

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 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:

Task 1. Assist CITY in franchise enforcement issues.

Task 2. Assist the CITY in communications policy issues, including issues with respect to the provision of services by the City, and the authority of the City to regulate communications service providers, manage its rights-of-way and obtain reasonable compensation for use of public property .

Task 3. Assist CITY with franchise issuance, transfers, renewals and related issues.

Task 4. Provide telecommunications legislative analysis.

Task 5. Provide legal analysis and assistance regarding FCC rulings and federal legislation as needed by CITY.

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 members are:

Nicholas P. Miller, Member
Joseph Van Eaton, Member
Gerry Lederer, Of Counsel

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 has designated Michael Reardon as the Project Manager for this Agreement, and the individual to whom all communications pertaining to the day to day conduct of the Agreement shall be addressed. The Project Manager shall have the authority to transmit instructions, receive information, and interpret and define the CITY's policy and decisions pertinent to the work covered by this Agreement.

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 with the attached rate schedule, plus out-of-pocket costs as described in Schedule A.:

The total cost of this contract, unless amended, shall not exceed \$79,000.00.

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.

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.

The CITY shall indemnify, save and hold harmless, the CONSULTANT, its principals, employees and subcontractor from alleged damages or injuries arising directly or indirectly from negligent acts or omissions of the CITY, its agents, officers, or employees, in performance of activities under this Agreement only to the maximum limits of its municipal tort liability limits set forth in Minn. Stat. § 466.01 *et seq.* and any indemnifications made by the CITY under this Agreement are accordingly governed and limited. This clause will not be construed to bar any legal remedies the CITY may have for the CONSULTANT's failure to fulfill its obligations under this Agreement or for the CONSULTANT'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

SCHEDULE A: FEES AND CHARGES

Effective February 1, 2010

Attorney	Discounted Municipal	Discounted Muni. Litigation
Kenneth A. Brunetti	290	375
Marci L. Frischkorn	250	325
James R. Hobson	290	375
Gail A. Karish	250	325
Gerard L. Lederer	290	325
William Malone	290	395
Nicholas P. Miller	340	395
Matthew K. Schettenhelm	225	275
Joseph Van Eaton	300	395
Law Clerk	150	150
Paralegal	95	110

A review of rates is conducted at least annually and an adjustment upwards may be made, but the City will receive the Discounted Municipal Rate.

Additional Charges

In addition to our fees, there will be other charges for items incident to the performance of our legal services. Generally, charges which reflect the use of resources provided by outside vendors (courier services, court reporters, etc.) are charged at the vendor's charge to us without markup. Certain other charges reflect the utilization of firm resources or involve an integral combination of firm's resources and outside vendors (photocopying, computer research, etc.). These services are charged at standard rates which encompass both the direct vendor charge and an amount equal to the firm's estimate of an appropriate charge for the firm resources allocated to the service. While these charges may not match the firm's exact cost of providing these services in each instance, we believe that these charges are fair and generally comparable to the charges made by other firms for similar services. The current basis for charges is set forth below. The Firm may review this schedule of charges on an annual basis and adjust it to take into account changes in the Firm's costs and other factors.

Computer Research: The Firm uses the Lexis/Nexis and Westlaw computer-assisted research services. The Firm charges on an time-of-use basis for computer assisted research services..

Photocopying: The Firm charges \$.25 per page.

Mail: Clients are charged the actual expense to the Firm of postage for the U.S. Postal Service, as well as the actual expense of air express couriers.

Overtime: Staff overtime is charged only when required by the time constraints of the specific project.

Facsimile and Electronic Scanning: The Firm charges \$1.00 per page for outgoing faxes, which includes all telephone costs. There is no charge for incoming faxes. The Firm charges \$1.00 per page for electronic scanning of documents within the Firm.

Telephone Calls: There is no charge for local calls. Long distance calls which originate at the Washington office are billed according to the actual expense to the Firm of the call .

Travel-Related Expenses: Airfare, meals, and related travel expenses charged to the client represent actual, out-of-pocket expenses. Automobile mileage is charged at the IRS-approved rate of .55 cents per mile. Credits earned under the Frequent Flyer Programs accrue to the individual traveler and not to the Firm.

Firm Messengers: There is no charge for walking messenger trips made by Washington office employees. Other courier expenses are billed at the actual expense to Firm.

All Other Costs: The Firm charges actual disbursements for third-party services such as court reporters, expert witnesses, etc.

Unless special arrangements are otherwise made, fees and expenses of others (such as experts, investigators, consultants and court reporters) will be the responsibility of, and billed directly to, the client. Further, all invoices in excess of \$500 will be forwarded to the client for direct payment, unless other arrangements are agreed to separately.

In the event that payments from you to us include advances of anticipated but unearned fees and unincurred charges, you agree that such advances may be **commingled** with the firm's funds, subject to an accounting not later than upon termination of the representation.