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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2010-3

INTRODUCED BY:

AN ORDINANCE

GRANTING A NON-EXCLUSIVE FRANCHISE TO NEWPATH NETWORKS, LLC TO RENT, USE AND OCCUPY THE CITY'S PUBLIC RIGHTS-OF-WAY IN THE CITY OF SANTA FE, NEW MEXICO, AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. NewPath Networks, LLC (hereinafter called "Applicant") submitted a request pursuant to the Telecommunication and Cable Services in the Public Rights-of-Way Ordinance (hereinafter referred to as Article 27-2 SFCC 1987) to construct, purchase, acquire, locate, maintain and extend into, within, and through the City of Santa Fe (hereinafter called "the City"), a telecommunications network as that term is defined in Article 27-2 SFCC 1987 and has requested a franchise agreement in order to do same.

Section 2. The City is authorized to grant one or more non-exclusive franchises for telecommunication services within the city.

Section 3. The City has reviewed Applicant's request.

Section 4. The City has determined that granting of a franchise on the terms set

1 | forth herein is in the public interest and in the interest of the City and its residents and will assist
2 | in meeting the telecommunications related needs and interests of the community.

3 | **Section 5.** In consideration of the mutual covenants and promises herein contained,
4 | the parties hereto agree as follows:

5 | **Section 6. Short Title.** This franchise Ordinance may be cited as the NewPath
6 | Networks, LLC Franchise.

7 | **Section 7. Permission To Rent And Use.** There is hereby granted by the City to
8 | Applicant permission to rent, use and occupy and the right, privilege and authority to construct,
9 | purchase, acquire, locate, maintain and extend into, within, and through the city, a
10 | telecommunications network with the right and privilege for the period and upon the terms and
11 | conditions hereinafter specified and upon the terms and conditions of the Article 27-2 SFCC 1987
12 | “Telecommunication Networks and Cable Systems in the Public Rights-of-Way Ordinance”, to
13 | sell, furnish and distribute telecommunications in the city, by means of its network, on, over,
14 | under, along and across all City public rights-of-way in the city, now or hereafter included in the
15 | boundaries of the city as such boundaries now exist or may hereafter be extended. This
16 | permission is not exclusive and cannot prevent the City from issuing other franchises or
17 | authorizations or prevent the City from itself constructing, operating, or repaving its own system,
18 | with or without a franchise.

19 | **Section 8. Term; Effective Date.**

20 | (A) Term. This franchise, and the rights, privileges and authority granted hereunder,
21 | shall continue for a period of ten (10) years from the effective date hereof.

22 | (B) Effective Date. This Ordinance shall become effective from and after its passage
23 | and publication as provided by § 3-42-1 NMSA 1978, or successor statute; provided that
24 | Applicant, within thirty (30) days of the date of adoption of this franchise Ordinance shall have
25 | filed with the City Clerk of the City an unconditional acceptance of this Ordinance. Within ten

1 (10) days after the filing of the acceptance, the City Clerk shall acknowledge in writing the
2 receipt of Applicant's acceptance. All costs of any publication required by law shall be at the
3 expense of Applicant in addition to other charges provided for herein.

4 **Section 9. Compensation and Charges.** Fee. As consideration for this franchise,
5 which provides for the rental and use by Applicant, of the public rights-of-way within the
6 boundaries of the City, Applicant shall pay to the City a fee in the amount of five percent (5.0%)
7 of the annual gross revenue of telecommunications services. Payment shall be made according to
8 the requirements of Article 27-2 SFCC 1987.

9 **Section 10. Notice.**

10 (A) For the purpose of this Ordinance, notice to the City will be to:

11 City Manager
12 City of Santa Fe
13 P.O. 909
14 Santa Fe, New Mexico 87504-0909

15 With a copy to:

16 City Attorney
17 City of Santa Fe
18 P.O. 909
19 Santa Fe, New Mexico 87504-0909

20 (B) Notice to NewPath Networks, LLC will be to:

21 NewPath Networks, LLC
22 Attention: Mike Kavanagh
23 768 Garfield Street
24 Seattle, Washington 98109

25 With a copy to:

Todd H. Wells, Counsel for NewPath Networks, LLC
Schnelz Wells, P.C.
280 North Old Woodward, Suite 250
Birmingham, Michigan 48009

(C) Notice will be effective upon delivery at the above addresses until the City or Applicant notifies the other in writing, of a change in address. All notices shall be delivered personally or sent by certified mail, return receipt requested to the parties at their respective addresses set forth above.


Section 11. Severability Clause. If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Governing Body hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 12. Public Meeting. It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of time, place, and purpose of said meeting was given as required.

Section 13. Compilation. This Ordinance shall be incorporated in and compiled as APPENDIX _____ SFCC 1987.

Editor's Note: Current APPENDIX I shall become APPENDIX _____.

APPROVED AS TO FORM:


CITY ATTORNEY (ACTING)

Jp/ca/jpmb/2009 bills/telecommunications NewPath