

1 [RCN Proposed OVS Franchise]

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3 **Ordinance granting a four year franchise to RCN Telecom Services, Inc. with an**  
4 **opportunity for two extensions of three years each, for use of the public rights-of-way**  
5 **within the City and County of San Francisco to provide open video system services**  
6 **and cable internet services upon compliance with the terms of this franchise.**

7 Note: This entire section is new.

8 Be it ordained by the People of the City and County of San Francisco:

9 RECITALS.

10 This Franchise is granted by the City and County of San Francisco, a municipal corporation  
11 ("City"), to RCN Telecom Services, Inc., a California Corporation ("Grantee"), pursuant to  
12 Chapter 11 of the San Francisco Administrative Code.

13 This Franchise is granted in reliance upon the following facts and circumstances:

- 14 1. On July 30, 1999, Grantee submitted a written application for a cable system franchise to  
15 the Board of Supervisors ("Board") and on September 7, 1999 submitted the initial  
16 estimated application processing fee.
- 17 2. On July 25, 2000, the Board awarded Grantee a cable franchise ("cable franchise") by  
18 Ordinance No. 204-00.
- 19 3. Grantee is currently constructing, installing, and maintaining facilities in the Public Rights-  
20 of-Way to provide Telecommunications Service, Video Service, and Cable Internet  
21 Service within the City under the cable franchise.
- 22 4. On November 1, 2002, Grantee applied to the City to terminate its cable franchise and  
23 replace it with an Open Video System ("OVS") Franchise.

- 1 5. On November 25, 2002, the Federal Communications Commission), pursuant to 47  
2 U.S.C. Section 573, approved Grantee's certification to operate an OVS in the City and  
3 County of San Francisco.
- 4 6. The City has authority pursuant to Article XI, Sections 7 and 9 of the California  
5 Constitution, and Section 16.111 of its Charter, to grant a franchise to Grantee to install  
6 facilities in the Public Rights-of-Way and to provide OVS services using such facilities.
- 7 7. Grantee will comply with all of the terms of this Franchise and will not challenge the City's  
8 authority to enforce any term of the Franchise. In addition, Grantee will not allege that  
9 any provision herein is inapplicable or unenforceable because Grantee is an OVS  
10 operator rather than a cable operator.
- 11 8. This Franchise will permit Grantee to provide Video Service and Cable Internet Service  
12 within the geographic area of the City and County of San Francisco.
- 13 9. This Franchise replaces, supercedes, and extinguishes all of Grantee's rights and  
14 obligations pursuant to the cable franchise, and Grantee's rights and obligations to the  
15 City shall henceforth be as set forth in this OVS Franchise.
- 16 10. In compliance with Charter Section 16.111 and Section 11.13(a) of Chapter 11, which  
17 require a "competitive process" before a franchise is awarded, the City issued a  
18 solicitation of applications on May 15, 2003 for the grant of an OVS franchise, on terms  
19 and conditions similar to those set forth herein. The City published notice of the  
20 solicitation of applications in the San Francisco Independent and the City's website.  
21 DTIS also informed cable overbuilders and OVS providers operating in California.
- 22 11. No proposals were received in response to the request for proposals prior to the June 3,  
23 2003 deadline.
- 24 12. In accordance with Section 11.13(f) of Chapter 11 of the San Francisco Administrative  
25 Code, DTIS has submitted a final report to the Board of Supervisors recommending

1 granting Grantee this OVS Franchise, subject to certain obligations and restrictions on  
2 Grantee. DTIS has determined that, in light of Grantee's current financial circumstances,  
3 current market conditions, and Grantee's potential to continue to provide Video Service  
4 and Cable Internet Service in competition with the incumbent cable operator, it is in the  
5 best interest of the City to terminate the cable franchise granted by Ordinance 204-00  
6 and grant an OVS Franchise to Grantee for a term of four years, subject to certain  
7 obligations and restrictions.

8 13. On January 27, 2003, the Telecommunications Commission recommended, as a policy  
9 recommendation only, that the Board approve Grantee's proposal subject to  
10 considerations raised by DTIS in its final report.

11 14. The Land Use Committee of the Board of Supervisors held public hearings on July 12  
12 and August 9, 2004 to consider the proposed OVS Franchise and its procedural and  
13 substantive impacts on the City. The Committee has determined that, in light of  
14 Grantee's current financial circumstances, current market conditions, and Grantee's  
15 potential to continue to provide Video Service and Cable Internet Service in competition  
16 with the incumbent cable operator, it is in the best interest of the City to terminate the  
17 cable franchise granted by Ordinance 204-00 and grant an OVS Franchise to Grantee for  
18 a term of four years, subject to the obligations and restrictions set forth herein.

19 15. The Board finds that granting Grantee an OVS Franchise within the geographic area of  
20 the City will enable continued competition in the provision of Video Service and Cable  
21 Internet Service.

22 16. The Board finds that competition in the provision of Video Service and Cable Internet  
23 Service may result in lower prices, innovative service offerings and greater choice of  
24 services for consumers, and improvements in customer service.

1 17. The Board finds that terminating the cable franchise and replacing it with the OVS  
2 Franchise as set forth herein will increase the likelihood of continued competition for  
3 Video Service and Cable Internet Service in the City.

4 18. The Board finds that terminating the cable franchise and replacing it with the OVS  
5 Franchise as set forth herein is appropriate in light of the particular market position and  
6 characteristics of the Grantee. Grantee has been providing Video Service and other  
7 services in the City for more than three years. Grantee currently has approximately  
8 3,150 subscribers in the City and 430,000 subscribers nationwide. Grantee has been  
9 building its System in the City in the face of competition from the incumbent cable  
10 operator.

11 19. The Board finds that Grantee is facing serious financial hardship and that it might exit the  
12 market in the City altogether if the City does not replace the cable franchise with an OVS  
13 Franchise as set forth herein. The Grantee's financial condition weighs against the City  
14 granting an OVS Franchise. However, the Grantee offers the prospect of providing  
15 significant competition to the incumbent cable operator in the future if it overcomes its  
16 current financial difficulties. If it does, consumers may benefit from lower prices and  
17 improved service. Grantee already has built its System in some parts of the City and is  
18 already providing Video Service and Cable Internet Service in the City in competition with  
19 the incumbent cable operator. In addition, current conditions in the telecommunications  
20 market make it unlikely that, within the next few years, another facilities-based service  
21 provider is likely to seek to enter the market and compete against the incumbent cable  
22 operator. The Board therefore finds that, because (i) the Grantee is likely to exit the  
23 market in the City if the City does not replace the cable franchise with the OVS Franchise  
24 as set forth herein, and (ii) within the next few years no other facilities-based provider is  
25 likely to enter the market and compete with the incumbent cable operator to provide

1 Video Service and Cable Internet Service in the City, consumers will be best served by  
2 granting Grantee an OVS Franchise as set forth herein.

3 20. Grantee acknowledges and agrees that the renewal provisions in 47 U.S.C. § 546 do not  
4 apply to this OVS Franchise and do not create any rights for Grantee.

5 21. The Board finds that granting an OVS Franchise for a period of four years provides  
6 Grantee a reasonable period of time for it to improve its financial condition and  
7 demonstrate that it is capable of providing service to a substantial number of San  
8 Francisco households. At the same time, the Board recognizes that granting Grantee  
9 this OVS Franchise may create a disincentive for other facilities-based providers to enter  
10 the market and provide Video Service and Cable Internet Service in competition with the  
11 incumbent cable operator. The City finds that granting an OVS Franchise for a period of  
12 four years, without any right to or presumption of renewal, would minimize any such risk.

13 22. This Franchise relieves Grantee of the System construction requirements that were  
14 contained in the cable franchise granted by Ordinance No. 204-00. The Board finds that  
15 such relief is necessary to increase the likelihood that Grantee will remain in the market  
16 and continue to compete with the incumbent cable operator.

17 23. Grantee will continue to provide channel capacity, facilities, and support for public,  
18 education, and government ("PEG") access cable television programming. Grantee will  
19 provide 7 PEG access channels. Grantee has also agreed to a procedure for converting  
20 those channels into digital equivalents at an equitable ratio for the City. Grantee will  
21 provide 17 video feeds for PEG channels and PEG financial support, on a percent of  
22 gross revenue basis, greater than the support currently provided by the incumbent cable  
23 provider, subject, as provided herein, to adjustment of Grantee's ongoing obligations to  
24 match any percentage or per subscriber contributions obligation imposed on Comcast as  
25 part of its current franchise renewal.

- 1 24. Grantee will pay to the City a five percent (5%) fee on Gross Revenues derived from  
2 operation of the System to provide Services to compensate the City for the benefits  
3 derived from use of the Public Rights-of-Way. Grantee will also pay all of the fees and  
4 taxes required by applicable law, including the Street Damage Restoration Fee set forth  
5 in Section 2.4.44 of the San Francisco Public Works Code.
- 6 25. Grantee will provide to the City, for City use, Fiber Optic Infrastructure, Video Service or  
7 Cable Internet Service and City Conduit for installing Fiber Optic Infrastructure.
- 8 26. Grantee will offer Service to all of the locations within the City that Grantee currently  
9 passes with its System. Those locations are set forth in Appendix 4 hereto.
- 10 27. Grantee has agreed to criteria for any future expansion of its System that will preclude  
11 discrimination on the basis of the income level or minority status of the residents of a  
12 neighborhood and has agreed to specific provisions that explicitly prohibit discrimination.
- 13 28. Grantee will provide eligible low income subscribers a discounted rate on Video Service  
14 that should make Video Service more affordable and may increase subscribership  
15 among low income consumers.
- 16 29. Pursuant to the terms of a letter agreement dated July 10, 2000, and adopted by  
17 Resolution of the Board No. 730-00, Grantee will also provide, at no cost to the City,  
18 cable drops, cable modems, and Cable Internet Services for use in a City administered  
19 pilot project designed to address and bridge the digital divide.
- 20 30. Grantee has demonstrated that it has the technical qualifications and ability to provide  
21 Video Service and Cable Internet Service as authorized in this Franchise. Grantee is  
22 currently providing such services to consumers in San Francisco and Peninsula  
23 communities, such as, South San Francisco, Daly City, San Mateo, Redwood City,  
24 Burlingame in addition to serving in the New York, Boston, Chicago, Philadelphia, and  
25 Washington D.C. metropolitan areas.

- 1 31. The technical capabilities and performance standards of Grantee's facilities are equal to  
2 or exceed those generally being deployed on a large scale for residential consumers  
3 within the City.
- 4 32. All portions of Grantee's System shall be constructed in a manner that complies with all  
5 existing and future federal, state, and local construction requirements, including but not  
6 limited to the City's Public Works Code and the California Public Utilities Commission  
7 General Orders 95 and 128.
- 8 33. The Board finds that this Franchise will not cause unreasonable disruption or  
9 inconvenience to existing users of utility poles, public easements, or Public Rights-of-  
10 Way. Under this Franchise, Grantee will arrange for any necessary relocation of facilities  
11 on poles, public easements, and Public Rights-of-Way at its own cost.
- 12 34. Grantee's use of poles, public easements, and Public Rights-of-Way is unlikely to have  
13 any significant impact on future use by existing occupants. However, to the extent that  
14 Grantee occupies space on utility poles, public easements, and Public Rights-of-Way  
15 there may be less space for subsequent entrants.
- 16 35. Grantee has agreed to be subject to all governing applicable law as it is now and as it  
17 may be adopted, including all policies and procedures that the City adopts governing  
18 customer service and governing the placement of facilities in the Public Rights-of-Way.  
19 Those policies and procedures may mitigate any aesthetic impact due to additional  
20 cables, nodes, and power supplies attached to utility poles or additional utility boxes  
21 placed in the Public Rights-of-Way by Grantee pursuant to its authorization under this  
22 Franchise.
- 23 36. The Director of the City's Planning Department has found that the grant of this Franchise  
24 is in conformity with the City's General Plan and consistent with the Eight Priority Policies  
25 of City Planning Code Section 101.1.

- 1 37. The Environmental Review Officer of the City's Planning Department, by letter dated  
2 May 20, 2003 confirmed the conclusion of its May 26, 2000 letter (the "Environmental  
3 Review Letter"), a copy of both letters are on file with the Clerk of the Board of  
4 Supervisors, that the City may act as a responsible agency in the grant of the RCN OVS  
5 Franchise, pursuant to CEQA Guidelines Section 15381. The Environmental Review  
6 Letter analyzed the potential impacts from the grant of the RCN OVS Franchise, in  
7 accordance with CEQA Guidelines Section 15164.
- 8 38. The Board has reviewed and relied upon the negative declaration and the Environmental  
9 Review Letter prepared at the time that RCN obtained its Cable Franchise. The Board  
10 finds on the basis of the whole record before it that the negative declaration is adequate  
11 and complete for the Board to act on this Franchise. In exercising its independent  
12 judgment, the Board concurs with and adopts the findings and conclusions made in the  
13 negative declaration and the Environmental Review Letter, and incorporates said findings  
14 and conclusions as though fully set forth herein. The Board also finds, on the basis of  
15 the Planning Department's May 20, 2003 letter, that there have been no changes to the  
16 proposed activities, no changes to the circumstances surrounding the proposed activities  
17 have occurred, and no new information has become available since adoption of the  
18 negative declaration that would alter the findings set forth therein even though the  
19 negative declaration was adopted for RCN's Cable Franchise.
- 20 39. The Board finds that, while the proposed construction activities associated with this  
21 Franchise may be potentially disruptive at each location that is under construction for the  
22 duration of that construction, the activities would not result in impacts that exceed those  
23 generally accepted in an urban environment where construction work is a fact of life.  
24 With implementation of the mitigation measures set forth in the negative declaration, the  
25 Environmental Review Letter and this Franchise, site specific impacts will be mitigated to



1 a less than significant level, and the project overall will not have a significant adverse  
2 effect on the environment.

3 40. The mitigation measures included in the negative declaration and Environmental Review  
4 Letter are adopted as conditions of approval to this Franchise and will be implemented as  
5 set forth in the negative declaration and the Environmental Review Letter. The City's  
6 Department of Public Works and DTIS will enforce and monitor implementation of the  
7 Mitigation Measures through the permitting process.

8 41. In consideration of the mutual covenants, terms and conditions set forth herein and of  
9 Grantee's payment of \$100,000 to the City Controller no later than the Effective Date of  
10 this Ordinance in consideration for the termination of the Cable Franchise approved on  
11 July 25, 2000, the receipt and sufficiency of which are hereby acknowledged, and  
12 intending to be legally bound, the City and Grantee agree as follows:

13  
14 Preamble: The above recitals are incorporated into this Franchise. Each party  
15 represents that the recitals are true and correct as they relate to that party's acts.

#### 16 PART 1 – DEFINITIONS

17 **Section 1. DEFINITIONS.** For purposes of this Franchise, the following terms, phrases,  
18 words, abbreviations and their derivations, when capitalized, shall have the meanings given  
19 herein. When not inconsistent with the context, words used in the present tense include the  
20 future tense; words in the plural number include the singular number; and words in the  
21 singular number include the plural number. The words "shall" and "will" are mandatory. "May"  
22 is permissive. The use of the term "including," "such as" or words of similar import when  
23 following any general term, statement or matter shall not be construed to limit such term,  
24 statement or matter to the specific items or matters, whether or not language of non-limitation  
25 is used with reference thereto. Rather, such terms shall be deemed to refer to all other items

1 or matters that could reasonably fall within the scope of such statement, term or matter.

2 Unless expressly stated otherwise, words not defined herein shall be given the meaning given  
3 them in Chapter 11, and if not defined therein, their common and ordinary meaning. To the  
4 extent there is any difference between a definition set forth in this Franchise and a definition  
5 set forth in Chapter 11, the definition used in this Franchise shall govern. References to  
6 governmental individuals or entities refer to those individuals, entities, or their successors in  
7 authority. Unless expressly stated otherwise, if specific provisions of law referred to herein  
8 are renumbered or amended, then the reference shall be read to refer to the renumbered or  
9 amended provision.

10 (a) "Affected Service" shall have the meaning set forth in Section 60(b) below.

11 (b) "Agent," when used with reference to either party to this Franchise, means the  
12 members, officers, directors, commissioners, employees, agents, contractors and  
13 subcontractors of such party, and their respective heirs, legal representatives, successors and  
14 assigns, when acting under this Franchise.

15 (c) "Affiliate," when used in relation to any Person, means another Person who  
16 owns or Controls, is owned or Controlled by, or is under common ownership or Control with,  
17 such Person.

18 (d) "Analog Channel" means a six (6) Megahertz (MHz) frequency band.

19 (e) "Analog PEG Channel" shall have the meaning set forth in Section 48(a)  
20 below.

21 (f) "Applicable Law" means all applicable Federal, State, and City laws,  
22 ordinances, codes, rules, regulations and orders, as the same may be amended or adopted  
23 from time to time.

24 (g) "Attorneys' Fees and Costs" means any and all attorneys' fees, costs,  
25 expenses and disbursements, including, but not limited to, expert witness fees and costs,

1 travel time and associated costs, transcript preparation fees and costs, document copying,  
2 exhibit preparation, courier, postage, facsimile, long-distance and communications expenses,  
3 court costs and the costs and fees associated with any other legal, administrative or  
4 alternative dispute resolution proceeding, fees and costs associated with execution upon any  
5 judgment or order, and costs on appeal.

6 (h) "Bandwidth" means the extent of the range of frequencies between minimum  
7 and maximum endpoints measured in megahertz (MHz).

8 (i) "Board" means the City's Board of Supervisors.

9 (j) "Board Approval" means the approval of the San Francisco Board of  
10 Supervisors by resolution or ordinance, as applicable, and the approval of the Mayor unless  
11 the Mayor's disapproval is overridden by the Board of Supervisors. Board approval shall not  
12 be deemed to have occurred unless and until the applicable resolution or ordinance becomes  
13 effective in accordance with Applicable Law.

14 (k) "Bona Fide Institutional Lender" means any one or more of the following: (1) a  
15 savings bank, a savings and loan association, a commercial bank or trust company, an  
16 insurance company, a real estate investment trust, or any other Person which, at the time a  
17 pledge in trust or mortgage is recorded in favor of such Person, has assets of at least  
18 \$500 million in the aggregate (or the equivalent in foreign currency), and is regularly engaged  
19 in the financial services business; or (2) any special account, managed fund, department,  
20 agency or Affiliate of any of the foregoing; or (3) any Person acting in a fiduciary capacity for  
21 any of the foregoing. For purposes hereof: (1) acting in a "fiduciary capacity" shall be deemed  
22 to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan  
23 agreement, indenture or other loan document; and (2) a lender, even if not a Bona Fide  
24 Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if, no more than  
25 thirty (30) City business days after such loan is consummated, the note(s) or other evidence

1 of indebtedness or the collateral securing the same are assigned to a Person then qualifying  
2 as a Bona Fide Institutional Lender.

3 (l) "Cable Drop" shall have the meaning set forth in Section 45 below.

4 (m) "Cable Internet Service" means "Online Computer Services" and "Internet  
5 Access," as those terms are defined in Section 65003 of the California Revenue and Taxation  
6 Code as of the Effective Date, that are offered using any of Grantee's Facilities in the City.

7 (n) "Cable Service" means the one way transmission to Subscribers of video  
8 programming or other programming service and Subscriber interaction, if any, required to  
9 select or use such video programming or other programming service.

10 (o) "Capacity" means the maximum transmission capability of the System. The  
11 Capacity for the System can be expressed in terms of bandwidth measured in hertz (cycles  
12 per second) between minimum and maximum endpoints.

13 (p) "Channel" means both Analog Channels and Digital Channel Equivalents.

14 (q) "Chapter 11" means Chapter 11 of the San Francisco Administrative Code, as  
15 it may be amended from time to time.

16 (r) "City" means the City and County of San Francisco, a municipal corporation of  
17 the State of California.

18 (s) "City business day" means each Monday through Friday, excluding any day  
19 recognized as an official holiday by the City.

20 (t) "City Conduit" shall have the meaning set forth in Section 46(a) below.

21 (u) "City Deposit" shall have the meaning set forth in Section 52(b) below.

22 (v) "C/N" shall have the meaning set forth in Section 48(g)(3) below.

23 (w) "Comcast" means Comcast of California II, Inc., the grantee under the cable  
24 television franchise granted by the City pursuant to Ordinance No 105-64, or any successor.

1           **(x)**       “Communications Project Grant” shall have the meaning set forth in Section  
2 44(e) below.

3           **(y)**       “Complete Outage” means loss of picture and sound on all Channels to one or  
4 more Subscribers.

5           **(z)**       “Construction Sequence Plans” shall have the meaning set forth in Section  
6 16(a) below.

7           **(aa)**      “Control” means the power to control the affairs and key decisions of another  
8 Person, in whatever manner exercised, whether directly or indirectly.

9           **(bb)**      “CPI-U” means the Consumer Price Index for All Urban Consumers (base  
10 years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the  
11 United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that  
12 the base year differs, the Index shall be converted in accordance with the conversion factor  
13 published by the United States Department of Labor, Bureau of Labor Statistics. If the Index  
14 is discontinued or revised during the Term, such other government index or computation with  
15 which it is replaced shall be used in order to obtain substantially the same result as would be  
16 obtained if the Index had not been discontinued or revised. Adjustments in CPI-U shall be  
17 calculated by comparing the CPI-U most recently published with the CPI-U in effect on  
18 February 1, 2000. If the CPI-U has increased, then the sum or amount payable on the  
19 calculation date shall be set by multiplying the sum or payment by a fraction, the numerator of  
20 which is the CPI-U as of the calculation date and the denominator of which is the CPI-U in  
21 effect on February 1, 2000.

22           **(cc)**      “CPUC” means the California Public Utilities Commission.

23           **(dd)**      “CULCOP” shall have the meaning set forth in Section 6(c) below.

24           **(ee)**      “Demarcation Point” means the point within a building or otherwise designated  
25 by the City where Grantee's fiber terminates.

- 1           **(ff)**       “Deposits” shall have the meaning set forth in Section 52(b) below.
- 2           **(gg)**       “Digital Channel Equivalent” means the portion of the Capacity of the System  
3 required to deliver a digital video Signal, with accompanying audio, meeting or exceeding  
4 National Television System Committee (“NTSC”) quality standards.
- 5           **(hh)**       “DTIS” means the City’s Department of Telecommunications and Information  
6 Services.
- 7           **(ii)**       “DTIS Director” means the Director of DTIS, or his or her designee.
- 8           **(jj)**       “DPW” means the City’s Department of Public Works.
- 9           **(kk)**       “EAS” shall have the meaning set forth in Section 42(h) below.
- 10          **(ll)**       “Effective Date” means October 18, 2004.
- 11          **(mm)**      “Eligible Employee” shall have the meaning set forth in Chapter 12-O of the  
12 San Francisco Administrative Code.
- 13          **(nn)**       “Excavator” means “Utility Excavator” as defined in Section 2.4.4(s) of the  
14 City’s Public Works Code.
- 15          **(oo)**       “Facilities” means any physical element of the System used in connection with,  
16 or designed to be used in connection with, the provision of Services or Telecommunication  
17 Services, whether or not located in the Public Rights-of-Way, including, without limitation,  
18 Hubs, Nodes, the Headend, pedestals, cabinets, ducts and conduits (whether empty or  
19 occupied), transformers, equipment, drains, handholds, lines, manholes, poles, power  
20 supplies and generators, splice boxes, surface location markers, vaults, tunnels, amplifiers,  
21 power guards, coaxial cables, and fiber strands (whether active or dark).
- 22          **(pp)**       “FCC” means the Federal Communications Commission.
- 23          **(qq)**       “Fiber Backbone” means Grantee’s inter-Hub trunking, and shall not include  
24 fiber optic or coaxial cable running from Hubs to Nodes or Nodes to buildings.
- 25          **(rr)**       “Fiber Drop” shall have the meaning set forth in Section 44(b) below

1           **(ss)**     "Fiber Optic Infrastructure" or "FOI" means the Fiber Strands and Fiber Drops  
2 provided by Grantee to the City pursuant to Section 44 below.

3           **(tt)**     "Fiber Route" shall have the meaning set forth in Section 8(b) below.

4           **(uu)**     "Fiber Strands" shall have the meaning set forth in Section 44(a) below.

5           **(vv)**     "First Source Hiring Agreement" shall have the meaning set forth in Section  
6 89(a) below.

7           **(ww)**     "Franchise" means this Ordinance No. [ 210-04 ] of the City's Board of  
8 Supervisors, as it may be amended from time to time, and all the terms and conditions  
9 thereof. "Franchise" shall not mean or include any license or permit required for the privilege  
10 of transacting and carrying on a business within the City as required by other ordinances or  
11 laws of the City, including, without limitation: (1) any permit, agreement or authorization  
12 required in connection with operations on public streets or property such as permits and  
13 agreements for placing devices on or in poles, conduits or other structures, whether owned by  
14 the City or a private entity, or for excavating or performing other work in or along Public  
15 Rights-of-Way; and (2) express or implicit authorization to provide Service to, or install  
16 Facilities on, private property without owner consent.

17           **(xx)**     "Grantee" means RCN Telecom Services, Inc., and any lawful permitted  
18 successor or assign.

19           **(yy)**     "Gross Revenues" means any and all income, receipts, consideration and  
20 other revenue of any kind or nature, including but not limited to the value of goods or services  
21 received in-kind or in a barter arrangement, derived by Grantee or any Affiliate from the  
22 operation or use of the System to provide Service within the City. The use of the phrase  
23 "within the City" does not limit Gross Revenues to those generated solely from operations  
24 within the City. Rather, Gross Revenues include any revenues derived in any part through or  
25 in connection with the operation of the System, including, but not limited to, such portion as is

1 attributable to the City, in accordance with general accounting principles, of advertising or  
2 other revenues generated on a regional or national basis from Grantee's operations both  
3 within and outside the City. Gross Revenues include, by way of illustration and not limitation:  
4 any amounts or fees collected from Subscribers, regardless of how they are enumerated on  
5 the bill, including subscriber fees, capacity fees, usage-based fees, installation fees,  
6 disconnection fees, reconnection fees, change-in-service fees, late fees, and administrative  
7 fees; revenues derived from other Persons using the System, including without limitation,  
8 Lessees, except to the extent such Persons pay a franchise fee to the City for the use of the  
9 System; revenues received from programmers for carriage of programming on the System;  
10 revenues from rentals or sales of Service-related equipment; advertising revenues; revenues  
11 from program guides; revenues from home shopping channels; and any other revenues  
12 derived from Grantee's operations in the City. This provision shall be read broadly to prevent  
13 the avoidance of franchise fees by Grantee through special billing techniques or bundling of  
14 Services, or arrangements with Affiliates. Gross Revenues shall not include: (i) any taxes on  
15 Services that are imposed directly on any Subscriber or user by the State, City, or other  
16 governmental unit and which are collected by Grantee on behalf of said governmental unit; (ii)  
17 actual bad debt write offs to the extent consistent with generally accepted accounting  
18 principles consistently applied, provided however, that any part of such bad debt that is written  
19 off but subsequently collected shall be included in Gross Revenues; or (iii) amounts paid by a  
20 Subscriber but subsequently refunded to the Subscriber. The franchise fee required pursuant  
21 to Section 10 below is not such a tax, and Grantee shall not exclude from Gross Revenues  
22 amounts collected from Subscribers that are attributable to Grantee's payments of franchise  
23 fees to the City or that are designated on Subscriber bills as franchise fees. Gross Revenues  
24 shall not be reduced by the amount of any costs or expenses incurred by the Grantee,  
25 including but not limited to amounts attributable to the franchise fee.



1           **(zz)**     "Hazardous Material" means any material that, because of its quantity,  
2 concentration or physical or chemical characteristics, is deemed by any federal, state or local  
3 governmental authority to pose a present or potential hazard to human health or safety or to  
4 the environment. Hazardous Material includes, without limitation, any material or substance  
5 defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the  
6 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as  
7 amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California  
8 Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed pursuant  
9 to Section 25140 of the California Health & Safety Code; any asbestos and asbestos  
10 containing materials whether or not such materials are part of any Facilities to be constructed  
11 on the Public Rights-of-Way by or on behalf of Grantee, or are naturally occurring substances  
12 on, in or about the Public Rights-of-Way, and petroleum, including crude oil or any fraction  
13 thereof, and natural gas or natural gas liquids.

14           **(aaa)**    "Headend" means the point in the System where all Signals are collected and  
15 formatted for transmission on the System.

16           **(bbb)**    "Hub" means the equipment in the distribution system that receives Signals  
17 from the Headend for transmission to a number of Nodes.

18           **(ccc)**    "Hub Area" shall have the meaning set forth in Section 8(a) below.

19           **(ddd)**    "Incremental Labor and Materials Costs" means the actual, out-of-pocket  
20 additional labor and materials cost incurred by the Grantee for a specific activity performed for  
21 the benefit of the City that Grantee would not have incurred but for the City's request.  
22 Incremental Labor and Materials Costs must be supported by appropriate invoices, which may  
23 include a certified bill of labor, payroll and/or bill of materials.

1           **(eee)** "Indemnified Parties" means City, including, but not limited to, all of its boards,  
2 commissions, departments, agencies and other subdivisions; all of the Agents of the City, and  
3 all of their respective heirs, legal representatives, successors and assigns, and each of them.

4           **(fff)** "Indemnify" means indemnify, protect, defend, reimburse and hold harmless  
5 forever.

6           **(ggg)** "Local Channel" shall have the meaning set forth in Section 49 below.

7           **(hhh)** "Local Origination Programming" means Programming produced in  
8 San Francisco or containing San Francisco-related content.

9           **(iii)** "Loss" or "Losses" when used with reference to any Indemnity means any and  
10 all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable  
11 consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and  
12 other proceedings, judgments and awards and costs and expenses, (including, without  
13 limitation, reasonable Attorneys' Fees and Costs and consultants' fees and costs).

14           **(jjj)** "Material Breach" means a breach of this Franchise that has a substantial  
15 and significant effect on the rights or benefits either party to the Franchise has secured  
16 pursuant to the Franchise. Material Breach shall include, but not be limited to, those breaches  
17 designated as such in this Franchise and in Chapter 11. Additionally, any breach not  
18 identified as a Material Breach in this Franchise may become a Material Breach if it occurs  
19 frequently or remains uncured for such a length of time that it has a substantial and significant  
20 effect of the rights or benefits of either party to this Franchise.

21           **(kkk)** "Mitigation Measures" shall have the meaning set forth in Appendix 2 below.

22           **(lll)** "Node" means the equipment that receives Signals from a Hub and  
23 redistributes the Signals to individual Subscribers.

24           **(mmm)** "Node Area" shall have the meaning set forth in Section 8(a) below.

1           **(nnn)**     "Normal Business Hours" means a total of sixty (60) hours per week and  
2 shall include the hours between 9:00 a.m. and 6:00 p.m. Monday through Friday and 10:00  
3 a.m. and 6:00 p.m. on Saturday. The remaining seven (7) hours shall include some hours  
4 after 6:00 p.m. during the week.

5           **(ooo)**     "NTSC" shall have the meaning set forth in (gg) above.

6           **(ppp)**     "One Year Construction Plan" shall have the meaning set forth in Section  
7 16(a)(1) below.

8           **(qqq)**     "PEG Channel" means any Analog Channel or Digital Channel Equivalent  
9 designated for transmission of public, educational or governmental audio, video and/or digital  
10 Signals pursuant to the requirements of Section 48 below.

11          **(rrr)**     "PEG Digital Channel Equivalent" shall have the meaning set forth in  
12 Section 48(b) below.

13          **(sss)**     "PEG Operating Contributions" shall have the meaning set forth in Section  
14 47(a) below.

15          **(ttt)**     "PEG Signal" means the audio, video, and/or digital Signal generated by a  
16 public, educational, or governmental source for transmission over a PEG Channel.

17          **(uuu)**     "Person" means any individual, group, company, partnership, association,  
18 joint stock company, trust, corporation, society, syndicate, club, business, or governmental  
19 entity. Person shall not include the City.

20          **(vvv)**     "Pesticide Ordinance" shall have the meaning set forth in Section 88 below.

21          **(www)**     "Programming" means any video, audio, text or data coded Signals carried  
22 over the System.

23          **(xxx)**     "Proposal" shall have the meaning set forth in Chapter 11.

24          **(yyy)**     "Public Rights-of-Way" shall have the meaning set forth in Chapter 11.

25          **(zzz)**     "Quarterly Meeting" shall have the meaning set forth in Section 17 below.

1           **(aaaa)** "Quarterly Reports" shall have the meaning set forth in Section 16.

2           **(bbbb)** "Residential Unit" means a residence, whether located in a single family  
3 residence, lodging house, apartment building, condominium, cooperative building, or  
4 dormitory, or any other type of residential dwelling unit.

5           **(cccc)** "Revocation" means the City's affirmative act of Terminating this Franchise.

6           **(dddd)** "SAP" shall have the meaning set forth in Section 48(g)(4) below.

7           **(eeee)** "Scheduled Appointment" means a scheduled time with a Subscriber for  
8 service, installation or disconnection, specified by date, not to exceed a four (4) hour window  
9 in which a service representative shall arrive.

10          **(ffff)** "Security Interest" shall have the meaning set forth in Section 52(a) below.

11          **(gggg)** "Service" means all of the Services Grantee is permitted to provide under this  
12 Franchise pursuant to Section 2(b) below. "Service" shall not include Telecommunications  
13 Service unless and until Applicable Law permits local governments to require telephone  
14 corporations in California to obtain a local Franchise or pay fair and reasonable compensation  
15 for the use of the Public Rights-of-Way in connection with the provision of  
16 Telecommunications Service.

17          **(hhhh)** "Service Interruption" means loss of picture or sound on one or more  
18 Channels to one or more Subscribers.

19          **(iiii)** "Signal" means any electromagnetic or optical energy transmitted over the  
20 FOI or over the System from one location to another.

21          **(jjjj)** "Street Furniture Policy" shall have the meaning set forth in Section 7(b)  
22 below.

23          **(kkkk)** "Subscriber" means the City, except where expressly stated otherwise, and  
24 any Person who legally receives any Service from Grantee. "Subscriber" shall include  
25 residential, commercial, industrial, public and institutional customers.

1 (llll) "Subscriber Deposit" shall have the meaning set forth in Section 52(b) below.

2 (mmmm) "System" means the totality of Grantee's Facilities owned, constructed,  
3 installed, or operated to provide Services or Telecommunication Services in the City.

4 (nnnn) "System Tests" shall have the meaning set forth in Section 35(a) below.

5 (oooo) "Telecommunications Service" means any service regulated by the CPUC or  
6 the FCC as a telecommunications service and provided to customers by Grantee in its  
7 capacity as a telephone corporation regulated by the CPUC.

8 (pppp) "Term" shall have the meaning set forth in Section 2(g) below.

9 (qqqq) "Termination" means the conclusion of a Franchise by any means, including,  
10 but not limited to, by expiration of its Term, abandonment, or Revocation.

11 (rrrr) "Termination Date" shall have the meaning set forth in Section 60(b)(1)  
12 below.

13 (ssss) "Transfer" means any transaction in which: (1) all or a portion of any  
14 Facilities or any rights to use or operate Facilities located in the Public Rights-of-Way are sold,  
15 conveyed, transferred, assigned, encumbered (except as set forth herein) or leased, in whole  
16 or in part, directly or indirectly, by one or more transactions to another Person, whether  
17 voluntarily or by operation of law or otherwise; or (2) there is any change, acquisition, or  
18 transfer in the identity of the Person in Control of Grantee, or any Person that controls  
19 Grantee, including, without limitation, forced or voluntary sale, merger, consolidation, or  
20 receivership; or (3) the rights or obligations under the Franchise are sold, conveyed,  
21 transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part,  
22 directly or indirectly, by one or more transactions to another Person, whether voluntarily or by  
23 operation of law or otherwise. It will be presumed, for purposes of clause (2) above, that any  
24 transfer or cumulative transfer of a voting interest by a Person or group of Persons acting in  
25 concert of twenty five percent (25%) or more of Grantee, or Person that Controls Grantee, or

1 any change in the managing general partners of a Grantee is a change of Control. "Transfer"  
2 does not include: (1) a lease to a UVPP pursuant to 47 U.S.C. Section 573; (2) the  
3 transmission of a commodity or electronic signal using Facilities on a common carrier basis;  
4 (3) a lease or other right to use Facilities mandated pursuant to 47 U.S.C. Section 224,  
5 California Public Utilities Code Section 767.5, or by an order of the CPUC; or (4) a pledge in  
6 trust, mortgage or other encumbrance against the Facilities, or any portion thereof, given to a  
7 Bona Fide Institutional Lender in connection with a loan or other financing required to secure  
8 the construction, operation, or repair of the Facilities ("Loan") provided that such Loan is  
9 subject to the rights and powers of the City pursuant to the Franchise and Applicable Law,  
10 including, without limitation, the right of the City to approve any Transfer upon foreclosure.

11 "Transferring" and "Transferee" shall have correlative meanings.

12 (tttt) "Update" shall have the meaning set forth in Section 16(c)(3) below.

13 (uuuu) "UVPP" means an unaffiliated video programming provider, which is any  
14 Person who uses capacity on Grantee's Cable System to deliver Video Service or other  
15 communications service to Subscribers and who is not an Affiliate of Grantee.

16 (vvvv) "Video Feeds" shall have the meaning set forth in Section 48(g)(2) below.

17 (wwww) "Video Service" means Cable Service provided over an OVS.

18 (xxxx) "WDS" shall have the meaning set forth in Section 89(a) below.

## 19 PART 2 – FRANCHISE GRANT

### 20 Section 2. FRANCHISE GRANT

21 (a) Board Authorization. Pursuant and subject to Charter Section 16.111, Chapter  
22 11, and the terms and conditions agreed to herein, the City hereby authorizes Grantee to  
23 occupy and use the Public Rights-of-Way to construct, install, repair, maintain and to operate  
24 its System within the City to provide the Services specified in subsection (b) below during the  
25 Term. This Franchise does not confer any rights other than those expressly provided herein

1 and does not authorize Grantee to occupy and use the Public Rights-of-Way for any purposes  
2 other than to construct, install, repair, maintain and operate its System to provide the Services  
3 specified in subsection (b) below.

4       **(b) Services Authorized.** Subject to the acknowledgment and agreement in (c)  
5 below, this Franchise authorizes Grantee to use the Public Rights-of-Way to provide Video  
6 Service and Cable Internet Service, leasing or offering the use of the System through any  
7 other arrangement to any Person otherwise authorized to use the Public Rights-of-Way  
8 pursuant to Sections 11.3 or 11.4 of Chapter 11 or to a UVPP. Grantee shall have no  
9 obligation under this subsection (b) to notify the City before providing Telecommunications  
10 Service. Grantee's failure to obtain City approval prior to providing any service not authorized  
11 pursuant to this Franchise shall be a Material Breach of this Franchise.

12       **(c) Telecommunications Services.** Subject to the conditions set forth in subparts (a)  
13 through (d) of this subsection, the City hereby acknowledges and agrees (i) that Grantee may  
14 operate and use its Facilities to provide Telecommunications Services and shall not be liable  
15 for payment of franchise fees on Gross Revenues from the operation of the System to provide  
16 Telecommunications Services pursuant to Part 4 below, and (ii) that Grantee shall not be  
17 required to obtain another Utility Conditions Permit pursuant to Section 11.9 of Chapter 11.  
18 The City's acknowledgment and agreement is subject to the following conditions: (a) There is  
19 no change in §7901 of the California Public Utilities Code or its interpretation, which, as of the  
20 Effective Date, is interpreted to prohibit local governments from requiring telephone  
21 corporations in California to obtain a local Franchise or pay fair and reasonable compensation  
22 for use of the Public-Rights-of-Way in connection with the provision of Telecommunications  
23 Services; (b) Grantee maintains a current Certificate of Public Convenience and Necessity  
24 ("CPCN") from the California Public Utilities Commission ("CPUC") authorizing Grantee to  
25 provide Telecommunications Services, or other successor authorization presented to the City

1 pursuant to subpart (d) below and accepted by the City, and (c) Grantee is in compliance with  
2 all the provisions of its CPCN or other successor authorization; and (d) Grantee provides the  
3 City written notice within ten (10) City business days of any material modification to its CPCN.  
4 Grantee shall promptly provide to the City a copy of any modification to its CPCN. If, at any  
5 time, any of the aforementioned conditions are not satisfied, DTIS may deem the  
6 acknowledgment and agreement set forth in this subsection to be null and void upon 20  
7 (twenty) City business days written notice to Grantee, may require Grantee to apply for a UCP  
8 pursuant to Section 11.9 of Chapter 11, or may require Grantee to obtain any other lawful  
9 authorization that it may deem appropriate in its sole discretion. With the exception of the  
10 franchise fee requirements of Part 4 below, notwithstanding their use to provide  
11 Telecommunications Services, Grantee's Facilities and the operation and use of its Facilities  
12 and System shall be subject to all the terms and conditions of this Franchise.

13       **(d) Cable Internet Services.** (1) The FCC has declared Cable Internet Service to  
14 be an interstate information service, FCC 02-77, rel. March 15, 2002. That decision was  
15 affirmed in part and reversed in part by the United States Court of Appeals for the Ninth  
16 Circuit in *Brand X Internet Services v. F.C.C.*, 345 F.3d 1120 (9<sup>th</sup> Cir. 2003), in which the court  
17 held that Cable Internet Service is in part an information service and in part a  
18 Telecommunications Service. That decision is subject to further review by the United States  
19 Supreme Court, in the event the Court accepts the case on certiorari. (2) In view of the  
20 foregoing, the City agrees that as of the Effective Date of this Franchise, the terms and  
21 conditions of this Franchise as they pertain to Cable Internet Service shall be tolled and City  
22 shall not enforce such terms and conditions against Grantee, nor shall Grantee have any  
23 obligation to comply therewith during such tolling; provided, however, the City may terminate  
24 this tolling at any time at its sole discretion, by resolution by the City's Board of Supervisors,  
25 so long as and to the extent City is permitted to enforce such provisions against Grantee



1 under Applicable Law. If City terminates the tolling, it shall do so by ninety (90) days' prior  
2 written notification of such termination to Grantee. Upon termination of such tolling, Grantee  
3 shall comply with all of the applicable terms and provisions of this Franchise as they pertain to  
4 Cable Internet Services. Nothing in the foregoing tolling is an admission by the City of by  
5 Grantee of the current state of Applicable Law, and neither party has waived any rights by  
6 agreeing to this current tolling. The City acknowledges and agrees that Sections 3(c), 3(e),  
7 and 60(a) shall not apply with respect to any challenge by Grantee upon the City's notification  
8 to Grantee of any termination of the tolling relative to Cable Internet Service. In addition, with  
9 regard to Cable Internet Service, the procedures set forth in this Section shall be followed  
10 prior to application of Section 60(b) below. (3) Notwithstanding the decision of the Ninth  
11 Circuit, (a) in the event Grantee pays a fee to, or complies with customer service requirements  
12 or agrees to any enforcement mechanisms in connection therewith for the benefit of, any  
13 municipality in the State of California in connection with the provision of Cable Internet  
14 Services, Grantee shall promptly notify the City of same and shall pay an equivalent fee to,  
15 and comply with equivalent customer service and enforceability requirements for the benefit  
16 of, the City under this Franchise, and (b) Grantee further agrees during the tolling period to  
17 comply with the customer service requirements in Sections 26, 27, 28 and 29 of this  
18 Franchise, not subject, however, to the provisions of Section 59 and 60, in Grantee's provision  
19 of Cable Internet Service. Grantee further agrees to be bound by any lawful ordinance  
20 adopted by the City's Board of Supervisors that may: (i) require Grantee and other persons  
21 granted a franchise to provide Video Service or Cable Internet Service within the City to  
22 provide Internet service providers with nondiscriminatory access to broadband transport  
23 services; and (ii) establish consumer protection standards for Cable Internet Service or  
24 requirements for access to information, data and programming generally available on the  
25 internet that may be accessed using Grantee's Facilities.

1           (e)    Type of Franchise. For purposes of distinguishing between a Cable System  
2 Franchise and an OVS Franchise under Chapter 11, this Franchise is granted for an OVS.

3           (f)    Effective Date. Provided it has been accepted by Grantee pursuant to Section  
4 11.13 of Chapter 11, the Term of this Franchise shall commence (the "Effective Date") on the  
5 effective date of the ordinance of the San Francisco Board of Supervisors enacting this  
6 Franchise.

7           (g)    Term. The term of this Franchise shall be four (4) years, commencing upon the  
8 Effective Date (the "Initial Term"). The Initial Term may be extended as provided herein, and  
9 the Initial Term plus any extensions shall be referred to as the "Term."

10          (h)    As Is Condition of City Property. Grantee agrees that the use of the Public  
11 Rights-of-Way is being offered by the City and accepted by Grantee in its "AS IS WITH ALL  
12 FAULTS" condition. Grantee specifically acknowledges and agrees that neither the City nor its  
13 Agents has made, and there is hereby disclaimed the making of, any representation or  
14 warranty, express or implied, of any kind, with respect to the condition of the Public Rights-of-  
15 Way or appurtenances thereto, or the suitability of the Public Rights-of-Way for Grantee's  
16 intended uses. In connection with Grantee's use of the Public Rights-of-Way, Grantee hereby  
17 releases the City from any and all claims relating to the matters set forth in this Section.

18 **Section 3. EFFECT OF ACCEPTANCE.** By executing and accepting this Franchise  
19 Grantee hereby expressly, and for the benefit of the City:

20          (a)    Accepts and agrees to comply with each provision of: (1) this Franchise; (2)  
21 Chapter 11; (3) the Public Works Code; and (4) any lawful future amendments to Chapter 11  
22 or the Public Works Code.

23          (b)    Acknowledges and accepts the legal power of the City: (1) to require Grantee to  
24 obtain this Franchise; (2) to grant this Franchise; and (3) to enforce this Franchise and  
25 Applicable Law related to this Franchise;

1           (c)    Agrees that this Franchise was granted pursuant to processes and procedures  
2 consistent with Applicable Law, and that it will not raise any claim to the contrary, or allege in  
3 any claim or proceeding by Grantee against the City that any provision, condition or term of  
4 Applicable Law or this Franchise at the time of its acceptance was unreasonable, arbitrary, or  
5 void, or that the City had no power or authority to make or enforce any such provision,  
6 condition or term; provided, that nothing in the foregoing is intended to limit Grantee's ability to  
7 challenge or dispute any interpretation of any provision of this Franchise.

8           (d)    Agrees that it will not oppose intervention by the City in any proceeding affecting  
9 the City's rights under this Franchise or the City's exercise of its regulatory authority.

10          (e)    Releases, waives and discharges forever, to the maximum extent permitted by  
11 Applicable Law, any and all claims, demands, rights, and causes of action against, and  
12 covenants not to sue, the City and its Agents, under any present laws, statutes, or regulations,  
13 arising out of any acts, omissions, or matters relating to this Franchise as of the Effective  
14 Date. In connection with the foregoing release, Grantee acknowledges that it is familiar with  
15 Section 1542 of the California Civil Code, which reads:

16               A general release does not extend to claims which the creditor does not know or suspect to  
17 exist in his favor at the time of executing the release, which if known by him must have  
18 materially affected his settlement with the debtor.

19 Grantee acknowledges that the release contained herein includes all known and unknown,  
20 disclosed and undisclosed, and anticipated and unanticipated claims, demands, rights and  
21 causes of action under any present laws, statutes or regulations arising out of any acts,  
22 omissions, or matters relating to this Franchise as of the Effective Date. Grantee realizes and  
23 acknowledges that it has entered into this Franchise in light of this realization and, being fully  
24 aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542,  
25 or any statute or other similar law now or later in effect. The foregoing release shall survive

1 the Termination of this Franchise. Subject to the foregoing, the City and Grantee reserve all  
2 other rights they may now or hereafter possess under Applicable Law, unless expressly  
3 waived herein.

4 **Section 4. TRANSFERS: City Approval Required.** This Franchise is a privilege that is in  
5 the public trust and personal and specific to Grantee and is granted in consideration of the  
6 unique knowledge, skill and expertise possessed by Grantee. Consequently, the City and  
7 other Subscribers shall not be required to accept performance of this Franchise from a third  
8 party who has not submitted its qualifications for review and approval pursuant to Section  
9 11.14 of Chapter 11. Any Transfer shall be subject to all the terms and conditions of Section  
10 11.14 of Chapter 11. Any Transfer without the approval of the City as set forth in Chapter 11  
11 shall be considered to impair the City's assurance of due performance, and may, at the City's  
12 sole option, be voidable and/or constitute a Material Breach of this Franchise.

13 Notwithstanding anything to the contrary in this Franchise or other Applicable Law, until  
14 expressly determined otherwise by the Board, Facilities constructed, installed, operated, or  
15 used to provide Services or Telecommunications Services under this Franchise shall remain  
16 subject to this Franchise and the payment of franchise fees regardless of any Transfer,  
17 whether or not City approval was obtained.

18 **Section 5. NON-EXCLUSIVITY OF FRANCHISE.** Pursuant to Section 11.8 of Chapter 11,  
19 this Franchise is non-exclusive and shall not affect the power of the City to grant any other  
20 Person a Franchise or right to occupy or use the Public Rights-of-Way for the construction,  
21 installation, operation or maintenance of any facilities, including a similar system within the  
22 City, or the power of the City to use or permit the use of the Public Rights-of-Way for any  
23 purpose whatsoever. Grantee hereby acknowledges the City's power to make such grants  
24 and to use and permit such uses pursuant to Applicable Law.

1 PART 3 – CONSTRUCTION OF SYSTEM

2 **Section 6. CONDITIONS ON CONSTRUCTION.**

3 (a) No Waiver. Unless expressly stated otherwise herein, nothing in this Franchise  
4 is intended to constitute a waiver in favor of Grantee of any construction, excavation, or  
5 Facility placement requirement, or any fee, tax, charge, or assessment that may be required  
6 by Applicable Law.

7 (b) Grantee Shall Obtain All Necessary Permits and/or Approvals. Consistent with  
8 Grantee's obligation to comply with all Applicable Laws, Grantee shall not commence any  
9 construction, installation or relocation of Facilities within the Public Rights-of-Way until any  
10 necessary permits and/or approvals have been issued by the proper City officials. Grantee  
11 shall pay all fees required as a condition precedent to the issuance of any such permits and/or  
12 approvals in accordance with the applicable rates and charges then in effect. Additionally, the  
13 City may impose such conditions and regulations on a permit or approval as are necessary, in  
14 the discretion of the City, consistent with Applicable Law, including, without limitation,  
15 conditions imposed for the purpose of protecting and/or preserving the Public Rights-of-Way  
16 and any structures in the Public Rights-of-Way, and the protection of the public or the  
17 continuity of pedestrian or vehicular traffic over the Public Rights-of-Way. Grantee is  
18 responsible for submitting permit applications or seeking other approvals in a manner that  
19 permits Grantee to meet its construction, installation, or relocation plans or obligations.

20 (c) CULCOP Participation. During any period in which Grantee is engaged in  
21 System construction, Grantee shall participate in DPW's Pavement Management Program  
22 and the Committee for Utility Liaison on Construction and Other Projects ("CULCOP")  
23 established by Section 5.63 of the San Francisco Administrative Code, or any successor  
24 organization established by the City, in the manner prescribed by the DPW Director. At a  
25 minimum, Grantee shall regularly attend CULCOP meetings and shall provide its construction

1 plans to DPW pursuant to Public Works Code Section 2.4.11 so as to effectuate the  
2 excavation coordination goals of CULCOP and the Public Works Code. Additionally, Grantee  
3 shall take all reasonable precautions to protect all other facilities located in the Public Rights-  
4 of-Way.

5       **(d)**    Underground Service Alert. In accordance with the provisions of Chapter 3.1 of  
6 Division 5 of Title I of the Government Code of the State of California (Section 4216 et seq.),  
7 Grantee as an operator of a subsurface installation shall obtain and maintain membership in a  
8 regional notification center (e.g., Underground Service Alert - Northern California), and shall  
9 otherwise comply with the provisions of the referenced chapter, division and title upon  
10 demand. Grantee shall furnish written proof of such membership to DPW within ten (10) days  
11 of the Effective Date. Repeal of any Law requiring such membership shall not negate  
12 Grantee's obligation to maintain such membership.

13       **(e)**    Emergency Response Plan. Prior to conducting any work in the Public Rights-  
14 of-Way, Grantee shall provide to City a current emergency response plan identifying staff who  
15 have authority to resolve, twenty-four (24) hours a day, seven (7) days a week, problems or  
16 complaints resulting from the System.

17       **(f)**    Public Notices. Grantee shall endeavor to notify all residents concerning the  
18 impact of the installation of its Facilities in a neighborhood in which it plans construction prior  
19 to commencing construction and periodically during the course of its construction by letter and  
20 when appropriate through neighborhood newspapers and neighborhood associations. At a  
21 minimum, Grantee shall comply with the requirements of Section 2.4.50 of the City's Public  
22 Works Code. For construction activities involving excavation that is incidental to aerial  
23 construction, Grantee shall comply with Section 2.4.50(a) of the Public Works Code even if  
24 such compliance is not otherwise required by the terms of Section 2.4.50(a). For all other  
25 excavation, Grantee shall comply with Section 2.4.50(b) of the Public Works Code, even if

1 such compliance is not otherwise required by the terms of Section 2.4.50(b). In addition,  
2 Grantee shall deliver written notice of its aerial construction activities to affected residents not  
3 less than seventy-two (72) hours prior to commencing construction. All notices issued to  
4 residents pursuant to this Section shall provide a toll free number that residents may call to  
5 report problems or request additional information.

6 **Section 7. INSTALLATION OF FACILITIES.**

7 (a) Guiding Principles. Grantee shall construct, install, operate and maintain its  
8 Facilities in accordance with the maps and other documents submitted pursuant to Part 5  
9 herein. All Facilities shall be located, installed, constructed and maintained in a manner that  
10 minimizes: (1) interference with vehicular or pedestrian traffic in the Public Rights-of-Way; (2)  
11 visual blight; and (3) interference with the rights and convenience of property owners. The  
12 erection and location of all Facilities in the Public Rights-of-Way shall be fixed with the prior  
13 written approval and under the supervision of DPW.

14 (b) New Policy Will Apply To Grantee. Without limiting Grantee's obligations under  
15 Section 73 below to comply with all Applicable Laws, Grantee understands and acknowledges  
16 that at the time of the Effective Date, DPW, in conjunction with the Telecommunications  
17 Commission, may develop policies and procedures to address the placement of Facilities in  
18 the Public Rights-of-Way. These policies will likely address the placement of those Facilities  
19 that have the effect of interfering with the use of the Public Rights-of-Way or that create visual  
20 blight in the Public Rights-of-Way, including overhead Facilities that may be installed on utility  
21 poles ("Street Furniture Policy"). Grantee specifically understands and agrees that the City  
22 has not in this Franchise relinquished its authority to adopt and enforce a Street Furniture  
23 Policy and that Grantee will be subject to the Street Furniture Policy that DPW adopts. The  
24 adoption of the Street Furniture Policy shall not excuse Grantee from any of its obligations  
25 under this Franchise. DPW shall apply the Street Furniture Policy in a nondiscriminatory and

1 competitively neutral manner to all similarly situated Persons seeking to place facilities in the  
2 Public Rights-of-Way.

3 (c) Grantee shall comply with a process for installing facilities to which Grantee,  
4 DPW, and the Department of Planning mutually agree.

5 (d) Installation Shall Be Permanent in Nature. All Facilities installed in the Public  
6 Rights-of-Way shall be of a permanent nature, using durable components, except where  
7 maintenance or emergency repairs require the installation of temporary Facilities. Temporary  
8 Facilities shall be replaced as soon as possible. Grantee shall notify DTIS in writing if  
9 replacement of temporary Facilities will not be achieved within sixty (60) days of their  
10 installation. Nothing in the foregoing shall be deemed to grant to Grantee a permanent right  
11 or interest in the Public Rights-of-Way, or to limit the City's relocations rights as set forth in  
12 any Applicable Law or permit.

13 (e) Joint Excavation. Grantee shall take advantage of every opportunity to  
14 participate in joint excavation in areas where: (i) underground facilities are required; (ii)  
15 Grantee anticipates installing Facilities, and; (iii) joint excavation is mandated by Section  
16 2.4.12 of the Public Works Code, provided that DPW determines that installation of dry utility  
17 facilities is feasible. This provision shall not be read to expand any of Grantee's obligations  
18 pursuant to Article 2.4 of the Public Works Code with respect to excavations solely to connect  
19 Facilities in the Public Rights of Way to an individual building.

20 (f) Termination of Franchise. Upon Termination of the Franchise, Grantee shall  
21 transfer to City or remove all or any portion of the Facilities in accordance with San Francisco  
22 Administrative Code Sections 11.17 and 11.18. Grantee shall repair, at no cost to the City,  
23 any damage caused by Grantee's removal of the Facilities. Upon Termination of the  
24 Franchise for any reason, the City may at its option purchase all or a portion of Grantee's  
25 Facilities at fair market value.



1 **Section 8. CONSTRUCTION SEQUENCE.**

2 (a) System Description. Grantee shall construct its System by building a Hub to  
3 provide Service in a particular geographic area ("Hub Area") and then installing Fiber to  
4 connect the Nodes in the Hub Area to the Hub. Grantee represents and covenants that no  
5 more than six hundred and forty (640) Nodes will be served by a single Hub. Grantee  
6 warrants: (1) that each Node will be connected to its Hub via a fiber bundle consisting of an  
7 average of twelve (12) single-mode fibers; and (2) that each Node will serve approximately  
8 one hundred and fifty (150) Subscribers or potential Subscribers ("Node Area").

9 (b) Location of Hubs. Grantee shall locate each Hub within a geographic area  
10 based upon the following criteria: geographic centrality to the Nodes designated for a Hub  
11 Area, and the cost to lease or purchase real estate in which to locate the Hub. Once a Hub  
12 location is established, Grantee shall identify the routes along which Fiber will be constructed  
13 to connect each Node in the Hub Area to the Hub ("Fiber Route").

14 (c) Sequence of Construction of Fiber Routes. Prior to constructing, Grantee will  
15 present to DTIS Grantee's anticipated construction sequence, pursuant to Section 16(1).

16 (d) No Discrimination. Grantee shall: (i) provide the same scope and quality of  
17 Service throughout the System; (ii) shall not differentiate the technical qualities of its System  
18 in any geographic area of the City, or plan, schedule or perform construction or Service  
19 activation in a Hub Area, a Node Area, or of a Fiber Route in a discriminatory manner; or (iii)  
20 otherwise discriminate against Persons located in a Hub Area, a Node Area, or along a Fiber  
21 Route on the basis of the fact or perception of a Person's or area's income, race, color, creed,  
22 religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic  
23 partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV  
24 status (AIDS/HIV status). Grantee's failure to comply with the non-discrimination provisions of  
25 this subsection shall be a Material Breach of this Franchise.

1 (e) Sequence of Service Activation. Once a Fiber Route is constructed or under  
2 construction, Grantee shall use its best efforts to activate its System in a sequential fashion  
3 along the Fiber Route from the Node closest to the Hub to the Node furthest from the Hub.  
4 Grantee shall activate a Node and offer Service within a Node Area as soon as possible after  
5 completion of construction in a Node Area.

6 (f) Service Obligation. Grantee shall provide or offer to provide Services, which  
7 shall include, at a minimum Video Services and Cable Internet Services, at standard  
8 installation rates and without any charge for extension of plant and pursuant to the terms of  
9 (d) above, to (i) each Residential Unit in a building with an exterior wall within one hundred  
10 fifty feet of Grantee's Facilities in the Public Rights-of-Way or utility easement within the City,  
11 and (ii) each commercial, institutional, or public unit within one hundred fifty feet of Grantee's  
12 Facilities in the Public Rights-of-Way or utility easement within the City.

13 **Section 9. UNDERGROUNDING.** Grantee shall not install overhead Facilities in the Public  
14 Rights-Of-Way within Legislated Underground Districts, pursuant to San Francisco Public  
15 Works Code Section 911, or in areas where utility services are provided by rear yard feeds.  
16 Upon receipt of a demand from City pursuant to Applicable Law, Grantee shall, at no cost to  
17 the City, replace any of its overhead Facilities with underground Facilities in accordance with  
18 all Applicable Laws. As soon as possible, but no less than forty five (45) City business days  
19 prior to any planned undergrounding, Grantee shall notify DTIS so that DTIS may elect to  
20 have City Conduit installed pursuant to Section 46 below.

#### 21 PART 4 - FRANCHISE FEE PAYMENTS

22 **Section 10. AMOUNT OF FRANCHISE FEE.** While the City does not agree that franchise  
23 fees in such an amount adequately reflect the full value of the use of the Public Rights-of-  
24 Way, Grantee shall pay the City a franchise fee equal to five percent (5%) of Grantee's Gross  
25 Revenues.

1 **Section 11. PAYMENT.** Grantee's payment of franchise fees shall be subject to the  
2 provisions of Chapter 11. Grantee shall make quarterly franchise fee payments pursuant to  
3 Section 11.22 of Chapter 11 and shall owe interest on any late franchise fee payments  
4 pursuant to Section 11.27 of Chapter 11. All franchise fees and any other payments due to  
5 the City hereunder shall be paid by Grantee to the City, without offset or prior demand, in  
6 immediately available funds of the United States of America at the address for notices to the  
7 City specified in this Franchise or to such other Person or at such other place as the City may  
8 from time to time designate by written notice to Grantee. Grantee's failure: (1) to place any  
9 disputed amount of franchise fees in an escrow fund pursuant to Section 11.26 of Chapter 11  
10 within 30 days following written demand from the City; or (2) to make two successive quarterly  
11 franchise fee payments to the City in full as and when required hereunder shall constitute a  
12 Material Breach of this Franchise.

13 **Section 12. GRANTEE RESPONSIBILITY FOR FEES OF THIRD PARTIES.** Grantee shall  
14 fully cooperate with the City in collection of franchise fees owed to the City by any Person  
15 using Grantee's Facilities.

16 **Section 13. ACCEPTANCE OF PAYMENT NOT A RELEASE.** No acceptance by the City of  
17 any franchise fee payment shall be construed as an accord that the amount paid is in fact the  
18 correct amount owed, nor shall such acceptance of such franchise fee payment be construed  
19 as a release or waiver of any claim the City may have for additional sums payable or any  
20 known or unknown breach of this Franchise.

21 **PART 5 - REPORTING REQUIREMENTS**

22 **Section 14. REQUIRED REPORTS AND NOTICES.** Grantee shall comply with the  
23 reporting requirements of Article IV of Chapter 11. In addition, on or before October 31 of  
24 each year of this Franchise, including any extensions thereof, Grantee shall provide to the  
25 City information relating to the six factors enumerated in Section 50 hereof; Grantee shall also

1 give City notice promptly of any material deficiency in the System including, but not limited to,  
2 any of the following: (i) material defects in construction or installation; (ii) deterioration or  
3 obsolescence of the System which has caused any material portion of it to become  
4 dysfunctional; and (iii) failure to meet any material requirement of any regulatory agency with  
5 jurisdiction. Grantee shall promptly develop and implement a plan to address any such  
6 deficiency, and shall make, upon request, periodic reports to City of its progress in correcting  
7 such deficiency

8 **Section 15. FAILURE TO COMPLY.** Grantee's failure to provide reports as required by this  
9 Franchise and Article IV of Chapter 11 may be a Material Breach of this Franchise.

10 **Section 16. INFORMATION DUE DURING SYSTEM CONSTRUCTION.** Grantee shall  
11 provide the information described in this Section to DTIS three (3) months after the Effective  
12 Date and every three (3) months thereafter ("Quarterly Reports"). The Quarterly Reports shall  
13 be provided in a paper and electronic form acceptable to the DTIS Director and shall contain  
14 the following information:

15 (1) Construction Sequence Plans. Grantee shall provide DTIS with System  
16 construction plans, as described below, showing the anticipated sequence of Grantee's  
17 construction ("Construction Sequence Plans"). The Construction Sequence Plans shall  
18 contain all information at a level of detail and in a form acceptable to the Director of DTIS. In  
19 addition, within three months of the Effective Date and each year thereafter, Grantee shall  
20 provide written summaries of its planned sequence of construction for the upcoming 12  
21 months ("One Year Construction Plan"). The One Year Construction Plan shall contain  
22 information sufficient for the City to determine whether the plans comply with the criteria set  
23 forth in Section 8 above. If the Grantee does not plan any construction for the next 12  
24 months, it will so inform the Director by letter.

1           **(a)**    Certifications. Grantee shall include a written certification with the Construction  
2 Sequence Plans certifying that it has not planned, and will not execute, any construction  
3 sequence in a manner that would improperly discriminate against any Person in violation of  
4 Section 8(d) above.

5           **(b)**    Technical Information. In the event that Grantee intends to construct its system  
6 beyond the areas already built as of the Effective Date, as set forth in Appendix 4, at least 90  
7 days prior to such planned construction Grantee shall provide the following technical  
8 information to DTIS, in a form approved by the DTIS Director:

9                   (1)    System Architecture Maps. System architecture maps, of industry-  
10 standard scale and using standard symbology, depicting all electronic and physical features of  
11 the System;

12                   (2)    System "Turn-Up" Maps. A System "Turn-Up" Map which tracks the  
13 Construction Sequence Plans provided to DTIS pursuant to subsection (a) above, stating  
14 when Grantee anticipates Service will be provided in each Node Area and indicates where  
15 Service is being offered; and

16                   (3)    Explanation of Deviation from Prior Construction Sequence Plans.  
17 Grantee shall construct the System substantially in accordance with the Construction Plans  
18 submitted to the City. Upon deviating from such plans, Grantee shall submit a written  
19 explanation and any necessary maps to clearly demonstrate how Grantee's actual System  
20 construction has deviated from the representations made by Grantee in its System  
21 Construction Plans submitted in its prior Quarterly Report to DTIS ("Update").

22                   (4)    Location of Hubs. Hub locations, as they are designated, and a map  
23 showing the anticipated Hub Areas.

24                   (5)    As-Built Maps. As-built maps depicting all Facilities as actually installed  
25 and constructed.

1 (6) Fiber Route Maps. A map of the fiber routes which will be constructed in  
2 the next year which shows the number of strands in each cable segment, the location of  
3 splices and the location of Nodes.

4 **Section 17. QUARTERLY MEETINGS.** No later than ten (10) City business days following  
5 Grantee's production of a Quarterly Reports to DTIS pursuant to Section 16 above, Grantee  
6 shall meet with DTIS upon DTIS' request to review the Quarterly Report ("Quarterly Meeting").  
7 Among other things, DTIS shall work with Grantee to designate Fiber Drop locations and City  
8 Conduit routes at the Quarterly Meetings. In addition, Grantee shall consider any good faith  
9 changes suggested by the City to any construction plan. Failure to submit two successive  
10 Quarterly Reports or attend two Quarterly Meetings shall constitute a Material Breach of this  
11 Franchise.

12 **Section 18. INFORMATION DUE UPON REQUEST.** Grantee shall, no later than ten (10)  
13 City business days after a written request, provide DTIS with the following information in  
14 writing:

15 (a) Plans showing the exact location of Grantee's Headend, anticipated Hub  
16 locations, and anticipated Hub Areas;

17 (b) Plans showing the location of the City's Fiber Drops, Cable Drops, and City  
18 Conduit and manholes and when they will be available for City use;

19 (c) An Update, as described in Section 16(c)(3) above;

20 (d) Technical specifications for the Facilities installed, or intended to be installed, at  
21 the Headend, Hubs, and Nodes, including, without limitation, amplifiers, other active and  
22 passive devices, optical equipment, power supplies and other related equipment;

23 (e) A technical description of how Grantee intends to transmit PEG Signals to  
24 Subscribers, including a description of the interconnection equipment that will be used, the  
25 method of transport to the interconnection point (to the extent Grantee is responsible for any

1 connection or has obtained such information from any other cable operators involved in PEG  
2 interconnection) and from the interconnection point to the System, and PEG Signal origination  
3 and destination locations; and

4 (f) Documents setting forth Grantee's engineering guidelines and construction  
5 practices in the geographic area of the City; and

6 (g) Such additional information or documents relating to this Franchise as is  
7 reasonably requested by the City.

8 **Section 19. CUSTOMER SERVICE REPORTS.**

9 (a) FCC Reports. No later than ten (10) City business days after a written request  
10 from DTIS, Grantee shall provide DTIS any and all customer service reports generated by  
11 Grantee pursuant to 47 C.F.R. Section 76.309 or other Applicable Law.

12 (b) Subscriber Complaint Reports. Simultaneous with each Franchise Fee  
13 payment, Grantee shall provide to DTIS, in a form acceptable to DTIS, a quarterly report  
14 tracking each Subscriber complaint referred to Grantee by the City and each Subscriber  
15 complaint escalated to the corporate office of Grantee or its Affiliates, how and when it was  
16 received, the nature of the complaint, how and when it was responded to, whether the  
17 complaint was referred to Grantee by the City, and the ultimate resolution of the issue. If a  
18 complaint is not resolved at the end of the quarter, any action related to the complaint shall be  
19 reported in the following quarterly report until it is resolved. The report shall quantify  
20 Grantee's response performance so that City and Grantee may easily determine whether  
21 Grantee is meeting the requirements of Section 29(f). To the extent that Grantee is able,  
22 Grantee shall provide the information required by this Section 19(b) for all calls from  
23 Subscribers under this Franchise, in addition to calls referred to Grantee by the City and  
24 Subscriber complaints escalated to the corporate office of Grantee or its Affiliates, and  
25 Grantee shall provide such information in its quarterly reports.

1 **Section 20.** CITY REVIEW DOES NOT CONSTITUTE WAIVER. The City's receipt and  
2 review of any of the information provided to it, including, without limitation, the information  
3 provided to it pursuant to this Part, shall not operate to excuse or waive any violation or non-  
4 performance under this Franchise or other Applicable Law.

5 **Section 21.** CONFIDENTIALITY OF PROPRIETARY INFORMATION. Grantee understands  
6 and agrees that the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter  
7 67) and the State Public Records Law (Gov't Code section 6250 et seq.), apply to this  
8 Franchise. Pursuant to Section 11.20 of Chapter 11, Grantee shall have the opportunity to  
9 protect from disclosure to the public any information provided to the City pursuant to this  
10 Franchise that is proprietary, trade secret or is otherwise protected from disclosure under the  
11 California Public Records Act (Cal. Gov't Code Section 6254, et seq.), the City's Sunshine  
12 Ordinance and other Applicable Law.

13 **PART 6 – RECORD REVIEW, RETENTION, AND ACCESS RIGHTS**

14 **Section 22.** MAINTENANCE OF RECORDS. Grantee shall maintain and keep, in  
15 accordance with generally accepted accounting principles, detailed and accurate books and  
16 records relative to this Franchise, including but not limited to records of all revenues received  
17 from any source whatsoever and all amounts due and owing to Grantee from any third party.  
18 Grantee shall further maintain and keep all customer service agreements or contracts  
19 provided to Subscribers, billing records, solicitations, correspondence between the Grantee  
20 and any Subscriber, and documentation relating to Subscriber complaints. Grantee's failure  
21 to comply with the provisions of this Section may constitute a Material Breach of this  
22 Franchise.

23 **Section 23.** ACCESS TO RECORDS. Grantee shall comply with all provisions of Article V of  
24 Chapter 11, provided that any amount owed to the City pursuant to Section 11.41 of Chapter  
25 11 shall be paid within ten (10) City business days following the City's written demand.



1 Grantee's failure to comply with the provisions of this Section may constitute a Material  
2 Breach of this Franchise.

3 PART 7– CUSTOMER SERVICE

4 **Section 24. APPLICABILITY.** The provisions of this Part shall apply to all Services provided  
5 by Grantee pursuant to this Franchise. Additionally, notwithstanding the fact that Grantee is  
6 an OVS operator, Grantee shall comply with all of the requirements set forth in Chapter 11,  
7 Article VI, and Grantee shall provide all Services authorized pursuant to this Franchise in a  
8 manner consistent with those provisions.

9 **Section 25. CUSTOMER SERVICE REGULATIONS.** Pursuant to Section 11.51 of Chapter  
10 11, Grantee shall comply with all customer service standards and consumer protection laws  
11 established by Applicable Law, including, without limitation, 47 C.F.R. 76.309, those set forth  
12 herein, and those set forth in Chapter 11. The City reserves the right to adopt additional or  
13 more stringent customer service standards or consumer protection laws and to impose them  
14 upon Grantee and other similarly situated Persons providing the same Services authorized by  
15 this Franchise, using Facilities installed in the Public Rights-of-Way, in a fair and non-  
16 discriminatory manner.

17 **Section 26. EMERGENCY MAINTENANCE.** Grantee shall respond to Service Interruptions  
18 and System malfunctions that may result in a Service Interruption by maintaining an  
19 emergency maintenance and repair staff capable of responding to and repairing, on a timely  
20 basis, System malfunctions, or Service Interruptions, on a twenty four (24) hour, seven (7)  
21 days a week basis.

22 **Section 27. LANGUAGES.** Grantee shall have employees able to respond to billing  
23 inquiries and Service requests in all languages in which Grantee markets Services. At a  
24 minimum, Grantee shall have employees able to respond to billing inquiries and Service

1 requests in English and the 5 other languages DTIS determines to be spoken by the largest  
2 number of San Francisco residents.

3 **Section 28. CREDITS.** Grantee shall provide credits to Subscribers (or potential  
4 Subscribers) pursuant to the procedures set forth in 47 C.F.R. 76.309(c)(3)(iv) under the  
5 following circumstances:

6 (a) Failure to Maintain a Scheduled Appointment. In the event Grantee fails to  
7 make or timely cancel a Scheduled Appointment pursuant to 47 C.F.R. 76.309(2)(iii)-(v) and  
8 California Civil Code Section 1722, Grantee shall clearly and immediately, with no prompting  
9 from the Subscriber, notify the Subscriber in writing that he or she may choose among the  
10 following remedies: (i) waiver of the fee if the Scheduled Appointment was for a Service for  
11 which a fee was to be charged; (ii) one free month of either basic Video Service plus the other  
12 most widely subscribed to Video Service tier or Cable Internet Service based upon the service  
13 for which the Scheduled Appointment was made, or if the Scheduled Appointment was to  
14 have been provided free of charge; or (iii) an opportunity to pursue up to five hundred dollars  
15 (\$500) in damages pursuant to California Civil Code Section 1722, if applicable.

16 (b) Failure to Perform Timely Installation. In the event Grantee fails to perform a  
17 standard installation within seven (7) business days as required pursuant to 47 C.F.R.  
18 76.309(c)(2)(i) Grantee shall clearly and immediately, with no prompting from the Subscriber,  
19 notify the Subscriber in writing that he or she may choose between: (i) waiver of the  
20 installation fee if a fee was going to be charged; or (ii) one free month of either basic Video  
21 Service plus the other most widely subscribed to Video Service tier or Cable Internet Service  
22 based upon the service that Grantee failed to install, if the installation was to have been  
23 provided free of charge.

24 (c) Service Interruption. Grantee shall begin to repair any Service Interruption  
25 within twenty-four (24) hours. In the event Grantee Fails to correct a Service Interruption

1 within twenty four (24) hours, Grantee shall, upon Subscriber request, credit an affected  
2 Subscriber 1/30th of the monthly Service charge for each twenty four (24) hour period, or  
3 fraction thereof, that the Service Interruption continues. In the event of a Complete Outage  
4 lasting more than twenty-four (24) hours, Grantee shall automatically (without a Subscriber  
5 request) credit all affected Subscribers the same refund. This provision shall not apply to  
6 Subscribers who experience a Service Interruption as a result of their own intentional act(s).

7 (d) Rate Change Notification. Grantee may not increase Subscriber rates until it  
8 has provided at least thirty (30) days written notice of any rate increase to Subscribers.

9 **Section 29. SUBSCRIBER COMPLAINTS.** Grantee shall establish written procedures for  
10 receiving, acting upon and resolving Subscriber complaints. These procedures shall require,  
11 at a minimum, that Grantee:

12 (a) Acknowledge receipt of any complaint made in person, by telephone, or  
13 electronic mail, no later than the next business day after receiving the complaint;

14 (b) Acknowledge receipt of any complaint made in writing by mail within five (5)  
15 business days of receipt of the complaint;

16 (c) Inform a complainant regarding the option of reporting a complaint to the City's  
17 representatives;

18 (d) Designate a liaison responsible for working with the City to resolve Subscriber  
19 complaints; and

20 (e) Respond by telephone to complaints referred to it by the City no later than the  
21 next business day after the referral and follow up in writing no later than two (2) business days  
22 after the referral; and

23 (f) Comply with the time frames specified in this Section not less than ninety  
24 percent (90%) of the time, as measured on a quarterly basis. The phrase "of the time" refers  
25 to the number of complaints or referrals received by Grantee, so that if Grantee receives one

1 thousand (1000) complaints or referrals in a quarter, at least nine hundred (900) of those  
2 complaints or referrals shall be responded to within the time frames set forth in this Section.

3 **Section 30. RATES AND CHARGES.**

4 (a) Rate Regulation. Pursuant to Section 11.48 of Chapter 11, the City reserves all  
5 power to implement and impose regulation on Grantee's rates and charges to the maximum  
6 extent permissible under Applicable Law.

7 (b) Low Income Rate. Any Person receiving federal, state, or local cash income  
8 maintenance benefits or food assistance ("Eligible Subscribers") shall be eligible to receive  
9 Video Services at reduced rates. For the Term of this Franchise, Grantee shall provide to  
10 Eligible Subscribers a reduced rate for the most widely subscribed to tier or combination of  
11 tiers, and any less expensive tiers, of Video Services offered by Grantee, excluding pay-per-  
12 view and premium add-on services for which Subscribers pay an additional fee or charge.  
13 The reduced rates for these Services shall reflect a discount equal to at least twenty percent  
14 (20%) off the rates charged to Subscribers not receiving the discount. Grantee shall not  
15 require Eligible Subscribers to receive additional or bundled Services (Cable Internet  
16 Services, Telecommunications Services, or other Services) in order to receive the reduced  
17 rate for Video Service. Grantee shall be under no obligation to provide a special tier of Video  
18 Service distinct from the Video Service tiers offered to other Subscribers. Grantee shall  
19 provide notice to all Subscribers and potential Subscribers about the availability of reduced  
20 rates as set forth in this Section in accordance with reasonable rules agreed to by DTIS and  
21 Grantee. All Grantee's marketing materials shall include notification of the low income rate,  
22 and shall be subject to DTIS's prior review and approval for this purpose. Following any  
23 change in the TSC franchise (Ordinance 105-64) currently held by Comcast or the grant of a  
24 subsequent franchise to Comcast, Grantee's obligations under this section shall be

1 automatically adjusted to correspond to the low income requirements to be provided by  
2 Comcast under its new franchise.

3 **Section 31. FRANCHISE ADMINISTRATION ACCOUNT.** The first one hundred thousand  
4 dollars (\$100,000) of franchise fees paid by Grantee annually pursuant to Part 4 herein shall  
5 be allocated by the City to fund the City's administration and oversight of the City's cable and  
6 OVS television franchises and related Applicable Law. This potential allocation is intended for  
7 the benefit of the City only, and no other Person, including but not limited to Grantee, may rely  
8 upon, or seek to enforce or benefit from, the proposed allocation or failure to allocate. The  
9 terms of this Franchise shall be governed by and subject to the budgetary and fiscal  
10 provisions of the City's Charter. Notwithstanding anything to the contrary contained herein,  
11 there shall be no obligation for the allocation, payment or expenditure of money by the City  
12 unless the City's Controller first certifies, pursuant to Section 3.105 of the Charter, that there is  
13 a valid appropriation from which the expenditure may be made and that unencumbered funds  
14 are available for the allocation or expenditure.

15 **Section 32. CABLE TELEVISION ACCESS AND DEVELOPMENT FUND.** After the  
16 allocation provided in Section 31 above, an amount equivalent to two tenths of one percent  
17 (0.2%) of Grantee's Gross Revenues shall be allocated by the City to the Cable Television  
18 Access and Development Fund for public, educational, and municipal access activities. The  
19 not-for-profit corporation designated by the Board pursuant to the terms of Ordinance 105-64,  
20 as amended, shall receive not less than one-third of any amount that may be allocated  
21 pursuant to this Section. This potential allocation is intended for the benefit of the City only,  
22 and no other Person, including but not limited to Grantee, may rely upon, or seek to enforce or  
23 benefit from, the proposed allocation or failure to allocate. The terms of this Franchise shall  
24 be governed by and subject to the budgetary and fiscal provisions of the City's Charter.  
25 Notwithstanding anything to the contrary contained herein, there shall be no obligation for the

1 allocation, payment or expenditure of money by the City unless the City's Controller first  
2 certifies, pursuant to Section 3.105 of the Charter, that there is a valid appropriation from  
3 which the expenditure may be made and that unencumbered funds are available for the  
4 allocation or expenditure.

5 **PART 8 - TESTING AND TECHNICAL REQUIREMENTS**

6 **Section 33. TECHNICAL STANDARDS.** The System shall meet or exceed the applicable  
7 technical standards set forth in 47 C.F.R. Part 76 and any other Applicable Law.

8 **Section 34. MONITORING TESTS.** Throughout the Term of this Franchise Grantee shall  
9 perform all tests necessary to demonstrate compliance with the requirements of this  
10 Franchise and Applicable Law, and to ensure that the System components are operating  
11 properly. Grantee shall repeat any specified test until identified problems or flaws have been  
12 corrected. All tests shall be conducted at Grantee's expense and in accordance with  
13 Applicable Law. Grantee shall conduct tests as follows:

14 (a) Initial acceptance tests on newly constructed or rebuilt Facilities. Successful  
15 completion of the first semi-annual FCC proof of performance test for the newly constructed or  
16 rebuilt Facilities shall constitute the initial acceptance test for that newly constructed or rebuilt  
17 portion.

18 (b) Proof of performance tests on the System at least once every six months or as  
19 required by FCC rules, whichever is more often, except as and to the extent Applicable Law  
20 otherwise limits Grantee's obligation;

21 (c) Special tests when Subscriber complaints indicate tests are warranted; and

22 (d) Special tests at DTIS's reasonable request, upon a showing of need.

23 **Section 35. SYSTEM TESTS.**

24 (a) Tests Required. Within 36 months of the Effective Date, Grantee shall perform  
25 the following tests to establish that the System complies with this Franchise, FCC rules, and

1 other Applicable Laws ("System Tests"). As applicable, System Tests shall be conducted at  
2 end-of-line locations served by five percent (5%) of all Nodes within the System:

- 3 (1) Visual carrier levels on each activated Channel;
- 4 (2) Aural carrier levels on each activated Channel;
- 5 (3) The calculated difference between the visual and aural carrier levels on  
6 each activated Channel;
- 7 (4) Adjacent Channel video difference on activated Channels;
- 8 (5) The difference between the highest video carrier level on any activated  
9 Channel and the lowest video carrier level on any activated Channel;
- 10 (6) Carrier-to-noise ratio on six (6) Channels selected by City;
- 11 (7) Hum and low frequency disturbances on six (6) Channels selected by  
12 City;
- 13 (8) Intermodulation distortions on six (6) Channels selected by City;
- 14 (9) Subjective expert rating of picture quality, if any, on all activated  
15 Channels;
- 16 (10) Industry standard performance measurements comparable to the  
17 performance measures set forth in 1 through 9, above to determine the quality of digital  
18 transmission; and
- 19 (11) Industry standard tests which demonstrate whether Grantee's Cable  
20 Internet Service is performing at levels represented by Grantee to Subscribers and at levels  
21 required by Applicable Law.

22 The System Tests will be complete when, after any necessary corrective action  
23 pursuant to Section 41 below, the DTIS Director determines that the System meet applicable  
24 requirements.

1           **(b) Measurements Prior to Tests.** Prior to the System Tests, Grantee shall take the  
2 following measurements at its Headend, under the City's supervision: (i) video carrier levels  
3 and picture quality on all Channels leaving the Headend; (ii) audio carrier levels on all  
4 Channels leaving the Headend; and (iii) FM radio carrier levels, if any. Additionally, prior to  
5 the tests, Grantee shall present the City with copies of current calibration certificates issued  
6 by an independent calibration laboratory for all frequency/voltage sensitive equipment that will  
7 be used in the tests.

8           **(c) City Interference.** The City recognizes and understands that some of the Final  
9 System Tests required in (a) above may interfere with the quality of Grantee's video  
10 programming. Consequently, the City shall take all reasonable steps to minimize such  
11 interference during the performance of the tests.

12 **Section 36. SUPERVISION OF TESTS.** DTIS may supervise and specify the location of  
13 Facilities to be tested for the tests performed pursuant to Section 34(c), Section 34(d), and  
14 Section 35 above.

15 **Section 37. REIMBURSEMENT OF CITY COSTS.** Grantee shall reimburse the City's  
16 reasonable costs to supervise any tests requested by DTIS pursuant to this Part, not to  
17 exceed a total of thirty thousand dollars (\$30,000) during the term, provided that any  
18 unexpended portion of such reimbursement cap shall be increased by the CPI-U from the  
19 Effective Date to the time a test is performed.

20 **Section 38. NOTICE OF TESTS.** Grantee shall provide DTIS at least five (5) City business  
21 days' notice of, and opportunity to observe, any tests performed on the System pursuant to  
22 this Part.

23 **Section 39. TEST RESULTS.** Upon DTIS's written request, Grantee shall provide DTIS a  
24 written report of the results of any test and any other written materials in Grantee's control or  
25 possession relating to the test, no later than ten (10) City business days after the test unless



1 otherwise instructed by DTIS. The complete results of all tests performed pursuant to this  
2 Part shall be retained by Grantee and shall be available for inspection or copying by DTIS for  
3 five (5) years after they are completed.

4 **Section 40. CITY RIGHT TO INSPECT.** The City reserves the right to inspect the System  
5 pursuant to Section 11.43 of Chapter 11. However, such inspection does not relieve Grantee  
6 of its obligation to construct the System in compliance with this Franchise and other  
7 Applicable Law.

8 **Section 41. CORRECTIVE ACTION.** If any test indicates that any portion of the System fails  
9 to meet applicable requirements, Grantee shall, without the requirement of additional notice or  
10 a request from DTIS, take corrective action, retest the locations and advise DTIS of the action  
11 taken and results achieved. Grantee shall continue corrective action and repeat tests until  
12 tests indicate that the System meets applicable requirements. Nothing herein shall constitute  
13 a waiver of the City's right to require compliance with any FCC standard or other Applicable  
14 Law.

15 **Section 42. SYSTEM CHARACTERISTICS.** The System shall, at all times during the  
16 Franchise Term, meet or exceed the following requirements:

17 (a) Capacity. The System shall have a downstream bandwidth of at least 806 MHz  
18 and an upstream bandwidth of at least 35 MHz, and shall be capable of meeting all FCC  
19 performance requirements while carrying the equivalent of at least 110 analog NTSC video  
20 channels.

21 (b) Continuous 24-Hour Operation. The System shall be capable of operating  
22 twenty-four (24) hours a day without severe material degradation of Signal except during  
23 extremely inclement weather or immediately following extraordinary storms or other Force  
24 Majeure events that adversely affect utility services or damage major System components.

1           **(c)**    Temperature Specifications. The System shall be capable of operating over an  
2 outdoor temperature range of negative ten (-10) degrees Fahrenheit to one hundred and  
3 twenty five (125) degrees Fahrenheit and over variation in supply voltages from 105 to 130  
4 volts AC without catastrophic failure or irreversible performance changes.

5           **(d)**    No Interference. Grantee shall operate the System in such a manner as to  
6 minimize interference with Subscribers' reception of off-the-air signals. Grantee shall ensure  
7 that signals carried by the System, or originating outside the System Facilities, do not ingress  
8 or egress into or out of the System in excess of FCC or other applicable standards. In  
9 particular, and without limitation, Grantee shall not operate the System in such a manner as to  
10 pose unwarranted interference with emergency radio services, aeronautical navigational  
11 frequencies or any airborne navigational reception in normal flight patterns, or any other type  
12 of wireless communications, pursuant to FCC regulations.

13           **(e)**    No Deterioration of Access Signals. The System shall be constructed and  
14 operated so that there is no significant deterioration in the quality of PEG Signals resulting  
15 from the transmission of the PEG Signals, either upstream or downstream, as compared with  
16 any other Channel on the System. Deterioration refers to any Signal transmission problem,  
17 including but not limited to ghost images and other interference and distortions

18           **(f)**    Stand-By Power. Grantee shall provide standby power generating capacity for  
19 the Headend, Hubs, Nodes, and distribution Facilities comprising its System meeting the  
20 following specifications:

21                   (1)    Headend. Grantee shall maintain motorized standby power generators  
22 capable of maintaining all Services at the Headend for at least twenty-four (24) hours duration  
23 after loss of normal commercial power.

24                   (2)    Hubs. Grantee shall provide battery standby power capable of  
25 maintaining all services at each Hub for at least twenty-four (24) hours duration after loss of

1 normal commercial power, with automatic response systems to alert the Headend when  
2 commercial power is interrupted. Grantee shall maintain portable generators to deploy to  
3 each Hub in the event that the duration of a power disruption is expected to exceed twenty-  
4 four (24) hours.

5 (3) Nodes and Distribution Plant. The power generators serving the Nodes  
6 and distribution plant to Subscribers shall be capable of maintaining all Services to those  
7 portions of the System for no less than six (6) hours, according to manufacturer specification,  
8 after loss of normal commercial power.

9 (g) Service for the Disabled. All closed-caption programming retransmitted on the  
10 System shall include the closed-caption signal. For hearing impaired Subscribers, Grantee  
11 shall provide information concerning the cost and availability of equipment to facilitate the  
12 reception of all Services for the hearing impaired. In addition, Grantee must have TDD/TTY  
13 (or equivalent) equipment available for use in its local office, and a publicly listed telephone  
14 number to access such equipment so that hearing impaired Subscribers may communicate  
15 with Grantee for all their service needs. When such equipment is commercially available,  
16 Grantee shall offer, for purchase or lease, remote control devices to operate any Grantee-  
17 provided equipment for those Subscribers who are mobility-limited.

18 (h) Emergency Alert System. In conjunction with the construction of its System,  
19 Grantee shall install and thereafter maintain an emergency alert system capable of overriding  
20 audio and video on all channels to provide an emergency alert to all Subscribers ("EAS"). The  
21 EAS shall be designed and maintained so that City-designated officials can activate it  
22 remotely without Grantee's assistance, using a telephone and secure password, or by such  
23 other technical means as the City may approve. The EAS shall also be designed and  
24 maintained so that City-designated officials, from a touch-tone telephone, can activate a pre-  
25 recorded text message, and, at their option, an accompanying live audio voice message

1 lasting up to two (2) minutes. The City shall have the right to run test messages on the EAS  
2 at least four times each year and shall provide reasonable notice to Grantee prior to any such  
3 test. Grantee shall fully cooperate with the City in conducting any such test. The City and  
4 Grantee shall meet periodically to discuss operational procedures for use of the EAS. As part  
5 of those discussions, the City and Grantee may agree on alternative capabilities and  
6 activation procedures for the EAS. The EAS should be integrated, to the extent reasonably  
7 possible, with Grantee's EASs in other communities. Grantee's failure to install and maintain  
8 the EAS pursuant to this Section shall be deemed a Material Breach.

9 **Section 43. SYSTEM MAINTENANCE.**

10 (a) Service Interruptions to be Minimized. Grantee shall schedule System  
11 maintenance to minimize the likelihood of Service Interruptions.

12 (b) Maintenance Practices Subject to Regulation. Grantee shall perform System  
13 maintenance in accordance with FCC requirements and standards and other Applicable Law.  
14 The City may monitor Grantee's maintenance practices and, to the extent permitted by  
15 Applicable Law, City may adopt regulations waiving maintenance requirements or, upon a  
16 showing of need, adopting additional maintenance requirements to ensure the System  
17 remains capable of providing high-quality service and to protect the public health, safety, and  
18 welfare. Such requirements shall be applied to all similarly situated Persons providing the  
19 same Services as authorized by this Franchise using Facilities installed in the Public Rights-  
20 of-Way, in a fair and non-discriminatory manner.

21 **PART 9 - CITY FACILITIES AND BENEFITS**

22 **Section 44. FIBER OPTIC INFRASTRUCTURE FOR CITY USE.** Grantee shall provide the  
23 following Fiber Optic Infrastructure ("FOI") for the City's use and failure to provide such FOI as  
24 set forth below shall constitute a Material Breach of this Franchise:

1           **(a)**   Fiber Strands Provided to City. Within thirty (30) City business days of a DTIS  
2 request made after Grantee has completed construction of its System or a Hub Area within  
3 the System, Grantee shall provide and maintain for the City's use and at no cost to the City,  
4 up to four (4) dark fiber optic strands along its Fiber Backbone route(s) ("Fiber Strands").

5           **(b)**   Fiber Drops. Grantee shall, at no cost to the City, connect up to 350 City-  
6 designated locations to the Fiber Strands using two single-mode fiber strands from the Hub to  
7 each location ("Fiber Drops"). The City may designate some locations in which multiple Fiber  
8 Drops shall be installed, provided that Grantee shall have no obligation to provide a total of  
9 more than 350 Fiber Drops. The designation of a Fiber Drop will reduce the number of free  
10 Cable Drops available to the City under Section 45 below by 1.5 Cable Drops per Fiber Drop.  
11 Grantee shall make Fiber Drops available to the City pursuant to the procedure set forth in  
12 subsection (f) below.

13           **(c)**   Access to Hubs and Equipment. The City shall have the right to install optical  
14 amplifiers and other equipment necessary for the City's operation of the FOI in Grantee's  
15 Hubs and to access the optical amplifiers and other equipment in the Hubs twenty four (24)  
16 hours a day, seven (7) days a week in a manner reasonably assuring security of the Hub.  
17 Grantee shall provide equipment racks necessary for placement of the optical amplifiers and  
18 all other equipment in the Hubs as well as the back up power and shared environmental  
19 equipment necessary for the operation of the equipment.

20           **(d)**   Monitoring and Maintenance of Fiber Strands. Grantee shall be responsible for  
21 providing continuity of the City's Signal at useful signal levels from any Demarcation Point to  
22 another, but shall not be responsible for the maintenance of the City equipment on the City  
23 side of the Demarcation Point, or any termination equipment used by the City at the Fiber  
24 Drops, except as set forth in subsection (b) above. Grantee shall be responsible for  
25 maintaining and repairing, at no cost to the City, the Fiber Strands up to the Demarcation

1 Point. Grantee shall use the same efforts to maintain and repair the City's Fiber Strands and  
2 Fiber Drops as it uses to maintain and repair its own fiber strands. Grantee shall strive to  
3 ensure that outages are minimized by monitoring the Fiber Strands as part of its System, shall  
4 notify a DTIS-designated City employee as soon as possible in the event Grantee detects an  
5 outage or problem with the Fiber Strands, and shall test and remedy the outage or problem in  
6 as efficient a manner as possible. DTIS shall contact Grantee in the event that the City  
7 experiences service problems or an outage on the FOI and Grantee shall cooperate with DTIS  
8 and perform testing to determine the source and resolve the problem as soon as possible.  
9 Grantee shall notify a DTIS-designated City employee of scheduled System maintenance  
10 activities which may impact the City's use of the Fiber Strands at least two (2) City business  
11 days prior to such scheduled maintenance.

12 (e) Designation of Fiber Drops. Grantee shall deploy the Fiber Strands and Fiber  
13 Drops in conjunction with the construction of its System. Connection to City-designated  
14 locations will be made in the course of construction when Grantee's System reaches within  
15 one hundred and twenty five feet (125') of the City-designated location. The City shall pay  
16 Incremental Labor and Materials Costs to Grantee for any installation required beyond the one  
17 hundred and twenty-five foot (125') limit. DTIS shall designate the location of Fiber Drops to  
18 Grantee in writing at least six (6) months prior to the time at which Grantee's construction is  
19 anticipated to reach the Fiber Drop location, as set forth in its One Year Construction Plan  
20 provided to DTIS pursuant to Section 16(a)(1) above. Nothing herein prevents DTIS from  
21 designating a Fiber Drop location in advance of receiving any Construction Sequence Plan  
22 showing that the location will be passed. In the event DTIS fails to timely designate a Fiber  
23 Drop location, Grantee shall use its best efforts to accommodate an untimely request from  
24 DTIS to the extent such accommodation does not create Incremental Labor and Materials  
25 Costs for Grantee or the City is willing to pay any Incremental Labor and Materials Cost.

1 Notwithstanding the foregoing, in no event will a DTIS failure to timely designate a Fiber Drop  
2 location be allowed to delay construction of Grantee's System; provided, however, that  
3 Grantee shall be responsible for providing any requested Fiber Drop in the event Grantee fails  
4 to provide DTIS at least nine (9) months notice through a One Year Construction Plan of its  
5 intent to pass DTIS's designated Fiber Drop location. Additionally, notwithstanding DTIS's six  
6 (6) month notice obligation, DTIS may designate its first round of Fiber Drop locations along  
7 any route shown on the first set of One Year Construction Reports provided to it within thirty  
8 (30) City business days of receipt and Grantee shall install Fiber Drops at those locations  
9 pursuant to the provisions of this Section. Grantee shall provide a Fiber Drop no later than  
10 twenty (20) City business days after activating Service in the Node Area where the Fiber Drop  
11 is located

12 (f) Use of Fiber Strands. The City may use the FOI for any lawful municipal or  
13 public purpose acting in its governmental or proprietary capacity, including making the FOI  
14 available to third parties; provided, however, that the City shall not use or permit the use of the  
15 FOI for any commercial purpose. The FOI shall be available for the City's sole, continuous,  
16 and permanent use and shall not be used by any Person without written authorization by the  
17 DTIS Director. Grantee shall not exercise any control over the content of transmissions over  
18 the FOI, whether video, data, or voice.

19 (g) Technical Specifications. The FOI shall be capable of providing two-way voice  
20 and video and point-to-point data communications. The Fiber Strands shall be connected at a  
21 Demarcation Point specified to Grantee by the City. It shall be the City's responsibility to  
22 purchase, install, operate, and maintain any and all electronic and other equipment necessary  
23 to activate the Fiber Strands provided to the City for its own use pursuant to this Section,  
24 except as provided in subsection (c) above.

1           **(h)** Additional Fiber Drops. In the event the City desires to designate more Fiber  
2 Drops than are provided in subsection (b) above, the City may pay Grantee the Incremental  
3 Labor and Materials Cost for installing a Fiber Drop. The remaining provisions of this Section  
4 regarding Fiber Drops shall apply to all Fiber Drops installed pursuant to this subsection.

5           **(i)** Additional Fiber Locations. Grantee shall notify DTIS as soon as possible prior  
6 to the installation of any fiber optic capacity in locations not contemplated by the initial design  
7 of the System so that the City may elect to have two (2) additional Fiber Strands installed for  
8 it's own use at the Incremental Labor and Materials Cost of adding any such Fiber Strands.  
9 DTIS shall have forty (40) City business days after receipt of Grantee's notification to notify  
10 Grantee regarding whether and where it would like to have additional Fiber Strands installed  
11 for the City's use.

12           **(j)** Upgrades to City's Facilities. When performing modifications or upgrades to the  
13 System, Grantee shall perform such modifications or upgrades to the Facilities installed for  
14 the City's use per this Part 9: (i) to the extent such modifications or upgrades do not result in  
15 Incremental Labor and Materials Costs, or (ii) upon City's agreement to pay for any such  
16 Incremental Labor and Materials Costs.

17           **(k)** Support for Incremental Labor and Materials Costs. With regard to any  
18 Incremental Labor and Material Cost that may be payable by the City in this Part 9, Grantee  
19 shall provide to the City, not less than ten (10) days in advance, a statement of the  
20 Incremental Labor and Material Cost (or, a good faith estimate thereof) so that City can decide  
21 whether to proceed and incur the Incremental Labor and Material Cost. If the City does not  
22 agree to pay such Incremental Labor and Material Cost in writing, Grantee shall have no  
23 obligation to perform the work relative to such Incremental Labor and Material Cost.

24 **Section 45. FREE SERVICE TO CITY-DESIGNATED BUILDINGS.** Grantee shall install one  
25 (1) drop, including reasonable interior wiring, to as many as 525 City-designated buildings



1 with an exterior wall within 125 feet of Grantee's System for underground wiring and 150 feet  
2 of Grantee's System for above-ground wiring ("Cable Drop"); provided, if a City-designated  
3 building requires a Cable Drop in excess of the above-referenced length, Grantee shall  
4 provide the Cable Drop so long as the City agrees to pay the Incremental Labor and Materials  
5 Cost for the added length. In addition, the City shall elect one of the following, to be provided  
6 by Grantee at no cost to the City, with respect to each of the above City-designated buildings:  
7 (i) the most widely subscribed to tier or combination of tiers, and any less expensive tiers, of  
8 Video Services offered by Grantee, (but excluding pay per view and premium add-on services  
9 for which Subscribers pay an additional fee) or (ii) Cable Internet Service. The provision of  
10 Cable Internet Service shall include the use of a cable modem and any other equipment  
11 provided by Grantee to its residential Cable Internet Service Subscribers that is necessary to  
12 receive the Cable Internet Service, but shall not include personal computers or work stations.  
13 The designation of a Fiber Drop according to Section 44(b) above will reduce the number of  
14 Cable Drops available to the City by 1.5 Cable Drops per Fiber Drop. The Cable Drop  
15 locations shall be identified by the DTIS Director on an as-needed basis during the Franchise  
16 Term and shall be installed by Grantee within the standard installation time provided to  
17 Subscribers. The City shall also be entitled to additional Cable Drops in a number equal to the  
18 number of buildings newly owned, leased or occupied after the Effective Date by the City, the  
19 San Francisco Unified School District, the San Francisco Community College District, and  
20 office of the San Francisco Housing Authority or the San Francisco Redevelopment Agency.  
21 The City may use these additional Cable Drops to serve any City-designated building or may  
22 exchange them for Fiber Drops as provided in this Section. Grantee's failure to comply with  
23 the terms of this Section shall constitute a Material Breach of this Franchise.

1 **Section 46. CITY CONDUIT.**

2 (a) Conduit for City's Sole and Exclusive Use. During construction of its System  
3 and whenever it places Facilities underground, Grantee, in conjunction with the installation of  
4 its own conduit, shall install conduit for the sole and exclusive use of the City and without  
5 charge to the City ("City Conduit"). The City shall have a right to a minimum of 539 linear  
6 miles of one (1) two inch (2") conduit or any combination of conduit of equivalent value.  
7 Consequently, the City may elect to trade the right to one (1) linear mile of one (1) two inch  
8 (2") conduit for .54 (54/100) linear miles of (1) four inch (4") conduit; or .22 (22/100) linear  
9 miles of (2) four inch (4") conduits. The City may also elect to have Grantee install additional  
10 City Conduit upon payment to Grantee of Incremental Labor and Materials Costs. The DTIS  
11 Director shall designate the placement of the City Conduit in the same manner as provided for  
12 Fiber Drops in Section 44(f) above. Grantee's failure to provide City Conduit pursuant to this  
13 Section shall constitute a Material Breach of this Franchise.

14 (b) Technical Specifications. The City Conduit shall be PVC pipe, shall contain a  
15 pull string, and be clearly identified as City Conduit with an exterior marking. At the City's  
16 request, the City Conduit may be terminated in specified Grantee-owned "pass-through  
17 manholes" located no more than 600 feet apart ("pass-through manholes" are those manholes  
18 not designated to contain any type of electronics, or splice closure). In the event the distance  
19 between two pass-through manholes exceeds approximately 600 feet, the City may request  
20 Grantee to sweep the City Conduit to a location in a sidewalk vault mutually agreed to by  
21 Grantee and the City and install a City provided pull-box to provide access to the City Conduit.

22 (c) Access to City Conduit. The City shall have access to the City Conduit upon  
23 three (3) City business days' notice to Grantee for scheduled maintenance. In the event of an  
24 emergency, the City shall have access to the City Conduit immediately, upon oral or written  
25 notice to Grantee.

1           (d) Title to City Conduit. Upon request from the City, Grantee shall execute such  
2 documents of title in a form acceptable to the City Attorney as will convey to the City, free and  
3 clear of liens and/or adverse claims of title, all right, title, and interest in the City Conduit, or  
4 any part thereof.

5           (e) Use of City Conduit. Upon reasonable written notice to Grantee, the City, or any  
6 City-designated entity, may use the City Conduit for any lawful municipal or public purpose;  
7 provided, however, that the City shall not use or permit the use of the City Conduit to provide  
8 any services for any non-municipal or non-public purpose that are in competition with services  
9 provided by Grantee over its Facilities. The City may solicit bids to provide services using the  
10 City Conduit. Grantee shall be invited to respond to any such solicitation.

11 **Section 47. PEG SUPPORT CONTRIBUTIONS.** Throughout the Term of this Franchise,  
12 including any extensions thereof, Grantee shall make the following PEG Support Payments in  
13 satisfaction of its obligations pursuant to 47 U.S.C. Section 573 with respect to support for  
14 public, educational and governmental access equipment and services:

15           (a) PEG Support Payments. Grantee shall pay to the City (1) within thirty (30) days  
16 of the Effective Date of this Franchise, a one-time payment Four Hundred Thousand Dollars  
17 (\$400,000) (the "Initial PEG Support Payment"); and (2) as of the Effective Date and ongoing  
18 throughout the Term of this Franchise, including any extensions thereto, in quarterly payments  
19 made concurrently with its franchise fee payments, three percent (3%) of Gross Revenues  
20 (the "Ongoing PEG Support Payments" and, together with the Initial PEG Support Payment,  
21 the "PEG Support Payments"). Such PEG Support Payments shall fund: (i) the City's  
22 purchase of equipment and services related to City communications projects and related uses  
23 as determined by the City in its sole discretion ("Communications Project Grant"); (ii) the  
24 purchase of equipment, the development of programming, and the operation and  
25 maintenance of the PEG Channels; and (iii) the support of equipment and production facilities

1 for the PEG Channels. "Gross Revenues" shall not include revenues derived from the  
2 provision of Cable Internet Service for so long as the tolling provisions set forth in Section 2(d)  
3 remain in force and unless and until Comcast's PEG Support Payments also reflect its Cable  
4 Internet Service revenues.

5 (b) Automatic Adjustment of Ongoing PEG Support Payments. To the extent that a  
6 renewed or new franchise is granted to Comcast during the Term of this Franchise, including  
7 any renewals thereto, pursuant to which Comcast is obligated to pay Ongoing PEG Support  
8 Payments that are based on a percent of Comcast's Gross Revenues or on a specified  
9 monetary amount per subscriber, Grantee's Ongoing PEG Support Payments shall be  
10 automatically adjusted on a prospective basis (without adjustment for prior contributions) to  
11 match such percent of Gross Revenues or specified amount per subscriber.

12 (c) Material Breach. Grantee's failure to make any payment to the City required  
13 pursuant to this Section shall constitute a Material Breach of this Franchise.

14 **Section 48. PEG CHANNELS.**

15 (a) PEG Channels. Grantee shall provide seven Analog Channels for public,  
16 educational and/or governmental use ("Analog PEG Channels") no later than nine (9) months  
17 from the Effective Date. Grantee shall use its best efforts to give the City written notice ninety  
18 (90) days prior to any change in any PEG Channel location, and shall, in no event, provide  
19 less than thirty (30) days' prior written notice. Grantee shall not locate any Analog PEG  
20 Channel in such a way as to make it unavailable to Subscribers who receive only the least  
21 expensive level of Video Services provided by Grantee. If at any time Grantee provides more  
22 than 806 MHz of downstream capacity on its System, Grantee shall, within sixty (60) City  
23 business days, provide ten percent (10%) of all capacity devoted to Video Service and Cable  
24 Internet Service in excess of 806 MHz to the City for public, educational and/or governmental  
25 use.

1           **(b)**    Digital Capacity. The City may, at its sole option and at any time during the  
2 Term, obtain Digital Channel Equivalents as an alternative to any of the Analog PEG  
3 Channels provided pursuant to subsection (a) above ("PEG Digital Channel Equivalents").  
4 The City shall be entitled to as many Digital Channel Equivalents as can be provided at any  
5 given time using the average analog to digital compression ratio in use for Channels on the  
6 System that are not PEG Channels. For example, if Analog PEG Channels on the System  
7 are being compressed at an average ratio of 6 digital signals for every one analog signal, the  
8 City shall be entitled to substitute 42 Digital Channel Equivalents for the 7 Analog PEG  
9 Channels provided pursuant to Subsection (a) above and shall be entitled to 6 Digital Channel  
10 Equivalents for any one Analog PEG Channel. Grantee shall make Digital Channel  
11 Equivalents available to the City pursuant to this subsection within 30 City business days of  
12 City's written request.

13           **(c)**    Automatic Adjustment of Analog PEG Channels and Digital Channels.  
14 Grantee's obligations pursuant to subsections (a) and (b) above shall be adjusted to  
15 correspond to any Analog PEG Channels or Digital Channel Equivalents required to be  
16 provided to the City by Comcast, or its successor, upon the effective date of an act of the  
17 Board renewing the franchise granted by Ordinance 105-64 to Comcast or otherwise granting  
18 a subsequent franchise to Comcast or its successor.

19           **(d)**    Grantee Use of Analog PEG Capacity. On a temporary basis, Grantee may use  
20 one of the Analog PEG Channels and any of the PEG Digital Channel Equivalents for  
21 commercial purposes so long as DTIS has certified in writing that such Analog PEG Channels  
22 or PEG Digital Channel Equivalents are currently unused and that DTIS has no intention of  
23 using such Analog PEG Channels or PEG Digital Channel Equivalents in the next one  
24 hundred eighty (180) days. Any such Analog PEG Channels or PEG Digital Channel  
25 Equivalents used by Grantee on a temporary basis shall be returned to the City upon written

1 notice from DTIS of its intent to use such Channel. DTIS shall use its best efforts to give  
2 Grantee ninety days prior written notice of the Department's revocation of its permission, and  
3 shall, in no event, provide less than thirty (30) days prior written notice. Grantee shall take full  
4 responsibility for displacing any commercial programming that may temporarily be offered  
5 using Analog PEG Channels or PEG Digital Channel Equivalents released to the Grantee.

6 (e) Editorial Control. Grantee shall not exercise any editorial control over any  
7 Analog PEG Channel or PEG Digital Channel Equivalent (together "PEG Channel"); provided,  
8 however, that Grantee shall have no obligation to indemnify, defend or hold harmless any  
9 Person, firm or entity, including the City, from claims, damages or losses arising out of or  
10 relating to any public, educational or governmental programming on any PEG Channel.

11 (f) City May Designate PEG Operators. The City, in its sole discretion, may  
12 designate any Person to manage and/or control any PEG Channel or any portion thereof.

13 (g) Interconnection and Transmission of PEG Channel Signals.

14 (1) PEG Signal Transmission. Pursuant to Section 11.53 of Chapter 11, and  
15 notwithstanding the fact that Grantee is an OVS operator, the System shall be designed and  
16 constructed to permit interconnection with other systems. Upon the DTIS Director's request,  
17 Grantee shall promptly interconnect to other systems as may be necessary in order to  
18 transmit PEG programming to Subscribers.

19 (2) Video Feeds. Grantee shall install for the City's use and at no cost to the  
20 City, up to seventeen (17) upstream video feeds from DTIS-designated locations to Grantee's  
21 Headend ("Video Feeds") upon forty (40) City business days written notice. Grantee shall  
22 also provide and install, for the City's use and at no cost to the City, any equipment necessary  
23 for the City to transmit signals via the Video Feed to Grantee's Headend. Grantee's obligation  
24 to install such a Video Feed shall not take effect until completion of construction in the Node

1 Area in which the City requests the Video Feed and such Video Feed location shall be no  
2 more than 300 feet from Grantee's System.

3 (3) Technical Standards. The Carrier to Noise ("C/N") Ratio for the Video  
4 Feeds and any PEG video programming facilities within the City shall be in the range of 45.8  
5 dB to 49.0 dB. The maximum C/N Ratio at the end user shall not vary for each of the Video  
6 Feeds by more than 2 dB from its respective C/N Ratio at the origination point. If the median  
7 results of C/N Ratio tests fall below 42 dB in any month for any of the Video Feeds, the parties  
8 agree to promptly fashion a remedy, including, if necessary, designating a new  
9 interconnection point for the Video Feed.

10 (4) Second Audio Program Signals. Grantee shall, at its sole cost and  
11 expense, provide and maintain all equipment necessary to distribute Second Audio Program  
12 ("SAP") signals over all PEG Channels from all PEG Channel Origination Locations; provided,  
13 however that Grantee shall have no responsibility for the creation of SAP audio programming.

14 (h) Material Breach. Grantee's failure to provide any PEG Analog Channels, PEG  
15 Digital Channel Equivalent, or Video Feeds to the City, or to interconnect and transmit PEG  
16 Programming as required pursuant to this Section shall constitute a Material Breach of this  
17 Franchise.

18 **Section 49. LOCAL ORIGINATION PROGRAMMING.** At such time as Grantee is providing  
19 Video Services to twenty-seven percent (27%) of the homes passed by the activated portion  
20 of its System, Grantee shall provide an opportunity for public expression by providing at least  
21 one Channel for the transmission of Local Origination Programming ("Local Channel").

#### 22 PART 10 - EXTENSIONS

23 **Section 50. Extensions.** Grantee may apply for two extensions of three years each pursuant  
24 to the following procedures. One year prior to the expiration of the Initial Term of this  
25 Franchise or of any previously granted extensions thereof, Grantee shall request in writing to

1 the Board a three-year extension of this Franchise. Grantee shall include the following  
2 information with such request: Grantee's construction plans and budget for the City; a  
3 description of Grantee's construction activities in other cities during the past three years and  
4 planned for the next three years; the most recent available information concerning Grantee's  
5 financial condition nationally and in San Francisco; and any other information that DTIS  
6 requests. In deciding whether to grant an extension, the Board may consider, among other  
7 things, whether Grantee: (i) is in compliance with Franchise and Applicable Law; (ii) has the  
8 financial resources to continue to operate the System; (iii) has the financial resources to  
9 resume or to continue any previously started construction; (iv) has constructed elsewhere in  
10 the past three (3) years or plans to construct elsewhere; (v) has increased subscriber  
11 penetration in its existing service area; and (vi) other relevant market and economic  
12 conditions. The Board may, in its sole discretion, extend the Franchise without any  
13 modification of the terms and conditions, determine that the extended Franchise should be  
14 modified to include new and different terms and conditions (such as a new System  
15 construction requirement), or refuse to extend the Franchise.

#### 16 PART 11 - LIABILITY/INSURANCE/INDEMNIFICATION

##### 17 Section 51. INSURANCE.

18 (a) Without in any way limiting Grantee's liability pursuant to the "Indemnification"  
19 section of this Franchise, Grantee must maintain in force, or require to be maintained during  
20 the full Term of the Franchise, insurance in the following amounts and coverages:

21 (1) Workers' Compensation, with Employers' Liability Limits not less than  
22 \$1,000,000 each accident; and

23 (2) Commercial General Liability Insurance with limits not less than  
24 \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage,  
25 including Contractual Liability, Personal Injury, Products and Completed Operations; and



1           (3) Business Automobile Liability Insurance with limits not less than  
2 \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage,  
3 including Owned, Non-Owned and Hired auto coverage, as applicable.

4           **(b)** Without in any way limiting Grantee's liability pursuant to the "Indemnification"  
5 section of this Franchise, Grantee or its contractor(s) must maintain in force, or require to be  
6 maintained during the full Term of the Franchise, insurance in the following amounts and  
7 coverages:

8           (1) Pollution Liability Insurance with limits not less than \$1,000,000 each  
9 occurrence combined single limit for bodily injury and property damage, including coverage for  
10 all claims arising from pollution or contamination with respect to activities under this Franchise  
11 with any deductible not to exceed \$25,000 each occurrence. Such insurance shall be  
12 required during any period of construction or excavation.

13           **(c)** All Commercial General Liability, Business Automobile Liability and Pollution  
14 Liability Insurance policies maintained by Grantee or its contractor as set forth above shall  
15 provide the following:

16           (1) Name as Additional Insured the City and County of San Francisco, its  
17 Officers, Agents, and Employees.

18           (2) That such policies are primary insurance to any other insurance available  
19 to the Additional Insureds, with respect to any claims arising out of this Franchise, and that  
20 insurance applies separately to each insured against whom claim is made or suit is brought.

21           **(d)** All policies shall provide thirty (30) days' advance written notice to City of  
22 cancellation mailed to the following address:

23           Department of Telecommunications and Information Services

24           875 Stevenson St., 5th Floor

25           San Francisco, CA 94103-0948

1 Attn: Franchise Administrator

2 (e) Should any of the required insurance be provided under a claims-made form,  
3 Grantee shall maintain such coverage continuously throughout the Term of this Franchise  
4 and, without lapse, for a period of three years beyond the expiration of this Franchise, to the  
5 effect that, should occurrences during the Franchise Term give rise to claims made after  
6 expiration of the Franchise, such claims shall be covered by such claims-made policies.

7 (f) Should any of the required insurance be provided under a form of coverage that  
8 includes a general annual aggregate limit or provides that claims investigation or legal  
9 defense costs be included in such general annual aggregate limit, such general annual  
10 aggregate limit shall be double the occurrence or claims limits specified above.

11 (g) Should any required insurance lapse during the Term of this Franchise, the City  
12 may, at its sole option, Revoke this Franchise effective on the date of such lapse of insurance.

13 (h) Ten (10) City business days prior to commencing any operations under this  
14 Franchise, Grantee must furnish to City certificates of insurance, in form and with insurers  
15 satisfactory to City, evidencing all coverages set forth above, and shall furnish complete  
16 copies of policies promptly upon City request.

17 (i) Grantee's failure to maintain any insurance pursuant to this Section shall be a  
18 Material Breach of this Franchise. Any approval of Grantee's insurance by the City shall not  
19 relieve or decrease the liability of Grantee hereunder.

20 **Section 52. PERFORMANCE GUARANTEES.**

21 (a) Security Interest. Within ten (10) City business days of the Effective Date of this  
22 Franchise, Grantee shall provide to DTIS, and maintain during the entire Term of this  
23 Franchise, a performance bond or other security interest approved by the City's Risk manager  
24 in favor of the City in the amount of one million one hundred thousand dollars (\$1,100,000) to  
25 guarantee Grantee's faithful performance of the terms and conditions of this Franchise, the

1 San Francisco Administrative Code, and other Applicable Law ("Security Interest"). The  
2 Security Interest shall meet the following conditions:

3 (1) Security Interest Shall Protect City From Losses. There shall be  
4 recoverable by the City, from the principal and any surety, any and all fines, fees, and  
5 penalties due to the City and any and all damages, losses, costs, and expenses (together  
6 "Losses") suffered or incurred by the City resulting from the failure of Grantee after notice and  
7 opportunity to cure, to faithfully comply with: (i) the material provisions of this Agreement, the  
8 San Francisco Administrative Code, and other Applicable Law; (ii) all orders, permits and  
9 directives of the City, or other body having jurisdiction over Grantee's acts or defaults; (iii)  
10 payment of fees due to the City; or (iv) payment of any claims or liens due the City. Such  
11 Losses shall include, without limitation, reasonable Attorneys' Fees and Costs, consultant  
12 fees, administrative fees, and other associated expenses.

13 (2) Events Triggering Forfeiture of the Security Interest. The City may  
14 immediately collect or draw upon the entire collateral evidenced by the Security Interest in the  
15 event:

16 (i) Grantee abandons the System at any time during the Term of this  
17 Franchise; or

18 (ii) Grantee effects a Transfer without the express written consent of  
19 the City as provided herein;

20 (iii) Grantee declares bankruptcy or insolvency; or

21 (iv) The City incurs any other Loss(es) which cannot reasonably be  
22 recouped from Grantee's Deposits provided pursuant to subsection (b) below and Grantee  
23 fails to pay to the City such Losses within ten City business days.

24 (3) Use of the Security Interest Funds. The City shall apply any funds  
25 received under the Security Interest to defray any Losses incurred by the City, including,

1 without limitation, Losses attributable to or arising from the abandonment of the System or  
2 Grantee's unauthorized Transfer. Upon final resolution of all claims and payment of all  
3 Losses following Termination of this Franchise, the City shall release its interest in the  
4 Security Interest.

5 (4) Form of Security Interest. If the Security Interest is a performance bond,  
6 the performance bond shall be issued by a surety qualified to do business in California and  
7 with an A+9 or better rating for financial condition and financial performance in Best's Key  
8 Rating Guide, Property/Casualty Edition; shall be in a form approved by the City Attorney and  
9 City Risk Manager; and shall contain the following rider:

10 "his bond may not be canceled, or allowed to lapse, until ninety (90) days after  
11 receipt by the City, by certified mail, return receipt requested, of a written notice  
12 from the issuer of the bond of intent to cancel or not to renew."

13 Any other Security Interest shall meet similar criteria.

14 (5) Upon the City's approval, Grantee may reduce the amount of the Security  
15 Interest required by subsection (a).

16 (6) Indexing. Grantee shall adjust the amount of the Security Interest by the  
17 CPI-U every three (3) years on the anniversary of the Effective Date of this Franchise.

18 (b) Deposits. In addition to the Security Interest set forth above, within ten (10) City  
19 business days of the Effective Date of this Franchise, Grantee shall provide to DTIS two cash  
20 deposits: (1) a one hundred thousand dollar (\$100,000) cash deposit to guarantee Grantee's  
21 faithful performance of the terms and conditions of this Franchise, the San Francisco  
22 Administrative Code, and other Applicable Law ("City Deposit"); and (2) a twenty five  
23 thousand dollar (\$25,000) cash deposit to guarantee Grantee's faithful performance of the  
24 obligations it owes to Subscribers pursuant to this Franchise ("Subscriber Deposit"). Grantee  
25 shall maintain the City and Subscriber Deposits (together "Deposits") at the level required

1 herein, adjusted by the CPI-U every three (3) years on the anniversary of the Effective Date of  
2 this Franchise, throughout the Term of the Franchise. The Deposits shall be held by the City's  
3 Controller. Pursuant to the procedures set forth in San Francisco Administrative Code  
4 Sections 10.27-1 through 10.27-7, the Controller may offset from the Deposits all monies due  
5 the City or Subscribers by Grantee pursuant to the Franchise, the San Francisco  
6 Administrative Code, or other Applicable Law, including, without limitation, taxes, fees,  
7 liquidated damages, penalties, and any Losses which would otherwise be offset by the  
8 Security Interest described in subsection (a) above. Grantee shall redeposit monies within ten  
9 (10) City business days of such an offset to return the Deposits to the levels required herein.

10 (c) Material Breach. Grantee's failure to provide or maintain the Security Interest or  
11 any Deposit as required by this Section shall constitute a Material Breach of this Franchise  
12 and may result in forfeiture of the Deposits and/or Security Interest as damages due the City.

13 (d) Segregation of Funds; No Limitation on Liability. The City' obligations with  
14 respect to the Deposits and the Security Interest are solely that of debtor and not trustee. The  
15 City shall not be required to keep the Deposits separate from its general funds, and Grantee  
16 shall not be entitled to any interest on the Deposits. The provisions of this Section shall not  
17 be deemed to limit Grantee's liability under the Franchise in any way.

18 **Section 53. INDEMNIFICATION.**

19 (a) Grantee shall Indemnify the City and the Indemnified Parties from, and, if  
20 requested, shall defend them against any and all Losses resulting directly or indirectly from  
21 Grantee's acts or omissions relating to this Franchise including, but not limited to, Losses  
22 associated with the use of the Public Rights-of-Way or Grantee's Facilities, regardless of the  
23 negligence of, and regardless of whether liability without fault is imposed or sought to be  
24 imposed on City, except to the extent that such indemnity is void or otherwise unenforceable  
25 under Applicable Law and except to the extent that such Losses are the result of the active

1 negligence or willful misconduct of City and are not contributed to by any act of, or by any  
2 omission to perform some duty imposed by Applicable Law or agreement on Grantee or its'  
3 Agents.

4 (b) In addition to Grantee's obligation to Indemnify City, Grantee specifically  
5 acknowledges and agrees that it has an immediate and independent obligation to defend City  
6 from any claim which actually or potentially falls within this indemnification provision, even if  
7 the allegations are or may be groundless, false or fraudulent, which obligation arises at the  
8 time such claim is tendered to Grantee by City and continues at all times thereafter.

9 (c) Grantee shall Indemnify the City and the Indemnified Parties from all Losses  
10 relating to any infringement of the patent rights, copyright, trade secret or any other  
11 proprietary right or trademark and all other intellectual property claims of any Person resulting  
12 from or relating to the acceptance by City, or any of its Agents, of articles or Services to be  
13 supplied in the performance of this Franchise.

14 (d) Grantee shall Indemnify the City and the Indemnified Parties from all Losses  
15 incurred by the City to defend the award of this Franchise to Grantee.

16 (e) Grantee shall Indemnify the City and the Indemnified Parties from all Losses  
17 arising out of the City's action with respect to any other cable or OVS operator in the City or  
18 any applicant for a cable or OVS franchise in the City, if such operator or applicant claims that  
19 the City has acted unlawfully by granting this Franchise, or if such operator or applicant relies  
20 on the City's grant of this Franchise in support of a claim that the City is required to take some  
21 action or is precluded from taking some action with respect to the operator or applicant.

22 (f) Grantee's failure to Indemnify the City and the Indemnified Parties in  
23 accordance with this Section shall be deemed a Material Breach of this Franchise.

24 **Section 54. INCIDENTAL AND CONSEQUENTIAL DAMAGES.** Grantee shall be  
25 responsible for incidental and consequential damages resulting in whole or in part from

1 Grantee's acts or omissions relative to this Franchise. Nothing in this Franchise shall  
2 constitute a waiver or limitation of any rights that City may have under Applicable Law.

3 **Section 55. WORK PERFORMED BY CONTRACTORS AND SUBCONTRACTORS.** Any  
4 contractor or subcontractor used for work or construction, installation, operation, maintenance,  
5 or repair of the System must be properly licensed pursuant to Applicable Law. Each such  
6 contractor or subcontractor shall have the same obligations with respect to its work as  
7 Grantee would have if the work were performed by Grantee. Grantee shall ensure that all  
8 contractors, subcontractors and all employees who perform work for it are trained and  
9 experienced. Grantee shall be responsible for ensuring that the work of contractors and  
10 subcontractors is performed consistent with this Franchise and other Applicable Law, shall be  
11 responsible for acts or omissions of contractors or subcontractors under this Franchise to the  
12 same degree it is responsible for the acts of its employees, shall be responsible for promptly  
13 correcting acts or omissions by any contractor or subcontractor, and shall implement a quality  
14 control program to ensure that the work contemplated by this Franchise is properly performed.

15 **Section 56. NO LIMITATION ON LIABILITY.** None of the provisions of this Part or any  
16 insurance policy required herein, or any damages recovered by the City hereunder shall be  
17 construed to excuse the faithful performance by or limit the liability of Grantee under this  
18 Franchise for damages either to the limits of such policies or otherwise.

#### 19 PART 12 - VIOLATIONS OF THIS FRANCHISE

#### 20 **Section 57. REMEDIES.**

21 (a) Remedies Available at Law or in Equity. In the event of any breach of this  
22 Franchise, the City shall have all rights and remedies available at law and in equity. Without  
23 limiting the foregoing, the City shall be entitled to equitable relief, including not limited to  
24 injunctive relief, relative to any violation of any term, covenant, condition or provision of this  
25 Franchise. No Termination or Revocation of this Franchise pursuant to the terms hereof or by

1 operation of law or otherwise shall in any instance relieve Grantee of its liabilities and  
2 obligations hereunder arising on or before Termination or Revocation of this Franchise.

3       **(b) No Accord or Satisfaction.** No submission by Grantee or acceptance by City of  
4 full or partial payment of any sum hereunder during the continuance of any failure by Grantee  
5 to perform any obligations hereunder shall waive any of City's rights or remedies or constitute  
6 any accord or satisfaction, whether or not City had knowledge of any such failure. No  
7 endorsement or statement on any check or remittance by or for Grantee or in any  
8 communication accompanying or relating to such payment shall operate as a compromise or  
9 accord or satisfaction unless the same is approved as such in writing by City. City may  
10 accept such check, remittance or payment and retain the proceeds thereof, without prejudice  
11 to its rights to recover the balance of any amounts due from Grantee and to pursue any right  
12 or remedy provided for or permitted under this Franchise or in law or at equity.

13       **(c) Material Breaches.** In the event Grantee's commits a Material Breach as  
14 defined in Section 1(jjj) above, the City may seek Revocation of the Franchise pursuant to  
15 Section 11.16 of Chapter 11, provided that Grantee shall have the notice, cure, and other  
16 rights set forth in Section 11.16 of Chapter 11. Grantee acknowledges and agrees that  
17 violation of the following sections shall constitute a Material Breach of this Franchise: Section  
18 2(b) (Services Authorized), Section 4 (Transfers – City Approval Required), Section 8(d)  
19 (Construction Sequence – No Discrimination), Section 11 (Payment of Franchise Fee),  
20 Section 42(h) (Emergency Alert System), Section 44 (Fiber Optic Infrastructure For City Use),  
21 Section 45 (Free Service to City-Designated Buildings), Section 46 (City Conduit), Section 47  
22 (PEG Contributions), Section 48 (PEG Channels), Section 51 (Insurance), Section 52  
23 (Performance Guarantees), Section 53 (Indemnification), Section 64 (Nondiscrimination), and  
24 Section 69 (EIC Forms). Notwithstanding the foregoing list, Grantee understands and



1 acknowledges that a breach of any Section of this Franchise may be, or may become, a  
2 Material Breach as that term is defined herein.

3 (d) Cure Periods for Non-Material Breaches. The notice and cure periods of this  
4 subsection shall apply to all alleged breaches of this Franchise other than alleged Material  
5 Breaches, which are governed by (c) above. In the event that Grantee fails to pay any sum  
6 due and owing to the City hereunder, Grantee shall have a period of ten (10) City business  
7 days from the date of written notice of such failure from the City in which to cure the  
8 nonpayment; provided, the City shall not be required to provide such notice regarding  
9 Grantee's failure to make any given payment when due more than twice during any calendar  
10 year, and such nonpayment after Grantee has received two such notices in any calendar year  
11 shall be deemed a breach without requirement on the part of the City to give to Grantee  
12 additional notice. In the event that Grantee fails to perform or comply with any other term,  
13 covenant, condition or representation made in this Franchise, Grantee shall have a period of  
14 thirty (30) days following the date of written notice of such failure from the City in which to cure  
15 the failure; provided, if such failure cannot reasonably be cured within said thirty (30) day  
16 period, Grantee shall not be deemed to be in breach if Grantee commences such cure within  
17 said thirty (30) day period and thereafter diligently prosecutes the same to completion;  
18 provided, the City shall not be required to provide such notice regarding Grantee's failure to  
19 perform any given obligation more than twice during any calendar year, and such  
20 nonperformance after Grantee has received two such notices in any calendar year shall be  
21 deemed a breach without requirement on the part of the City to give to Grantee additional  
22 notice. Notwithstanding anything to the contrary set forth above, the cure periods set forth in  
23 this subsection (d) shall apply only to those provisions in this Franchise which, by their  
24 express terms or by incorporation of Chapter 11, do not have specified cure periods. If a  
25 notice or cure period is required by the express terms of a provision of this Franchise or by

1 Chapter 11, then this subsection (d) shall not require the giving of a second notice or the grant  
2 of a second cure period.

3 **Section 58. LIQUIDATED DAMAGES.** Without limiting Section 57 above, the City shall be  
4 entitled to liquidated damages for specified breaches as set forth in this Section. Nothing in  
5 this Section shall limit or impair the City's power to: (i) Revoke this Franchise as a result of  
6 any Material Breach of its provisions; or (ii) impose penalties and costs as set forth in  
7 Chapter 11; provided, however, the City cannot simultaneously impose, with respect to a  
8 specific breach, both liquidated damages under this Section and penalties and costs under  
9 Chapter 11.

10 (a) Liquidated Damages Set Forth Herein Are Not Penalties. By executing this  
11 Franchise, Grantee agrees that in the event it fails to comply with certain provisions of this  
12 Franchise, the City will suffer actual damages that will be impractical or extremely difficult to  
13 determine. Grantee further agrees that the amounts set forth in this Section that will be owed  
14 to the City as a result of its failure to comply are not penalties, but reasonable estimates of the  
15 damages that the City will incur as a result of Grantee's failure to comply, based on the facts  
16 known to Grantee and the City and established in light of the circumstances existing at the  
17 Effective Date of this Franchise.

18 (b) Notice and Withdrawal. In the event of a default triggering liquidated damages  
19 pursuant to this Section, the City shall notify Grantee of the default in writing and Grantee  
20 shall have ten (10) City business days from the date of the City's issuance of the notice to  
21 cure the default or, in the event the default cannot reasonably be cured within ten (10) City  
22 business days, to begin to take steps to cure the default and notify the City of its plan to cure  
23 within a certain time. In the event the default is not timely cured, Grantee shall be liable to the  
24 City for liquidated damages in the amounts set forth in this Section and liquidated damages  
25 shall continue to accrue for so long as the default continues, up to the full amount of Grantee's

1 Security Interest and the applicable Deposits. The City may, in its discretion, withdraw  
2 liquidated damages owed to it from an applicable Deposit pursuant to Section 52(b) above, or  
3 Grantee's Security Interest pursuant to Section 52(a) above, in the event Grantee fails to pay  
4 the liquidated damages within the time provided.

5 (c) Events of Default Triggering Liquidated Damages. Grantee shall be liable to the  
6 City for liquidated damages in the following amounts (adjusted by the CPI-U on each  
7 anniversary date of the Effective Date) whenever the following defaults of this Franchise have  
8 occurred:

9 (1) Failure to Submit Required Reports, Information, and Plans. Grantee  
10 shall pay the City liquidated damages of five hundred dollars (\$500) per City business day  
11 from the City Deposit or Security Interest for failure to provide, within five (5) days following  
12 City's written notice of such failure, any report, test result, or plan required pursuant to Parts 5  
13 and 6 of this Franchise.

14 (2) Failure to Provide Fiber Optic Infrastructure. Upon activation of any Node  
15 Area where the City has requested a Fiber Drop pursuant to Section 44(f) above, Grantee  
16 shall pay the City liquidated damages of three hundred dollars (\$300) per day from the City  
17 Deposit or Security Interest for failure to provide the City's Fiber Optic Infrastructure pursuant  
18 to Section 44 above.

19 (3) Failure to Maintain City's Fiber Optic Infrastructure. Upon activation of  
20 any Node Area where the City has requested a Fiber Drop pursuant to Section 44(f) above,  
21 Grantee shall pay the City liquidated damages of three hundred dollars (\$300) per day from  
22 the City Deposit or Security Interest for failure to maintain the City's Fiber Optic Infrastructure  
23 pursuant to Section 44 above.

24 (4) Failure to Timely Provide Fiber Drops. Upon activation of any Node Area  
25 where the City has requested a Fiber Drop pursuant to Section 44(f) above, Grantee shall pay

1 the City liquidated damages of fifty dollars (\$50) per City business day from the City Deposit  
2 or Security Interest for failure to timely provide the City with a Fiber Drop or access to its Fiber  
3 Backbone pursuant to Section 44 above.

4 (5) Failure to Provide PEG Channels or Transmission. Grantee shall pay the  
5 City liquidated damages of two hundred and fifty dollars (\$250) per day, per Channel, from the  
6 City Deposit or Security Interest for failure to provide any PEG Channel, any PEG Digital  
7 Channel Equivalent, or meet any Video Feed requirement pursuant to Section 48 above.

8 (6) Customer Service Requirements of Chapter 11. Grantee shall pay the  
9 City liquidated damages of fifty dollars (\$50) per day, per incident, from the Subscriber  
10 Deposit or Security Interest for failure to comply with the customer service requirements of  
11 Section 11.46 of Chapter 11, including, without limitation, the restrictions on exclusive  
12 contracts, the requirement to provide inside wiring, and the obligation to promptly disconnect a  
13 Subscriber upon the Subscriber's request.

14 (7) Failure to Meet Customer Service Standards.

15 (i) Grantee shall pay the City liquidated damages of two hundred  
16 dollars (\$200) per day from the Subscriber Deposit for each violation of any of the following  
17 requirements:

- 18 • Failure to have its City office open for Subscribers during Normal Business  
19 Hours;
- 20 • Failure to have trained company representatives available to respond to  
21 telephone inquiries during Normal Business Hours pursuant to 47 C.F.R.  
22 76.309(c)(1)(i)(A);
- 23 • Failure to maintain a local or toll free telephone number twenty four (24) hours  
24 a day, seven (7) days a week pursuant to 47 C.F.R. 76.309(c)(1)(i); and

- 1           • Failure to respond to Subscriber inquiries by the next business day pursuant  
2           to 47 C.F.R. 76.309(c)(1)(i)(B).

3                       (ii)     Beginning on the Effective Date, Grantee shall pay the City  
4     liquidated damages of twenty-five cents (\$0.25) per Subscriber per quarter from the  
5     Subscriber Deposit for violation of any of the following, which shall be measured on a  
6     quarterly basis at the time Grantee is required to submit its franchise fee payments:

- 7           • Failure to answer its business telephone lines within the time limits prescribed  
8           by 47 C.F.R. 76.309(c)(1)(ii) for three (3) quarters in a row, or for two (2)  
9           quarters in a row, if the difference between the performance standard and the  
10          actual performance is not reduced by at least twenty percent (20%) between  
11          quarters; and  
12          • Failure to meet the requirements of 47 C.F.R. 76.309(c)(2) regarding  
13          installations, outages and service calls.

14     **Section 59. FORCE MAJEURE.** Grantee shall not be deemed in default of a provision of  
15     this Franchise where performance was rendered impossible or delayed by causes beyond  
16     Grantee's reasonable control, including, but not limited to wars or riots, labor strikes or civil  
17     disturbances, floods, earthquakes, fire, explosions, or epidemics, or other acts of God, and  
18     this Franchise shall not be Revoked or Grantee penalized for such noncompliance, provided  
19     that Grantee takes immediate and diligent steps to bring itself back into compliance with this  
20     Franchise and to comply as soon as possible under the circumstances without unduly  
21     endangering the health, safety, and integrity of the Grantee's employees or property, or the  
22     health, safety, and integrity of the public, Public Rights-of-Way, public property, or private  
23     property. Acts beyond Grantee's reasonable control shall not include (i) failure to obtain  
24     financing or have adequate funds, or (ii) work shortages when qualified workers are available.  
25     The provisions of this Section shall have no application unless a party seeking an extension of

1 time for performance under this Franchise shall have first notified the other party in writing of  
2 the cause or causes thereof within thirty (30) days after its reasonable determination that an  
3 event may constitute a Force Majeure delay under this Section.

4 PART 13 - MISCELLANEOUS PROVISIONS

5 **Section 60. Preemption/Abrogation.**

6 (a) General Provision. In the event that a material provision of this Franchise is  
7 preempted or otherwise declared unenforceable by a change in state or federal law, or the  
8 parties agree that the underlying legal authority for a material provision of this franchise  
9 results in preemption or abrogation, with the effect that a party to this Franchise is not  
10 receiving the benefits of the bargain intended under this Franchise as evidenced by its terms,  
11 the City and Grantee shall negotiate in good faith to amend this Franchise to redistribute the  
12 benefits of the bargain to equitably maintain the balance of benefits between the parties. In  
13 the event either the City or Grantee believes that such a preemption or abrogation has  
14 occurred, it shall send a written notice to the other party requesting negotiations pursuant to  
15 this Section. The notice shall, at a minimum, include: (1) citations to the applicable state or  
16 federal law; (2) an analysis of which provisions of this Franchise are affected and the benefits  
17 of the bargain that are consequently denied to the party by the preemption or abrogation; (3) a  
18 proposal to redistribute the benefits of the bargain, including specific language changes to the  
19 Franchise; and (4) a proposed schedule for negotiations. The parties shall have forty (40) City  
20 business days after receipt of a request for negotiations pursuant to this Section to agree to  
21 any proposed amendments ("Negotiation Period"). A notice which does not meet the criteria  
22 set forth herein shall not trigger the Negotiation Period. In the event that the parties are  
23 unable to agree to Franchise amendments within the Negotiation Period, either party may  
24 request non-binding mediation. If the parties are unable to agree to Franchise amendments  
25 after participating in mediation over a period of no less than twenty (20) City business days,

1 then the party against whom the preemption or abrogation was asserted may Terminate this  
2 Franchise. The parties acknowledge and agree that any state or federal law shall be read and  
3 construed as narrowly as possible so as to prevent preemption or abrogation of the terms of  
4 this Franchise. Unless expressly prohibited by the applicable state or federal law, the terms  
5 as reflected in this Franchise shall be deemed to have been "grandfathered" and not severed  
6 or altered as a result of the change in state or federal law.

7 (b) Single Franchise. This Franchise, as to the provisions regarding Video Service  
8 and the Facilities related thereto, is issued pursuant to the City's authority under the California  
9 Constitution, California law, and the San Francisco Charter and Codes. Grantee intends to  
10 build a System consisting of Facilities over which it may provide Video Services,  
11 Telecommunication Services and Cable Internet Services. The provisions of this Franchise  
12 relating to the construction, installation, repair, maintenance and operation of Facilities to  
13 provide Telecommunication Services represent an exercise of the City's authority under the  
14 California Constitution, California law, and the City's Charter and Codes. In connection with  
15 its construction of a single multi-purpose System, Grantee has requested a single Franchise  
16 which grants the authority required and establishes the conditions under which Grantee may  
17 occupy and use the Public Rights-of-Way to construct, install, repair, maintain and operate  
18 Facilities to provide Video Services as well as the conditions under which it may occupy and  
19 use the Public Rights-of-Way to construct, install, repair, maintain and operate Facilities to  
20 provide Telecommunication Services and other Services. If, as a result of the grant of a  
21 single Franchise in which the City exercises its authority under Applicable Law with respect to  
22 Video Services, Telecommunication Services and Cable Internet Services, any provision of  
23 this Franchise, including but not limited to, the franchise fee provisions, is not fully enforceable  
24 according to its terms with respect to a particular type of service other than Video Service (the  
25 "Affected Service"), the following shall occur.

1 (1) The City shall afford the Grantee 60 (sixty) City business days from the  
2 date the provisions are first declared unenforceable by a court or agency of competent  
3 jurisdiction (the "Termination Date") to obtain a separate authorization from the City to use or  
4 occupy the rights of way to construct, install, repair, maintain and operate any Facilities  
5 related to the provision of the Affected Service.

6 (2) Grantee shall promptly seek and diligently pursue an authorization to  
7 occupy and use the Public Rights-of-way to construct, install, repair, maintain and operate any  
8 Facilities to provide the Affected Service.

9 (3) The authorization in this Franchise to occupy and use the Public Rights-  
10 of-Way to provide the Affected Service and to construct, install and maintain the Facilities  
11 related thereto shall continue pursuant to all the applicable terms and conditions of this  
12 Franchise (including the payment of franchise fees on Gross Revenues from the Affected  
13 Service pursuant to Part 4 above, to the extent permitted by law) until the City grants or  
14 denies the separate authorization to provide the Affected Service.

15 **Section 61. NOTICES.** Unless otherwise expressly provided herein, all written  
16 communications sent by the City or Grantee may be by United States mail, and shall be  
17 addressed as follows:

18  
19 To City: Department of Telecommunications and Information Services  
20 875 Stevenson Street, 5th Floor  
21 San Francisco, CA 94103  
22 Attn: OVS Franchise Administrator

23 and

24  
25 San Francisco City Attorney's Office  
26 City Hall, Room 234  
27 San Francisco, CA 94102  
28 Attn: Energy and Telecommunications Team Leader  
29



1 To Grantee: RCN Telecom Services, Inc.  
2 1400 Fashion Island Boulevard, Suite 100  
3 San Mateo, CA 94404  
4 Attn: General Manager

5  
6 and

7  
8 RCN Telecom Services, Inc.  
9 105 Carnegie Center  
10 Princeton, NJ 08540  
11 Attn: General Counsel

12 **Section 62. TAXES.**

13 (a) Grantee shall be responsible for payment of any taxes, including possessory  
14 interest taxes and California sales and use taxes, levied upon or as a result of this Franchise,  
15 Grantee's use of the Public Rights-of-Way, or the Services delivered pursuant hereto.

16 (b) Grantee shall collect and remit to City the utility users tax pursuant to Article 10  
17 of Part III of the San Francisco Municipal Code, as amended, if the System is used to provide  
18 services that are subject to the tax, as well as the emergency response fee pursuant to Article  
19 10A of Part III of the San Francisco Municipal Code, as amended, if the System is used to  
20 provide services subject to the fee. Grantee shall provide such records to City as City may  
21 require to confirm compliance with this requirement.

22 (c) Grantee recognizes and understands that this Franchise may create a  
23 "possessory interest" for property tax purposes. If such a possessory interest is created, then  
24 the following shall apply:

25 (1) Grantee, on behalf of itself and any permitted successors and assigns,  
26 recognizes and understands that Grantee and any permitted successors and assigns may be  
27 subject to real property tax assessments on the possessory interest;

28 (2) Grantee, on behalf of itself and any permitted successors and assigns,  
29 recognizes and understands that the creation, extension, renewal, or assignment of this

1 Franchise may result in a "change in ownership" for purposes of real property taxes, and  
2 therefore may result in a revaluation of any possessory interest created by this Franchise.  
3 Grantee accordingly agrees on behalf of itself and its permitted successors and assigns to  
4 report on behalf of the City to the County Assessor the information required by Revenue and  
5 Taxation Code sections 480.5 and 480.6, as amended from time to time, and any successor  
6 provision.

7 (3) Grantee, on behalf of itself and any permitted successors and assigns,  
8 recognizes and understands that other events (see, e.g., Rev. & Tax. Code section 64, as  
9 amended from time to time) also may cause a change of ownership of the possessory interest  
10 and result in the revaluation of the possessory interest. Grantee accordingly agrees, on  
11 behalf of itself and its permitted successors and assigns, to report, as required by Applicable  
12 Law, any information related to a possible change in ownership to the County Assessor, the  
13 State Board of Equalization or other public agency.

14 (4) Grantee further agrees to provide such other information as may be  
15 requested by the City to enable the City to comply with any reporting requirements for  
16 possessory interests that are imposed by Applicable Law.

17 **Section 63. CONFLICT OF INTEREST.** Through its execution of this Franchise, Contractor  
18 acknowledges that it is familiar with the provisions of section 15.103 of City's Charter, Article  
19 III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 *et*  
20 *seq.* and sections 1090 *et seq.* of the Government Code of the State of California, and  
21 certifies that it does not know of any facts which constitute a violation of said provision and  
22 agrees that if it becomes aware of any such fact during the Term of this Agreement it shall  
23 immediately notify the City.

1 **Section 64. NON-DISCRIMINATION.**

2 (a) Grantee Shall Not Discriminate. In the performance of this Franchise, Grantee  
3 agrees not to discriminate on the basis of the fact or perception of a person's race, color,  
4 creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender  
5 identity, domestic partner status, marital status, disability or Acquired Immune Deficiency  
6 Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee  
7 working with, or applicant for employment with Grantee, in any of Grantee's operations in San  
8 Francisco or in connection with this Franchise elsewhere within the United States, or against  
9 any person seeking accommodations, advantages, facilities, privileges, services, or  
10 membership in all business, social, or other establishments or organizations operated by  
11 Grantee.

12 (b) Subcontracts. Grantee shall incorporate by reference in all subcontracts the  
13 provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative  
14 Code (copies of which are available from Purchasing) and shall require all subcontractors to  
15 comply with such provisions. Grantee's failure to comply with the obligations in this  
16 subsection shall constitute a Material Breach of this Franchise.

17 (c) Non-Discrimination in Benefits. Grantee does not as of the date of this  
18 Franchise and will not during the Term of this Franchise, in any of its operations in San  
19 Francisco or where the work is being performed for the City or elsewhere within the United  
20 States, discriminate in the provision of bereavement leave, family medical leave, health  
21 benefits, membership or membership discounts, moving expenses, pension and retirement  
22 benefits or travel benefits, as well as any benefits other than the benefits specified above,  
23 between employees with domestic partners and employees with spouses, and/or between the  
24 domestic partners and spouses of such employees, where the domestic partnership has been  
25 registered with a governmental entity pursuant to state or local law authorizing such

1 registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco  
2 Administrative Code.

3 (d) Condition to Franchise. As a condition to this Franchise, Grantee shall execute  
4 the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-  
5 12B-101) with supporting documentation and secure the approval of the form by the San  
6 Francisco Human Rights Commission.

7 (e) Incorporation of Administrative Code Provisions by Reference. The provisions  
8 of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this  
9 Section by reference and made a part of this Franchise as though fully set forth herein.

10 Grantee shall comply fully with and be bound by all of the provisions that apply to this  
11 Franchise under such Chapters of the San Francisco Administrative Code, including but not  
12 limited to the remedies provided in such Chapters. Without limiting the foregoing, Grantee  
13 understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a  
14 penalty of \$50 for each person for each day during which such person was discriminated  
15 against in violation of the provisions of this Franchise may be assessed against Grantee  
16 and/or deducted from any payments due Grantee, including the City Deposit held by the  
17 Controller pursuant to Section 52(b) above.

18 **Section 65. CONTRACTING WITH MINORITY/WOMEN AND LOCALLY-OWNED**  
19 **BUSINESS ENTERPRISES.**

20 (a) Except as provided below, Grantee shall comply fully with all applicable  
21 provisions of Chapter 12D.A ("Minority/Women/ Local Business Utilization Ordinance") of the  
22 San Francisco Administrative Code (as it now exists or as it may be amended in the future  
23 provided such amendments do not materially increase Grantee's obligations or liabilities, or  
24 materially diminish Grantee's rights, under this Agreement) and agrees to include this section  
25 in all subcontracts made in fulfillment of the Grantee's obligations under this Agreement. The

1 Minority/Women/ Local Business Utilization Ordinance is incorporated by reference and made  
2 a part of this Agreement as though fully set forth. In addition, Grantee shall comply with all  
3 other applicable local, state and federal laws prohibiting discrimination and requiring equal  
4 opportunity in contracting, including subcontracting.

5 The parties acknowledge that the validity of the City's Minority/Women/ Local Business  
6 Utilization Ordinance is the subject of pending litigation and that on July 26, 2004 a Superior  
7 Court judge issued an order enjoining the City from enforcing certain provisions of that  
8 ordinance (the "Injunction"). Specifically, the Injunction states that "[T]he City is hereby  
9 permanently enjoined and prohibited from enforcing or attempting to enforce the race and  
10 gender conscious provisions of the MBE/WBE Ordinance or of any other public contracting  
11 program that discriminates against or grants preferential treatment to any individual or group  
12 on the basis of race, sex, color, ethnicity, or national origin in the operation of public  
13 contracting now and in the future." The City is appealing that order. In light of these  
14 circumstances, and notwithstanding anything to the contrary set forth in this Agreement,  
15 Grantee shall not have any obligation to comply with the requirements of the City's  
16 Minority/Women/ Local Business Utilization Ordinance, and the City shall not enforce such  
17 provisions against Grantee, unless and until a court of competent jurisdiction stays or lifts the  
18 Injunction or makes a final decision that the provisions of such ordinance may remain in  
19 effect.

20 Grantee further acknowledges that, during any period in which the Injunction (or any  
21 similar injunction) is in place, the City has adopted, or may adopt interim or other legislation  
22 creating a program that will grant bid preferences and establish subcontracting goals for  
23 disadvantaged local business enterprises, or a similar program ("DBE Ordinance"). Grantee  
24 agrees that if at any time during the term of this Agreement a DBE Ordinance adopted by the  
25 City is operational, then the provisions of such ordinance shall control Grantee's obligations

1 under this Agreement with respect to subcontracting as if the provisions of such DBE  
2 Ordinance were fully set forth in this Agreement, for so long as the City's Minority/  
3 Women/Local Business Utilization Ordinance is suspended. But if a court of competent  
4 jurisdiction stays or lifts the Injunction or otherwise decides that the provisions of the City's  
5 Minority/Women/Local Business Utilization Ordinance may remain in effect, then on and after  
6 the date of such action or decision, and during the term of this Agreement and for so long as  
7 such decision is in effect, Grantee shall instead comply with the applicable provisions of the  
8 City's Minority/Women/Local Business Utilization Ordinance in accordance with this  
9 Agreement.

10 (b) Subject to the foregoing provisions, Grantee agrees to utilize Minority-Owned  
11 Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) for contracts  
12 and purchases of all services, materials or equipment for the construction, operation and  
13 maintenance of the System. In order to demonstrate its commitment to this objective Grantee  
14 agrees to contracting goals for MBEs and WBEs. The combined MBE/WBE contracting goal  
15 for this Franchise is fifteen percent (15%) of the total third-party contracting cost for which  
16 Grantee lets out contracts relating to the purchasing of equipment or materials and the  
17 construction, operation and maintenance of the System. Grantee agrees that Chapter 12D.A  
18 of the San Francisco Administrative Code shall apply to this Franchise and Grantee shall  
19 comply with all terms thereof with respect to the foregoing goal; subject, however, to: (i) any  
20 modifications that may be agreed upon between the City's Human Rights Commission  
21 ("HRC"), DTIS and Grantee in writing, and (ii) any modifications to reflect the fact that the City  
22 is not making payments to Grantee for work performed by Grantee under this Franchise. The  
23 terms MBE and WBE are defined in Chapter 12D.A of the San Francisco Administrative Code.  
24 The MBEs and WBEs must be certified by HRC. Grantee recognizes that additional effort and  
25 coordination will be required to develop a detailed plan to facilitate implementation of this

1 Section. Grantee agrees to work in good faith with DTIS and HRC to develop such an  
2 implementation plan, consistent with the terms of this Section; provided, the failure to develop  
3 such a plan shall not limit Grantee's obligations or the City's rights under this Section. The  
4 implementation plan shall include an increase in the contracting goal set forth above as the  
5 percentages of available MBE/WBE contractors increase during the Term of this Franchise.

6 (c) If Grantee or the City receives a written complaint alleging that Grantee has  
7 discriminated on the basis of race or gender in the awarding of any contract under this  
8 Franchise, the party that received such complaint shall promptly forward it to the other party.  
9 Within fifteen (15) City business days from its receipt of the complaint, Grantee shall provide  
10 to the City a written statement of the facts relative to the complaint and any evidence showing  
11 that Grantee or its contractor did not discriminate in the awarding of the contract.

12 (d) With each Quarterly Report, Grantee shall submit to DTIS, on behalf of itself and  
13 its contractors, the following information, in a form reasonably acceptable to DTIS and HRC:

14 (i) the dollar amount of each contract awarded by Grantee and the scope of work to be  
15 performed under each such contract; (ii) the name of the contractor and whether that  
16 contractor is a MBE or a WBE; (iii) the total payments to be made to the contractor through  
17 the end of the relevant reporting period; and (iv) such additional information as DTIS or HRC  
18 may reasonably request to verify compliance with this Section. Grantee shall designate an  
19 internal compliance officer who will be responsible for ensuring Grantee's compliance with this  
20 Section, interacting with HRC and DTIS on any compliance issues, and providing the above  
21 information.

22 (e) If the HRC Director believes, after notice and an opportunity for Grantee to  
23 present evidence to the contrary, that Grantee is in violation of the terms of this Section with  
24 respect to one or more contracts, the HRC Director will refer the matter to HRC's  
25 Commissioners. If the HRC Commissioners determine, after a public hearing, that Grantee is

1 in violation of this Section with respect to one or more contracts, then the HRC  
2 Commissioners may assess liquidated damages against Grantee in an amount not to exceed  
3 \$25,000 or 5% of the contract amount, whichever is greater, for each such violation.

4 **Section 66. TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN.** Pursuant to §804(b)  
5 of the San Francisco Environment Code the City urges Grantee not to import, purchase,  
6 obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin  
7 redwood or virgin redwood wood product.

8 **Section 67. MACBRIDE PRINCIPLES.** Pursuant to San Francisco Administrative Code  
9 Section 12.F.5, the City urges companies doing business in Northern Ireland to move towards  
10 resolving employment inequities, and encourages such companies to abide by the MacBride  
11 Principles. The City urges San Francisco companies to do business with corporations that  
12 abide by the MacBride Principles.

13 **Section 68. PROHIBITION ON TOBACCO PRODUCTS ADVERTISING.** Pursuant to  
14 Section 4.20 of the San Francisco Administrative Code, Grantee acknowledges and agrees  
15 that no advertising of cigarettes or tobacco products is allowed on any real property owned by  
16 or under the control of the City. This prohibition includes the placement of the name of a  
17 company producing, selling or distributing cigarettes or tobacco products or the name of any  
18 cigarette or tobacco product in any promotion of any event or product. This prohibition does  
19 not apply to any advertisement sponsored by a state, local or nonprofit entity designed to  
20 communicate the health hazards of cigarettes and tobacco products or to encourage people  
21 not to smoke or to stop smoking.

22 **Section 69. EARNED INCOME CREDIT (EIC) FORMS.**

23 (a) Grantee shall provide EIC Forms to each Eligible Employee at each of the  
24 following times: (i) within thirty (30) days following the Effective Date (unless Grantee has  
25 already provided such EIC Forms at least once during the calendar year in which such



1 Effective Date falls); (ii) promptly after any Eligible Employee is hired by Grantee; and (iii)  
2 annually between January 1 and January 31 of each calendar year during the Term of this  
3 Franchise.

4 (b) Failure to comply with any requirement contained in subparagraph (a) of this  
5 Section shall constitute a Material Breach by Grantee of the terms of this Franchise. If, within  
6 thirty (30) days after Grantee receives written notice of such a breach, Grantee fails to cure  
7 such breach or, if such breach cannot reasonably be cured within such period of thirty (30)  
8 days, Grantee fails to commence efforts to cure within such period or thereafter fails to  
9 diligently pursue such cure to completion, the City may pursue any rights or remedies  
10 available under this Franchise or other Applicable Law.

11 (c) Any subcontract entered into by Grantee shall require the subcontractor to  
12 comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

13 (d) Capitalized terms used in this Section and not defined in this Franchise shall  
14 have the meanings assigned to such terms in Chapter 12O of the San Francisco  
15 Administrative Code.

16 **Section 70. POLICE AND REGULATORY POWERS RESERVED.** In executing this  
17 Franchise, Grantee acknowledges that its rights are subject to the powers of the City to adopt  
18 and enforce general ordinances necessary to the safety and welfare of the public. Grantee  
19 shall comply with all Applicable Laws, including but not limited to those enacted by the City  
20 pursuant to any such power. Any conflict between the terms of this Franchise and any  
21 present or future lawful exercise of the City's police and regulatory powers shall be resolved in  
22 favor of the latter.

23 **Section 71. REMEDIES CUMULATIVE.** All remedies under this Franchise are cumulative  
24 unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of  
25 another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties

1 relieve Grantee of its obligations to comply with its Franchise or other Applicable Law.

2 Remedies may be used singly or in combination. In addition, either party may exercise any  
3 rights it has at law or in equity.

4 **Section 72. RIGHT OF CONDEMNATION RESERVED.** Nothing in this Franchise shall limit  
5 any right the City may have to acquire by eminent domain or otherwise any property of  
6 Grantee; provided, however, that Grantee shall be compensated for any such acquisition  
7 pursuant to Applicable Law.

8 **Section 73. COMPLIANCE WITH LAWS.** Grantee shall comply with all Applicable Laws  
9 relating to its activities under this Franchise and its conduct of business within the City as they  
10 exist or may be amended hereafter. Grantee shall also keep itself fully informed of all  
11 Applicable Laws that in any manner affect Grantee's performance under this Franchise,  
12 including, without limitation, the City's Charter, codes, ordinances and regulations. The parties  
13 acknowledge and agree that Grantee's obligation to comply with all present or future  
14 Applicable Laws as provided herein is a material part of the bargained-for consideration under  
15 this Franchise. Grantee shall promptly upon request provide City with evidence of its  
16 compliance with any Applicable Law.

17 **Section 74. TIME IS OF THE ESSENCE.** Time is of the essence with respect to each  
18 provision of this Franchise, including, but not limited to, the provisions relating to extension of  
19 the Initial Term and to the payment of franchise fees and other sums due hereunder, subject  
20 to the provisions of Section 59 above.

21 **Section 75. NO WAIVER.** The failure of the City on one or more occasion to exercise a  
22 right, to require Grantee's compliance or performance with an obligation under this Franchise,  
23 the San Francisco Administrative Code or any other Applicable Law, or the City's failure to  
24 pursue a breach thereof shall not be deemed to constitute a waiver of such right, obligation or  
25 breach. Grantee shall not be excused from such right, obligation, or breach unless such right,

1 obligation or breach has been specifically waived in writing by the City. No express written  
2 waiver of any default or the performance of any provision hereof shall affect any other default  
3 or performance, or cover any other period of time, other than the default, performance or  
4 period of time specified in such express waiver. One or more written waivers of a default or  
5 the performance of any provision hereof shall not be deemed to be a waiver of a subsequent  
6 default or performance of the same or any other provision.

7 **Section 76. NO RECOURSE FOR GRANTEE'S DAMAGES.** Grantee shall have no  
8 recourse against the City for any loss, cost, expense, or damage arising out of the  
9 enforcement or lack of enforcement of any provision or requirement of this Franchise, or other  
10 Applicable Law. Notwithstanding the foregoing, nothing herein precludes Grantee from  
11 seeking and obtaining any injunctive relief against the City.

12 **Section 77. MODIFICATION.** This Franchise may not be modified, nor may compliance with  
13 any of its terms be waived, except by written instrument executed and approved in  
14 accordance with the requirements of Chapter 11 and the City's Charter.

15 **Section 78. VENUE.** The formation, interpretation, and performance of this Franchise shall  
16 be governed by the laws of the State of California. Venue for all litigation relative to the  
17 formation, interpretation and performance of this Franchise shall be in San Francisco.

18 **Section 79. CONSTRUCTION OF FRANCHISE.** The provisions of this Franchise shall be  
19 liberally construed to effectuate its objectives consistent with Chapter 11 and other Applicable  
20 Law and the public interest. Paragraph captions shall be for reference only and shall not be  
21 considered in construing this Franchise.

22 **Section 80. ENTIRE DOCUMENT.** This document and its attachments, appendices, and  
23 exhibits, including all documents and instruments incorporated by reference, sets forth the  
24 entire agreement between the City and Grantee and supersedes all other oral or written  
25 provisions. This document may only be modified as provided in Section 77 above.

1 **Section 81. ORDER OF PRECEDENCE.** Except as precluded by Applicable Law, to the  
2 extent the provisions of this Franchise, Chapter 11, or other Applicable Law are in conflict, the  
3 provisions which impose the higher or greater legal duty or obligation upon Grantee shall take  
4 precedence; unless a different order of precedence is expressly set forth herein.

5 **Section 82. SEVERABILITY.** If any non-material provision of this Franchise, or the  
6 application thereof to any Person or circumstance, is held invalid, by a court of competent  
7 jurisdiction (following the exhaustion of any permitted appeals), the remainder of this  
8 Franchise, including the application of such part or provision to other Persons or  
9 circumstances, shall not be affected thereby and shall continue in full force and effect. To this  
10 end, the non-material provisions of this Franchise are severable. For purposes of this  
11 Section, a non-material provision shall be deemed a provision that, upon deletion, (i) does not  
12 undermine the balance of the bargain agreed to by the parties as reflected by this Franchise,  
13 and (ii) does not cause the continued enforcement of the remainder of this Franchise to be  
14 inequitable under all of the circumstances. In addition, any provision, the breach of which is  
15 defined as a Material Breach hereunder, shall be deemed a material provision for purposes of  
16 this Section. In the event any material provision of this Franchise is held invalid by a court of  
17 competent jurisdiction (following the exhaustion of any permitted appeals), the procedures  
18 and remedies set forth in Section 57above shall govern.

19 **Section 83. HAZARDOUS MATERIALS.** Grantee and its Agents shall comply with all  
20 Hazardous Materials Laws. Without limiting the generality of the foregoing, Grantee, on  
21 behalf of itself and its Agents, covenants and agrees that it will not use, generate, transport,  
22 store, emit, discharge or dispose of Hazardous Materials on, under or about the Public Rights-  
23 of-Way, nor will it transport or permit the transport of Hazardous Materials to or from the  
24 Public Rights-of-Way, except for (A) standard building materials and equipment that do not  
25 contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs),

1 (B) gasoline and other fuel products used to transport and operate vehicles and equipment,  
2 and (C) any Hazardous Materials which do not require a permit or license from, or that need  
3 not be reported to, a governmental agency, which Hazardous Materials are used in the  
4 construction of the Facilities in the ordinary course of Grantee's business, and which are  
5 reported to, and approved by, City prior to any such use and, in any case, are used in strict  
6 compliance with all Applicable Laws.

7 **Section 84. NO JOINT VENTURE.**

8 (a) Nothing contained in this Franchise shall be deemed or construed as creating a  
9 partnership or joint venture between City and Grantee or between City and any other Person,  
10 or cause City to be responsible in any way for the debts or obligations of Grantee. The City  
11 shall not be liable for any act of Grantee and Grantee shall not be liable for any act of the City,  
12 and nothing herein contained shall be construed as creating the relationship of employer and  
13 employee between the City and Grantee or any of their respective Agents. Grantee is not a  
14 state or governmental actor with respect to any activity conducted by Grantee hereunder. The  
15 subject of this Agreement is a Franchise with neither party acting as the agent of the other  
16 party in any respect.

17 (b) Nothing contained in this Franchise shall create or justify any claim against the  
18 City by any third person with whom Grantee may have contracted or may contract relative to  
19 this Franchise or by any other Person.

20 **Section 85. PREVAILING WAGES.** Grantee agrees that any person performing labor in the  
21 construction of the Facilities shall be paid not less than the highest prevailing rate of wages  
22 and that Grantee shall include, in any contract for construction of such improvements, a  
23 requirement that all persons performing labor under such contract shall be paid not less than  
24 the highest prevailing rate of wages for the labor so performed. Grantee further agrees that,  
25 as to the construction of such improvements under this Franchise, Grantee shall comply with

1 all the provisions of Section 6.22(E) of the San Francisco Administrative Code that relates to  
2 payment of prevailing wages. Grantee shall require any contractor to provide, upon request,  
3 certified payroll reports with respect to all persons performing labor in the construction of any  
4 Facilities.

5 **Section 86.** GRANTEE'S REPRESENTATIONS AND WARRANTIES. Grantee represents,  
6 warrants and covenants to City as follows, as of the Effective Date:

7 (a) Valid Existence; Good Standing. Grantee is a corporation duly organized and  
8 validly existing under the laws of the State of Pennsylvania. Grantee has all requisite power  
9 and authority to own its property and conduct its business as presently conducted. Grantee  
10 has made all required corporate filings and is a corporation in good standing in the State of  
11 Pennsylvania.

12 (b) Authority. Grantee has all requisite power and authority to execute and deliver  
13 this Franchise and to carry out and perform all of the terms and covenants of this Franchise.  
14 The execution and delivery of this Franchise by Grantee has been duly and validly authorized  
15 by all necessary action.

16 (c) No Limitation on Ability to Perform. Neither Grantee's articles of incorporation or  
17 operating agreement, nor the organizational documents of any of Grantee's members or  
18 partners, nor any rule, policy, constitution, by-law, agreement or law, in any way prohibits,  
19 limits or otherwise affects the right or power of Grantee to enter into and perform all of the  
20 terms and covenants of this Agreement. Neither Grantee nor any of its members or partners  
21 are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation  
22 or other instrument which could prohibit, limit or otherwise affect the same. There are no  
23 pending or threatened suits or proceedings affecting Grantee or any of its members or  
24 partners before any court, governmental agency, or arbitrator which might materially

1 adversely affect the Grantee's ability to install and operate the System or perform its  
2 obligations under this Franchise.

3 (d) Truth and Accuracy. No document furnished by Grantee to the City in  
4 connection with this Franchise contains any untrue statement of material fact or omits or will  
5 omit a material fact necessary to make the statements contained therein not misleading,  
6 under the circumstances under which any such statement shall have been made.

7 (e) Suspension or Disbarment. Grantee has not been suspended or disbarred by  
8 the U.S. General Services Administration, nor has Grantee been suspended, disciplined, or  
9 prohibited from contracting with any federal, state or local governmental agency. Grantee  
10 covenants that it shall not, in connection with this Franchise, hire any contractor that has been  
11 suspended or disbarred by the City.

12 **Section 87. FALSE CLAIMS.** Article 5 of Chapter 6 of the San Francisco Administrative  
13 Code, relating to the submission of false claims, shall apply to this Franchise. Accordingly, if  
14 Grantee submits a false claim, it shall be liable to the City for three times the amount of  
15 damages that the City sustains because of the false claim. Grantee shall also be liable to the  
16 City for the cost, including Attorneys' Fees and Costs, of a civil action brought to recover any  
17 of those penalties or damages and may be liable to the City for a civil penalty of up to (ten  
18 thousand dollars) \$10,000 for each false claim. Grantee will be deemed to have submitted a  
19 false claim to the City if Grantee: (a) knowingly presents or causes to be presented to the City  
20 a false statement of Gross Revenues; (b) knowingly makes, uses or causes to be made or  
21 used a false record or statement to get a false claim paid to or approved by the City;  
22 (c) conspires to defraud the City by getting a false claim allowed or paid to or approved by the  
23 City; (d) knowingly makes, uses or causes to be made or used a false record or statement to  
24 conceal, avoid or decrease an obligation to pay or transmit money or property to the City;  
25 (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently

1 discovers the falsity of the claim, and fails to disclose the false claim to the City within a  
2 reasonable time after discovery of then false claim.

3 **Section 88. PESTICIDE PROHIBITION.** Grantee shall comply with the provisions of  
4 Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance"), which prohibit  
5 the use of certain pesticides on City property. Nothing herein shall prevent Grantee, through  
6 the DTIS, from seeking a determination from the Commission on the Environment that it is  
7 exempt from complying with certain portions of the Pesticide Ordinance as provided in Section  
8 308(c) thereof. In the event Grantee obtains permission from the Commission on the  
9 Environment to use any biocide, defoliant, chemical fertilizer or other pesticide or  
10 agrochemical, Grantee shall use such substance in strict compliance with the Commission's  
11 conditions, any and all applicable laws and regulations, and the manufacturer's instructions for  
12 use.

13 **Section 89. FIRST SOURCE HIRING.**

14 (a) Grantee shall comply with the hiring requirements imposed by the City's First  
15 Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which are  
16 incorporated herein by this reference. Any undefined term used in this Section shall have the  
17 meaning given to such term in San Francisco Administrative Code Chapter 83. Grantee shall  
18 notify the City's Workforce Development System (the "WDS") of all projected Entry Level  
19 Positions and the approximate date such positions will be available. It shall also notify the  
20 WDS of all vacancies or new positions for work related to the Work Program, and shall offer  
21 the WDS the first opportunity to provide qualified Economically Disadvantaged Individuals for  
22 employment in these positions. Grantee shall not publicize or otherwise post such vacancies  
23 until the WDS refers Qualified Economically Disadvantaged Individuals for employment in  
24 these positions or notifies Grantee that no Qualified Economically Disadvantaged Individuals  
25 are available for the particular vacancies. The WDS shall respond to Grantee within ten (10)



1 business days. Grantee shall comply with the First Source Hiring Agreement attached hereto  
2 as Appendix 3 (the "First Source Hiring Agreement"), the terms of which are incorporated  
3 herein by this reference. Upon request by the City, Grantee agrees to separately execute the  
4 attached First Source Hiring Agreement, although the lack of such a separate execution shall  
5 not affect the requirements of the First Source Hiring Agreement as incorporated herein.

6 (b) Grantee shall keep, and provide to the City upon request, accurate records  
7 demonstrating its compliance with the First Source Hiring Ordinance. A failure to abide by the  
8 provisions of this Section may result in the imposition of liquidated damages in the amount of  
9 \$2,070 for every new hire for each Entry Level Position improperly withheld from the First  
10 Source Hiring process. Additionally, Grantee shall include these provisions in any contracts it  
11 enters into, and any subcontracts, relating to the Franchise. Grantee shall be responsible for  
12 ensuring compliance by all such contractors and subcontractors.

13 **Section 90. LOCAL HIRING.**

14 (a) Grantee agrees, with respect to the hiring of any new employee to perform work  
15 under this Franchise, to make a good-faith effort, with the assistance of community  
16 organizations designated by the City or local labor union hiring halls, to hire qualified  
17 individuals who are residents of the City and County of San Francisco to comprise no less  
18 than 50% of such new hires, measured in labor work hours, and Grantee promises to give  
19 special preference to minorities, women and economically disadvantaged individuals.

20 (b) Grantee shall keep, and provide to the City, an accurate record showing the  
21 name, place of residence, hours employed and per diem pay of each person employed by the  
22 Grantee, including full-time, part-time, permanent and temporary employees. Grantee shall  
23 keep, and provide to the City, an accurate record describing in detail Grantee's good faith  
24 efforts to secure employment of residents of the City and County of San Francisco. A failure

1 to abide by the provisions of this Section may result in the imposition of sanctions and  
2 penalties, including those provided for in San Francisco Administrative Code Sections 6.80.

3 **Section 91. ATTORNEYS' FEES AND COSTS.** If either party hereto fails to perform any of  
4 its respective obligations under this Agreement or if any dispute arises between the parties  
5 hereto concerning the meaning or interpretation of any provision of this Agreement, then the  
6 defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any  
7 and all costs and expenses incurred by the other party on account of such default and/or in  
8 enforcing or establishing its rights hereunder, including, without limitation, reasonable  
9 Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either party in  
10 enforcing a judgment in its favor under this Agreement shall be recoverable separately from  
11 and in addition to any other amount included in such judgment. For purposes of this  
12 Agreement, if either party uses its own attorney employees, the reasonable fees of such  
13 attorneys shall be based on the fees regularly charged by private attorneys with the equivalent  
14 number of years of experience in the subject matter area of the law for which the services  
15 were rendered who practice in the City and County of San Francisco.

16 **Section 92. GUARANTY.** On or before the execution of this Franchise by Grantee, RCN  
17 Corporation, a Delaware corporation, shall execute and deliver to the City a Guaranty  
18 Agreement in the form attached hereto as Appendix 1 ("Guaranty Agreement"). This  
19 Franchise shall not become effective unless and until the City's receives the duly executed  
20 Guaranty Agreement.

21 **Section 93. MITIGATION MEASURES.** The Mitigation Measures as set forth in the negative  
22 declaration and as attached hereto as Appendix 2 are incorporated into this Franchise by this  
23 reference. Grantee shall perform all the Mitigation Measures as they relate to any activities  
24 under this Franchise. Without limiting the City's rights and remedies under this Franchise for

1 the failure to perform any Mitigation Measure, DPW and DTIS will monitor and enforce  
2 implementation of the Mitigation Measures through the permitting process.

3 **Section 94. PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC.** As of July 1,  
4 2003, Grantee may not purchase preservative-treated wood products containing arsenic in the  
5 performance of this Franchise unless an exemption from the requirements of Chapter 13 of  
6 the San Francisco Environment Code is obtained from the Department of the Environment  
7 under Section 1304 of the Code. The term "preservative-treated wood containing arsenic"  
8 shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an  
9 arsenic copper combination, including, but not limited to, chromated copper arsenate  
10 preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate  
11 preservative. Grantee may purchase preservative-treated wood products on the list of  
12 environmentally preferable alternatives prepared and adopted by the Department of the  
13 Environment. This provision does not preclude Grantee from purchasing preservative-treated  
14 wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean  
15 a pressure-treated wood that is used for construction purposes or facilities that are partially or  
16 totally immersed in saltwater

17 **Section 95. GENERAL PLAN REVIEW.** In finding that the Franchise is in conformity with  
18 the City's General Plan and consistent with the Eight Priority Policies of City Planning Code  
19 Section 101.1, the Planning Department has reviewed only those Facilities used by Grantee  
20 to provide Service under this Franchise that are installed on existing utility poles. Grantee  
21 may not install any Facilities necessary to provide Service in any area where Grantee cannot  
22 install such Facilities on utility poles (except for underground conduits) until the Planning  
23 Department has determined that Grantee's construction of such Facilities is in conformity with  
24 the City's General Plan and consistent with the Eight Priority Policies of City Planning Code  
25 Section 101.1.

1 **Section 96.** NOTIFICATION ON LIMITATION ON CONTRIBUTIONS. Through execution of  
2 this Franchise, Grantee acknowledges that it is familiar with section 1.126 of City's Campaign  
3 and Governmental Conduct Code, which prohibits any person who contracts with the City for  
4 the rendition of personal services or for the furnishing of any material, supplies or equipment  
5 to the City, whenever such transaction would require approval by a City elective officer or the  
6 board on which that City elective officer serves, from making any campaign contribution to the  
7 officer at any time from the commencement of negotiations for the contract until three months  
8 after the date the contract is approved by the City elective officer or the board on which that  
9 City elective officer serves.

ACKNOWLEDGED AND AGREED TO BY THE PARTIES:

CITY & COUNTY OF SAN FRANCISCO:

RCN TELECOM SERVICES, INC.:

Approved By:



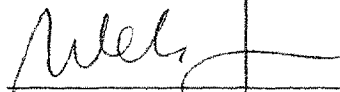
LEWIS LOEVEN, Director, Department of  
Telecommunications and Information  
Services

Date:

8/24/04

APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

By:

  
WILLIAM K. SANDERS  
Deputy City Attorney

SEE ATTACHED FOR ORIGINAL

Signature

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

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date : \_\_\_\_\_

RCN TELECOM SERVICES, INC.:

SEE ATTACHED FOR  
ORIGINAL

Signature

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

Title: \_\_\_\_\_

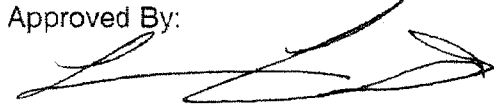
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Date : \_\_\_\_\_

ACKNOWLEDGED AND AGREED TO BY THE PARTIES:

CITY & COUNTY OF SAN FRANCISCO:

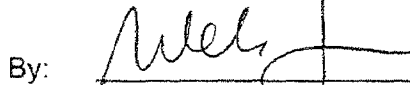
Approved By:



LEWIS LOEVEN, Director, Department of  
Telecommunications and Information  
Services

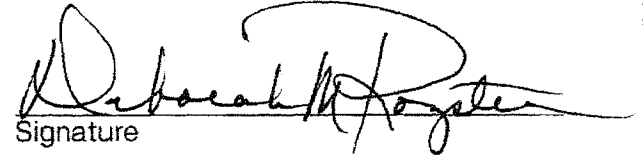
Date: 3/24/04

APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney



By: WILLIAM K. SANDERS  
Deputy City Attorney

RCN TELECOM SERVICES, INC.:



Signature

Name: Deborah M. Royster

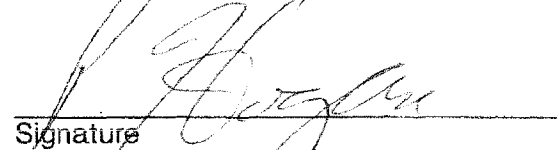
Title: Senior Vice President, General  
Counsel & Corporate Secretary

Address: 105 Carnegie Center

Princeton, NJ 08540

Date: August 20, 2004

RCN TELECOM SERVICES, INC.:



Signature

Name: Patrick Hogan

Title: Senior Vice President, Finance

Address: 105 Carnegie Center

Princeton, NJ 08540

Date: August 20, 2004

Appendix 1

Guaranty Agreement

THIS GUARANTY AGREEMENT (this "Guaranty") dated as of August 23, 2004, is made by RCN CORPORATION, a Delaware corporation (the "Guarantor"), to and for the benefit of THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"). Unless otherwise defined in this Guaranty, all initially capitalized terms used in this Guaranty shall have the meanings given them in the Franchise (as defined in Recital Paragraph A below).

THIS GUARANTY is made with reference to the following facts and circumstances:

A. The City has granted to RCN Telecom Services, Inc., a Pennsylvania corporation ("Grantee"), a franchise (the "Franchise") as set forth in Ordinance No. 210-04, approved by the City's Board of Supervisors on August 17, 2004.

B. Guarantor will derive material financial benefit from the Franchise. As an essential inducement for the City to enter into the Franchise, the Guarantor is entering into this Guaranty, whereby Guarantor agrees to guaranty payment and performance of the obligations of the Grantee under the Franchise.

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Guarantor agrees as follows:

1. Guaranty

1.1 Guaranty of Obligations. Guarantor unconditionally and irrevocably guarantees to the City the due and punctual payment (and not merely the collectibility) and performance of the Guaranteed Obligations (as defined in Section 1.2 below), as and when such Guaranteed Obligations shall become due and/or payable, on the terms provided in this Guaranty. In addition, Guarantor shall pay, and upon request of City shall promptly reimburse City for, all costs and expenses (including, without limitation, collection charges and Attorneys' Fees and Costs, as defined in Section 8.8 below) incurred by the City (collectively, the "Reimbursement Amount") in connection with the enforcement of the City's rights, powers, or remedies under this Guaranty, whether or not suit is brought. Any delinquent payment for the Guaranteed Obligations and the Reimbursement Amount shall be accompanied by interest on such amounts at the lesser of ten percent (10%) per annum or the maximum amount permitted by law, from the date due through and including the date of payment of such

amounts (calculated on the basis of a 365-day year for the actual number of days elapsed). Guarantor's guaranty of payment of the Guaranteed Obligations shall be discharged and satisfied only as provided in Section 6 below relating to termination of this Guaranty.

1.2 Definition of Guaranteed Obligations. For purposes of this Guaranty, "Guaranteed Obligations" shall mean the obligation of the Grantee (the "Obligor") to make any payments and timely perform any obligations set forth in the Franchise, including, without limitation, the payment of franchise fees and the completion of the System as set forth in the Franchise.

1.3 Acknowledgments by Guarantor. Guarantor acknowledges, confirms, and agrees that: (a) it has received fair and adequate consideration for its execution of this Guaranty; (b) it will derive material financial benefit from the City's execution of the Franchise; (c) the City's agreement to enter into the Franchise and take the actions required in connection therewith is in consideration of, and in reliance upon, the Guarantor's execution and delivery of this Guaranty; and (d) there are no conditions to the full effectiveness of this Guaranty other than those expressly set forth in this Guaranty.

1.4 Independent Obligations; Continuing Guaranty. Subject to the provisions of this Guaranty, this Guaranty is a primary and original obligation of Guarantor and is an absolute, unconditional, continuing and irrevocable guaranty of payment and performance.

## 2. Indemnity

2.1 Indemnity. Guarantor agrees to indemnify, defend and hold harmless the Indemnified Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, Attorneys' Fees and Costs as hereinafter defined) arising in connection with any investigative, administrative or judicial proceeding, that may be imposed on, incurred by or asserted against such Indemnified Party, in any manner relating to or arising out of or in connection with the payment or enforcement of this Guaranty (collectively, the "Indemnified Liabilities"). Notwithstanding the foregoing, Indemnified Liabilities shall not include liabilities, obligations, losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs, expenses and disbursements to the extent caused by or resulting from the willful misconduct or negligence of such Indemnified Party. Guarantor agrees to defend the Indemnified Parties against any claims that are actually or potentially within the scope of the indemnity provisions of this instrument, even if such claims may be groundless, fraudulent or false.



2.2 Notice. The Indemnified Parties agree to give prompt notice to Guarantor with respect to any suit or claim initiated or threatened against the Indemnified Parties, at the address for notices of Guarantor set forth in this Guaranty, which the Indemnified Party has reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice is not given to Guarantor, then Guarantor's liability hereunder shall terminate as to the matter for which such notice is not given, provided that failure to notify the Guarantor shall not prejudice the rights of the Indemnified Party hereunder unless the Guarantor is prejudiced by such failure, and then only to the extent of such prejudice. The Guarantor shall, at its option but subject to the reasonable consent and approval of the Indemnified Party, be entitled to control the defense, compromise or settlement of any such matter through counsel of the Guarantor's own choice; provided, however, that in all cases the Indemnified Party shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Guarantor shall fail, however, in the Indemnified Party's reasonable judgment, within a reasonable time following notice from the Indemnified Party alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the Indemnified Party shall have the right promptly to hire counsel at the Guarantor's sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to the Indemnified Party upon receipt by the Guarantor of a reasonably detailed invoice therefor.

### 3. Waivers by Guarantor

3.1 Waivers. Guarantor waives: notice of acceptance of this Guaranty; notice of the amount of the Guaranteed Obligations; notice of any other fact that might increase the Guarantor's risk; and notice of presentment for payment, demand, protest and notice of protest, notice of dishonor, diligence in collection and notice of nonpayment as to any instrument. Guarantor also waives any and all rights, by statute or otherwise, to require the City to institute suit against the Obligor or to exhaust any of the City's rights, powers or remedies against such Obligor.

3.2 Waiver of Subrogation. Upon satisfaction in full of all of the Guaranteed Obligations, Guarantor shall be subrogated to the rights of the City against the Obligor with respect to the Guaranteed Obligations, and the City agrees to take such steps as Guarantor may reasonably request to implement such subrogation (provided that Guarantor shall pay any and all of City's costs and expenses in connection therewith, including, without limitation City's Attorneys' Fees and Costs and provided further that the City shall not incur any liabilities in taking any such steps).

#### 4. Consents by Guarantor

4.1 Consents; No Discharge of Obligations. Without releasing, discharging, impairing, or otherwise affecting any obligations of Guarantor under this Guaranty or the validity or enforceability of this Guaranty, the City may, by action or inaction, in its sole, absolute and unlimited discretion and without notice to Guarantor: compromise, settle, extend the time for payment or performance of all or any part of the Guaranteed Obligations; refuse or fail to enforce all or any portion of the City's rights, powers or remedies under the Franchise; and deal in all respects with Grantee as if this Guaranty were not in effect; provided, however, the City shall not have the right by agreement with Grantee otherwise to increase the Guaranteed Obligations without the Guarantor's prior written consent. It is the intent of the parties that Guarantor shall remain liable for the payment and performance of the Guaranteed Obligations and all other obligations guaranteed hereby, notwithstanding any act or thing that might otherwise operate as a legal or equitable discharge of a surety, except as specified in the proviso at the end of the preceding sentence.

4.2 Payments to Other Persons. The City shall be under no obligation to marshal any assets in favor of Guarantor or against, or in payment or performance of, any or all of the Guaranteed Obligations. If all or any part of any payment to or for the benefit of the City in respect of the Guaranteed Obligations shall be invalidated, declared to be fraudulent or preferential, set aside, or required for any reason to be repaid or paid over to a trustee, receiver or other person (a "trustee") under any insolvency law or any other law or rule of equity (collectively, "set aside"), to the extent of that payment or repayment, the Guaranteed Obligations (or the part thereof) intended to have been satisfied shall be revived and continued in full force and effect as if that payment had not been made, and Guarantor shall be primarily and jointly and severally liable for that obligation, provided that nothing hereunder shall preclude the Guarantor from obtaining a refund from a trustee.

4.3 Additional Rights. This Guaranty is in addition to, and not in substitution for or in reduction of, any other guaranty by Guarantor or any obligation of Guarantor under any other agreement or applicable Law that may now or hereafter exist in favor of the City. The liability of Guarantor under this Guaranty shall not be contingent upon the enforcement of any lien or realization upon the security, if any, the City may at any time possess with respect to the Guaranteed Obligations.

4.4 Recourse. The City shall have the right to seek recourse against Guarantor to the full extent provided for in this Guaranty, which right shall be absolute and shall not in any way be impaired, deferred, or otherwise diminished by reason of any inability of the City to claim any amount of such Guaranteed Obligation from Guarantor as a result of bankruptcy or otherwise, including, but not limited to, any limitation on the City's claim from Guarantor under section 502(b)(6) of the United States Bankruptcy Code, as amended (11 U.S.C. §502(b)(6)). No election to proceed in one form of action or proceeding, or against any person, or on any obligation, shall constitute a waiver of the City's right to proceed in any form of action or proceeding or against other persons unless City has expressly waived that right in writing.

5. Representations and Warranties of Guarantor

5.1 Representations and Warranties. Guarantor represents, warrants and covenants as follows:

(a) Valid Existence; Good Standing. Guarantor is a corporation duly organized and validly existing under the laws of the State of California. Guarantor has all requisite power and authority to own its property and conduct its business as presently conducted. Guarantor has made all filings and is in good standing in the State of California.

(b) Authority. Guarantor has all requisite power and authority to execute and deliver this Guaranty and the agreements contemplated by this Guaranty and to carry out and perform all of the terms and covenants of this Guaranty and the agreements contemplated by this Guaranty.

(c) No Limitation on Ability to Perform. Neither the Guarantor's articles of organization or operating agreement, nor the organization documents of any of the Guarantor's members, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of the Guarantor to enter into and perform all of the terms and covenants of this Guaranty. Neither the Guarantor nor any of its members are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by the Guarantor of this Guaranty or any of the terms and covenants contained in this Guaranty. There are no pending or threatened suits or proceedings or undischarged judgments affecting the Guarantor or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Guaranty or the business, operations, assets or condition of the Guarantor or any of its members.

(d) Valid Execution. The execution and delivery of this Guaranty and the agreements contemplated hereby by the Guarantor has been duly and validly authorized by all necessary action. This Guaranty will be a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms. The Guarantor has provided to the City a written resolution of the Guarantor authorizing the execution of this Guaranty and the agreements contemplated by this Guaranty.

(e) Defaults. The execution, delivery and performance of this Guaranty (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which the Guarantor or any

member is a party or by which the Guarantor's or any member's assets may be bound or affected, (B) any law, statute, ordinance, regulation, or (C) the articles of organization or the operating agreement of the Guarantor, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of the Guarantor or its members.

(f) Meeting Financial Obligations. The Guarantor is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and the Guarantor is not in default or claimed default under any agreement for borrowed money.

5.2 Independent Investigation. Guarantor has performed its own independent investigation as to the matters covered by this Guaranty.

The representations and warranties in this Section shall survive any termination of this Guaranty.

## 6. Termination of Guaranty

Guarantor's liability under this Guaranty shall be discharged and satisfied, and Guarantor shall be relieved of any and all further obligations under this Guaranty, upon the later of (a) Termination of the Franchise and (b) payment and performance in full of the Guaranteed Obligations together with any and all other amounts payable by Guarantor under this Guaranty (including any Reimbursement Amounts); provided, however, no such event shall result in termination of this Guaranty unless and until the expiration of any further period within which a trustee or other similar official in an action under any insolvency law may avoid, rescind, or set aside any payment of any of the Guaranteed Obligations. Upon Guarantor's request the City will confirm in writing the fact of termination of this Guaranty if this Guaranty has terminated.

## 7. Notices

A notice or communication under this Guaranty by either party to the other shall be sufficiently given or delivered if dispatched by hand or by certified mail, postage prepaid, addressed as follows:

(a) In the case of a notice or communication to the City:

Department of Telecommunications and Information Services  
875 Stevenson Street, 5th Floor  
San Francisco, CA 94103  
Attn: OVS Franchise Administrator

with a copy to:

San Francisco City Attorney's Office  
City Hall, Room 234  
San Francisco, CA 94102  
Attn: Energy and Telecommunications Team Leader

(b) And in the case of a notice or communication sent to Guarantor:

RCN Corporation  
1400 Fashion Island Blvd., Suite 100  
San Mateo, CA 94404  
Attn.: Chief Executive Officer

with a copy to:

RCN Corporation  
105 Carnegie Center  
Princeton, NJ 08540  
Attn.: General Counsel

For the convenience of the parties, copies of notice may also be given by telefacsimile.

Every notice given to a party hereto, pursuant to the terms of this Guaranty, must state (or must be accompanied by a cover letter that states) substantially the following:

(a) the Section of this Guaranty pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto;

(c) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Guaranty shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A party may not give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

## 8. General Provisions

8.1 Successors and Assigns. This Guaranty is binding upon and will inure to the benefit of the successors and assigns of the City and the Guarantor, subject to the limitations set forth in Section 8.11 below. Where the term "Guarantor," or "City" is used in this Agreement, it means and includes their respective successors and assigns.

8.2 Amendments. Except as otherwise provided herein, this Guaranty may be amended or modified only by a written instrument executed by the City and Guarantor.

8.3 Waivers. No action taken pursuant to this Guaranty by the City shall be deemed to be a waiver by that party of the Guarantor's compliance with any of the provisions hereof. No waiver by the City of any breach of any provision of this Guaranty shall be construed as a waiver of any subsequent or different breach. No forbearance by the City to seek a remedy for noncompliance hereunder or breach by the Guarantor shall be construed as a waiver of any right or remedy with respect to such noncompliance or breach.

8.4 Continuation and Survival of Covenants. Subject to Section 6 above, all covenants by Guarantor contained herein shall be deemed to be material and shall survive any Termination of the Franchise or portion thereof if the obligations thereunder have arisen and are not satisfied before such date.

8.5 Governing Law; Selection of Forum. This Guaranty shall be governed by and construed in accordance with the laws of the State of California. As part of the consideration for the Franchise, the Guarantor agrees that all actions or proceedings arising directly or indirectly under this Guaranty may, at the sole option of City, be litigated in courts located within the State of California, and the Guarantor expressly consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon the Guarantor wherever the Guarantor may then be located, or by certified or registered mail directed to the Guarantor at the address set forth in this Guaranty for the delivery of notices.

8.6 Merger of Prior Agreements. The parties intend that this Guaranty (including all of the attached exhibits and schedules, which are incorporated into this Guaranty by reference) and the Franchise shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Guaranty shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Guaranty.

8.7 Interpretation of Guaranty. The section and other headings of this Guaranty and the table of contents are for convenience of reference only and shall not affect the meaning or

interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. To the extent the recitals contained herein are inconsistent with the operative provisions of this Guaranty, the operative provisions shall control. This Guaranty has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Guaranty against the party that has drafted it is not applicable and is waived. The provisions of this Guaranty shall be interpreted in a reasonable manner to effect the purposes of the parties and this Guaranty.

8.8 Attorneys' Fees and Costs. Should any party institute any action or proceeding in court to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Guaranty, the prevailing party shall be entitled to receive from the losing party court costs or expenses incurred by the prevailing party including, without limitation, expert witness fees and costs, travel time and associated costs; transcript preparation fees and costs; document copying expenses; exhibit preparation costs; carrier expenses and postage and communications expenses; such amount as a court or other decision maker may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing party in such action or proceeding; fees and costs associated with execution upon any judgment or order; and costs on appeal and any collection efforts (collectively, "Attorneys Fees and Costs"). For purposes of this Guaranty, the reasonable fees of attorneys of the City 's office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of professional experience in the subject matter area of the law for which the City Attorney's c services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

8.9 Severability. Invalidation of any provision of this Guaranty, or of its application to any Person, by judgment or court order, shall not affect any other provision of this Guaranty or its application to any other Person or circumstance, and the remaining portions of this Guaranty shall continue in full force and effect, unless enforcement of this Guaranty as invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Guaranty.

8.10 Joint and Several Liability. In the event that Guarantor is comprised of more than one Person, the obligations of Guarantor hereunder are joint and several.

8.11 Assignment. Guarantor may not assign its rights or obligations under this Guaranty.

8.12 Counterparts. This Guaranty may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Guarantor, being duly authorized, has executed and delivered this Guaranty as of the date first written above.

GUARANTOR

RCN CORPORATION, a Delaware corporation

*SEE ATTACHED FOR ORIGINAL*

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

Print Name: Deborah M. Royster

Its: General Counsel and Corporate Secretary

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

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

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

ACCEPTED AND AGREED:

THE CITY AND COUNTY OF SAN FRANCISCO, a municipal  
corporation

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

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

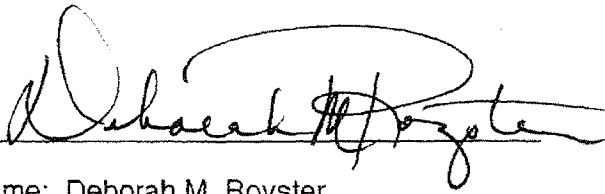
Title: \_\_\_\_\_



IN WITNESS WHEREOF, Guarantor, being duly authorized, has executed and delivered this Guaranty as of the date first written above.

GUARANTOR

RCN CORPORATION, a Delaware corporation

By: 

Print Name: Deborah M. Royster

Its: General Counsel and Corporate Secretary

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

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

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

ACCEPTED AND AGREED:

THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

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

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

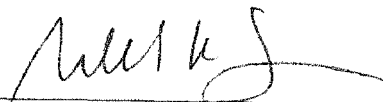
Title: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

APPROVED AS TO FORM:

A handwritten signature in cursive script, appearing to read "M. K. J.", written over a horizontal line.

Deputy City Attorney

## Appendix 2 Mitigation Measures

Grantee shall comply with all mitigation measures, with respect to all activities of Grantee and its Agents under this Franchise, that are now or hereafter contained in (i) the CPCN, (ii) the Negative Declaration, (iii) any permit or approval issued by the City to Grantee relative to its use of the Public Rights-of-Way, and (iv) any Applicable Law (collectively, the "Mitigation Measures").

Without limiting the foregoing, Grantee recognizes and agrees that the following mitigation measures (as set forth in the Negative Declaration and summarized below) apply to this Franchise:

- A. All Environmental Factors. The Negative Declaration requires a re-assessment of environmental impacts if Grantee constructs facilities beyond existing utility rights of way into undisturbed areas or other rights of way.
- B. General Cumulative Impacts. The Negative Declaration requires Grantee to consult with the DTIS and DPW and to abide by the standards established by local agencies. Grantee is also required to file a quarterly summary of construction activities and mitigation compliance, so that DTIS and DPW may coordinate multiple projects if necessary, and may monitor compliance with required mitigation.
- C. Geological Resources. The Negative Declaration requires compliance with all local design, construction and safety standards by obtaining all applicable permits from local agencies, including the development and approval of erosion control plans for areas identified as particularly unstable or susceptible to erosion. No such areas have been identified to date, but could be delineated by DTIS or DPW during subsequent permit application review.
- D. Water Resources. The Negative Declaration requires consultation with appropriate local, state, and federal water agencies for projects in close proximity to water resources (underground or surface), and requires compliance with applicable water resource regulations, including development of site-specific measures to address water quality, drainage, direction, flow or quantity if/as necessary. No water resources in close proximity have been identified to date, but could be delineated by DTIS or DPW during subsequent permit application review.
- E. Air Quality. The Negative Declaration requires compliance with applicable air quality standards established by the Bay Area Air Quality Management District (BAAQMD), and also requires development and implementation of dust control measures as recommended by the BAAQMD. Basic control measures recommended by BAAQMD include the following: water all active construction areas at least twice daily; cover all trucks hauling soil, sand, and other

loose materials or require all trucks to maintain at least two feet of freeboard; pave or apply water three times daily to unpaved areas; sweep daily with water sweepers all paved areas at construction sites, and adjacent streets if soil materials are visible.

F. Transportation and Circulation and Public Services. The Negative Declaration requires Grantee to consult with DPW, MUNI, and DPT in order to allow coordination with other projects affecting public rights of way, and requires Grantee to abide by locally applicable standards related to construction maintenance and safety by acquiring all necessary permits (e.g. excavation, encroachment, and building permits). The Negative Declaration further requires appropriate construction start and end times, and dates if appropriate, to avoid peak traffic periods if construction encroaches upon transportation rights of way. These times/dates would be specified by DPW as a condition of street use permits affecting busy thoroughfares. Grantee would also be required to provide notice to property owners and occupants in affected areas at least two weeks in advance of construction, and to consult with DTIS and DPW on appropriate restoration of public service facilities that are damaged by construction, and to be responsible for such restoration.

G. Hazards. Similar to item F, above, the Negative Declaration requires consultation with the Fire Department and the City's Office of Emergency Services if the project interferes with routes used for emergencies or evacuations, so that emergency or evacuation plans are not hindered.

H. Noise. The Negative Declaration requires Grantee to abide by San Francisco's Noise Ordinance, and requires notification (same as item F above) of the days when most construction noise would occur.

I. Aesthetics. The Negative Declaration requires that Grantee consult the Planning Department regarding placement of above-ground structures such as supply units, to ensure that such units are placed so as to mitigate any visual impacts (e.g. placed in areas where utility cabinets, etc. already occur). Grantee would also be required to abide by any policy concerning the placement of telecommunications facilities in the PROW developed by the Telecommunications Commission in conjunction with DPW. Grantee would also be required to restore any landscaping affected by the project.

J. Cultural Resources. While the Negative Declaration requires Grantee to conduct appropriate research into known cultural resources, and to avoid such resources, Grantee's project would affect previously-disturbed rights of way, and research does not appear warranted. Grantee would be required, however, to halt construction activities if previously unknown cultural resources are encountered during excavation, to retain the services of an archaeologist to evaluate the resources, and to adopt mitigation strategies such as avoidance, data collection and documentation, or other recommendations of the archaeologist.

Appendix 3  
First Source Hiring Agreement

This First Source Hiring Agreement (this "Agreement"), is made and entered by and between the City and County of San Francisco, State of California, by and through its First Source Hiring Administration, hereinafter called "FSHA", and RCN Telecom Services, Inc., hereinafter called "Grantee".

1. For purposes of this Agreement, initially capitalized terms shall be defined as follows:
  - a. Economically Disadvantaged Individual: An individual who is either (a) eligible for services under the Job Training Partnership Act, 29 U.S.C. section 1503, as determined by the San Francisco Private Industry Council; or (b) designated as "economically disadvantaged" by the FSHA as an individual who is at risk of relying upon, or returning to, public assistance.
  - b. Employer: Grantee, Subcontractor, partner, agent, or employee of Grantee, or a combination thereof, engaged in commercial activities of the Franchise, who is subject to the requirements of Chapter 83 of the San Francisco Administrative Code.
  - c. Entry Level Position: A non-managerial position that requires no education above a high school diploma or certified equivalency, and less than 2 years training or specific preparation, and shall include temporary and permanent jobs, and construction jobs related to the development of a commercial activity.
  - d. First Opportunity: Consideration by Employer of the System referrals for filling Entry Level Positions prior to recruitment and hiring of non-System job applicants.
  - e. FSHA: First Source Hiring Administration, the body designated to administer and monitor the San Francisco Workforce Development System as set forth in section 83.6 of the San Francisco Administrative Code.
  - f. Interviewing Requirement: Completion of notification to the System of available Entry Level Positions, receipt of System referrals, and fair consideration of referrals for a specified time prior to non-System applicant recruitment and hiring.
  - g. Job Classification: Categorization of employment opportunity or position by craft, occupational title, skills, and experience required, if any.

- h. Publicize: Advertise or post, including participation in job fairs or other forums, in which employment information is available.
- i. Qualified: An Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications provided by Employer to the San Francisco Work Force Development System in the job availability notices required by Chapter 83 of the San Francisco Administrative Code.
- j. Retention: When used in this Agreement, Retention shall be construed to apply to the Entry Level Positions, not to any particular individual.
- k. System: The San Francisco Workforce Development System established by the City and County of San Francisco, and managed by the FSHA, for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective Employers covered by the First Source Hiring requirements under Chapter 83 of the San Francisco Administrative Code.
- l. Subcontractor: A person or entity who has a direct Subcontract with Grantee to perform a portion of the work under this Franchise.

## 2. SAFE HARBOR PROVISION

Employer will make good faith efforts to: 1) fill its first available Entry Level Position for work in connection with the Franchise with a job applicant referred through the First Source Program; and, 2) 50% of its subsequent available Entry Level Positions for work in connection with the Franchise with job applicants referred through the First Source Program.

Fulfillment of this target establishes Employer's good faith efforts. However, failure to meet this target does not impute "bad faith." Failure to meet this target triggers a review of the referral process and the Employer's efforts.

### Good Faith Efforts

- a. The Employer must provide a clear, accurate job description, including expectations, standard of appearance, any special requirements, e.g., language skills, drug testing, driver's license. Job descriptions must be in accord with skills, knowledge, and abilities that are standard for that industry.

- b. The Employer must promptly list available Entry Level Position(s) with the Workforce Development System referral network and refrain from seeking applicants from other sources during the specified time.
- c. Employers subject to collective bargaining agreement(s) requiring compliance with a pre-established applicant referral process as set forth in such agreement(s) for available Entry Level Positions must:
  - i. Notify the appropriate union(s) of the Employer's First Source obligation and request assistance from the union(s) in referring Qualified Economically Disadvantaged applicants for the available Entry Level Position(s), to the extent such referral can conform to the requirements of the collective bargaining agreement(s).
  - ii. Use "name call" privileges, in accordance with the terms of the applicable collective bargaining agreement(s), to seek Qualified Economically Disadvantaged applicants for the available Entry Level Position(s).
  - iii. Sponsor Qualified Economically Disadvantaged apprenticeship applicants, referred through the Workforce Development System, for applicable union membership.
- d. The Employer must give due consideration to all referrals made by the System, resumes must be reviewed, and interviews conducted in accordance with the non-discrimination provisions of this Franchise.
- e. The Employer must provide constructive feedback on all applicants referred by the System.
  - i. Employers who meet the safe harbor provision must only respond orally to follow-up questions asked by the 1st Source account executive.
  - ii. Employers who are unable to meet the safe harbor provision will be required to provide written comments on all referrals.
  - iii. Job applicants will also be required to provide brief feedback on the process.
- f. The Employer must provide timely notification as soon as the job is filled, and identify by whom.
- g. The Employer must list all Entry Level Positions as they become available during the Term of the Franchise, lease or permit condition.

3. In the event that Grantee subcontracts a portion of the work under this Franchise, Grantee shall determine how many, if any, of the Entry Level Positions are to be employed by its Subcontractor(s), provided, however, that Grantee shall retain the primary responsibility for meeting the requirements imposed under this Agreement. Grantee shall ensure that this Agreement is incorporated into and made applicable to such Subcontract.
4. Grantee agrees to offer the System the First Opportunity to provide Qualified Economically Disadvantaged Individuals for employment consideration in Entry Level Positions, subject to any enforceable collective bargaining agreements. Employers shall consider all applications of Qualified Economically Disadvantaged Individuals referred by the System for employment. Provided Employer utilizes nondiscriminatory screening criteria, Employer shall have the sole discretion to interview and hire individuals referred or certified by the System as being Qualified Economically Disadvantaged Individuals.
5. The duration of the First Source Program Interviewing Requirement shall be 10 days. During this period, Employer may only Publicize the availability of Entry Level Positions by calling the System referral number: (415) 749-7500.
6. Grantee shall provide the System with all the following information:
  - a. Projected employment needs for work performed under this Franchise. Describe such needs by Job Classification, weekly hours required, wages paid, and duration of employment.
  - b. Timely notification of Entry Level Positions as they become available.
  - c. Identification of specific job qualifications, if any (e.g. driver's license).
  - d. Identification of English language proficiency requirements or absence thereof.
  - e. Notification of projected hiring schedule and procedures for each job classification, including the time and place of hiring for each Entry Level Position.
7. Nothing in this Agreement precludes Grantee from using temporary or reassigned existing employees to perform essential functions of its operation; provided, however, the obligations of this Agreement to make Good Faith Efforts to fill such vacancies permanently with System referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business.
8. The City is entitled to the remedies set forth in section 83.10 of the San Francisco Administrative Code if Grantee fails to comply with this Agreement.
9. Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the case of collective



bargaining agreements, the FSHA will take the primary responsibility for integrating the requirements of this First Source Program with any such collective bargaining agreements.

10. Nothing in this Agreement shall be interpreted to prohibit the adoption of hiring and retention goals, first source hiring and interviewing requirements, notice and job availability requirements, monitoring, record keeping, and enforcement requirements and procedures which exceed the requirements of this Agreement.
11. Under this Agreement, the System shall:
  - a. Receive Grantee/Employer job notification and job orders, and immediately initiate recruitment and pre-screening activities.
  - b. Recruit Qualified Economically Disadvantaged Individuals to create a pool of applicants for jobs who match Employer job specifications and to the extent appropriate train applicants for jobs that will become available through the First Source Program.
  - c. Screen and refer applicants according to qualifications and specific selection criteria submitted by employers.
  - d. Provide funding for City-sponsored pre-employment, employment training, and support services programs,
  - e. Follow up with Employers on outcomes of applicants referred for employment and initiate corrective action as necessary to maintain an effective employment /training delivery system.
  - f. Provide Employer with reporting forms for monitoring the requirements of this Agreement.
  - g. Monitor the performance of the Agreement by examination of Employer records as submitted in accordance with the requirements of this Agreement.
12. The obligations of Grantee under this Agreement are as follows:
  - a. Maintain accurate records demonstrating Grantee's compliance with the First Source Hiring requirements of Chapter 83 of the San Francisco Administrative Code including, but not limited to, the following:
    - (1) Applicants
    - (2) Job offers
    - (3) Hires
    - (4) Rejections
  - b. Submit completed reporting forms based on Grantee's records to the System quarterly, unless more frequent submittals are required by FSHA. In this regard, Grantee agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, the FSHA may require daily, weekly, or monthly reports containing all or some of the above information.
  - c. If based on complaint, failure to report, or other cause, the FSHA has reason to question Grantee's good faith effort, Grantee shall demonstrate to the

reasonable satisfaction of the City that it has exercised good faith in its First Source Hiring under this Agreement.



# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails

### Ordinance

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**File Number:** 021825

**Date Passed:**

Ordinance granting a four year franchise to RCN Telecom Services, Inc. with an opportunity for two extensions of three years each, for use of the public rights-of way within the City and County of San Francisco to provide open video system services and cable internet services upon compliance with the terms of this franchise.

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- August 10, 2004 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE  
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval
- August 10, 2004 Board of Supervisors — PASSED ON FIRST READING AS AMENDED  
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval
- August 17, 2004 Board of Supervisors — FINALLY PASSED  
Ayes: 10 - Ammiano, Daly, Dufty, Elsbernd, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval  
Absent: 1 - Alioto-Pier

File No. 021825

I hereby certify that the foregoing Ordinance  
was **FINALLY PASSED** on August 17, 2004  
by the Board of Supervisors of the City and  
County of San Francisco.

6/25/04

Date Approved

Gloria L. Young  
Clerk of the Board

Mayor Gavin Newsom