

CITY OF GEORGETOWN, KENTUCKY

ORDINANCE NO. 2021-10

AN ORDINANCE CONFIRMING THE SALE AND AWARDING A NON-EXCLUSIVE FRANCHISE TO OPENFIBER KENTUCKY COMPANY, LLC FOR THE PLACEMENT OF FACILITIES FOR TELECOMMUNICATIONS SERVICES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF GEORGETOWN, CONSISTENT WITH THE TERMS OF ORDINANCE 2021-05.

SUMMARY

1. Awards the bid of the non-exclusive telecommunications services franchise established in Ordinance 2021-05 to OpenFiber Kentucky Company, LLC.
2. Authorizes the Mayor to sign the Telecommunications Services Franchise Agreement.
3. Provides for repeal of inconsistent laws, severability of provisions, and an effective date upon passage and publication.

The full text of this Ordinance is available for examination in the City Clerk's Office, 100 North Court Street, Georgetown, Kentucky 40324 or at www.georgetownky.gov.

INTRODUCED AND PUBLICLY READ FIRST TIME: June 28, 2021

PUBLICLY READ SECOND TIME AND PASSED: July 12, 2021

APPROVED: *Tom Prather*
Tom Prather (Jul 13, 2021 14:25 EDT)
Tom Prather, Mayor

ATTEST: *Tracie Hoffman*
Tracie Hoffman (Jul 13, 2021 14:56 EDT)
Tracie Hoffman, City Clerk

I, Devon E. Golden, hereby certify I am an Attorney licensed to practice law in the Commonwealth of Kentucky. My office is located at 100 North Court Street, Georgetown, Kentucky 40324. I further certify the foregoing Summary of Ordinance 2021-10 of the City of Georgetown, Kentucky, was prepared in accordance with the requirements of KRS 83A.060(9) and is a true and accurate summary of the contents of said Ordinance.

Devon E. Golden

Devon E. Golden

CITY OF GEORGETOWN, KENTUCKY

ORDINANCE NO. 2021-10

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SPONSORS: Tammy Lusby Mitchell and Greg Hampton

WHEREAS, Ordinance 2021-05, adopted by the Georgetown City Council on March 22, 2021, provided for the creation and sale of a non-exclusive franchise, for a term of ten (10) years with up to two (2) additional extensions of time of five (5) years each, for the privilege of constructing, operating, maintaining and distributing telecommunications services facilities within public rights-of-way within the corporate boundaries of the City of Georgetown; and

WHEREAS, after publication of said advertisement on April 23, 2021, the City Clerk received a qualified bid from OpenFiber Kentucky Company, LLC (“Franchisee”).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF GEORGETOWN, KENTUCKY, AS FOLLOWS:

Section 1. That a non-exclusive telecommunications services franchise, as created by Ordinance 2021-05, be, and it hereby is, awarded to OpenFiber Kentucky Company LLC for the cost of advertising and sale of said telecommunications services franchise.

Section 2. That the Mayor shall be, and hereby is, authorized and directed to execute a Telecommunications Services Franchise Agreement consistent with the terms and conditions established in Ordinance 2021-05 with the Franchisee.

Section 3. All prior ordinances, municipal orders, or policies or parts thereof in conflict herewith, are to the extent of such conflict, hereby repealed.

Section 4. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 5. This Ordinance shall become effective upon passage and publication.

PUBLICLY INTRODUCED AND READ FIRST TIME: June 28, 2021

PUBLICLY READ SECOND TIME AND PASSED: July 12, 2021

APPROVED: Tom Prather
Tom Prather (Jul 13, 2021 14:25 EDT)
Tom Prather, Mayor

ATTEST: Tracie Hoffman
Tracie Hoffman (Jul 13, 2021 14:56 EDT)
Tracie Hoffman, City Clerk











2021-06-28 - Telecomm. Franchise Award - OFKY

Final Audit Report

2021-07-13

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|-----------------|--|
| Created: | 2021-07-13 |
| By: | Tracie Hoffman (tracie.hoffman@georgetownky.gov) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAA5rY83Rb38p__WKPnPol-PgHSM6ryUY2e |

"2021-06-28 - Telecomm. Franchise Award - OFKY" History

-  Document created by Tracie Hoffman (tracie.hoffman@georgetownky.gov)
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Signature Date: 2021-07-13 - 7:03:37 PM GMT - Time Source: server- IP address: 96.11.21.18
-  Agreement completed.
2021-07-13 - 7:03:37 PM GMT

TELECOMMUNICATIONS SERVICES FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made and entered into this 14 day of July, 2021, by and between the **CITY OF GEORGETOWN**, a municipal corporation and political subdivision of the Commonwealth of Kentucky (hereinafter "Georgetown"), and **OpenFiber Kentucky Company LLC**, a corporation created and existing under and by virtue of the laws of the Commonwealth of Kentucky (hereinafter "Franchisee").

WITNESSETH:

WHEREAS, by Ordinance 2021-05, Georgetown provided for the creation and sale of a non-exclusive franchise for telecommunications services; and

WHEREAS, Ordinance 2021-05 authorized the advertising for bids on said franchise, and Franchisee submitted a timely bid to acquire said franchise; and

WHEREAS, by Ordinance No. 2021-10, Georgetown accepted the bid of Franchisee to acquire said franchise; and

WHEREAS, Georgetown and Franchisee have entered into this Franchise Agreement to memorialize the sale by Georgetown to Franchisee of said franchise, subject to the terms and conditions reflected in Ordinance 2021-05 and Ordinance 2021-10 (collectively, the "Franchise Ordinances");

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

1. Ordinance 2021-05, which is attached hereto as Exhibit "A," is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

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

3. Ordinance 2021-10, which is attached hereto as Exhibit "C," is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

4. The franchise memorialized in this Franchise Agreement shall commence July 15, 2021 and shall expire as provided in the terms of the Franchise Ordinances.

5. Franchisee 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 the Franchise Ordinances and further to faithfully perform all acts required of it as the purchaser of said franchise.

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

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

****THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY****

CITY OF GEORGETOWN

BY: [Signature]
Tom Prather, Mayor

STATE OF KENTUCKY)
COUNTY OF Scott)

The foregoing Franchise Agreement was subscribed, sworn to and acknowledged before me by Tom Prather, as Mayor of the City of Georgetown, Kentucky, on this the 14 day of July, 2021.

My commission expires: 7/23/2022 #604671
[Signature]

NOTARY PUBLIC
KENTUCKY, STATE-AT-LARGE

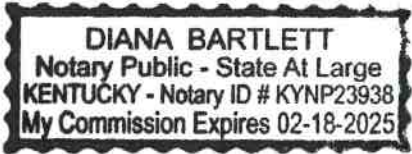
OPENFIBER KENTUCKY COMPANY LLC

BY: [Signature]
[representative]

STATE OF KENTUCKY)
COUNTY OF Jefferson)

The foregoing Franchise Agreement was subscribed, sworn to and acknowledged before me by David Flessas, as CEO of OpenFiber Kentucky Company LLC, on this the 20 day of July, 2021.

My commission expires: _____



[Signature]
NOTARY PUBLIC
KENTUCKY, STATE-AT-LARGE



FRANCHISE BOND

Bond No.: 810009322

KNOW ALL MEN BY THESE PRESENTS,

THAT OPENFIBER KENTUCKY COMPANY, LLC as Principal, and Atlantic Specialty Insurance Company having its executive office One State Street Plaza, 31st Floor, New York, NY 10004 as Surety, are held and firmly bound unto City of Georgetown, hereinafter referred to as Obligee, in the penal sum of Fifty Thousand and 00/100 DOLLARS (\$50,000.00) for the payment of which, well and truly to be made, we bind ourselves our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents, the liability of the Surety being limited to said penal sum regardless of the number of years this bond remains in force or is renewed, of the number of premiums that shall be payable or paid, the number of Subscribers to the system and/or legal fees which may be required and incurred.

WHEREAS, the Obligee has granted a franchise to Principal to use the public streets and places within its Municipality to transmit and distribute electrical impulses through an open line-coaxial antenna system for television receivers located within said

NOW THEREFORE, the condition of this obligation is such, that if the above bound Principal shall faithfully perform, well and truly observe and fulfill their terms and conditions of the franchise, then this obligation shall be null and void; otherwise it shall remain in full force and effect until cancelled.

PROVIDED, HOWEVER, it shall be a condition precedent to any right of recovery hereunder, that in the event of any default on the part of the Principal, a written statement of the particular facts showing the date and nature of such default shall be immediately delivered to the Surety by registered mail at its Home Office at One State Street Plaza, 31st Floor, New York, NY 10004

AND PROVIDED FURTHER that no action, suit or proceeding shall be had or maintained against the Surety on this instrument unless same be brought or instituted and process served upon the surety within twelve (12) months after an act of breach or cancellation of this bond or termination of said franchise, whichever occurs first.

This Bond may be terminated or canceled by Surety by giving thirty (30) days prior notice in writing from Surety to Principal and said Obligee, such notice to be given by certified mail. Such termination shall not affect any liability incurred or accrued under this Bond prior to the effective date of such termination or cancellation.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 16th day of July, 2021.

WITNESS:

OPENFIBER KENTUCKY COMPANY, LLC

PRINCIPAL

By: David Flessas

TITLE David Flessas, CEO

Atlantic Specialty Insurance Company

SURETY

By: Julie Kames

Julie Kames, Attorney-in-Fact





Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: **Carolyn E. Wheeler, Vicki Nobinger, Mary Y. Volmar, Loretta M. Jones, Sandra King, Joy M. Williams, Bonnie L. Rice, Rachel A. Chaveriat, Julie Karnes, Sandy McElhaney, Jessica Frederick, Andrea Allman, Krystal Karnes, Michelle Lute-Heatherly, Thelma M. Lett, Lori A. Wright, Sarah Major**, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: **unlimited** and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

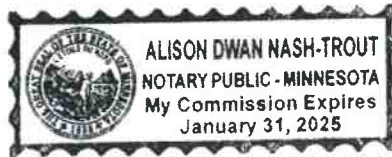
IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this twenty-seventh day of April, 2020.



By 
Paul J. Brehm, Senior Vice President

STATE OF MINNESOTA
HENNEPIN COUNTY

On this twenty-seventh day of April, 2020, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.




Notary Public

I, the undersigned, Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated 16th day of July, 2021.




Kara Barrow, Secretary

This Power of Attorney expires
January 31, 2025



OPENFIBER
KENTUCKY

1700 Eastpoint Parkway
Ste 230
Louisville, KY 40223
(502) 586-7600

Date: July 20th, 2021

City of Georgetown
100 N. Court Street
Georgetown, KY 40324
Attn: Devon Elise Golden, J.D.
City Attorney/City of Georgetown

Dear Ms. Golden:

Please find enclosed an original fully executed Franchise Agreement. Also, please find enclosed a Franchise Bond for the amount of \$50,000.00 per the City Ordinance (section 3 subsection (E-1), page 19). This is related to a Franchise Agreement awarded by the City to OpenFiber Kentucky Company, LLC.

Also, please find below the address for OpenFiber Kentucky for mail and official notifications:

- Open Fiber Kentucky Company, LLC
1700 Eastpoint Parkway, Ste. 230
Louisville, Kentucky 40223
Attention: Rosemary Watkins, Controller

In addition, please find below a management level individual with OpenFiber Kentucky that can coordinate with and assist the city as needed with the development of emergency plans:

- John Binkley-Director of Service Delivery
(270) 977-3660-Mobile
(502) 586-7600 Ext. 108-Office
1700 Eastpoint PKWY., Ste. 230
Louisville, KY 40223

If you should have any questions/concerns then please do not hesitate to contact me at (502) 541-7574 or eric.fuson@openfiberky.com.

Respectfully Submitted,

Eric S. Fuson
Sr. Project Manager/Service Delivery
OpenFiber Kentucky