

ORDINANCE NO. 010, 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.

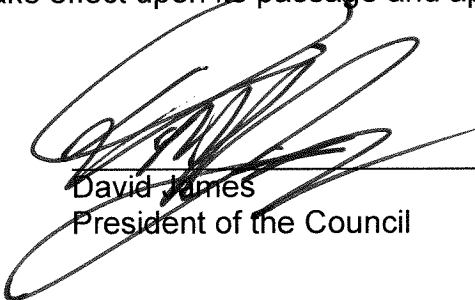
SECTION III. That the statements set forth in the Preamble to this Ordinance are hereby incorporated in this Ordinance by reference, the same as if set forth at length herein.

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.

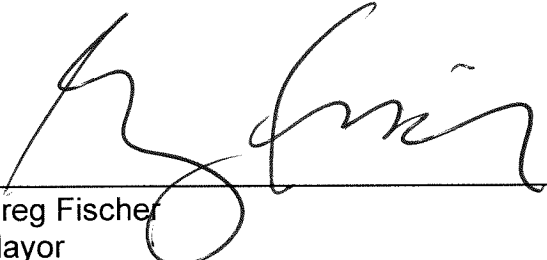
SECTION V. This ordinance shall take effect upon its passage and approval.



Sonya Harward
Metro Council Clerk



David James
President of the Council

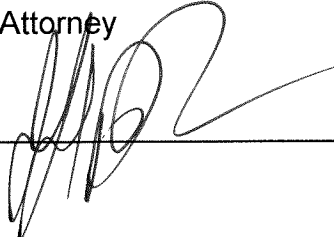


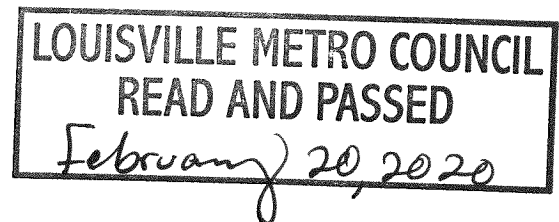
Greg Fischer
Mayor

2/21/2020
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.

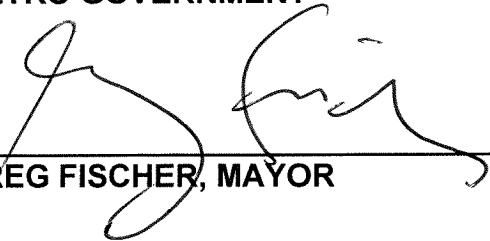
14. This Franchise Agreement memorializes the agreement between the parties and shall be binding upon and inure to the benefit of the respective successors in

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

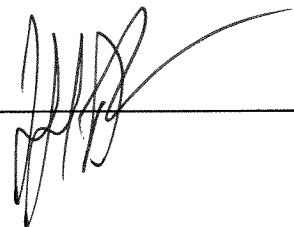


GREG FISCHER, MAYOR

TIMOTHY SCHNEIDER, SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By:  _____



Louisville Metro Public Works & Assets

Communications Franchise Application

Applicant Information

Applicant Name: SQF, LLC
(Complete Legal Name as registered with the Kentucky Secretary of State)

Address: 16 Middle St. Fourth Floor

City: Portland State: Maine Zip Code: 04101

E-mail Address: mbowen@tilsontech.com

Phone Number: 307-921-2680 Fax Number: 207-221-1635

Local Representative Information

Applicant Name: Jason Morris

Address: 4294 Country Lane

City: Greenwood State: Indiana Zip Code: 46142

E-mail Address: sqfnotifications@tilsontech.com

Phone Number: 207-358-7467 Fax Number: 207-221-1635


Emergency Contact Information: 207-358-7467

Certification

Applicant agrees to be bound by all provision of the Franchise and agrees to obtain all application permits and authorizations prior to constructing, installing or operating a System in the right-of-way.

Applicant hereby certifies that the information provided by the applicant is true and correct and that the person signing on behalf of the applicant is authorized to do so. Applicant further acknowledges and certifies that it shall be responsible to certify to Louisville Metro any material changes to the information provided in the completed application during the terms of any Franchise.

Complete Legal Name of Applicant: SQF, LLC

Signature: 

Printed Name: Matthew Bowen

Title: Staff Attorney

Date: November 25, 2019

January 08, 2019

Louisville-Jefferson County Metro Government
611 W. Jefferson,
Mezzanine Level
Louisville, KY 40202

RE: SQF November Bid for Communication Franchise with the City of Louisville/Jefferson County: Project Description
Revision 2.

To Whom It May Concern,

SQF, LLC, a competitive local exchange carrier (CLEC) in the Commonwealth of Kentucky is a telecommunication infrastructure provider and owns and operates infrastructure and support systems for wireless telecommunications and internet service providers. SQF would like to own and operate telecommunications system consisting of new and replacement utility poles, light poles, and other similar structures in the public right-of-way to support wireless telecommunications and wireless internet facilities owned and operate by others duly authorized to do so, is seeking a Communication Franchise with the Louisville-Jefferson County Metro Government.

SQF proposes to purchase existing or soon to be existing infrastructure owned by others authorized to construct and operate in the public right-of-way with the Metro Government. The locations of the existing or soon to be existing infrastructure facilities are as follows:

The map below indicates the approximate locations throughout the county and is marked by a black dot surrounded by a white ring and a black ring.



If there are any questions or concerns, please let me know and I can provide additional information.

Respectfully,

Matthew Bowen

Matthew Bowen
Staff Attorney - SQF, LLC
16 Middle St., Fourth Floor
Portland, ME 04101

BEFORE THE LOUISVILLE-JEFFERSON COUNTY METRO GOVERNMENT

Petition of

SQF, LLC,

For Approval of a Special Exception to Chapter 116
§ 116.03 (F)(1) Bond Requirement

Matter/Case No. _____

PETITION

SQF, LLC ("SQF" or "Applicant") requests Metro Council approval of a Special Exception pursuant to Louisville-Jefferson County Code Chapter 116 § 116.03 (L). Approval of the Special Exception meets the requirements that SQF demonstrate

- (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 Communication Service in Louisville Metro; and
- (3) The requirement unreasonably discriminates against franchisee in favor of another comparable Communications Service provider.

Approval of the Special Exception will provide SQF with the ability to expand its service offerings in the Louisville-Jefferson County Metro area with corresponding benefits to the public for competition, service availability, and reliability, and the Special Exception will not result in the discontinuance, reduction, loss, or impairment of service to any customers.

In support of this Petition, SQF provides the following information:

I. Description of the Applicant and Project

SQF is a Delaware limited liability company¹ with its principal office at 16 Middle Street, 4th Floor, Portland, Maine 04101. SQF is currently a direct, wholly owned subsidiary of SQF Holdco. SQF holds a license to provide facilities-based competitive local exchange telecommunications services in Kentucky (Utility ID: 5057620; Utility Made Active Date: September 13, 2017). SQF provides its services using a system of fiber optic cables and small antennas and conversion equipment attached to poles and other structures.

SQF intends to purchase fifteen poles with small wireless antennas and ancillary equipment attached or integrated in the poles. SQF will provide the infrastructure for AT&T to lease space on the poles and to operate its wireless network for the public and its customers. These poles are either currently constructed or are soon to be constructed, and all construction permits will be covered under AT&T's franchisee and permitting process. AT&T intends to sell these poles to SQF only after construction of the pole and SQF's grant of a Communication Franchisee by the Louisville-Jefferson County Metro Government.

II. Application Requirements and Special Exception

The City of Louisville-Jefferson County Metro Government requires that prospective communication franchisees apply through the open bid process on their website. Chapter 116 of the Louisville-Jefferson County Metro Code articulates the minimum requirements for submission which includes a "franchise bond in the amount of \$1,000,000 which shall be required to be in place for the entire term of the franchise..." Chapter 116 § 116.03 (F)(1). The purpose of the franchise bond is for

¹ SQF, LLC converted from a Maine LLC to a Delaware LLC on February 12, 2019.

"[t]he failure of franchisee to comply with its obligations under this chapter..." Chapter 116 § 116.03 (F)(3). The \$1,000,000 requirement, however, is a one size fits all policy and discriminates against smaller facilities-based competitive local exchange telecommunications companies and it creates a financial threshold that makes it impossible to apply for a franchise and to compete in the Louisville-Jefferson County Metro area.

SQF proposes to have a franchise bond for the duration of the franchise equal to \$2000 per pole, equaling \$15,000 initially, and it will increase its bond amount each and every time a new pole is purchased or erected under SQF's franchise.

A. The exception will not create any threat to the public health, safety or welfare;

A bond by its very nature is a surety agreement against the performance of a contract. While SQF does not intend to violate the franchisee agreement, or any provision of Chapter 116 if it is given a Communication Franchisee, the franchise bond would only be necessary to protect the public health, safety or welfare if SQF fails to maintain its liability insurance. SQF has insurance that meets the required insurance limits under Chapter 116 § 116.03 (F)(6).

B. 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 Communication Service in Louisville Metro

SQF will be unable to purchase the poles from AT&T due to the economic burden a \$1,000,000 franchise bond would place on SQF. With such a high expense, SQF would have to have own thousands of poles in the Louisville-Jefferson County Metro area to be profitable and maintain a \$1,000,000 franchise bond. SQF proffers that a \$2,000 franchise bond, in conjunction with the required insurance and the performance bonds should adequately satisfy the needs of the Louisville-Jefferson County Metro Government and allow SQF to purchase the poles from AT&T and avoid

being effectively prohibited from receiving a franchise from the Louisville-Jefferson County Metro Government.

C. The requirement unreasonably discriminates against franchisee in favor of another comparable Communications Service provider.

The \$1,000,000 franchise bond requirement favors larger franchisees over smaller franchisees as the larger franchisees can spread the cost of the \$1,000,000 over more infrastructure and therefore dilute the cost. SQF, as a smaller company, would only be able to spread the cost of a \$1,000,000 franchise bond over fifteen initial revenue generating poles, and therefore would be unable to generate a profit. As such, a one size fits all requirement such as this unreasonably discriminates against smaller franchisees and companies seeking a franchise, and effectively prohibits smaller companies from competing in the Louisville-Jefferson County Metro area.

Grant of this Petition and SQF's presence in the local telecommunications marketplace within the Louisville-Jefferson County Metro area will serve the public interest by supporting technological innovation, deployment of new infrastructure, lower rates through increased competition, and greater reliability of existing networks. Expanding the availability and reliability of telecommunications services in the Metro area will improve the telecommunications infrastructure and facilitate economic development.

III. Conclusion

For the foregoing reasons, Applicants submits that the public interest, convenience, and necessity would be furthered by approval of this Petition. Applicants respectfully request the Metro Council's approval of the Petition pursuant to Louisville-Jefferson County Code Chapter 116 § 116.03 (L) and grant Applicant a Special Exception of the \$1,000,00 Bond Requirement pursuant to Chapter 116 § 116.03 (F)(1) of the Louisville-Jefferson County Code, and in turn allow Applicant the

opportunity to procure a franchise bond pro-rated to equal \$2,000 per pole and to be increased each and every time the Applicant construct or purchase additional poles.

Respectfully submitted,

Matthew Bowen

Matthew Bowen
Regulatory Administrator - SQF, LLC
16 Middle Street, 4th Floor
Portland, ME 04101
Tel: (307) 921-2680
Fax: (207) 772-3427
mbowen@tilsontech.com

Dated: November 27, 2019