

ORDINANCE NO. 8, 2022 SERIES

AN ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE TELECOMMUNICATIONS (OR RELATED NON-CABLE) FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE GENERATION, TRANSMISSION, DISTRIBUTION AND SALE OF TELECOMMUNICATIONS OR RELATED NON-CABLE SERVICES WITHIN THE PUBLIC RIGHT-OF-WAY OF CITY OF FRANKFORT FOR A TEN (10) YEAR DURATION; AND PROVIDING FOR COMPLIANCE WITH OTHER RELEVANT LAWS, REGULATIONS, STANDARDS, AND ORDINANCES; DEFINITIONS; WORK, MATERIALS AND CONSTRUCTION STANDARDS; WIRE MOVING AND TREE TRIMMING; PERFORMANCE BONDS; INDEMNIFICATION; INSURANCE; ACCESS TO PROPERTY AND INSPECTIONS; NOTICE OF FILINGS WITH THE PUBLIC SERVICE COMMISSION; NO VESTED RIGHTS; LIMITED ASSIGNMENT; NOTICE OF FORECLOSURE AND BANKRUPTCY; CANCELLATION OR TERMINATION; VIOLATIONS AND PENALTIES; PERMITTING AND INSPECTION FEES; ADDITIONAL PERMITTING AND OTHER REQUIREMENTS FOR SUBSTANTIAL NEW CONSTRUCTION; AND BID REQUIREMENTS; ALL EFFECTIVE ON DATE OF PASSAGE.

WHEREAS, pursuant to Kentucky Constitution Sections 163 and 164, the Board of Commissioners of the City of Frankfort is authorized and empowered to award telecommunications franchises; and

WHEREAS, the Board of Commissioners of the City of Frankfort has found and determined that the construction, operation, maintenance and utilization of a telecommunication franchise in the City of Frankfort benefits the citizens it serves; and

WHEREAS, in order to protect the health, safety and welfare of the citizens of the City of Frankfort and to provide for the orderly administration of the franchise contemplated herein, it is necessary and appropriate to require the successful franchisee to conduct its business and operations in a lawful manner in compliance with the terms and conditions set forth herein below.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF FRANKFORT, KENTUCKY AS FOLLOWS:

Section 1 - Creation of Franchise.

There is hereby created a non-exclusive franchise granting to the purchaser thereof whose bid may be accepted, the discretionary right to construct, erect, operate and maintain upon, through, along, under and over the streets, alleys, avenues, public roads, highways, bridges, viaducts, sidewalks and other public ways of City of Frankfort, a Telecommunications System (or a related system which is not otherwise a Cable System) embracing underground conduits, manholes, telephone poles, cables, boxes, wires, fixtures, fiber, electrical conductors and other apparatus, equipment and facilities necessary, essential, used or useful to and in the operation of any type of Telecommunications System, subject to all of the provisions of this Ordinance. This franchise does not excuse the Grantee from complying with any and all applicable existing and future local laws and ordinances, as may be adopted or amended in the future, and their pursuant regulations.

Section 2 - Existing Legislation.

The Government has already adopted legislation and regulations pertaining to, and including but not limited to, zoning, permitting, construction, historic preservation and other related activities by Grantees and other Persons in its Right-of-way. Therefore, the terms and provisions of the City of Frankfort existing ordinances, (the "Ordinances"), and as they may be amended in the future is incorporated herein by reference and shall apply as if fully set forth herein.

Section 3 - Definitions.

The definitions and terminology of any terms contained in this Ordinance which are not specifically defined in this section may be contained in the applicable provisions of the Ordinances (as they may be amended in the future) which are hereby incorporated herein by reference.

(a) "Applicant" means a Person which is applying for a franchise.

(b) "Application" shall refer to the list of documents and information set forth in Section 4 required from new entrants, including any written responses provided on Government forms or written correspondence provided in response to Government inquiries and investigations. Applications must comply with the requirements of this Ordinance in its entirety.

(c) "Board of Commissioners" means the City of Frankfort Board of Commissioners.

(d) "Cable Service" shall have the meaning in this Ordinance as it is defined in Section 602(6) of the Communications Act of 1934, as amended as it may be amended (hereinafter cited as 47 U.S.C. § 522(6)).

(e) "Cable System" shall have the meaning in this Ordinance as it is defined in Section 602(7) of the Communications Act of 1934, as it may be amended (47 U.S.C. § 522(7)).

(f) "Communications Act" means the Communications Act of 1934, as amended from time to time (47 U.S.C. § 151 et seq.).

- (g) "Customer" means a person located within the territorial limits of the Government who is legally receiving Telecommunications Service from the Grantee.
- (h) "Equipment and apparatus" means any manholes, underground conduits, ducts, nodes, electronic devices, poles, cables, boxes, wires, fixtures, conductors, or other facilities necessary, essential, used or useful to and operated by the Telecommunications System.
- (i) "Facility" means any tangible component of Grantee's Telecommunication System.
- (j) "FCC" means the Federal Communications Commission, or its lawful successor.
- (k) "Franchise Fee" means for the purposes of this Ordinance any fee that may be imposed by the Government on Grantee as compensation for Grantee's use of Right-of-way. Use of this definition in this Ordinance is without prejudice to any rights Grantee or Government may have under Federal and Kentucky law as they may be amended.
- (l) "Government" means (unless otherwise specified) the City of Frankfort, a city created pursuant to the Kentucky Revised Statutes, as it now exists in its present territorial limits, or may hereafter be extended or reduced, and its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.
- (m) "Grantee" means a Person to which a franchise under this Ordinance is granted by the Board of Commissioners, or its successors and assigns.
- (n) "Gross Revenue" means after adjustment for the net write-off of uncollectible accounts and for local, state and federal government entities, that claim exemption from Franchise Fees levied by the Government on Telecommunications Services they purchase, any and all revenues derived by Grantee within the City of Frankfort from Grantee's Telecommunications System, including, but not limited to: revenues from the sale of and use of Telecommunications Services originating or terminating in the City of Frankfort; revenues charged to or attributable to a circuit location in the City of Frankfort, regardless of where the circuit is billed or paid; revenues from the use, rental, or lease of Grantee's operating Facilities within the City of Frankfort, revenues from the provision of any and all products, services, or charges (including installation, maintenance and service charges) and revenues from any leases or Indefeasible Right of Use interests ("IRU") of any portion of Grantee's Telecommunications System within the City of Frankfort. "IRU" or "Indefeasible Right of Use" means any form of acquired capital interest in Grantee's Telecommunications System in which the holder possesses a right to use the Telecommunications System but not the right to control, maintain, construct or revise the Telecommunications System. "Gross Revenue" shall not include revenues received from the provision of Telecommunication Services which are exempt from taxation under local, state, or federal law.
- (o) "Minimum Annual Franchise Fee" means \$5,000 annually.
- (p) "PSC" means the Kentucky Public Service Commission or its lawful successor.
- (q) "Person" is any person, firm, partnership, association, corporation or company of any kind.
- (r) "Road" or "Street" or "Right-of-way" shall mean the surface of and the space above and below any public road, street, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the Government for the purpose of public travel and shall include other Right-of-way as shall be now held or hereafter held by the Government which shall, within their proper use and meaning entitle the Government and its Grantee to the use thereof for the purposes of installing or transmitting Telecommunication System transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Telecommunication System.
- (s) "Shall" is mandatory, not merely directive.
- (t) "Telecommunications Service" means any service provided for consideration for the purpose of provision, transmission, conveyance, or routing of information including, but not limited to, voice, video, images data, or any other information signals without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself and whether or not the transmission medium is wireline. By way of example, and not limitation, Telecommunications Service includes, but is not limited to the following:
1. telecommunications service (as defined by 47 USC §153(53) (as such term is now, or may in the future be, defined under federal law);
 2. telephone exchange service (as defined by 47 USC §153(54) (as such term is now, or may in the future be, defined under federal law);
 3. exchange access (as defined by 47 USC §153 (20) (as such term is now, or may in the future be, defined under federal law);
 4. mobile service (as defined by 47 USC §153(33) (as such term is now, or may in the future be, defined under federal law);

5. advanced communications services (as defined by 47 USC §153(1) (as such term is now, or may in the future be, defined under federal law);
6. long distance, inter-exchange and inter-LATA services, which may include MTS, WATS, 800, operator services, directory assistance and travel card services;
7. private line point to point service for end users of voice and data transmission; non-entertainment video, videoconferencing, or point to point private line service; and
8. any other intrastate or interstate telecommunication services which the Kentucky Public Service Commission or the FCC has authorized, or services provided by radio common carrier.

(v) "Telecommunications System" means all fiber optics, wires, cables, ducts, conduits, vaults, poles, anchors, nodes, antennas, cabinets, fixtures, transformers, Equipment and apparatus and other necessary facilities owned or used by Grantee for the purpose of providing Telecommunications Service and located in, above or below the Streets.

(w) "Transfer" means any sale, lease, mortgage, assignment, merger or other form of transfer of this Ordinance or of the rights and privileges granted or authorized by this Ordinance.

Section 4 - Applications.

All applications received by the Government from Applicants shall become the sole property of the Government. Applications must be submitted with three (3) copies and shall be accompanied by a non-refundable application fee of eight thousand dollars (\$8,000) payable to the Government. Said application fee shall defray in whole or part the Government's costs to process any application filed under this Ordinance and negotiate, award and administer any franchise. Said application fee shall not be considered franchise fee payments.

- (a) The Government reserves the right to reject any and all applications and waive informalities, and/or technicalities where the best interest of the Government may be served.
- (b) All questions regarding the meaning or intent of the Ordinance or application documents shall be submitted to the Government in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Government as having received the application documents. The Government reserves the right to make extensions of time for receiving applications as it deems necessary. Only replies to questions by written Addenda will be binding. All applications must contain an acknowledgment of receipt of all Addenda.
- (c) Applications must be submitted at the time and place indicated in the application documents. Applications may be modified at any time prior to the opening of the applications, provided that any modifications must be duly executed in the manner that the Applicant's application must be executed.
- (d) Before submitting its application, each Applicant must (i) examine the Ordinance and the application documents thoroughly, (ii) familiarize itself with local conditions that may in any manner affect performance under this Ordinance, and (iii) familiarize itself with federal, state and local laws, Ordinances, rules and regulations affecting performance under the franchise.
- (e) The Government may make such investigations as it deems necessary to determine the ability of the Applicant to perform under the franchise, and the Applicant shall furnish to the Government all such information and data for this purpose as the Government may request. The Government reserves the right to reject any application if the evidence submitted by, or investigation of, such Applicant fails to satisfy the Government that such Applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional applications will not be accepted.
- (f) All applications received by the Government from the Applicants will become the sole property of the Government. Applicants shall submit all requested information as provided by the terms of this Ordinance. The following information must be complete and verified as true by the Applicant:
 1. *Name and address of Applicant.* The Applicant's name, address, e-mail address and telephone and facsimile numbers; date of application and signature of Applicant or appropriate corporate officer(s); the name, address and e-mail address, and telephone and facsimile numbers of a local representative who shall be available at all times; and information regarding how to contact the local representative in an emergency.
 2. *Description of proposed Telecommunications System.* A description of the Applicant's proposed Telecommunications System design.
 3. *Services.* A statement setting forth a description of all the types of Telecommunications Services proposed.
 4. *Applicant organization.* The Applicant shall be a corporation or limited liability company authorized to do business in the Commonwealth of Kentucky, as certified by the Secretary of State. Applicant must fully disclose the ownership of the Facilities to be used in rendering the Telecommunications Service.
 5. *Technical description.* Applicant shall provide a technical description of the type of Telecommunication System proposed by the Applicant and Applicant's plan for the installation of the Telecommunications

System. Telecommunications System designs are to be submitted in bullet format detailing equipment start point, routes and end point location accompanied by network routing maps(s). The following information shall be included in the application:

- a. If the Applicant is proposing an underground installation in existing ducts or conduits within the Right-of-way, information in sufficient detail to identify the location of the existing ducts or conduits to be occupied.
 - b. If Applicant is proposing an underground installation within new ducts or conduits to be constructed within the Right-of-way:
 - i. The location, depth, size and quantity of proposed new ducts or conduits;
 - c. A preliminary installation schedule and completion date.
6. *Engineering statement.* A statement from the Applicant's senior technical staff member, or consultant, advising that the Applicant's planned Telecommunications System and operations thereof would meet all the requirements set forth herein.
7. *Environmental Impact Study.* The study must show that the Applicant is compliance with all applicable local, state and federal laws and regulations related to environmental hazards including, but not limited to, radiation that may be caused by its Facilities. Additionally, the study must show that Applicant has met its obligations under the above-mentioned laws and regulations to protect the public from any environmental hazards including, but not limited to, radiation that may be caused by its Facilities. If the Applicant is granted a Franchise pursuant to this Ordinance, the Franchisee shall be required to submit an Environmental Impact Study to the City Manager, or his or her designee, on the second anniversary of the Franchise and every two years thereafter.
8. *Additional requirements.*
- a. Supplementary, additional or other information that the Applicant deems reasonable for consideration may be submitted at the same time as its application but must be separately bound and submitted with three (3) copies. The Government may, at its discretion, consider such additional information as part of the application.
 - b. A copy of the Applicant's certificate of authority from the PSC where the Applicant is lawfully required to have such certificate from the PSC.
9. A copy of all insurance policies or certificates required under this Ordinance.
10. A statement signed by the Applicant that the Applicant agrees to be bound by all provisions of this Ordinance and its franchise and agrees to obtain all applicable permits and authorizations prior to constructing, installing, or operating a system in the Right-of-way.
- (g) The information provided by Applicant shall be certified as true and correct and Applicant shall be responsible to certify to the Government any material changes to the information provided in the completed application during the term of any franchise.
- (h) *Supplementation to applications.* The Government reserves the right to require such supplementary, additional or other information that it deems reasonably necessary for its determinations.
- (i) *The Government's rights reserved.* The Government reserves the right to waive all formalities and/or technicalities where the best interest of the Government may be served.

Section 5 - Rights under Franchise.

- (a) The Grantee shall have the non-exclusive right and privilege of constructing, erecting, operating and maintaining a Telecommunications System upon, through, along, under and over the Right-of-way within the City of Frankfort as they now exist or may hereafter be extended; subject to the provisions hereof and to all powers (including police power) inherent in, conferred upon or reserved to the Government, including but not limited to those contained in the Ordinances. The Government reserves the right to grant similar franchises to more than one Grantee.
- (b) This Ordinance does not give the Grantee, the right nor the privilege of attaching its Telecommunications System to any buildings, poles, streetlights, Equipment and apparatus, or Facilities owned by the Government. Additionally, this Ordinance does not give the Grantee the right nor the privilege of constructing, erecting, operating and maintaining a Telecommunications System upon, through, along, under and over real property owned by the Government (other than Right-of-way.) If Grantee desires to attach its Telecommunications System to any buildings, poles, streetlights, Equipment and apparatus, or Facilities owned by the Government or construct, erect, operate and maintain a Telecommunications System upon, through, along, under and over

real property owned by the Government, the Grantee shall be required to enter into separate agreements with the Government.

- (c) This Ordinance does not include the right or privilege to provide Cable Service or open video system (as defined by 47 CFR 76.1500 (a)), which shall be subject to separate franchising requirements, and also does not apply to (1) private communications system services provided without using the public rights of way; (2) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (3) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996.

Section 6 - Standards.

The Grantee shall conform to at least the minimum standards or requirements in federal and state law or regulation in the operation of its Telecommunications System pursuant to this Ordinance. In addition to complying with other applicable law, the Grantee agrees that:

- (a) All working Facilities and conditions used during construction, installation and maintenance of Facilities (including clearance of wires and cables above the Right-of-way and placement of any underground facilities) shall comply with the standards of the Occupational Safety and Health Administration, the National Electric Safety Code, and the National Electric Code. In the operation of its Telecommunications System, the Grantee shall conform to all standards required by applicable state or federal law or regulation;
- (b) All materials and equipment used or installed in construction shall be of first-class quality, and any defect in the work, materials or equipment, whether latent or patent, will be remedied by the Grantee at its cost;
- (c) Construction, reconstruction, maintenance, or removal of any Facilities, shall be performed with due regard for the rights of the Government and others, and shall not unnecessarily interfere with, or in any way injure the property of the Government or others under, on, or above the ground, or otherwise unduly interfere with the public use of the Right-of-way;
- (d) Placement of lights, danger signals or warning signs shall be undertaken by the Grantee in compliance with applicable law;
- (e) Unless exempted by the Government, Facilities shall be installed underground at any location where all other utilities' Facilities that are used to provide customer service are then being installed underground, or when otherwise required under the Ordinances, and shall be in conformance with the applicable requirements of this Ordinance and those set forth in the Code, the Zoning Ordinance, or any other applicable local law or regulation. The Grantee assumes all responsibility for damage or injury resulting from its placement or maintenance of any above-ground Facilities;
- (f) Grantee shall identify all of its Facilities, new and existing, by tagging or marking its Facilities with the Grantee's name and telephone number. Additionally, Grantee shall provide the Government annually with an electronic map (compatible with the Government's GIS System) which contains the location of all of its Facilities;
- (g) The Government, through the Board of Commissioners or their designee, or through such assistants as the Government may employ or designate, may, at all times and under reasonable conditions with prior notice, have reasonable access to all or any of the property or used in part or in whole by the Grantee in its operating and maintaining the Telecommunications System under this Ordinance and located within the Right-of-way; and
- (h) The Grantee agrees to provide to the Government and/or its Board of Commissioners with information pertaining to its provision of Telecommunications Services pursuant to this Ordinance upon reasonable request. This shall include, but is not necessarily limited to, attending public meeting(s) at which some or all of the Board of Commissioners members are in attendance (in order to provide such information upon reasonable advance notice) and providing an annual update to the Board of Commissioners upon its request.

Section 7 - Moving Permits and Tree Trimming.

- (a) The Grantee shall, at the request of any Person holding a moving permit issued by the Government, temporarily raise or lower its wires to permit the moving of buildings or other structures. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than twenty-one (21) days advance notice to arrange for such temporary wire changes.
- (b) The Grantee shall have the authority to trim trees upon the overhanging Right-of-way so as to prevent the branches of such trees from coming in contact with the wires or cables of the Grantee. Any trimming, removal or other disturbance of trees shall conform to all applicable laws or regulations and the National Arborist Association standards.

Section 8 - Bonds.

The Grantee may, with respect to aspects of those projects in excess of one hundred thousand dollars (\$100,000.00) be required to post a project performance bond(s). This bond (or bonds) shall be set in an amount and duration to be determined by the Government upon discussing and verifying the scope of such a project with the Grantee and shall be in favor of the Government to be issued by an entity subject to jurisdiction and venue in the City of Frankfort, Kentucky.

Section 9 - Indemnification.

a. **Obligation to Indemnify the Government.** Grantee, its successors and assigns, shall hold harmless, defend, protect and indemnify the Government, including, without limitation, each of its commissions, departments, officers, agents, employees and contractors, from and against any and all actions, losses, liabilities, expenses, claims, demands, injuries, damages, fines, penalties, costs, judgments or suits including, without limitation, reasonable attorneys' fees and costs (collectively, "Claims") of any kind allegedly arising directly or indirectly from: (i) any act by, omission by, or negligence of Grantee or its contractors or subcontractors, or the officers, agents, or employees of any of them, while engaged in the performance of the work or conduct of the activities authorized by this Ordinance, or while in or about the Rights-of-way or any other Government property for any reason connected in any way whatsoever with the performance of the work, conduct of the activities or presence of the Facilities authorized by this Ordinance, or allegedly resulting directly or indirectly from the presence, construction, installation, maintenance, replacement, removal or repair of the Facilities, (ii) any accident, damage, death or injury to any contractor, subcontractor, or any officer, agent, or employee of either of them, while engaged in the performance of the work, conduct of the activities or presence of the Facilities authorized by this Ordinance, or while in or about the Rights-of-way, for any reason connected with the performance of the work or conduct of the activities authorized by this Ordinance, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work authorized by this Ordinance, (iii) any accident, damage, death or injury, to real or personal property, good will, and Person(s) in, upon or in any way allegedly connected with the work or activities authorized by this Ordinance or the presence of the Facilities from any cause or claims arising at any time including, without limitation, injuries or damages allegedly caused, directly or indirectly, in whole or in part, by radio wave transmission or electromagnetic fields emitted by the Facilities, (iv) any release, or threatened release, of any hazardous material caused in whole or in part by Grantee in, under, on or about the property subject to this Ordinance or into the environment, or resulting directly or indirectly from the Facilities or the work or activities authorized by this Ordinance, (v) any violation by Grantee of the terms and conditions hereof or any permit or grant issued by the Government in connection with the Facilities or Telecommunications Services or pursuant hereto, or any misrepresentation made herein or in any document given by Grantee in connection herewith, and (vi) any direct or indirect interference by Grantee or the Facilities, except to the extent that such Claims arise from interference with use or placement of facilities in the public way caused by the sole negligence or willful misconduct of the Government, including without limitation, each of its commissions, boards, departments, officers, agents, employees and contractors.

b. **Scope of Indemnity.** Grantee shall hold harmless, indemnify and defend the Government as required in this Section 5, including without limitation, each of its commissions, boards, departments, officers, agents, employees and contractors, except only for claims resulting from the sole negligence or willful misconduct of the Government, including without limitation, each of its commissions, departments, officers, agents, employees and contractors. Grantee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Government from any claim which actually or potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered in writing to Grantee by the Government and continues at all times thereafter. Grantee agrees that the indemnification obligations assumed under this Ordinance shall survive expiration or other termination of any Franchise granted pursuant to this Ordinance.

c. **No Liability for Damage, Death or Bodily Injury.** Neither Government nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Grantee, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the Facilities or activities authorized by this Ordinance, the condition of any Government property subject to this Ordinance or Grantee's use of any Government property, except as otherwise provided herein.

d. These indemnity provisions shall in no way be limited by any financial responsibility, insurance, or loss control requirements below and shall survive to the extent permitted by the applicable statute of limitations.

Section 10 – Insurance.

(a) The Grantee shall procure and maintain for the duration of the franchise the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance hereunder by the Grantee:

(1) Commercial General Liability Insurance with:

- A. Limits of not less than \$5,000,000.00 for Bodily Injury and Property Damage.
- B. Products-Completed Operations coverage.
- C. Personal and Advertising Injury coverage.
- D. Explosion, collapse & underground coverage.

- E. Grantee's Commercial General Liability insurance policy will list as additional insureds, "the City of Frankfort, its elected and appointed officials, employees, volunteers and consultants for their vicarious liability from the negligent acts or omissions of Grantee.
 - F. Additionally, such insurance shall contain endorsement that Grantee's insurance coverage shall be primary insurance with respect to the Government. Any insurance or self-insurance maintained by the Government shall be in excess of the Grantee's insurance and shall not contribute to it.
- (2) Comprehensive Automobile Liability Insurance providing limits of not less than \$5,000,000.00.
 - (3) Workers' Compensation Insurance as required by the Kentucky Revised Statutes and Employers Liability Coverage equal to \$1,000,000 with endorsement that insurer shall agree to waive all rights of subrogation against Government for losses arising from work performed by the Grantee for Government.
 - (4) The Grantee shall abide by all local, state, and federal insurance regulations.
- (b) Acceptability of Insurers. Insurance is to be placed with insurers qualified to do business in the Commonwealth of Kentucky.
 - (c) Evidence of Insurance. The Government is to be furnished Certificates of Insurance reflecting the above coverages, and Grantee agrees to provide the Government, the following:
 - (1) Signed renewal Certificates for expiring policies;
 - (2) New Certificates of Insurance if policies or carriers change during terms of this franchise, showing compliance with the above Insurance requirements;
 - (d) Right to Review, Audit and Inspect. Grantee understands and agrees that the Government may review, audit, and inspect any and all of Grantee's relevant records and operations to ensure compliance with these Insurance requirements.
 - (e) Safety and Loss Control. Grantee agrees to adhere to and comply with all Federal, State and Local safety and environmental laws, regulations and Ordinances. The Grantee shall provide all safeguards, safety devices and protective equipment necessary to protect the life, health, safety and property of all persons on the job site, the public and the owner as required by applicable Federal, State and local law.
 - (f) Maintenance of Insurance. The insurance required in this Section 10 shall not be suspended, voided, canceled by the Grantee, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested to the Government.
 - (g) Definition of Default. Grantee understands and agrees that the failure to comply with any of these insurance, safety or loss control provisions (including with, among other things, Section 10(f)) within ten (10) business days after notice from the Government that the Grantee is not in compliance shall constitute a default under this Ordinance. The Government may elect, at its option, any single remedy or any combination of remedies, as available, including but not limited to, purchasing insurance and charging Grantee for any such insurance premiums purchased, or terminating the Grantee's franchise. The date of default with respect to Section 10(f) shall relate back to the date of breach, without regard to the date on which notice is provided by the Government.

Section 11 - Non-discrimination and Affirmative Action.

The Grantee shall comply with all applicable federal, state or local non-discrimination and affirmative action requirements of any laws, regulations and executive directives, and shall not discriminate in its employment practices against any employee or Applicant for employment because of race, color, religion, national origin, sex, age or disability.

Section 12 - Transfer of Control & General Rate Cases.

- (a) In the event that the Grantee files for a Transfer of the Grantee, or a general rate case with the PSC, it will furnish the City Manager, or his or her designee, with timely notice of such filing. In the event the Government should choose to intervene in such PSC action, the Grantee shall not oppose such intervention.
- (b) No Transfer shall take place, whether by forced or voluntary sale, lease, mortgage, assignment, encumbrance or any other form of disposition, without prior notice to and approval by the Government which shall not be unreasonably refused, withheld, or delayed. The notice shall include full identifying particulars of the proposed transaction, and the Board of Commissioners shall act by resolution. The Government shall have one hundred twenty (120) days within which to approve or disapprove a transfer of control or assignment, if no action is taken within such one hundred twenty (120) days; approval shall be deemed to have been given.
- (c) Section 12(b) is not intended to apply to assignments to a parent, subsidiary or affiliate of the Grantee, or in those instances in which the Grantee has filed for a transfer of control before the PSC. Such inter-corporate transfers or transfers subject to the jurisdiction of the PSC shall require notice to the Government as provided in Section 12(a).
- (d) In making a determination on whether to grant an application for a Transfer, the Government may consider the financial, technical and other qualifications of the transferee (assignee) to operate the Telecommunication System; whether the incumbent Grantee is in compliance with this Ordinance and, if not, the proposed transferee's (assignee's) commitment to cure such noncompliance and any other criteria allowed by applicable law.

- (e) The consent or approval of the Government to any Transfer of the Grantee shall not constitute a waiver or release of the rights of the Government in and to the Streets.

Section 13 - Franchise Duration.

- (a) The franchise hereby created shall be for an initial period of ten (10) years from the date of acceptance by the Board of Commissioners.
- (b) This franchise may be renewed for an additional term not to exceed ten (10) years upon the request of the Grantee and the approval of the request by the Board of Commissioners. The request for a renewal shall be made in writing to the City Manager, or his or her designee, at least one hundred eighty (180) days, but no earlier than one (1) year, in advance of the termination date of the Grantee's franchise agreement. The ultimate decision of whether to grant an additional franchise term shall solely be that of the Government. A decision not to grant an additional franchise term shall be based on the Grantee's noncompliance with the terms of this Ordinance, other local, federal or state laws and/or regulations.
- (c) In addition, the term of the franchise may be extended up to twelve (12) months by agreement of the parties in order to provide for the good faith negotiation of a new franchise.
- (d) The franchise created by this Ordinance creates no vested rights in the Grantee other than those provided by this Ordinance or at law, and any installation or placement of Facilities by the Grantee in the Right-of-way is at the Grantee's risk.

Section 14 - Penalties.

- (a) If, after the Grantee is provided the opportunity to appear and present evidence before the City Manager, or his or her designee, the City Manager, or his or her designee, finds that the Grantee has violated any of the following provisions of this Ordinance, the following penalties shall be recoverable. The decision of the City Manager, or his or her designee, shall be the final administrative decision and shall be in writing and provide the basis for the decision. The decision may be appealed to a court of competent jurisdiction.
 - (1) For failure to complete or remove any construction project by no later than the ending term of any franchise awarded pursuant to this Ordinance or any extension thereof, the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues; in lieu of a penalty, the Grantee may post a performance bond, letter of credit or other surety acceptable to the Government in an amount sufficient to complete such construction projects. This section shall not apply to any projects for which performance bonds or other surety is already pledged.
 - (2) For failure to provide data and reports requested by the Government and as required by this Ordinance the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.
 - (3) For failure to pay a permit fee or franchise fee when due pursuant to local law, the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.
- (b) If the Grantee fails to comply within thirty (30) days of any Board of Commissioners resolution directing compliance with any other provisions of this Ordinance, the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues. The decision of the Board of Commissioners may be appealed to a court of competent jurisdiction.
- (c) The Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Grantee's performance or to seek the Grantee's compliance with any one or more of such terms or conditions. Payment of penalties shall not excuse non-performance under this Ordinance. The right of the Government to seek and collect penalties as set forth in this section is in addition to its right to terminate and cancel as set forth in Section 16 of this Ordinance.

Section 15 - Maintenance of Telecommunication System.

The Grantee shall maintain its Telecommunication System in reasonable operating condition at all normal times during the term of its Franchise. An exception to this is automatically in effect when Telecommunications Service furnished by the Grantee is interrupted, impaired or prevented by fires, strikes, riots or other occurrences beyond the control of the Grantee, or by storms, floods or other casualties, in any of which events the Grantee shall do all things reasonably within its power to restore normal Telecommunications Service within a reasonable period of time.

Section 16 - Right to Terminate and Cancel the Franchise.

- (a) In addition to all other rights and powers pertaining to the Government by virtue of this Ordinance or otherwise, the Government, by and through its Board of Commissioners, reserves the right to terminate and cancel the franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:
- (1) Willfully violates any provision of this Ordinance, the franchise or any material rule, order, or determination of the Government made pursuant to the franchise, except where such violation is without fault or through excusable neglect or due to a force majeure act;
 - (2) Willfully attempts to evade any provision of this Ordinance or the franchise or practices any fraud or deceit upon the Government;
 - (3) Fails to begin or complete construction as provided under this Ordinance or the franchise;
 - (4) Knowingly makes a material misrepresentation of any fact in the application, proposal for renewal, or negotiation of the franchise; or
 - (5) Entry of a final and non-appealable order by the Public Service Commission of Kentucky which revokes any authority of the Grantee to provide Telecommunications Service in the City of Frankfort, Kentucky.
- (b) The Government may make a written demand that the Grantee do or comply with any such provision, rule, order or determination. The Grantee will be provided the opportunity to appear and present evidence before the City Manager, or his or her designee, whose decision shall be the final administrative decision, and shall be in writing and provide the basis for the decision. If the violation by the Grantee continues for a period of thirty (30) days following such a decision by the City Manager, or his or her designee, without written proof that the corrective action has been taken or is being actively and expeditiously pursued by the Grantee, the Government may place its request for termination of the franchise as early as the next regular Board of Commissioners meeting agenda. The Government shall cause to be served upon Grantee, at least ten (10) days prior to the date of such Board of Commissioners meeting, a written notice of intent to request such termination and the time and place of the meeting and shall publicly notice the same.
- (1) It shall be a defense to any attempt to terminate and cancel the franchise that the Grantee was relying on federal law, state law, or a valid tariff in acting or not acting on the issue in dispute.
 - (2) The Board of Commissioners shall consider the request of the Government and shall hear any Person interested therein, and shall determine in its discretion, whether or not any violation by the Grantee was with just cause.
 - (3) If such violation by the Grantee is found to have been with just cause, the Board of Commissioners shall direct the Grantee to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable within the Government's lawful authority.
 - (4) If the Board of Commissioners determines such violation by the Grantee was without just cause, then the Board of Commissioners may, by resolution, declare that the franchise of the Grantee shall be terminated and forfeited unless there is compliance by the Grantee within such reasonable period as the Board of Commissioners may fix. Any such determination by the Board of Commissioners is a final appealable action to a court of competent jurisdiction.

Section 17 - Foreclosure or Other Judicial Sale.

The Grantee shall provide the Government, in the form and manner required by the appropriate court or judicial body, at least thirty (30) days advance written notice, if at all possible, of the foreclosure or other judicial sale of all or a substantial part of the Grantee's Facilities within the City of Frankfort, or upon the termination of any lease covering all or a substantial part of its Facilities, and such notification shall be treated as a notification that a transfer or assignment of the franchise has taken place.

Section 18 - Government's Rights After the Appointment of a Receiver or Trustee.

The Board of Commissioners shall have the right to cancel a Grantee's franchise thirty (30) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

- (a) Within thirty (30) days after his election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,
- (b) Such receiver or trustee, within said thirty (30) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the franchise granted to the Grantee.

Section 19 - Advertising for Bids.

It shall be the duty of the City Manager, or his or her designee, to offer the terms of this Ordinance to the public. In the event that additional interested bidders are identified or express an interest in obtaining a franchise after this initial offering, the additional offering and advertisement to accommodate such bidders is hereby authorized. Said franchise and privilege shall be sold to the highest and best bidder or bidders at a time and place fixed by the City Manager, or his or her designee, after due notice thereof by advertisement or publication as required by law.

Section 20 - Bid Process.

- (a) Bids and proposals for the purchase and acquisition of the franchise hereby created shall be in writing and shall be delivered to the City Manager, or his or her designee, upon the date(s) and at the time(s) fixed by him or her in said advertisement(s) for receiving same. Thereafter, the City Manager, or his or her designee, shall report and submit to the Board of Commissioners, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval.
- (b) The Board of Commissioners reserves the right, for and on behalf of the Government, to reject any and all bids for said franchise; and, in case the bids reported by the City Manager, or his or her designee, shall be rejected by the Board of Commissioners, it may direct said franchise and privilege to be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and approved.
- (c) Each bid made by a Person not already holding a franchise within the territorial limits of the City of Frankfort sufficient to render the Telecommunications Service required by this Ordinance, shall be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent (5%) of the fair estimated cost of the Telecommunications System required to render the Telecommunications Service, which check or cash shall be forfeited to the Government in case the bid should be accepted and the bidder should fail, for thirty (30) days after the confirmation of the sale, to pay the price and to give a good and sufficient performance bond in favor of the Government in a sum equal to one-fourth (1/4) of the fair estimated cost of the Telecommunications System to be erected, conditioned that it shall be enforceable in case the Grantee should fail, within one hundred eighty (180) days, to establish and begin rendering the Telecommunications Service in the manner set forth in this Ordinance. Upon rendering the initial Telecommunications Service, this bond may be replaced by the performance bond required by Section 23(b), if applicable.
- (d) Bids made by a Person not already holding a franchise within the territorial limits of the City of Frankfort shall include such documentation as is necessary to support the bidder's determination of the fair estimated cost of the Telecommunications System and compliance with all applicable state, federal and local statutes, ordinances and regulations.
- (e) The Government reserves the right to review any of bidder's supporting documentation and compliance with laws and regulations. In addition, each bid shall be accompanied by a non-refundable payment to the Government in the amount of two thousand dollars (\$2,000.00) to cover the Government's cost of advertising and other administrative expenses incurred.

Section 21 - Compensation.

- (a) The Government is currently not collecting Franchise Fees while it elects to receive a distribution of the state Telecommunications Excise Tax.
- (b) The Telecommunications Excise Tax distribution from the state is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable as provided by law to the extent they are not Franchise Fees. Additionally, the Government may at any time impose any fees or taxes consistent with state or federal law, including, but not limited to property taxes, and occupational license fees.
- (c) If at any time the Government elects to forego distribution of the state Telecommunications Excise Tax and assess Franchise Fees on all Grantees under any Telecommunications Franchise granted by the City of Frankfort, Grantee shall pay an annual fee to the Government, which must be the greater of either: (a) the Minimum Annual Franchise Fee; or (b) an amount equal to either five percent (5%) of Grantee's Gross Revenues if Grantee provides Telecommunications Service to Customers within the City of Frankfort or if Grantee does not provide Telecommunications Service to Customers within the City of Frankfort, an amount equal to two dollars (\$2.00) per lineal foot of Facilities plus two hundred seventy dollars (\$270.00) per antenna, small cell, radio, or other small cell technology or communications transmitter receiver.
- (d) Grantee's first Minimum Annual Franchise Fee payable under this Ordinance shall be paid to the Government forty-five (45) days after Grantee is granted a Franchise from the Government. Thereafter, Grantee shall pay each Minimum Annual Franchise Fee on or before April 15, and Grantee's Minimum Annual Franchise Fee payment will apply to the current calendar year (January 1 through December 31). Any Minimum Annual Franchise Fee paid to the Government will be credited towards Grantee's Franchise Fee for that calendar year.

- (e) Gross Revenue based Franchise fee payments to the Government shall be computed based on Grantee's Gross Revenues from each calendar year quarter period (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October. 1 through December 31) and paid on or before the forty-fifth (45th) day following each calendar quarter period during the term of a franchise created under this Ordinance.
- (f) Facilities based Franchise Fee payments to the Government shall be computed based on Grantee's lineal foot of Facilities in the City of Frankfort as of January 1 of each calendar year and paid on or before April 15th of calendar year during the term of a franchise created under this Ordinance.
- (g) Payment not received by the Government by the due date shall be assessed interest equal to one percent (1%) per month. Interest shall be compounded daily. Interest shall be due on the entire late payment from the date on which the payment was due until the date on which the Government receives the payment.
- (h) Prior to making each payment to the Government, Grantee shall file with the Government a written report containing an accurate statement in summarized form, as well as in detail, of its calculation of the amount of the payment, verified by an officer or other authorized representative of Grantee, setting forth its Gross Revenues according to their accounting subdivisions, and any deductions claimed for the period upon which the payment is computed. Such reports shall be in form satisfactory to the Government.
- (i) If any Franchise Fee is owed to the Government, upon reasonable notice, the Government shall have the right to inspect the Grantee's income records, the right to audit and to re-compute any amounts determined to be payable under this agreement; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Grantee's fiscal years. If, as a result of such audit or review, the Government determines that Grantee has underpaid its fees to the Government in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, Grantee shall reimburse the Government for all expenses incurred as a result of an audit or review and such payments shall be paid within the thirty (30) days following written notice to the Grantee by the Government, which notice shall include a copy of the audit report and copies of all invoices for which the Government seeks reimbursement.
- (j) If any Franchise Fee is owed to the Government, in the event that any Franchise Fee payment or recomputed amount is not made to the Government on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of 2% over prime interest rate.
- (k) The Government reserves the right to require the Grantee to collect any consumer or other tax or other fee that may be imposed by the Government, the Commonwealth of Kentucky, or the federal government on Telecommunications Services. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable as provided by law to the extent they are not Franchise Fees. Additionally, the Government may at any time impose any fees or taxes consistent with state or federal law, including, but not limited to property taxes, and occupational license fees.
- (l) Notwithstanding the above, the Grantee shall be required to pay the Government an amount intended to adequately compensate it for its permitting and inspection of the Grantee's construction activities in the Right-of-way pursuant to the Code and all attorney's fees that the Government may incur relating to the franchising process, including but not limited to any attorneys' fees incurred relating granting of the franchise and any transfer, renewal or modification of the franchise.

Section 22 - Additional Requirements.

In addition to all other requirements, and except to the extent prohibited by law, any Grantee not already owning Facilities within the Right-of-way sufficient to render Telecommunications Services within the City of Frankfort, or any Grantee that is required pursuant to law to file for a certificate of convenience and necessity from the Kentucky Public Service Commission in order to replace or significantly upgrade or expand a substantial portion of its existing Facilities within the Right-of-way, shall also be required to perform the following requirements during the construction, replacement, upgrade or expansion of its Telecommunications System unless the Board of Commissioners determines that any or all of such requirements are not necessary to adequately protect the interests of the Government:

- (a) In addition to obtaining any and all permits required pursuant to the Ordinances, the Grantee shall submit for the Government's approval a comprehensive schedule of construction of its Telecommunications System no later than one (1) month after the Government's acceptance of the Grantee's bid. The schedule shall include sufficient detail for Government to determine the time and locations of construction activities and shall also depict the anticipated time frame of identifiable tasks required for construction purposes, as delineated by the Government. No construction related activities may be conducted in the Right-of-way until the schedule is approved by the Government. In addition, at thirty (30) day intervals during construction, the Grantee shall provide the Government with a plan of construction activities setting forth a general description of the activities to be undertaken during the following thirty (30) days and designating the geographical area of the City of Frankfort that will be affected. Approval by the Government of these plans shall constitute a condition which must be met prior to undertaking any construction activities.

- (b) The Grantee shall furnish traffic control plans, including site-specific hours of construction, to the Government no later than seven (7) days prior to the commencement of any construction activities. Such plans are subject to approval or modification by the Government. No construction related activities may be conducted in the Right-of-way without an approved traffic control plan.
- (c) The Grantee shall provide the Government a local telephone contact number, staffed twenty-four (24) hours per day, to enable the Government to report any concerns regarding construction of the Telecommunications System. In the event that the Government reports any concerns to the Grantee, the Grantee shall respond within a reasonable time as specified by Government or as specified elsewhere in this Ordinance. The Grantee shall perform the required repair or correct any adverse impact to Government's use or operations or the use or operations of a third party caused by the Grantee's construction activities in the Right-of-way at no cost to the Government.
- (d) Fourteen (14) days prior to commencement of construction, and every thirty (30) days thereafter during construction the Grantee shall publish, at its sole cost, a notice containing a map depicting where construction will occur in the *Frankfort State Journal*. Additionally, such notice shall provide a general description of construction activities and a telephone number to be called by citizens with questions concerning construction activities. A copy of said notice(s) shall be provided to the Government.
- (e) The Grantee shall provide at least fourteen (14) days' notice to other utilities in the City of Frankfort of its interest in seeking construction permits to open the Street before it applies for any Street cut permit. The Government shall provide the Grantee with a listing of all such utilities and their points of contact upon request. Such notice shall inform the other utility companies of the Grantee's intent to undertake construction in the affected areas and state that the other utility companies must notify the Government and the Grantee within seven (7) days of receipt of such notice of their desire to simultaneously lay conduit, or other Facilities, in any trench opened by the Grantee.
- (f) Failure to comply with the above provisions, or the Ordinances may, in the sole discretion of the Government:
 - (1) Be the basis for the Government to reasonably require that the Grantee perform more extensive restoration work than otherwise anticipated by a permit; and
 - (2) May result in the Grantee being assessed an additional premium on any permit fee to recoup any additional costs or expenses reasonably associated with the Grantee's failure.
- (g) Unless otherwise provided an extension by the Board of Commissioners, the Grantee must make Telecommunications Services available within the City of Frankfort within one hundred eighty (180) days from the date of the award of the franchise. This requirement shall not apply to a Grantee that does not provide, or has no intention of providing, any Telecommunications Services to the City of Frankfort Customers.
- (h) The Grantee shall maintain accurate Telecommunications System design drawings, maps and improvement plans of the Telecommunications System, in a form acceptable to the Government, in a manner consistent with industry construction standards. The Grantee shall furnish the Government, without charge, with a complete set of "as-built" drawings within sixty (60) days of completion of construction of the Telecommunications System. Such maps and improvement plans shall also be furnished to Government in digital form and shall be provided pursuant to a lawful protective agreement.

Section 23 - Letter of Credit and Performance Bond.

In addition to all other requirements, and except to the extent prohibited by law, any Grantee not already owning Facilities within the Right-of-way sufficient to render Telecommunications Services within the City of Frankfort, shall also be required to perform the following requirements during the construction of its Telecommunications System unless the Board of Commissioners determines that any or all of such requirements are not necessary to adequately protect the interest of the Government:

- (a) Within ten (10) days after the award of a franchise pursuant to this Ordinance, the Grantee shall deposit with the Government a one-year irrevocable renewable letter of credit from a financial institution acceptable to the City of Frankfort in the amount of fifty thousand dollars (\$50,000.00). The form and content of such letter of credit shall be approved by the Government. The letter of credit shall be used to insure the faithful performance by the Grantee of all provisions of this Ordinance ; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the Government having jurisdiction over its acts or defaults under this Ordinance, and the payment by the Grantee of any claims, liens and taxes due the Government which arise by reason of the construction, operation or maintenance of the Telecommunications System.
 - (1) The letter of credit shall be maintained at fifty thousand dollars (\$50,000.00) during the entire term of Grantee's franchise, even if amounts have to be withdrawn pursuant to this section.

- (2) If the Grantee fails to pay to the Government any compensation within the time fixed herein; or, fails, after ten (10) days' notice to pay to the Government any taxes due and unpaid; or, fails to repay the Government, within such ten (10) days, any damages, costs or expenses which the Government is compelled to pay by reason of any act or default of the Grantee in connection with its franchise; or, fails, after three (3) days' notice of such failure by the Government to comply with any provision of its franchise which the Government reasonably determines can be remedied by demand on the letter of credit, the Government may immediately request payment of the amount thereof, with interest and any penalties, from the letter of credit. Upon such request for payment, the Government shall notify the Grantee of the amount and date thereof.
 - (3) The rights reserved to the Government with respect to the letter of credit are in addition to all other rights of the Government and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Government may have.
 - (4) The letter of credit shall contain the following endorsement:
"It is hereby understood and agreed that this letter of credit may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Government, by registered mail, a written notice of such intention to cancel or not to renew."
- (b) If necessary, after the bonds required by Section 8 this Ordinance no longer protect the Government, the Government may require the Grantee to file with the Government a Performance Bond in the amount of Five Hundred Thousand Dollars (\$500,000.00) in favor of the Government. This bond shall be maintained throughout the construction period. In lieu of the above-mentioned performance bond, the Grantee may deposit with the Government an irrevocable letter of credit from a financial institution acceptable to the City of Frankfort in the amount of Five Hundred Thousand Dollars (\$500,000.00). The form and content of such letter shall be approved by the Government.
- (1) In the event the Grantee fails to comply with the Ordinances or any law, Ordinance or regulation governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of this Ordinance or the franchise, including the Grantee's application (as required in Section 4), there shall be immediately recoverable, jointly and severally, from the principal and surety of the bond or the letter of credit, any damages or loss suffered by the Government as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorney's fees, including the Government legal staff, and costs, up to the full amount of the bond.
 - (2) Upon completion of construction the Grantee's initial service area the requirement of this additional performance bond shall be waived.
 - (3) The bond or letter of credit shall contain the following endorsement:
"It is hereby understood and agreed that this bond [letter of credit] may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Government, registered mail, a written notice of such intent to cancel or not to renew."
 - (4) The rights reserved to the Government with respect to the performance bond or letter of credit are in addition to all other rights of the Government, and no action, proceeding or exercise of a right with respect to such performance bond or letter of credit shall affect any other right the Government may have.

Section 24 - Discontinuing Use of Facilities.

- (a) If Grantee decides to discontinue use of Facilities within all or a portion of the Streets and does not intend to use those Facilities again in the future, the Government may direct Grantee to remove the Facilities or may permit the Facilities to be left in place as abandoned, which permission shall not be unreasonably withheld or delayed. If Grantee is permitted to abandon its Facilities in place, upon written consent of the Government, the ownership of Facilities in the Government's Streets shall transfer to the Government and Grantee shall have no further obligation therefor. Notwithstanding Grantee's request that any such Facility remain in place, the Government may require Grantee to remove the Facility from the Street area or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The Government may require Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the Government. Until such time as Grantee removes or modifies the Facility as directed by the Government, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as restoration of the Street, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

Section 25 - Offers of Payment.

Bids offered for purchase of a franchise pursuant to this Ordinance shall state the bidder's acceptance of the conditions set forth in this Ordinance. If any bid shall include an offer of payment over and above the terms of the franchise, then a certified check for said amount, payable to the City of Frankfort, shall be deposited with the Government. This amount shall be in addition to the provision for any payments contained in Sections 20 and/or 21 of this Ordinance. Any check deposited pursuant to this section by an unsuccessful bidder shall be returned when the Board of Commissioners shall have accepted the bid or bids which in its judgment is or are the highest and best.

Section 26 - Forfeiture.

Any violation by the Grantee or successor or authorized Grantee representative of the provisions of this Ordinance or any material portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of its franchise and all rights hereunder after written notice to the Grantee and continuation of such violations, failure or default, as set forth herein.

Section 27 - Governing Law.

This Ordinance and any franchise awarded pursuant to it shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. The venue for any litigation related to this Ordinance or any franchise shall be in the court of competent jurisdiction in Franklin County, Kentucky.

Section 28 - Non-enforcement by the Government.

Grantee shall not be relieved of its obligations to comply with any of the provisions of this Ordinance by reason of any failure of the Government to enforce prompt compliance, nor does the Government waive or limit any of its rights under this Ordinance by reason of such failure or neglect.

Section 29 - Agent.

The Grantee shall designate in writing a local agent to oversee and manage all activities required pursuant to this Ordinance to accept service of any legal proceeding initiated by the Government.

Section 30 - Third Parties.

This Ordinance and any franchise awarded pursuant to it does not create a contractual relationship with or right of action in favor of a third party against either the Government or the Grantee.

Section 31 - Severability.

If any section, sentence, clause or phrase of the Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the Ordinance.

Section 32. Resolution of Inconsistencies with Federal or State Rules, Regulations or Laws.

In any case of an actual inconsistency between any provision or section of this Ordinance and any franchise granted hereunder, and any provision or section of a federal or state rule, regulation, or law, the federal or state rule, regulation, or law shall not only supersede the effect of the franchise, but also control in any local application

Section 33. Relief from this Ordinance.

- A. Grantee may file a written petition, at any time, with the Government seeking relief from one (1) or more provisions of this Ordinance. The relief requested may specifically include the delay in implementation of one (1) or more provisions of this Ordinance.
- B. So that no provider of Telecommunications Services shall receive an unfair competitive advantage. Grantee shall have no greater responsibility to furnish insurance, bonds, letters of credit or reports than any provider of Telecommunications Services in the Right of way.

Section 34. Effective Date.

The franchise created by this Ordinance shall become effective when the bid for it is accepted by the Board of Commissioners.

Section 35 - This Ordinance shall become effective on the date of its publication.

Passed and Approved on first reading this 23 day of May, 2022.

Passed and Approved on second reading and publication ordered this 27 day of June, 2022.

Approved: S/Layne Wilkerson
T/Mayor

Attest:

S/Chermie Maxwell
T/City Clerk

Summary: This ordinance creates a telecommunication franchise within the City of Frankfort, including the following: 1) a process for advertising and accepting bids for non-exclusive franchises allowing purchasers to use the City's rights-of-way for telecom infrastructure; 2) a non-refundable bidder application fee of \$8000 and non-refundable administrative/advertising fee of \$2000; 3) requirements regarding use of City property and compliance with all applicable laws and permitting requirements; 4) provision of detailed construction plans, environmental impact studies, and other information subject to City approval; 5) various notice provisions regarding proposed activities to the City, community, media and other utilities; 6) responsibility for disturbances and damages caused by franchise-related activities; 7) penalties for violations of the ordinance; and 8) various other requirements regarding bonding, insurance, transfers, and termination.

S/Laura Milam Ross
T/City Solicitor

Published by title & summary on July 3, 2022.