

**ORDINANCE NO. 0-17-2019**

**AN ORDINANCE ESTABLISHING A NON-EXCLUSIVE FRANCHISE FOR THE USE OF THE PUBLIC STREETS, ALLEYS, AND OTHER PUBLIC GROUNDS OF THE CITY FOR CABLE TELEVISION SYSTEMS, INTERNET, OR TELEPHONE SERVICES WITHIN THE CITY; AND PROVIDING THE TERMS THEREOF.**

**WHEREAS**, Sections 163 and 164 of the Kentucky Constitution prohibits public utilities from using the streets, alleys, and other public grounds within a city without a franchise for that use; and

**WHEREAS**, The City desires to issue non-exclusive franchise(s) for the use of the City streets, alleys and public grounds for cable television systems, internet service or telephone systems through and for consumption within the City; and

**WHEREAS**, this ordinance is enacted for the purpose of complying with the Constitution and Statutes of Kentucky and pursuant to the authority and requirements of Sections 163 and 164 of the Kentucky Constitution and Kentucky Revised Statute.

**NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT THOMAS, CAMPBELL COUNTY, KENTUCKY AS FOLLOWS:**

**SECTION I – Definitions**

As used herein, the following words and phrases have the meanings indicated for them:

- 1.1 The word “City” means the City of Fort Thomas in Campbell County, Kentucky.
- 1.2 The word “facilities” means the tangible apparatus, equipment and instrumentalities and the appurtenances thereto used for the transmission and distribution of cable television systems, internet services or telephone services through and within public property in the City, including, without limitation, poles, wires, cables, cross-arms, conduits, anchors, junction boxes, manholes, mains, pipes, and valves.
- 1.3 The word “Franchisee” means the person to whom the City has awarded and granted a franchise hereby established.
- 1.4 The words “public property” mean real estate in the City of Fort Thomas that has been dedicated or is otherwise open to public use and is subject to regulation by the City of Fort Thomas.

- 1.5 The words “calendar quarter” mean three months of a calendar year composed of the months of either: (a) January, February, and March; or (b) April, May and June; or (c) July, August, and September; or (d) October, November, and December.

## **SECTION II. – Franchise**

There is hereby established a non-exclusive franchise for the use of the public property within the City for cable television system, internet services or telephone services for consumption both within and outside of the City.

## **SECTION III – Terms of Franchise**

The terms and conditions of the franchise hereby established are as follows:

- 3.1 Bidding Requirement. Pursuant to Section 164 of the Kentucky Constitution, before granting the franchise hereby established, the City shall first, after due advertisement, receive bids therefor publically, and award it to the highest and best bidder; but the City shall have the right to reject any and all bids.
- 3.2 Franchise Non-exclusive. The franchise hereby established is not an exclusive franchise. It is a non-exclusive franchise; and the City reserves the right to also grant the franchise hereby established to others in accordance with applicable law.
- 3.5 Franchise Not Assignable. The franchise established hereby shall not be assignable without the written consent of the City; however, the Franchisee may assign the franchise to any affiliate which may, during the term of the franchise assume the obligation.
- 3.6 Franchise Area. The franchise established hereby shall be for the use of those portions of the public property within the City.
- 3.7 Effective Period of Franchise. The franchise established hereby may be effective for a period of five (5) years, beginning on the first day of the calendar month immediately following the grant and award of a franchise hereby established to a Franchisee unless previously terminated by the City pursuant to the provisions hereof or as otherwise provided by operation of law. The Franchisee shall have the option to renew the franchise agreement for a maximum of three, separate five (5) year terms, unless the Franchisee is in default. Under no circumstances shall the total length of the franchise agreement exceed twenty (20) years.
- 3.8 Franchise Termination. In the event of any default continuing longer than thirty (30) days by a Franchisee of any of the obligations of the franchise hereby established and after a written notice and description thereof to the Franchisee from the City by certified mail, return receipt requested, and upon the failure of the Franchisee to reasonably cure the default within a reasonable period of time, the City may

terminate the franchise awarded and granted to the defaulting Franchisee, through a written notice thereof to the Franchisee, by certified mail, return receipt requested, to be effective no less than ninety (90) days from delivery of said written notice

3.9 Franchisee Rights and Privileges During Effective Period. While the franchise established hereby is effective, the Franchisee may engage in the following activities:

3.9.1 Continuation of Existing Facilities. The continued operation, use, maintenance, repair construction and/or re-construction to the existing condition thereof all of the facilities of the Franchisee within or upon any public property within the City.

3.9.2 New Facilities. The Franchisee shall provide commercially reasonable notice of any non-emergency extension or expansion of any existing facilities of the Franchisee, or the construction or installation of new facilities within the franchise area; and the plans and specifications for such new facilities to the City. The Franchisee shall abide by the City's permitting process and receive the necessary approval thereof by the Mayor or the designee thereof, which approval shall not be withheld unless the extension, expansion, construction, or installation described in those plans and specifications is contrary to the public health, safety, welfare, and convenience. In the event that any request for the extension or expansion of any existing facilities of the Franchisee or the construction or installation of new facilities of the Franchisee is denied by the Mayor or his designee, such denial shall be set forth in writing with the basis of the denial set forth therein within thirty (30) days of the Franchisee's notice. If written denial or approval is not received within thirty (30) days of the Franchisee's notice, the extension, expansion, construction, or installation request shall be deemed approved. The City acknowledges that the Franchisee has a statutory duty to provide adequate efficient and reasonable service and that the Franchisee shall not be prevented from fulfilling that statutory obligation due to any delay by the Mayor or the designee thereof in giving or failing to give any approval described herein.

3.9.3 Pavement Removal, Excavation and Grading. The Franchisee shall provide commercially reasonable notice of any non-emergency removal or revision of any pavement and any excavation and grading reasonably necessary within any public property in the franchise area and the plans and specifications for such new facilities to the City. The Franchisee shall abide by the City's permitting process and receive necessary approval thereof by the Mayor or the designee thereof, which approval shall not be withheld unless the proposed pavement removal, excavation or grading are contrary to the public health, safety, welfare, and convenience. In the event that any request for pavement removal or revision, excavation or grading is denied by the Mayor

or his designee, such denial shall be set forth in writing with the basis of the denial set forth therein within thirty (30) days of the Franchisee's notice. If a written denial or approval is not received within thirty (30) days, the removal or revision of any pavement and any excavation and grading shall be deemed approved. The City acknowledges that the Franchisee has a statutory duty to provide adequate efficient and reasonable service and that the Franchisee shall not be prevented from fulfilling that statutory obligation due to any delay by the Mayor or the designee thereof in giving or failing to give any approval described herein.

3.9.4 Right of Way Maintenance. The Franchisee shall have the right, without payment of fees, to cut, trim or remove any trees, overhanging branches, or other obstructions on public property which in the reasonable opinion of the Franchisee may endanger or interfere with the efficient installation or maintenance of facilities. If, during the franchise period, the City closes to public use any public property in or on which facilities of the Franchisee are located, the City shall make such provisions as may be legal and necessary to grant the Franchisee the right to retain the facilities thereof within that public property, along with the rights to maintain and operate such facilities

3.9.5 Other Activities. All other activities that are reasonably necessary for the use by the Franchisee of the public property within the franchise area pursuant to the provisions of the franchise hereby established.

3.10 Franchisee Obligations During Effective Period. While this franchise is effective the Franchisee shall:

3.10.1 Surety Bond. Provide the City with and continually maintain a surety bond with (a) the City as the Obligee; and (b) the Franchisee as the Principale; and (c) a surety approved by the Mayor of the City, in an amount equal to \$50,000.00 conditioned upon the faithful performance by the Franchisee of the terms and conditions of the franchise hereby established; provided, however, that this requirement may be waived by the Mayor or the designee thereof upon the reasonable satisfaction thereof with the net worth of the Franchisee.

3.10.2 Liability Insurance. Provide the City with and continually maintain a comprehensive policy of liability insurance, with the Franchisee and the City as named insureds, and with limits not less than \$500,000.00 per person and \$1,000,000.00 per occurrence, by which the Franchisee and the City are insured against any legal liability to others that is in any way related to any acts or omissions of the Franchisee pursuant to the franchise hereby established; provided, however, that this requirement may be waived by the

Mayor or the designee thereof upon the reasonable satisfaction thereof with the net worth of the Franchisee.

- 3.10.3 Maintenance of Facilities. Cause the facilities of the Franchisee within the franchise area to be maintained and repaired to a condition that is functional and safe and not a hazard to the public health, safety, welfare, and convenience.
- 3.10.4 Prosecution of Work. During the construction, maintenance, repair, replacement, re-construction, expansion, extension, new construction or installation of any of the facilities of the Franchisee, the Franchisee shall promptly and diligently prosecute such activities to completion within a reasonable time, and at the least possible hazard to the public health, safety, inconvenience and general welfare; and, upon completion thereof, the public property of the City in which those activities occurred shall be restored by the Franchisee to a condition that is as good or better than the condition thereof at the time of the commencement of those activities.
- 3.10.5 Relocation of Facilities. During any construction, maintenance, repair, replacement, improvement, or expansion by the City of any of the public property within the franchise area or any improvements therein other than the facilities of the Franchisee, or at any other time, the Franchisee shall, remove, relocate, or adjust any of the facilities of the Franchisee in such public property within a reasonable time after a written request therefor from the City.
- 3.10.6 Reserved Rights of the City. Comply with the exercise by the City of all the rights thereof reserved by the City pursuant to the provisions of the previous SECTION 3.3 hereof.
- 3.10.7 Franchise Fee. Pay to the City within thirty (30) days after the end of each calendar quarter a franchise fee at a percentage rate based on gross receipts from the sale of services granted in the franchise for consumption within the City as agreed upon by the City and Franchisee during the previous calendar quarter, along with a certification signed by an officer of the Franchisee or a Certified Public Accountant employed by or on behalf of the Franchisee indicating the quarter's gross receipts, payment calculation, and any necessary gross-ups for collections by the Franchisee. The franchise fee required hereby is not in substitution or in lieu of any other tax, fee, imposition, or charge for which the Franchisee would otherwise be responsible and liable. The franchise fee required hereby is in consideration of the use of the public streets, alleys and other public grounds within the City by the Franchisee pursuant to the provisions of the franchise hereby established, since such

use is a valuable right in property, the acquisition and maintenance of which is very expensive to the City; and, without such use, the Franchisee would be required to acquire easements in private property for the transmission and distribution of either or both electricity and natural gas, at considerable expense to the Franchisee.

3.10.8 Release. Except to the extent otherwise prohibited under Kentucky law, release acquit and forever discharges the City, and all of the officers, agents, employees, successors and assigns thereof, from each, every, any and all uninsured obligations and liabilities of any of them to the Franchisee and the successors and assigns thereof for each, every, any and all personal injuries, property damage, costs, expenses, losses, compensation and all other damages of every kind and nature, and all claims and causes of action therefore, at law, or in equity, which may accrue to the Franchisee and the successors and assigns thereof, through any act, omission, event or occurrence proximately caused by any negligence of the City that is in any way related to the administration of the franchise established hereby or the award or grant thereof by the City to the Franchisee or the use of the public streets, alleys and other public grounds within the City by the Franchisee pursuant to the franchise established hereby

3.10.9 Indemnification. Pay, indemnify and hold the City and the officers, agents, employees, successors and assigns thereof harmless from and to defend them at the request of the City and at the sole cost and expense of the Franchisee, from each, every, any and all obligations and liabilities of any of them to others and the executors, administrators, heirs, successors and assigns of such others for each, every, any and all personal injuries, property damage, costs, expenses, losses, compensation and all other damages of every kind and nature, and all claims and causes of action therefore, at law, or in equity, including, without limitation, claims of third parties for indemnification and/or contribution, which may accrue to such others and their executors, administrators, heirs, successors and assigns, through any act, omission, event or occurrence proximately caused by the negligence of the Franchisee which is in any way related to the franchise established hereby or the award or grant thereof by the City to the Franchisee or the use of the public streets, alleys and other public grounds within the City by the Franchisee pursuant to the franchise hereby established.

3.11 Franchisee Obligations After Effective Period. The Release obligation of the Franchisee provided in the previous SECTION 3.10.9 and the Indemnification obligation of the Franchisee provided in the previous SECTION 3.10.10 shall continue after the effective period of the franchise hereby established regarding all such claims that accrue during the effective period.

#### **SECTION IV. – Construction**

This ordinance shall not be construed in a manner which would create an obligation, requirement or duty on the part of the Franchisee which is in any way inconsistent with Kentucky law or its tariff on file with and approved by the Commission.

**SECTION V. – Conflicting Ordinances Repealed**

All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

**SECTION VI. – Effective Date**

This Ordinance shall become effective upon passage, approval, and publication as required by law.

APPROVED:

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Eric Haas, Mayor

First Reading: October 21, 2019  
Second Reading: November 18, 2019

ATTEST:

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Melissa Beckett, City Clerk