

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2010-4

3 INTRODUCED BY:

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10 AN ORDINANCE

11 GRANTING A NON-EXCLUSIVE FRANCHISE TO CITYLINK FIBER HOLDINGS OF
12 SANTA FE NM, LLC TO RENT, USE AND OCCUPY THE CITY'S PUBLIC RIGHTS-
13 OF-WAY IN THE CITY OF SANTA FE, NEW MEXICO, AND FIXING THE TERMS
14 AND CONDITIONS THEREOF.

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

17 Section 1. CityLink Fiber Holdings of Santa Fe NM, LLC (hereinafter called
18 "Applicant") submitted a request pursuant to the Telecommunications and Cable Services in the
19 Public Rights-of-Way Ordinance (hereinafter referred to as Article 27-2 SFCC 1987) to construct,
20 purchase, acquire, locate, maintain and extend into, within, and through the City of Santa Fe
21 (hereinafter called "the City"), a telecommunications network as that term is defined in Article
22 27-2 SFCC 1987 and has requested a franchise agreement in order to do same.

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

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

1 **Section 4.** The City has determined that granting of a franchise on the terms set
2 forth herein is in the public interest and in the interest of the City and its residents and will assist
3 in meeting the telecommunications related needs and interests of the community.

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

6 **Section 6. Short Title.** This franchise Ordinance may be cited as the CityLink
7 Fiber Holdings of Santa Fe NM, LLC Franchise.

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

20 **Section 8. Term; Effective Date.**

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

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

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

5 **Section 9. Compensation and Charges.**

6 (A) Fee. As consideration for this franchise, which provides for the rental and use by
7 Applicant, of the Rights-of-Way within the boundaries of the City, Applicant shall pay to the City
8 a fee in the amount of five percent (5%) of the annual Gross Revenue of Telecommunications
9 Services. Payment shall be made according to the requirements of Article 27-2 SFCC 1987.

10 (B) Non-Monetary Consideration. As two-and-one-half percent (2.5%) of the five
11 percent of annual Gross Revenue consideration for this franchise, Applicant shall provide to the
12 City, for its exclusive non-commercial and internal use certain elements of its Network as
13 follows:

14 (1) 12 strands of Dark Fiber within its Backbone network. Dark Fiber shall
15 mean an un-energized fiber optic strand. The City is responsible, at its sole cost, for all
16 equipment, software and related items to energize or light the Dark Fiber.

17 (2) 4 strands of Dark Fiber to each public kindergarten through twelfth grade
18 schools locations, as and when Applicant deploys its Network and can reasonably and
19 economically connect to such schools, in Applicant's sole and reasonable discretion.

20 (3) Connection to Public Structures. At the time of construction of its
21 network Applicant shall provide, at no cost to the City, connections to Public Structures
22 as defined in the Telecommunications Ordinance. The City Communications Manager
23 will approve and request the connection to the Public Structure, but shall not
24 unreasonably delay Applicant's Network construction timeline.

25 (4) Additional Conduit at time of Construction. Applicant will provide

1 conduit to the City, at the City's sole expense, during any construction project. Applicant
2 will provide a written estimate of the incremental cost of adding the City conduit to its
3 construction plan. The City Communications Manager will approve and request the
4 additional conduit prior to construction, but will not unreasonably delay such
5 construction by Applicant.

6 (5) Higher Educational Sites. Applicant will provide 4 strands of lateral
7 dark fiber to be connected to the City's 12 strands of backbone dark fiber, in a manner
8 prescribed by the City, to ten (10) Higher Education sites at zero-cost. The designation
9 and approval of a site is at the discretion of the City's Communications Manager. A
10 designated site cannot be moved to a different physical location, once connected.

11 (C) Connections. Measurement and Procedure. For all connections to public
12 kindergarten through twelfth grade schools, Public Structures and Higher Education Sites, as
13 described above, such connections will be provided, at zero-cost, to the City as long as they are
14 within 200 linear feet of the nearest Applicant Network backbone. Such measurement will be
15 from the nearest facing wall of the building or structure to be connected and the nearest Applicant
16 Network backbone. Applicant will not be required to cross any adjacent street, road, alley, or
17 sidewalk. Should a public kindergarten through twelfth grade school, Public Structure, or Higher
18 Education site wish to be connected that is a greater distance than the above 200 foot distance, the
19 entity responsible for such site will pay to Applicant the actual costs for the portion that is greater
20 than 200 feet in distance. Applicant will provide a written estimate of the additional actual costs,
21 in advance, and the entity desiring the connection will provide written authorization to proceed
22 and commitment to pay, if it desires such connection. In no event shall Applicant connect a
23 building by way of another building lateral. All connections under this section are to be made at
24 the time Applicant is constructing the Network backbone within the area of the requested site.
25 Should a public kindergarten through twelfth grade school, Public Structure or Higher Education

1 Site wish to be connected after Applicant has completed its construction in the area of the site,
2 then the entity desiring the connection for that site shall pay to Applicant its reasonable direct
3 costs to connect the site.

4 **Section 10. Ordinary Course of Business.** Applicant is in the business of providing
5 a non-discriminatory open access telecommunications system. In the normal and ordinary course
6 of business Applicant may sell or lease elements of its telecommunications network. As an
7 example of such activity, Applicant may sell or lease certain dark fiber strands within its fiber
8 optic cable that is part of Applicant's telecommunications network. Such activities, within the
9 normal and ordinary course of business shall not require compliance with Section 27-2.6 SFCC
10 1987.

11 **Section 11. Notice.**

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

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

17 With a copy to:

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

22 (B) Notice to CityLink Fiber Holdings of Santa Fe NM, LLC will be to:

23 CityLink Fiber Holdings of Santa Fe NM, LLC
24 505 Marquette Ave NW
25 Suite LL-110A

1 Albuquerque, NM 87102

2 With a copy to:

3 CityLink Fiber Holdings of Santa Fe NM, LLC

4 Attn: Mr. Ross Perkal

5 708 Marquette Ave NW

6 Albuquerque, NM 87102

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

11 **Section 12. Severability Clause.** If any section, paragraph, sentence, clause, word
12 or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of
13 competent jurisdiction, such decision shall not affect the validity of the remaining provisions of
14 this Ordinance. The Governing Body hereby declares that it would have passed this Ordinance
15 and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any
16 provision being declared unconstitutional or otherwise invalid.

17 **Section 13. Public Meeting.** It is hereby officially found and determined that
18 the meeting at which this Ordinance is passed is open to the public as required by law and that
19 public notice of time, place, and purpose of said meeting was given as required.

20 **Section 14. Compilation.** This Ordinance shall be incorporated in and compiled as
21 APPENDIX _____ SFCC 1987.

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

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APPROVED AS TO FORM:

Villy A. Brennan

CITY ATTORNEY (ACTING)