

**AN ORDINANCE OF THE CITY OF MERIDIAN, MISSISSIPPI  
GRANTING A NON-EXCLUSIVE FRANCHISE  
TO CONTACT NETWORK, INC  
TO LAY, CONSTRUCT, MAINTAIN, REPLACE, REPAIR, AND OPERATE FIBER  
OPTIC CABLE  
AND APPURTENANT TELECOMMUNICATION FACILITIES  
IN, UNDER, OVER, AND ACROSS AND ALONG ALL STREETS, AVENUES, ALLEYS  
HIGHWAYS, ROADS, BRIDGES, VIADUCTS AND PUBLIC PLACES IN THE  
CITY OF MERIDIAN, MISSISSIPPI**

WHEREAS, Contact Network, Inc. dba Inline ("Inline") is an Alabama corporation duly authorized to do business in the State of Mississippi, for the purpose of constructing telephone lines and appurtenant facilities furnishing telecommunications services in the State of Mississippi and other states in which it is authorized to do so. Inline obtained a certificate of public convenience and necessity to provide such telecommunications services in Mississippi on August 21, 2002, in Mississippi Public Service Commission Docket No. 02-UA-0405.

WHEREAS, Inline is in the process of constructing certain telecommunications facilities as authorized by the Mississippi Public Service Commission in Docket No. 02- UA-0405. A portion of these facilities will be located within the city limits of Meridian, Mississippi, and

WHEREAS, Section 77-9-711 of the Mississippi Code of 1972, as amended, grants companies such as Inline the authority to construct telecommunications facilities along and across public highways and streets, but not in a manner so as to be dangerous to persons or property or to unreasonably interfere with the common use of such highways and streets, and

WHEREAS, Section 77-9-713 of the Mississippi Code of 1972, as amended, authorizes the City of Meridian, Mississippi the authority to regulate the manner in which such facilities shall be constructed and maintained along and within the rights-of-way of the municipality's streets, and

WHEREAS, the City of Meridian, Mississippi does hereby find and adjudicate that the proposal of Inline for the construction and operation of telecommunications facilities in Meridian is in the best interest of the citizens of the City of Meridian, Mississippi and that the following franchise agreement is reasonable and in the best interests of the City. The City of Meridian, Mississippi is authorized under the provisions of Sections 21-27-1, 21-13-3, and 77-9-713 of the Mississippi Code of 1972, as amended, to grant the franchise and the ordinance should be adopted.

**THEREFORE BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL  
OF THE CITY OF MERIDIAN, MISSISSIPPI AS FOLLOWS:**

*TELECOMMUNICATIONS FRANCHISE AGREEMENT*

*BETWEEN*

*THE CITY OF MERIDIAN, MISSISSIPPI*

*AND*

*CONTACT NETWORK, INC. DBA INLINE*

The City of Meridian, Mississippi, a Mississippi municipal corporation ("City"), and Contact Network, Inc. dba Inline, an Alabama corporation duly authorized to do business in Mississippi, ("Inline"), enter into this Telecommunications Franchise Agreement ("Agreement") as of March 6, 2012 (the "Agreement Date").

**UNDERSTANDING**

- A. Inline has applied for a franchise from the City for the purposes of laying, constructing, maintaining, replacing, repairing and operating a Telecommunications System (as defined herein) to provide Telecommunications Service (as defined herein), Video Services (as defined herein), and Other Services (as defined herein) to customers located in the City.
- B. Inline has provided the City Council with a franchise proposal, which the City, its representatives and Inline have discussed and adjusted in accordance with the needs and interests of the City and its citizens, taking into account the costs.
- C. The City Council, after evaluating Inline's final proposal in the form of this Agreement, and after hearing the comments of interested parties, has determined that Inline has the financial, legal and technical ability to fulfill the obligations under this Agreement. The City has further determined that it will serve the public interest to grant Inline a franchise on the terms and conditions of this Agreement.

Based on the above understanding, the parties enter into this Agreement.

**AGREEMENT**

**SECTION I-DEFINITIONS**

**1. Definitions.**

For the purpose of this Agreement, the following terms, phrases, words, and abbreviations shall have the following meanings:

*"Affiliates"* means an entity which, owns or controls, is owned or controlled by, or is under common ownership with Inline.

*"Agreement"* means this Telecommunications Franchise Agreement.

*"Agreement Date"* means March 6, 2012.

*"Facilities"* means all fiber optic wires, poles, wires, telecommunications, amplifiers, electronics, transmission and reception equipment, pedestals, towers, dishes, supporting hardware, and related equipment and fixtures necessary and desirable to construct and maintain the Telecommunications System and to provide Services (as defined herein) under this Agreement.

*"FCC"* means Federal Communications Commission.

*"Franchise"* means an initial authorization or renewal issued by the City whether such authorization is defined as an agreement, franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes the construction and operation of the Telecommunications System for the purpose of offering Services to Subscribers.

*"Gross Revenues"* means any revenue derived by Inline from the operation of the Telecommunications System to provide Telecommunications Services and Video Services to Subscribers in the Service Area, adjusted for non-payment. Gross Revenues shall include, but not be limited to, all Video Services fees, late fees, installation and reconnection fees, upgrade and downgrade fees, converter rental fees and lockout device fees. The term Gross Revenues shall not include any taxes on services furnished by Inline or franchise fees imposed by any municipality, state, or other governmental unit and collected by Inline for such governmental unit.

*"Other Services"* means services lawfully provided by Inline in the Service Area in addition to Telecommunications Service and Video Services, including, without limitation, private network services, internet access services, voice mail, call waiting, call forwarding, and distance learning services.

*"PEG Access"* means the public, educational and governmental access to a channel on the Telecommunications System dedicated by Inline to the City under this Agreement.

*"Person"* means an individual, partnership, association, joint stock company, trust, corporation, limited liability company, or governmental entity.

*"Public Way"* means the surface of, and the space above and below, any public street, highway, bridge, alley, sidewalk, easement or other public right-of-way, including, without limitation, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses held by the City in the Service Area.

*"Services"* collectively refers to Telecommunications Services, Other Services and Video Services.

*"Service Area"* means the areas of the City where Subscribers are reasonably accessible from the distribution network of the Telecommunications System.

*"Subscribers"* means a Person who lawfully receives Services with Inline's express permission.

*"Telecommunications Service"* means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

*"Telecommunications System"* means Inline's Facilities, consisting of a set of closed transmission fiber optic paths and associated signal generation, reception, and control equipment or other communication equipment that is designed to provide Services to Subscribers.

*"Inline"* means Contact Network, Inc. dba Inline, or its lawful successor or assigns

*"Video Services"* means the sale of video services to Subscribers within the City.

## **SECTION II-GRANT OF FRANCHISE**

### **1. Grant.**

The City grants to Inline a non-exclusive franchise authorizing Inline to construct and operate a Telecommunications System in the Public Ways and to offer Services within the Service Area. Subject to the terms of this Agreement and applicable law, Inline may erect, install, construct, operate, maintain, repair, replace, expand, and reconstruct its Telecommunications System in any Public Way.

### **Term.**

The franchise granted under this Agreement shall be for a term of ten (10) years from the Agreement Date, unless otherwise lawfully terminated. Either party may commence negotiations for a renewal of the franchise by giving the other party notice not more than two (2) years prior to the end of the term.

## **SECTION III-SYSTEM CONSTRUCTION**

### **1. System Construction.**

Within twelve (12) months of receiving all necessary permits, Inline shall commence the initial construction of the Telecommunications System within the City. Upon completion of the initial construction of the Telecommunications System, and upon the completion of additions to the Telecommunications System, Inline shall provide the City with as built drawings of the current Telecommunications System.

### **Conditions on Commencement of Upgrading.**

The City acknowledges that Inline has based its plans and cost estimates on reasonable access to Public Ways, poles, conduits, Subscriber premises, and other space for Inline's Facilities. Inline reserves the right to adjust its construction plans and timing or rescind this Agreement in the event that Inline faces substantial interference or delay in such access. Throughout the term of this Agreement, provided Inline otherwise complies with the City's permitting requirements, Inline shall be entitled expand and upgrade its Telecommunications System as it deems reasonably necessary.

## **SECTION IV-PUBLIC, EDUCATION AND GOVERNMENT ACCESS CHANNEL**

### **1. PEG Access Channel.**

At any time after the completion of the initial construction of the Telecommunications System under Section III (1), the City may request Inline to provide the City one video channel for noncommercial PEG Access use. Inline shall provide the PEG Access channel within ninety (90) days of City's request.

### **Regulation of PEG Access Channel.**

The City shall establish reasonable regulations governing use by the public of the PEG Access channel and the content broadcast over the channel. Inline shall have the right to prohibit the broadcast of inappropriate or illegal programming over the channel in its sole reasonable discretion and in accordance with applicable law. The City shall be solely responsible for all costs, expenses, and equipment necessary for and related to producing or transmitting content over the PEG Access channel. Inline shall have no obligation, financial or otherwise, other than the obligation to provide access to one video channel for noncommercial PEG Access use.

**3. Return of PEG Access Capacity to Inline.**

In the event that unused capacity exists on the PEG Access channel, Inline may request the City to return that capacity to Inline for Inline's use. The City shall not unreasonably deny such request.

**SECTION V-REGULATION BY THE CITY**

**1. Franchise Fee.**

- (a) Inline shall pay to the City a franchise fee equal to 5% of Gross Revenues received by Inline from sale of Video Services to Subscribers within the City.
- (b) Inline shall also pay to the City a franchise fee equal to 2% of Gross Revenues received by Inline from the sale of Telecommunications Services to Subscribers within the City.
- (c) The franchise fee payments set forth in (a) and (b) above shall be computed quarterly as of the last day of March, June, September, and December of each year, and shall be due and payable sixty (60) days after the close of each quarter. Each payment shall be accompanied by a brief report from Inline showing the basis for the computation. Each payment must be received by the City on the due date. Inline shall pay City an additional charge of one percent (1 %) per month, for each month the total amount due to the City is not received by City by the due date.
- (d) All amounts paid shall be subject to audit by City no more than once each calendar year upon reasonable notice to Inline. If any audit reveals an underpayment by Inline of five percent (5%) or more during any annual audit period, Inline shall be responsible for City's reasonable out of pocket costs associated with the audit. Any underpayments shall be paid to City within ten (10) business days after notification to Inline.

**Transfer of Franchise.**

Inline must notify the City not less than sixty (60) days prior to any proposed sale or transfer of this franchise. Inline shall not sell, assign, transfer or dispose of its interest in the franchise or the Agreement without the prior written consent of the City, which consent will not be unreasonably withheld. Notwithstanding the foregoing, Inline may assign this Agreement to a purchaser of its voting stock or all or substantially all of its assets without consent but with written notice to City.

## **SECTION VI-OPERATIONAL STANDARDS**

### **1. Condition of Street Occupancy.**

Inline shall install all Facilities so as to minimize interference with the proper use of Public Ways, public utilities and with the rights and reasonable convenience of City and property owners whose property adjoins any Public Ways. Inline will comply with Sections 77-13-1 et seq. of the Mississippi Code of 1972, as amended ("Mississippi One Call" statute). Upon completion of any Facilities, Inline will furnish an as built drawing of the Facilities located within the City to the City.

#### **Restoration of Public Ways.**

Inline shall restore any disturbance it causes to any Public Way to a condition reasonably comparable to the condition of the Public Way existing before the disturbance.

### **3. Relocation at Request of City.**

After receipt of at least ninety (90) days prior written notice, Inline shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of Inline when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewer, drains, gas or water pipes, or any other type of structures or improvements by the City. Inline shall in all cases have the right to abandon its property. Any such abandoned property shall be promptly removed by Inline.

### **4. Relocation at Request of Third Party.**

On the request of any Person holding a building construction or moving permit issued by the City, Inline shall temporarily relocate its Facilities to permit the construction or moving of such building, provided: (a) the expense of such temporary relocation is paid by the requesting Person; and (b) Inline receives at least ninety (90) days prior written notice to arrange for such temporary relocation.

### **5. Trimming of Trees and Shrubbery.**

Inline shall have the authority to trim trees or natural growth on public right-of-way which may affect its Telecommunications System in the Service Area to prevent interference with InlWSWESWQine's Facilities. Inline shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall reasonably replace all trees or shrubs damaged and otherwise restore any other damage caused by or resulting from its activities. Any such action shall not be undertaken without ten (10) days prior notification to the City.

**6. Emergency Use.**

In the case of any emergency or disaster, to the extent of availability, Inline shall, upon request of the City, make available the Telecommunications System for the City or provide emergency information and instructions during the emergency or disaster period. The City to the extent it may lawfully do so shall hold Inline, its agents, employees, officers and assigns, harmless from any claims arising out of the emergency use of its Facilities by the City, including, but not limited to reasonable attorney's fees and costs.

**7. Technical Standards.**

Inline shall install, operate, and maintain the Telecommunications System in a good and workmanlike manner, free from defects in material and workmanship, and in accordance with applicable FCC regulations. Inline shall install its aerial facilities, if any, in accordance with requirements of the National Electric Safety Code in effect on the Agreement Date, and in such manner that they will not unreasonably interfere with installations of the City or of a public utility serving the City.

**SECTION VII-COMPLIANCE AND MONITORING**

Once per calendar year during the term of this Agreement and upon not less than thirty (30) business days notice to Inline, City may review Inline's books and records pertaining to the Telecommunications System and the provision of Telecommunications Service within the Service Area at Inline's business office during normal business hours and on a nondisruptive basis, as is reasonably necessary to monitor compliance with the terms of this Agreement. Inline shall not be required to disclose information that is reasonably deemed to be proprietary or confidential. The City agrees to treat any information disclosed by Inline as confidential and only to disclose it to employees, representatives, and agents that have a need to know.

**SECTION VIII-INSURANCE**

Inline shall maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance in the amount of One Million Dollars (\$1,000,000) combined single limit for bodily injury, and property damages. Prior to commencing construction of the Telecommunications System, Inline shall provide the City with a certificate of insurance designating it as an additional insured. Such insurance shall be non-cancelable except upon thirty (30) days prior written notice to the City.

## **SECTION IX-ENFORCEMENT AND TERMINATION OF AGREEMENT**

### **1. Notice of Noncompliance.**

If the City believes that Inline has not materially complied with any material term (other than payment of franchise fees and changes) of this Agreement, it shall notify Inline in writing. The notice shall state with specificity the basis for the alleged material noncompliance.

#### **Inline's Right to Cure or Respond.**

Inline shall have thirty (30) days from receipt of the notice described in Section IX (1) to respond as follows:

- (a) Respond to the City contesting the assertion of noncompliance;
- (b) Cure the noncompliance; or
- (c) In the event Inline's commercially reasonable efforts cannot cure the noncompliance within the thirty (30) day period, Inline shall initiate reasonable steps to remedy the noncompliance and notify the City of the steps being taken and the projected date of completion.

### **3. Public Hearing.**

If Inline fails to respond to the notice described in Section IX(1) under the procedures set forth in Section IX(2), or if Inline does not cure the alleged noncompliance within sixty (60) days after receiving notice of noncompliance, the City shall schedule a public hearing to investigate the noncompliance. Such public hearing shall be held at the next regularly scheduled meeting of the City which is scheduled at a time which is no less than five (5) business days from the expiration of the sixty (60) day period. The City shall notify Inline in writing of the time and place of such meeting and provide Inline with an opportunity to be heard.

### **4. Enforcement.**

Subject to applicable law, if the City, after a public hearing, where applicable, determines that Inline remains in material noncompliance with a material term of this Agreement, the City may pursue the following remedies:

- (a) In the case of a default of a material provision of this Agreement, terminate this Agreement and revoke the franchise; or

(b) Commence an action at law for monetary damages or seek other equitable relief. Should the City prevail in any such action. Inline shall pay City for its legal fees and attendant costs and expenses incurred in such action.

Inline shall not be held in default for noncompliance with this Agreement, nor suffer any enforcement or penalty, where such noncompliance or alleged defaults are caused by strikes, acts of God, acts of terrorism, power outages, acts of the City, its employees, or representatives, or other events reasonable beyond its ability to control.

**5. Failure to Pay Franchise Fees and Charges.**

In the event the Inline has not paid the City franchise fees, and late charges owing under Section V, when due, City shall send Inline a certified letter notifying Inline it is in default. Inline shall have fifteen (15) business days from the date of its receipt of the letter to cure the default. In the event Inline fails to cure the default by paying all franchise fees and late charges due, then the City shall notify Inline of City's intention to revoke the franchise. The notice of intention to revoke franchise shall be sent certified mail to Inline not less than ten (10) business days prior to a Board Meeting of the City. The letter shall notify Inline of the date, time, and place of the Board Meeting and the right of the Inline to be present and participate meeting. At the Board Meeting, the City may revoke the franchise of Inline if it has not cured the default in full.

6. Upon the expiration or termination of this Agreement, Inline may enter upon the Public Ways and remove its property at its own risk and restore the Public Ways to their former grade, contour and condition.

7. Inline agrees to indemnify and hold harmless the City, its officers, and employees from any and all damages, losses, or expenses (including reasonable attorneys' fees and costs), associated with any third party claims to the extent arising out of the acts or omissions of Inline, its officers, directors, employees, contractors, and agents in connection with this Agreement.

**SECTION X-THEFT OF SERVICE**

It shall be a misdemeanor for any Person to create, allow to create, or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the Telecommunications System without the express consent of Inline. Further, without the express consent of Inline, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part or the Telecommunications System or any means of receiving Telecommunications Service or Other Services. Violation of this section of this ordinance shall constitute a misdemeanor punishable by a fine not to exceed \$500.00 and/or six months imprisonment.

## SECTION XI-MISCELLANEOUS

### 1. **Actions of the Parties.**

In any action by Inline or the City mandated or permitted under this Agreement, the party shall act in a reasonable, expeditious, and timely manner. In any instance where approval or consent is required, such approval or consent shall not be unreasonably withheld.

#### **Notice.**

Any notice or response required by this Agreement shall be in writing and shall be deemed given upon receipt: (a) when hand delivered; (b) when delivered by commercial courier; or (c) after having been posted in a properly scaled and correctly addressed envelope by certified or registered mail, postage prepaid, at a post office maintained by U. S. Postal Service.

Mayor of the City of Meridian  
P. O. Box 1430  
Meridian, Mississippi, 39302

The notices or responses to Inline shall be addressed as follows:

The City and Inline may designate such other address or addresses from time to time by giving notice to the other as provided in this Section.

### 3. **Severability.**

If the legislature or a court or regulatory agency or competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unconstitutional, all other provisions of this Agreement will remain in full force and effect for the term of the Agreement or any renewal.

### 4. **Change of Law.**

In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of City or Inline to perform any material terms of this Agreement, the parties agree to amend this Agreement as necessary to comply with the changes in the law within thirty (30) days' of the receipts of written notice so such change in law.

IN WITNESS WHEREOF, the parties execute this separate page and Agreement as of the Agreement.

Martin Costa, President  
CONTACT NETWORK, INC., DBA INLINE

WITNESS: Rhonda Kennedy

Cheri M. Barry, Mayor  
CITY OF MERIDIAN, MISSISSIPPI

ATTEST: L. E. Skipper  
CITY CLERK

SO ORDAINED, this the 6<sup>th</sup> day of March 2012.

Motion by Councilman Smith second by Councilman Palmer.

Yea: Thomas, Henson, Palmer, Smith.

Nay: None.

Absent: Perry

BARBARA HENSON, PRESIDENT DATE: 3/07/2012  
CITY COUNCIL, MERIDIAN, MS

ATTESTED AND SUBMITTED TO THE MAYOR BY THE CLERK OF COUNCIL,  
ON THE 7<sup>TH</sup> DAY OF MARCH 2012.

PAMELA MCINNIS  
CLERK OF COUNCIL

APPROVE (X) DATE 3/10/2012

ATTEST:

L. E. SKIPPER  
CITY CLERK

CHERI M. BARRY, MAYOR  
CITY OF MERIDIAN

(SEAL)