

**CITY OF PROSPECT
ORDINANCE NO. 652, SERIES 2025**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO
A UNIFORM FRANCHISE AGREEMENT**

WHEREAS, Louisville/Jefferson County Metro Government publicly advertised bid proposals from parties interested in obtaining franchises to erect, install or maintain communication facilities or provide communication services by use of said communication facilities within the confines of Louisville Metro, Kentucky, which includes all the area in Jefferson County, Kentucky, and

WHEREAS, Lumos Fiber of Kentucky LLC (hereinafter "Provider"), with its principal office located at 4100 Mendenhall Oaks Parkway, Suite 300, High Point, NC 27265, 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 and was approved as the winning bidder by the City of Louisville Council meeting of the 12th day of December 2024, and

WHEREAS, The City of Prospect, being located within the confines of Louisville Metro (Jefferson County), also desires to approve a non-exclusive franchise with Lumos Fiber of Kentucky LLC, since a portion of the project will be located upon rights of way owned by the City of Prospect, but which are still in the geographic area of the bid notice,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PROSPECT, KENTUCKY:

SECTION 1: The City of Prospect hereby recognizes, adopts the bid process and all the related findings of Louisville/Jefferson County Metro Government supporting the franchise approval of Lumos Fiber of Kentucky LLC, contained in the record of such approval at the Louisville Metro Council meeting. Further, based on the findings herein, the certain non-exclusive franchise agreement for telecommunication services in Jefferson County, by and between the City of Prospect and Lumos Fiber of Kentucky LLC, be and hereby is approved by the City Council. Further the City Mayor is hereby authorized to sign the Agreement, along with any other documents required to effectuate the terms of the referenced Agreement, attached, and fully incorporated herein as Exhibit One.

SECTION 2: This Ordinance shall take effect upon its reading, passage, approval, and publication according to law.

First Reading this 21st day of April 2025

Second Reading this ____ day of _____ 2025

By a vote of ____ aye and ____ nay of the City Council.

APPROVED/VETOED:

ATTEST:

Douglass Farnsley
Mayor

John S. Carter
City Clerk

UNIFORM FRANCHISE AGREEMENT

THIS UNIFORM FRANCHISE AGREEMENT made and entered into this ____ day of _____, 2025, by and between the City of Prospect, a Home Rule city in Jefferson County, Kentucky, with its office at 9200 US Highway 42, Prospect, KY 40059 (hereinafter "City") and Lumos Fiber of Kentucky, LLC, with its principal office at 4100 Mendenhall Oaks Parkway, Suite 300, High Point, NC 27265 (hereinafter "Provider").

WITNESSETH:

WHEREAS, pursuant to Chapter 116 of the Louisville Metro Code of Ordinances and Section 163 and 164 of the Kentucky Constitution, the Louisville/Jefferson County Metro Government ("Louisville Metro") solicited bid proposal from parties interested in obtaining franchises to erect, install and maintain communication facilities or provide communication services by use of said communication facilities within the confines of Louisville/Jefferson County, Kentucky,

WHEREAS, Provider submitted a bid proposal to Louisville Metro for a communication services franchise pursuant to the requirement of Chapter 116 of the Louisville Metro Code of Ordinances,

WHEREAS, pursuant to Ordinance No. **222**, Series **2024**, Louisville Metro 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 confines of Louisville/Jefferson County, Kentucky in conformance with

Chapter 116 of the Louisville Metro Code of Ordinances,

WHEREAS, the City, being located within the same geographic area identified in the bid notice of Louisville Metro (i.e., Jefferson County), also desires to approve a non-exclusive franchise with Provider on substantially similar terms, since a portion of the project will be located upon rights-of-way owned by the City, which are the county and geographic areas described in the bid notice of Louisville Metro,

WHEREAS, the City Council recognized and adopted the bid process and all the related findings of Louisville Metro supporting the franchise approval of Provider, contained in the record of such bid proposal approved by Louisville Metro.

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 in conformance with Chapter 116 of the Louisville Metro Code of Ordinances. The following provisions of Chapter 116 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, indemnification, insurance, responsibility for costs and hold harmless provisions. 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.

2. The communication service facilities to be installed by the Provider by said

franchise are more particularly described in the attached as Exhibit "A"; which is incorporated herein by reference in its entirety and shall apply as if fully set forth herein. There shall be no changes, revisions or additions to the communication service facilities identified in Exhibit "A", without the expressed written consent of the City, provided City's issuance of a construction permit for new routes and facilities shall be deemed written consent for such new routes and facilities. Provider agrees to comply with all applicable requirements of any City ordinances and regulations concerning application for an encroachment permit; including the Provider's agreement to buffer, with landscaping or otherwise, cabinets (or other structures), which may be placed in the right-of-way, as directed by the City.

3. Provider shall make application to the City to obtain all necessary permits for any work that will be performed in the City's rights-of-way (ROW). Upon request of the Provider and prior to making an application for a ROW permit, 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 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, describe which areas along the proposed routes will have access to the facilities to be installed with the goal to provide the maximum feasible access to the new installation for the residents of City, the projected timelines for the same and the full contact information (including cell phone), of all the responsible parties for the installation of the facilities, especially the site supervisor and the on-site supervisor for any sub-contractor and the provider shall immediately update the contact information if there is a change in the individuals with on-site responsibility for the project. 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 or delayed. Provider shall give reasonable notice to the City prior to commencing construction within the City. Provider shall notify City upon completion of the permitted work and City shall have a right of final inspection and approval based on the approved permit. City shall perform inspections within 10 days of receipt of notice from the Provider that the permitted work has been completed. City shall notify in writing the Provider and City within 48 hours of their inspection(s) and findings.

4. Provider is informed that the City does not participate in the Telecommunication Tax under KRS 136.600 to 136.660, and any franchise fees relating to the use of its right of way will be imposed directly upon the user. Provider agrees that when this fiber becomes actively used, provider shall provide all information required for the City to begin collecting the appropriate franchise fee, which may be a maximum of five percent (5%) of Provider's (or the Provider's successors, assigns, license, and lessees), annual Gross Revenues earned within the City. Provider shall submit to City at least annually, documentation in the form attached to this Franchise Agreement as Exhibit B and shall respond to any reasonable document request from the City relating to the issue of whether the facilities are in use and therefore franchise fees should be paid. The first payment period for the franchise fee to be paid under this section shall commence ninety (90) days after Provider's notice and the City's acknowledgment and response. Provider shall be permitted to pass through and itemize on subscriber bills the amount of the franchise fee and/or any net taxes paid pursuant to KRS 136.600-136.660, so that in no event shall the amounts of franchise fees and net taxes charged to subscribers exceed the amounts paid or remitted by Provider to City and/or the Commonwealth. "Gross Revenues" shall mean

all revenues, as determined in accordance with generally accepted accounting principles, received by Provider from Subscribers residing within the Service Area of the City for services purchased by such Subscribers on a regular, recurring monthly basis. Gross Revenues shall not include (1) any taxes, fees or assessments collected by the Provider from Subscribers for pass-through to a government agency, including the franchise fee and FCC user fee; (2) bad debt; (3) credits, refunds and deposits paid to Subscribers; or (4) any exclusions available under State Law. No such franchise fee shall be assessed against Provider unless it is assessed on neutral and non-discriminatory basis for all communication services providers.

5. In the event the City requires Provider to provide a performance bond under this Franchise Agreement, the City will allow Provider to add the City to the bond acquired under the Louisville Metro franchise agreement.

6. Provider shall employ ordinary care in the maintenance and operation of its system and its facilities shall be kept in good condition and shall not be allowed to endanger the life, health or property of any citizen of the City or property of the City. Provider hereby agrees to indemnify and hold the City harmless, including its agents and employees, from any claims or damages resulting from the action of the Provider in constructing, operating, or maintaining its system. The Provider shall maintain throughout the term of the Franchise commercial general liability, automobile insurance and umbrella liability coverage in at least \$1,000,000.00 per occurrence and workers compensation within statutory limits. City shall be added as an additional insured, arising out of work performed by Provider, to the above commercial general liability, auto liability and umbrella liability insurance coverage. The Provider shall furnish the

City with current certificates of insurance evidencing such coverage upon request. If the Provider discontinues the use of its facilities, it shall so inform the City and represent a plan for the removal and/or safe disconnection and decommissioning of its facilities.

7. 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 suing in the agreed upon and appropriate venue to resolve the dispute, which shall be the Circuit Court of Jefferson County, Kentucky. Provider shall provide to the City an updated and current point of contact for Provider to facilitate communication.

8. Provider does hereby bind itself, its successors, and assigns, to faithfully and fully perform each 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.

9. 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.

10. This Franchise shall commence _____, 2025, and shall expire on _____, 2045.

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.

CITY OF PROSPECT

BY: _____
DOUG FARNSLEY, MAYOR

PROVIDER: LUMOS FIBER OF KENTUCKY, LLC

BY: _____

ITS: _____

DRAFT

EXHIBIT A

Lumos proposes to build a fiber-based, high-capacity telecommunications network, both to provide telecommunications services to third-party customers and for Lumos's own use. Lumos's initial plans are to impact homes and small businesses across Jefferson County, but plans can shift some as we work through the field engineering and construction phases of the project.

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