

ORDINANCE NO. _____, SERIES 2020

AN ORDINANCE AWARDING A COMMUNICATIONS SERVICES FRANCHISE TO SQF, LLC PURSUANT TO THE TERMS AND CONDITIONS IN CHAPTER 116 OF THE LOUISVILLE METRO CODE OF ORDINANCES.

SPONSORED BY: COUNCIL MEMBER BRANDON COAN

WHEREAS, pursuant to Chapter 116 of the Louisville Metro Code of Ordinances the Louisville/Jefferson County Metro Government (“Louisville Metro”) solicited bid proposals from parties interested in obtaining communications services franchises to erect, install or maintain communications facilities or provide communication services by use of said communication facilities within the confines of Louisville/Jefferson County, Kentucky; and

WHEREAS, SQF, LLC submitted a bid proposal to Louisville Metro for a communications services franchise which meets all of the requirements of Chapter 116 of the Louisville Metro Code of Ordinances and all other applicable state and federal laws.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I. Louisville Metro hereby grants to SQF, LLC for a period of 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 confines of Louisville/Jefferson County, Kentucky pursuant to Chapter 116 of the Louisville Metro Code of Ordinances as now written and as may be amended during the period of this franchise agreement.

SECTION II. The franchise agreement by and between SQF, LLC as appended to this ordinance is hereby approved and the Mayor is hereby authorized to execute and enter into that agreement for and on behalf of Louisville Metro.

SECTION III. That the statements set forth in the Preamble to this Ordinance are hereby incorporated in this Ordinance by reference, the same as if set forth at length herein.

SECTION IV. That if any section, sentence, clause or phrase of this Ordinance is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Ordinance.

SECTION V. This ordinance shall take effect upon its passage and approval.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell Jefferson
County Attorney

By:_____

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT made and entered into this ___ day of _____, 2020, by and between the Louisville/Jefferson County Metro Government (hereinafter “Louisville Metro”) and SQF, LLC.

WITNESSETH:

WHEREAS, pursuant to Chapter 116 of the Louisville Metro Code of Ordinances and 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 Louisville/Jefferson County, Kentucky.

WHEREAS, SQF, LLC submitted a bid proposal to Louisville Metro for a communications services franchise pursuant to the requirements of Chapter 116 of the Louisville Metro Code of Ordinances.

WHEREAS, pursuant to Ordinance No. ___, Series 2020, Louisville Metro granted to SQF, LLC for a period of 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 confines of Louisville/Jefferson County, Kentucky pursuant to Chapter 116 of the Louisville Metro Code of Ordinances as now written and as it may be amended during the term of this franchise agreement.

WHEREAS, Louisville Metro and SQF, LLC have entered into this Franchise Agreement to memorialize the award by Louisville Metro to SQF, LLC of said franchise pursuant to the terms and conditions reflected in Chapter 116 of the Louisville Metro Code of Ordinances as now written and as it may be amended during the term of this

franchise agreement.

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

1. Chapter 116 of the Louisville Metro Code of Ordinances, as now written and as it may be amended during the term of this franchise agreement, is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

2. The bid of SQF, LLC 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.

3. SQF, LLC agrees to comply with all applicable requirements as set forth in the Louisville Metro Public Works & Assets Utility Policy.

4. LMCO § 116.03(L) states:

Special exceptions. Louisville Metro may grant a special exception to the requirements of this chapter if a Franchisee, upon application, demonstrates with written evidence that:

(1) The exception will not create any threat to the public health, safety or welfare;

(2) The increased economic burden and the potential adverse impact on Franchisee's construction schedule resulting from the strict enforcement of the requirement would actually or effectively prohibits the ability of Franchisee to provide Communications Service in Louisville Metro; and

(3) The requirement unreasonably discriminates against Franchisee in

favor of another comparable Communications Service provider.

Any special exceptions shall be granted in a non-discriminatory manner.

5. In SQF, LLC's petition ("the Petition"), SQF, LLC has requested that Louisville Metro make an exception to the \$1,000,000 bond requirement of LMCO § 116.03(F)(1) pursuant to LMCO § 116.03(L). The Petition is attached hereto as Exhibit B.

6. Louisville Metro has reviewed the Petition and as determined that it will grant a special exception to the \$1,000,000 bond requirement of LMCO § 116.03(F)(1) because the Petition demonstrates that:

- (a) The exception will not create any threat to the public health, safety or welfare;
- (b) The increased economic burden and the potential adverse impact on SQF, LLC's construction schedule resulting from the strict enforcement of the \$1,000,000 bond requirement of LMCO § 116.03(F)(1) would actually or effectively prohibit the ability of SQF, LLC to provide Communications Service in Louisville Metro; and
- (c) The \$1,000,000 bond requirement of LMCO § 116.03(F)(1) unreasonably discriminates against SQF, LLC in favor of comparable Communications Service providers.

7. In lieu of the \$1,000,000 bond requirement of LMCO § 116.03(F)(1), Louisville Metro and SQF, LLC agree that SQF, LLC shall maintain a bond of \$9,300 per pole beginning with a \$232,500 bond for up to twenty-five (25) poles. If any poles are erected or owned by SQF, LLC beyond 25 poles, the bond shall be increased prior to SQF, LLC erecting or owning said poles in an amount equal to the \$9,300 per pole times the number

of poles owned and / or erected. Once the number of poles reaches 100, a \$1,000,000 bond shall be required and shall replace the former bond. SQF, LLC agrees to pay Louisville Metro \$1,000 per day for each pole erected or owned by SQF, LLC above 25 that are not properly bonded. Louisville Metro may collect via any authorized collection methods.

8. SQF, LLC shall, in writing, inform the Department of Public Works Engineering Manager, Suite 400, 444 South Fifth Street, Louisville, KY 40202, when SQF, LLC buys or installs a new pole. This is in addition to any other requirements or conditions found in Kentucky Revised Statutes, Louisville Metro Code of Ordinances and / or the Louisville Metro Public Works & Assets Utility Policy, each as amended.

9. For as long as SQF, LLC is operating under a bond in an amount under \$1,000,000.00, SQF, LLC is limited to only providing communications services on poles erected and maintained under the parameters established in Paragraph 7.

10. Upon thirty (30) days' notice prior to installation the Franchisee agrees to allow Louisville Metro to attach to Franchisee owned poles, at no cost to Louisville Metro, equipment and associated accessories that are used solely for public health, safety, or welfare purposes of Louisville Metro (i.e. cameras and sensors, hereinafter, "equipment"). Louisville Metro will be responsible for all costs associated with the installation of this equipment, including costs for any required load bearing survey, and all costs associated with the operation of the equipment, including, but not limited to maintenance of the devices, electric service, and network connectivity. The Franchisee shall maintain rights in reviewing its capacity for the equipment and determining placement of equipment on its poles so as to avoid damage or conflict with the Franchisee's equipment or other

authorized attachments. Any proposed installation shall be conditioned on (i) availability and space, (ii) non-interference with existing users, and (iii) structural capacity. If it is determined that the Franchisee has excess capacity in their dark fiber network at a location where a camera is to be installed, Louisville Metro and the Franchisee may negotiate a fee for use of the excess fiber capacity to connect the equipment to the Louisville Metro network.

11. Louisville Metro granted unto SQF, LLC a non-exclusive franchise, for a term of 20 years to erect, install or maintain communications facilities or provide communication services by use of said communication facilities within the confines of Louisville/Jefferson County, Kentucky and as more specifically identified in the above-mentioned bid pursuant to Chapter 116 of the Louisville Metro Code of Ordinances as now written and as it may be amended during the term of this franchise agreement.

12. The franchise memorialized in this Franchise Agreement shall commence on passage of the ordinance approving this agreement, the signatures of the parties, and the receipt of the bond described in paragraph 7 and shall expire in the time designated in this agreement and ordinance approving this agreement.

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

14. This Franchise Agreement memorializes the agreement between the parties and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

IN WITNESS WHEREOF, Louisville Metro and SQF, LLC have executed this Franchise Agreement as their free and voluntary act and deed effective as of the day and year first above written.

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

SQF, LLC

GREG FISCHER, MAYOR

TIMOTHY SCHNEIDER, SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By:_____