

**CITY OF HURSTBOURNE ACRES, KENTUCKY
JEFFERSON COUNTY, KENTUCKY**

ORDINANCE NO. 4 SERIES 2016

**AN ORDINANCE GRANTING A COMMUNICATIONS
FRANCHISE AND AUTHORIZING EXECUTION OF A
UNIFORM FRANCHISE AGREEMENT**

WHEREAS, the City desires to award a non-exclusive franchise to Google Fiber Kentucky, LLC; and

WHEREAS, pursuant to Chapter 116.70 - 116.99 of the Metro Code of Ordinances, Sections 163 and 164 of the Kentucky Constitution, Louisville Metro solicited bid proposals from parties interested in obtaining franchises to erect, install and maintain communications facilities or provide communication services by use of said communication facilities within the confines of Jefferson County; and

WHEREAS, Provider submitted a bid proposal to Metro for a communications services franchise pursuant to the requirements of Chapter 116.70 - 116.99 of the Louisville Metro Code of Ordinances.

NOW THEREFORE, BE IT ORDAINED AS FOLLOWS:

Section 1. The City hereby grants to Provider for a period of twenty (20) years, a non-exclusive franchise to erect, install or maintain communications facilities or provide communication services by use of said communication facilities within the boundaries of the City in conformance with and subject to the terms and conditions of the Uniform Franchise

Agreement attached hereto as Exhibit A and incorporated herein by reference as if set forth in full.

Section 2. The Mayor is hereby authorized to execute Exhibit A hereto, and may accept minor changes to Exhibit A provided that such changes and/or modifications do not materially alter the substance of the Agreement or any term thereof.

Section 4. Effective Date. This Ordinance shall be effective upon passage.

INTRODUCED AND READ AT A MEETING OF THE CITY COUNCIL OF THE CITY OF HURSTBOURNE ACRES, KENTUCKY, HELD ON THE 23rd DAY OF
July, 2016.

June

READ, PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HURSTBOURNE ACRES, KENTUCKY, AT A MEETING HELD ON THE 14th DAY OF JULY, 2016.

APPROVED:



SEAN P. FORE, MAYOR

ATTEST:



MICHAEL BOLTEN, CITY CLERK

**MAY 19, 2016 JEFFERSON COUNTY, KENTUCKY
UNIFORM FRANCHISE AGREEMENT**

THIS UNIFORM FRANCHISE AGREEMENT made and entered into this 23rd day of June, 2016 by and between City of Hurstbourne Acres (hereinafter "City"), Louisville/Jefferson County Metro Government ("Metro"), and Google Fiber Kentucky (hereinafter "Provider").

WITNESSETH:

WHEREAS, Louisville/Jefferson County Metro Government ("Metro") and City of Hurstbourne Acres ("City") have entered into an Interlocal Cooperation Agreement pursuant to KRS 65.210 et seq. for the purpose of providing a uniform franchising process for communications services providers throughout Jefferson County, Kentucky; and

WHEREAS, the City desires to award a non-exclusive franchise to Provider; and

WHEREAS, pursuant to Chapter 116.70 - 116.99 of the Metro Code of Ordinances, as they were written as the approval of this franchise and/or as amended thereafter throughout the term limits of this franchise, Sections 163 and 164 of the Kentucky Constitution and the Metro solicited bid proposals from parties interested in obtaining franchises to erect, install and maintain communications facilities or provide communication services by use of said communication facilities within the confines of Jefferson County; and

WHEREAS, Provider submitted a bid proposal to Metro for a communications services franchise pursuant to the requirements of Chapter 116.70 - 116.99 of the Louisville Metro Code of Ordinances.

WHEREAS, pursuant to Ordinance No. 5, Series 2016, the City granted to Provider for a period of twenty (20) years, a non-exclusive franchise to erect, install or maintain

communications facilities or provide communication services by use of said communication facilities within the boundaries of the City in conformance with Chapter 116.70 - 116.99 of the Metro Code of Ordinances as they were written as of the approval of this franchise and/or as amended thereafter throughout the term limits of this franchise.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein the receipt and sufficiency of which are hereby acknowledged, City and Provider hereby agree to incorporate the foregoing recitals as if fully set forth herein and further agree as follows:

1. The City grants unto Provider a non-exclusive franchise, for a term of twenty (20) years to erect, install or maintain communications facilities or provide communication services by use of said communication facilities within the confines of the City and as more specifically identified in the above- mentioned bid in conformance with Chapter 116.70 - 116.99 of the Louisville Metro Code of Ordinances, as they were written as of the date of the approval of this franchise and/or amended thereafter throughout the term limits of this franchise. No amendments will be made by Metro of any sections of this Chapter that would directly or indirectly affect the intent and/or purpose of this franchise without the prior notice to and input from all affected Cities within Jefferson County. No amendments to the Metro ordinances which materially alter the terms of this Agreement will be applicable within the City unless approved by the City.

2. Chapter 116.70 - 116.99 of the Louisville Metro Code of Ordinances (as amended by Metro Ordinance O-427-15, enacted February 11, 2016) as written and in force as of the approval of this franchise and/or amended thereafter through the period of the franchise are incorporated herein by reference in their entirety and shall apply as if fully set forth herein. All

provisions of Chapter 116.70 to 116.99 and of the bid of Provider which inure to the benefit of Louisville Metro shall be deemed to equally inure to the benefit of City including, but not limited to, indemnification, insurance, responsibility for costs, hold harmless provisions and bonds.

3. The bid of Provider for said franchise, which is attached hereto as Exhibit "A", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

4. Provider agrees to comply with all applicable requirements as set forth in the Louisville Metro Public Works & Assets Utility Policy.

5. In the event that KRS 136.660 is declared inoperative, unconstitutional, or is repealed, in whole or in part, commencing within thirty (30) days thereof or at such time as the parties may mutually agree in writing, Provider shall pay City an annual franchise fee as calculated by applying the formula set forth in Section 116.71(K) of the Louisville Metro Code of Ordinances as of the approval of this franchise, or as the parties may mutually agree in writing.

6. Provider shall periodically provide to the City a point of contact for Provider in order to facilitate communication. City shall provide and maintain a current e-mail address to Metro, through the Director of the Public Works Department, for communication purposes, including communications contemplated by Paragraphs 7 through 10.

7. The City agrees that any permit issued by Louisville Metro Government to Provider for the purpose of constructing or maintaining infrastructure related to the franchise shall be fully operative within the City and shall be given full faith and credit by the City, and the City shall not require any permit in connection with the franchise aside from those required by Louisville Metro, and the City further agrees that inspections performed by Louisville Metro

shall be deemed to comply with all inspection requirements of the City. In the event City requires all providers to relocate their facilities in the ROW, Provider will relocate its facilities within a commercially reasonable time.

8. Provider shall make application to Metro to obtain all necessary permits for any work that will be performed in the City's Right of Ways (ROW'S). Upon request of the Provider and prior to making an application for a ROW permit, Metro/City will use their best efforts to notify Provider of any unique features and/or conditions, as well as any unique Ordinances, of which the Metro/ City is aware which could have the potential to hinder, delay, or alter construction or significantly increase the cost thereof. Applications for a ROW permit shall contain descriptions and locations of construction, and projected timelines for the same. Metro will upon receipt and determination that the application is complete in accordance to Metro Chapter 116 .70 through 116.99 and its related Utility Policies will electronically forward the application and associated documents to the City within a maximum of 48 hours of the receipt of completed application for such work. If technologically feasible, Metro shall immediately or within one business day upon determining the application is complete forward the aforesaid completed application to the City. The City within 10 business days of receipt shall express any of its concerns/objections that it may have relative to the proposed work to Metro that is outside the scope of Chapter 116. Metro shall immediately or within one business day upon receipt of such concerns/objections relay the same to the Provider. The Provider will use its best efforts to satisfy any commercially reasonable/legal concerns/objections presented to them, and adjust or modify its permit application accordingly. However, the decision to approve an application will be made by Metro based solely on the applications conformity with Metro code. Should objections not be raised by Metro/City during the above mentioned timeframe allocated, any

concerns/objection then known or which reasonably could have been known by Metro/City shall be deemed to have been waived. Following the 10 business day review period, Metro will communicate to the Provider approval or denial of the permit application based solely on the applications conformity with Metro code. Nothing herein shall preclude Metro and the Provider from using a different time frame for permit applications which do not impact areas other than the Urban Services District and unincorporated areas of Jefferson County. In no event shall a permit be valid for more than eighteen months; provided, however, that requests for an extension will not be unreasonably withheld. Provider shall give reasonable notice to the City prior to commencing construction within the City. Notwithstanding that permit applications and related documents may be physically or electronically communicated to the City from Metro, City retains the right to request a copy of any application package that Provider has submitted to Metro for work that will be performed in City.

9. If Provider seeks to amend a permit application with Metro, Metro shall within 48 hours provide the City written notice of the same, which such notice shall specifically identify the area(s) and the revised timelines in which the Provider or its subcontractors shall perform such work. The process for review of such an amended permit shall be as described in Paragraph 8 above. Any concerns/objections raised by Metro/City at this time that were not raised during the permitting and approval period as defined within Paragraph 8 above which could have been known by Metro/ City shall be deemed to be waived. The permit application as well as the permit for such work will be revised to reflect these changes. A revised permit will be issued reflecting these changes and will be provided to Provider and the City simultaneously.

10. Provider shall notify Metro/ City upon completion of the permitted work issued in compliance with Paragraphs 1- 9 above and Metro shall have a right of final inspection and

approval thereof based on the approved permit. The City shall also have a right of inspection within its ROWs, however, Metro shall have the right of final approval. Metro/City shall perform inspections within 10 days of receipt of notice from the Provider that the permitted work has been completed. Metro shall notify in writing the Provider and City within 48 hours of their inspection(s) and findings.

11. Upon completion by Provider of all construction approved by Metro in a permit covering work within City, the authority to issue new permits and conduct inspections relative to maintenance, modification, or restoration of the same permitted area located within ROW's within the City shall revert from Metro to the City, provided that the City has legal authority to permit and inspect. If not, permitting and inspection authority shall remain with Metro. This reversion is with the additional exception of any Metro-maintained roads located within the City. The authority to issue new permits and conduct inspections relative to maintenance, modification, expansion or restoration on Metro-maintained roads located within the City shall remain with Louisville Metro.

12. Nothing herein is to be construed as granting Metro the authority to lease, sublease or otherwise transfer any property rights within the City to Provider, nor shall anything herein be construed as a transfer of title of any property owned by the City. In the event Provider desires to purchase, lease, or acquire any real property of the City for purposes of locating infrastructure-related buildings, such acquisition shall be accomplished by a separate agreement based upon commercially reasonable and practicable terms

13. Any dispute arising between the parties pursuant to or in connection with the Franchise shall not be subject to binding arbitration, but the parties agree that they will use their best efforts to resolve any such dispute (including mediation if appropriate) prior to bringing suit

in a court of competent jurisdiction and appropriate venue to resolve the dispute.

14. Provider does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of this franchise as memorialized in this Franchise, and further to faithfully perform all acts required of it as the purchaser of said Franchise.

15. This Franchise constitutes the entire agreement between the parties and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto. Provider represents and warrants that it has purchased its franchises from other governmental entities located in Jefferson County upon terms and conditions materially identical to those contained herein, and that there are no franchise agreements, contracts, leases or other agreements between Provider and any other governmental entity within Jefferson County which provide benefits materially different in kind than those being afforded to the City under this Franchise.

16. This Franchise shall commence June 23, 2016, and shall expire on June 23, 2036.

IN WITNESS WHEREOF, the City and Provider have executed this Franchise as their free and voluntary act and deed effective as of the day and year first above written.

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CITY OF HURSTBOURNE ACRES

PROVIDER



MAYOR

By: _____

Its: _____

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

MAYOR

ATTEST:

_____, CITY CLERK

APPROVED AS TO FORM AND LEGALITY

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

By: _____