

## RESOLUTION CITY OF SAINT PAUL, MINNESOTA

Presented by \_\_\_\_\_

1 RESOLVED, that the City of Saint Paul, Police Department is authorized to enter into an access  
 2 agreement with Takedown Pictures, LLC to provide department access for their television series about  
 3 specialized law enforcement units tentatively entitled "A&E Documentary Series". The agreement will  
 4 be entered into and a copy kept on file in the Office of Financial Services.  
 5

	Yeas	Nays	Absent
Bostrom			
Brendmoen			
Lantry			
Stark			
Thao			
Thune			
Tolbert			

Requested by Department of: **POLICE**

By: **Thomas E. Smith, Chief of Police**

Approved by the Office of Financial Services

By: \_\_\_\_\_

Approved by City Attorney

By: \_\_\_\_\_

Approved by Mayor for Submission to Council

By: \_\_\_\_\_

Adopted by Council: Date \_\_\_\_\_

Adoption Certified by Council Secretary

By: \_\_\_\_\_

Approved by Mayor: Date \_\_\_\_\_

By: \_\_\_\_\_

## ACCESS AGREEMENT

This agreement (the "**Agreement**") is made as of December 12, 2014 by and between Takedown Pictures, LLC, its assigns and/or licensees (collectively, "**Producer**") and the City of St. Paul, Minnesota by and through its Police Department ("**Department**") in connection with the unscripted television series about specialized law enforcement units tentatively entitled "*A&E Documentary Series*" featuring Department (the "**Series**"), anticipated for initial exhibition over the A&E Television Network (the "**Network**"). For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Access/Recording Rights.** Subject to the terms of this Agreement and the guidelines set forth below, Department grants Producer (and its successors, assignees, licensees, employees, agents, independent contractors and suppliers, all of whom are included in the term "Producer" for purposes of entry upon and access to the Property [as defined herein]) (a) the right, upon prior notice to Department, to enter upon and access Department property and facilities (including, but not limited to, precinct stations, offices, squad cars, bait cars and/or other Department vehicles, and jails, prisons and/or other incarceration facilities) (collectively, the "**Property**"); (b) the right to film, videotape, photograph, reproduce, and otherwise record (collectively, the "**Recording Rights**") the Property and the daily activities that take place on the Property in connection with Department (including, but not limited to, task forces, crime units, and police departments); (c) the right to bring and to remove television audio and video recording equipment, support vehicles, tools, props and other materials (collectively, "**Producer Equipment**") onto the Property, provided, however, that Producer shall be responsible for any damage to the Property resulting directly from Producer's use of such Producer Equipment on the Property, aside from regular wear and tear; (d) the right to use and refer to the name, any fictitious name, address and identification (*e.g.*, signs, business name, etc.) of Department and the Property both visually (including, without limitation, recreations or dramatizations) and/or in dialogue; and (e) the right to access all relevant Department personnel ("**Department Personnel**"). Producer shall be responsible for obtaining all necessary consent and releases; provided, however, that Department agrees to make good faith efforts to assist Producer in procuring appearance releases from Department Personnel.

**2. Additional Access Terms and Guidelines.**

a) To the extent necessary, (i) Producer will obtain releases from individuals its camera crew encounters who appear in the final cut of the Series; and (ii), in connection with entering and recording/shooting any premises of a suspect, interviewee and/or the private property of others, Producer shall obtain a release from the appropriate individual permitting Producer and the applicable production personnel to enter the premises and to record/shoot therein.

b) Provided Producer obtains all necessary releases, Producer may record/shoot Department Personnel when they are off duty.

c) Producer shall be permitted to blur or otherwise conceal the identity of any persons for whom releases could not be obtained.

d) The parties agree to work together to develop a mutually acceptable schedule that will provide the Producer access to Property for a period sufficient to record/shoot enough material for the Series. In all instances, Department will retain the right to limit access when supported by a valid law enforcement need or safety objective; provided, however, that Department will not unreasonably restrict access.

e) Producer agrees to comply with all applicable laws and regulations regarding disclosure of protected health information, including without limitation, the Health Insurance Portability and Accountability Act of 1996.

f) Producer agrees to comply with the Minnesota Government Data Practices Act with respect to all data created, collected, stored, disseminated or maintained by the Department. In connection with the foregoing, the Department will notify Producer of required compliance measures in writing.

g) For security purposes, Producer shall provide Department with basic information regarding each member of its camera crew and personnel upon Department's reasonable written request therefor. While on the Property, Producer, and its camera crew shall be escorted by Department Personnel at all times.

h) Producer acknowledges and agrees that in order to protect the integrity of Department's work, maintain the safety of officers, the public, and Producer's personnel, Producer shall comply with all instructions and restrictions reasonably imposed by the Department while Producer is shooting on the Property. Producer's camera crew and personnel shall not intentionally interfere in any manner whatsoever with the Department's performance of its duties.

3. **Term.** The term of Producer's access and Recording Rights shall commence upon October 15, 2014 and shall continue through February 15, 2015 and any extensions agreed between the parties in writing (the "**Term**"). If, because of the illness or unavailability of any Producer personnel, weather conditions, defective film or equipment, or any other occurrence beyond Producer's control, including but not limited to any event of force majeure, Producer is unable to proceed with the pre-production, production or post-production (e.g., retakes, added scenes, dubbing, advertisements, etc.) of the episode(s) of the Series in which Department is participating at any time during the Term and requires additional use of the Property, Producer shall have the right to extend the Term equal to the amount of time production was delayed and Department shall permit Producer to re-enter upon and again use the Property for such purpose. The Department expressly acknowledges, understands and agrees that ownership and all rights granted herein in the Material (as defined below) survive the expiration or termination of the Agreement.

4. **Ownership.** With the specific exception of the audio, video, and audio-video recordings from dashcam footage from any of Department's squad cars or any other of the Department's surveillance equipment (collectively, the "**Department Recordings**"), which Department Recordings shall remain the property of Department subject to Paragraph 5 below, Department expressly acknowledges, understands and agrees that Producer, its successors, assigns and licensees are and remain the sole and exclusive owner of all film, videotape, photographs and other audio, video and/or audio-video recordings or representations (e.g., sets, facades, props, designs and effects) of the Property, Department Personnel, third parties, or other material created by or on behalf of or at the direction of Producer for the Series and any elements thereof or ancillary thereto (collectively, the "**Material**"), including, all rights, titles and interests of every kind or nature, whether now known or hereafter devised (including, but not limited to, all copyrights, trademarks and service marks and all extensions and renewals thereof) in and to the Material in all languages throughout the universe in perpetuity, with the irrevocable right to make all Series related uses and reuses thereof and the right to control the reproduction, exhibition and exploitation of the Material in connection therewith, including, the advertising, promotion and marketing of the Material and the exhibitors and sponsors thereof (including but not limited to merchandising and commercial tie-ins), throughout the universe in perpetuity, in all languages, in any and all media, whether now known or hereafter devised in the sole discretion of Producer, its successors, assigns and licensees, and the right to make all changes and alterations in the Material. Notwithstanding anything herein to the contrary, Producer's use and exploitation of the Material shall be solely in and in connection with the Series and subject, in all respects, to the restrictions set forth in this Agreement. Further, any reference to "merchandise" shall be limited solely to "Series-related" merchandise. The Department agrees that the rights granted hereunder shall include the perpetual, irrevocable right of Producer, its respective licensees or assigns to edit, telecast, cablecast, rerun, record, publish, recreate, dramatize, reproduce, use, license, print, distribute or otherwise exploit, in any manner and in any medium or forum, whether now known or hereafter devised, the Material in whole or in part, in the Series, without any further obligation to Department (financial or otherwise). The Department further hereby expressly acknowledges, understands and agrees that Department has no claim to, right or interest whatsoever in the Material.

5. **License.** Without limiting anything to the contrary contained herein, Department hereby grants to Producer and its successors, licensees and assigns, the non-exclusive, right to film, videotape, photograph, reproduce, record and otherwise use the Property's and Department's names, copyrights, trademarks, service marks, logos, and/or other materials (including the Department Recordings and all identifying marks of and on any of the Property, to the extent of Department's interest therein) to which Producer is afforded access, in whole or in part, in accordance with the terms of this Agreement and in connection with the production, distribution, exhibition, exploitation, promotion and advertising of the Series and any elements thereof or ancillary thereto and the exhibitors and sponsors thereof in perpetuity throughout the universe, in any and all media now known or hereafter devised.

6. **Limited Right of Review.** Producer has discretion to determine the editorial content of the Series and each episode thereof including, but not limited to, theme, featured events and story line; provided, however, that Department shall have the right to review the rough cut of the episode(s) of the Series in which Department appears solely to ensure that such episode(s) do not contain Material that may compromise any pending investigations or factual inaccuracies of which Department is aware ("**Department Edit Restrictions**"). Notwithstanding the foregoing, due to very tight Series production schedules and other production exigencies, Department agrees to review all materials sent to its designed personnel and advise Producer within forty-eight (48) hours (the "**Review Period**") of receipt of any portion it believes should not be included in the final program due solely to any of the Department Edit Restrictions. If Producer does not receive comments from Department within the Review Period, the Material in such episode shall be deemed approved. Department will not exercise its edit rights above in a manner intended to frustrate or intentionally interfere with production of the Series and will use good faith efforts to approve a reasonable amount of material to enable the Series to be produced (pursuant to the terms herein).

7. **Release.** Department agrees never to, itself or by assisting any third party, assert or maintain against the Released Parties (as defined below), and hereby releases the Released Parties from and against, any claim, action, suit or demand of any kind or nature whatsoever, in connection with the development, production, promotion or exploitation of the Material, Series or any other rights granted in this Agreement. "**Released Parties**" mean Producer, Network and each of their parents, successors, affiliates, partners, licensees or assigns, and respective shareholders, directors, officers, members, employees, agents, representatives, sponsors, and advertisers.

8. **Nature of the Series.** Department understands, acknowledges and agrees that: (a) it has had an opportunity to consult with and be represented by counsel in connection with this Agreement; (b) the production of the episode(s) of the Series in which Department participates may disrupt Department's normal operations; (c) the Series or parts thereof may be different than Department expects and may include dramatized, fictional, altered, juxtaposed or recreated elements; and (d) Producer and Network have sole and absolute discretion to determine the content of the Series and each episode thereof.

9. **Remedies.** With respect to any act or omission by Producer or any other alleged claim arising hereunder or with respect to the Series, Department expressly agrees and will cause all Department Parties (as defined in Exhibit A) to agree that under no circumstances may Department or any of the Department Parties seek or obtain injunctive or other equitable relief against Producer or take any action that would interfere with the exploitation, telecast or distribution of the Series or any related materials. In the event of any act, omission or breach, or an attempted or threatened breach of this agreement by Department or any Department Party, Producer shall be entitled to seek equitable relief against any of the Department Parties; however, failure of Producer to exercise such right shall not be construed as a waiver of any preceding or succeeding breach of the same or any other term or provision hereof. Department further expressly agrees and will cause the other Department Parties expressly to agree that the sole remedy available to Department and any of the Department Parties for any breach or alleged claim arising or resulting from any breach by any of the Producer Parties (as defined in Exhibit A) is to seek monetary damages, if any, in an action at law. Notwithstanding anything to the contrary set forth in this paragraph, Department shall not be precluded from seeking equitable relief against Producer in the event that Producer breaches its obligations under Paragraph 6 of the Agreement by releasing an episode of the Program containing Material that Department specifically requested Producer to remove in good faith in accordance with the Department Edit Restrictions. Producer may assign its rights hereunder and this Agreement as it deems appropriate. Department may not assign this Agreement.

10. **Governing Law.** This Agreement shall be subject to the laws of the State of Minnesota applicable to contracts entered into and fully to be performed therein. If any provision of this agreement, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, then the remainder of this agreement shall not be affected thereby, and each provision of this agreement shall be valid and enforceable to the fullest extent permitted by law. Neither this agreement nor any term or provision hereof may be modified, amended, changed, discharged or terminated orally, but only by a written instrument signed by the parties.

11. **Prior Agreements.** This Agreement, including the Standard Terms and Conditions, attached as Exhibit "A" hereto and incorporated herein by this reference, supersedes all prior agreements and understandings between the parties hereto, whether oral or written, pertaining to the subject matter hereof.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date set forth above.

**ACCEPTED AND AGREED TO**

TAKEDOWN PICTURES, LLC

SAINT PAUL POLICE DEPARTMENT

By \_\_\_\_\_

By: \_\_\_\_\_

Thomas E. Smith

Its: \_\_\_\_\_

Its: Chief of Police

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Daphne Lundstrom

Its: City Attorney

By: \_\_\_\_\_

Todd Hurley

Its: Director of the Office of Financial Services

## EXHIBIT "A" STANDARD TERMS AND CONDITIONS

1. Confidentiality. Department will not at any time issue, authorize or participate in any news story, magazine article or other publicity or information of any kind relating to the Series, Producer, Network or any of its related or affiliated entities or disclose any confidential information, without Producer and/or Network's prior written consent, except that Department may make factual, incidental, non-derogatory mention of its participation in the Series after the initial exhibition of the episode(s) in which Department appears. Notwithstanding the foregoing, Department shall not, except in accordance with its statutory obligations under applicable open records laws or in accordance with court orders (Department will promptly advise Producer in writing of such disclosure), disclose any confidential information, including without limitation, any information regarding trade secrets, or the terms of this Agreement.
2. No Obligation to Proceed. Nothing herein shall impose an obligation on Producer and/or Network to develop, produce, exhibit, distribute and/or otherwise exploit the Material, the Series, or any part thereof.
3. Expenses Incurred. Producer shall pay and be exclusively responsible for all costs and expenses incurred by Producer in connection with or related to this Agreement.
4. Producer's Representations, Warranties; Indemnification. Producer represents and warrants that it has the capacity, right, power and authority to enter into this agreement. Producer agrees to indemnify, release, and hold Department and its employees, officers, directors, officials, agents and representatives (the "**Department Parties**") harmless from and against any and all claims, liabilities, losses, damages, injuries, costs and expenses (including, without limitation, reasonable outside attorneys' fees) of any nature whatsoever arising out of (a) intentionally wrongful or negligent acts committed by Producer, its personnel and camera crews during performance under this Agreement; (b) a material breach by Producer of any of its representations, warranties, and agreements set forth herein; and (c) the development, production, distribution or other exploitation of the Series (except to the extent covered by the Department's indemnity in Paragraph 5 below). Department shall notify Producer promptly upon presentation of any claim or institution of any action covered by the foregoing, giving full details thereof. Producer's obligation to indemnify and hold harmless does not apply to the extent of negligent acts or omissions of Department, or any of the Department Personnel. Producer reserves the right to assume the defense and control of any matter otherwise subject to indemnification by Producer, and in such case, Department agrees to cooperate in the defense of such claim.
5. Department's Representations, Warranties; Indemnification. Department represents and warrants that (a) Department has the full right, power and authority to grant Producer the rights granted hereunder; (b) Department is the sole owner of all intellectual property rights granted to Producer hereunder and such use by Producer will not violate the rights of any third parties; (c) Department will take no action nor allow or permit or authorize any third party to take any action which might interfere with Producer's full use and quiet enjoyment of the Property in accordance with the terms hereof; and (d) it is not necessary for Producer to obtain the consent or permission of, or to pay any amounts to, any person, firm or corporation in order to enable Producer to enjoy the full rights to the use of the Property as described herein. Department agrees to indemnify, release, and hold Producer and its parents, subsidiaries and affiliated entities and each of their respective employees, officers, directors, agents and representatives ("**Producer Parties**") harmless from and against any and all claims, liabilities, losses, damages, injuries, costs and expenses (including, without limitation, reasonable outside attorneys' fees) of any nature whatsoever arising out of or in connection with (a) Department's breach of any its representations, warranties, and agreements set forth herein, and (b) any acts alleged to have been committed by Department during performance (including recording/shooting) under this Agreement.
6. Insurance. Producer shall at all times maintain sufficient professional, liability and other appropriate insurance of not less than One Million Dollars (\$1,000,000) to cover its performance and indemnity obligations herein and shall provide Department with a Certificate of Insurance satisfactory to the Department and listing the Department as an additional insured.
7. Notices. Except as otherwise expressly specified in this Agreement, any required notice shall be given in writing, by certified mail (return receipt requested), overnight express courier, personal delivery, or by facsimile to the party concerned, at the address specified hereunder or at such other address as may be subsequently designated in writing by such party. Notice shall be deemed given on the date received if by certified mail, on the day of faxing if by facsimile (if faxed before 6pm, receiving party's time; otherwise, the next business day following the day of

faxing), the day delivered if by personal delivery, or the first business day following the overnight mailing if sent by reputable overnight courier. If the last day on which notice may be given falls on a Saturday, Sunday or other day on which the sending party that is responsible for sending such notice is not open for business, then notwithstanding any other provision hereof, such last day shall be deemed postponed until the next day on which such sending party is open for business. Notices shall be sent to the following addresses:

To Department: Amy Brown  
Saint Paul Police Department  
367 Grove Street  
Saint Paul, MN 55101

To Producer: Takedown Pictures, LLC  
407 Broome Street, 7<sup>th</sup> Floor  
New York, NY 10013  
Attn:

With a copy to: Frankfurt Kurnit Klein & Selz, P.C.  
488 Madison Avenue, Floor 10  
New York, NY 10022  
Attn: Melissa Georges, Esq.  
Facsimile: (212) 593-9175

8. Relationship of Parties. The parties agree that nothing contained in this Agreement or any act of Producer or of Department shall be deemed or construed by either of the parties hereto or by third persons to create any relationship of third party beneficiary hereof, or of principal and agent, or of a limited or a general partnership, or of a joint venture, or of any association or relationship between Producer and Department other than as independent parties to a contract entered into at arm's length.

9. Miscellaneous. No waiver of any term or condition of this Agreement shall be construed as a waiver of any other term or condition hereof; nor shall any waiver of any default under this Agreement be construed as a waiver of any other default hereunder. The descriptive headings of the paragraphs of this Agreement are for convenience only and do not constitute a part of this Agreement. All indemnification and hold harmless provisions herein, as well as any releases, shall remain in full force and effect after the termination of this Agreement. This Agreement may be executed in any number of counterparts and each such counterpart shall for all purposes be deemed an original. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, PDF or email shall be effective as delivery of a manually executed counterpart of this Agreement.