LEXINGTON-FAYETTE URBAN COUNTY COUNCIL

WORK SESSION AGENDA

October 14, 2008

I. Public Comment – Issues on Agenda

II. Requested Rezonings / Docket Approval – None

III. Approval of Summary-Yes, October 7, 2008, pp.5-8

IV. Budget Amendments – None

V. New Business, pp.10-43

VI. Continuing Business / Presentations

A. Services Committee(separate, not in packet)

B. Recognition of Customer Service Employees

C. Safety Awards Presentation
Patrick Johnston, Director of Risk Management

VII. Council Report

VIII. Mayor's Report – None

IX. Public Comment – Issues Not on Agenda

ADMINISTRATIVE SYNOPSIS

New Business Items

A. Authorization of a Pricing Implementation Document and a Prescription Benefit Services Agreement with Caremark LLC to Administer LFUCG's Pharmacy Benefit. (539-08) (Allen/Koch)
This request will authorize the approval of a Pricing Implementation Document and a Prescription Benefit Services Agreement with Caremark LLC to administer LFUCG's Pharmacy Benefit beginning November 1, 2008 through October 31, 2011. LFUCG will receive a rebate of $2.80 for each retail claim and $15.96 for each mail order claim. There is no administrative fee.**pp.10-12**

B. Authorization of Amendment No. 1 to Agreement with AIDS Volunteers, Inc. for use of HOME Investment Partnerships Funds for Support of Tenant Based Rental Assistance Project. (545-08) (P. King/Koch)
This request will authorize Amendment No. 1 to Agreement dated April 10, 2006 to extend the performance period for project completion from June 30, 2008 to June 30, 2009 with AVOL for use of HOME Investment Partnership Funds for Support of Tenant Based Rental Assistance Program. There are no other changes to this amendment.**p.13**

C. Authorization of a Lease Agreement with AIDS Volunteers, Inc. (AVOL) for Property Located at 851 Todds Road. (546-08) (P. King/Koch)
This request will authorize a Lease Agreement with AVOL for Solomon House located at 851 Todds Road. This facility provides housing and support services to low income persons with severe cases of AIDS. The lease is from November 15, 2008 to November 15, 2009 and may be renewed for three (3) additional 12-month terms at a cost of $10 per year.**p.14**

D. Authorization of a Lease Agreement with AIDS Volunteers, Inc. (AVOL) for Property Located at 1807 Dalton Court. (547-08) (P. King/Koch)
This request will authorize a Lease Agreement with AVOL for Rainbow House located at 1807 Dalton Court. This apartment facility provides housing and support services to homeless and near homeless low income persons who are HIV positive. The lease is from November 15, 2008 to November 15, 2009 and may be renewed for three (3) additional 12-month terms at a cost of $10 per year.**p.15**

E. Authorization of a Treasury Law Enforcement Agencies Agreement with the Internal Revenue Service, on Behalf of the Department of Public Safety, Division of Police. (540-08) (Bastin/Bennett)
This request will authorize a Treasury Law Enforcement Agencies Agreement with the internal Revenue Service, Criminal Investigation, on behalf of the Division of Police. This Agreement will allow officers of the Division to be reimbursed for overtime expenses directly related to conducting official Treasury investigations as members of a Joint Task Force Operation.**pp.16-20**

F. Authorization of Changes to Street Names and Individual Address Numbers within Council Districts 1, 2, 7, 8 and 10 for the Enhanced 911 System. (544-08) (Lucas/Bennett)
This request will authorize the following changes to street names and individual address numbers for the proper operation of the Enhanced 911 System. **Council District 1:** Change 501, 505, 509 513, 517, and 521 Douglas Ave to 751, 755, 759, 763, 767, and 771 Douglas Loop respectively; 501, 505, 509, 513, 517, and 521 Glen Arvin Ave to 651, 655, 659, 663, 667, and 671 Glen Arvin Cir respectively, 779 Newtown Pk to 1 Imperial Ct, 657 – 679 Kennedy Rd to 673 Kennedy Rd, and 1205 N Broadway to 201 Legends Ln. **Council District 2:** Change 447 – 451 Ash St to 451 Ash St, 3216 Bracktown Rd to 3217 Bracktown Rd, 769 – 771 Breathitt Ave to 771 Breathitt Ave, 935 – 937 Charles Ave to 937 Charles Ave, 737 Florence Ave to 735 Florence Ave, 1408 – 1436 N Forbes Rd to 1422 N Forbes Rd, 417 – 417 Georgetown St to 417 Georgetown St, 371 Glen Arvin Ave to 369 Glen Arvin Ave,3460 Price Rd to 410 Greenwood Ave, 330 – 320 Hickory St to 306 Hickory St, 401 – 1413 Leestown Rd to 1401 Leestown Rd, 1417 – 1419 Leestown Rd to 1417 Leestown Rd, 1445 Leestown Rd to 1441 Leestown Rd, 320 Lima Dr to 250 Lima Dr, 435 – 437 Lindberg Dr to 437 Lindberg Dr, 331 – 333 Newtown Pk to 333 Newtown Pk, 439 Newtown Pk to 429 Newtown Pk, 501 – 503 Newtown Pk to 501 Newtown Pk, 836 Whitney Ave to 846 Whitney Ave, and 370 Price Rd to 955 Whitney Ave. **Council District 7:** Change 736 Lochmere Pl to 734 Lochmere Pl. **Council District 8:** Change 3712, 3708, 3704, 1300, and 1304 Trent Cir to 2801, 2805, 2809, 2813, and 2817 Styx Ct respectively. **Council District 10:** Change 2117 Ft Harrods Dr to 3401 Lyon Dr.**pp.21-24**

G. Authorization of a Deed of Permanent Drainage Easement and a Temporary Construction Easement Regarding the Polo Club Boulevard at Property Located at 2550 Winchester Road. (542-08) (Rayan/Webb)
This request will authorize a Deed of Permanent Drainage Easement and a Temporary Construction Easement for construction of the Polo Club Boulevard at property located at 2550 Winchester Road. This drainage easement will allow Man O' War Boulevard to be connected to Winchester Road at no cost to LFUCG.**p.25**

H. Authorization of a Co-Terminus Equipment Addition Amendment to Lease Agreement with IKON Office Solutions, Inc. on Behalf of the Council Office. (543-08) (Langston)
This request will authorize a Co-Terminus Equipment Addition Amendment for an additional cost of $45.61 per month for lease of an internal hole punch and an expanded paper deck for a leased Canon iRC 5185i copier on behalf of the Council Office. Funds are budgeted.**p.26**

I. Authorization of a Resolution Requesting Kentucky Economic Development Finance Authority to Issue Revenue Bonds to Benefit Baptist Healthcare System, Inc. (Central Baptist Hospital). (548-08) (Wright/Kelly)
This request will authorize a resolution to request Kentucky Economic Development Finance Authority to issue Revenue Bonds in an amount not to exceed $123,530,291 for Baptist Healthcare Systems, Inc. (Central Baptist Hospital) to finance and refinance the costs of acquisition, construction, renovation and installation of certain additions and improvements, including equipment at the Hospitals for the "Prior Project" and the "2008 Project." LFUCG shall have no expense in connection with the Projects or the issuance of the Bonds. The adoption of the resolution shall not impose any financial liability or responsibility on LFUCG.**p.27**

J. Authorization of an Ordinance to Create and Establish a Non-Exclusive Telecommunications Franchise and the Acceptance of Bids for Non-Exclusive Franchise Agreements for Telecommunications Services in Fayette County. (549-08) (Cole)
This request will authorize an Ordinance to create and establish a non-exclusive Telecommunications Franchise and accept bids for non-exclusive Franchise Agreements to provide for the placement of facilities for the generation, transmission, distribution and sale of telecommunications services within the public rights-of-way. The Agreements will be for a 3-year period on Council approval. There is no budgetary impact.**pp.28-43**

URBAN COUNTY COUNCIL

WORK SESSION SUMMARY

October 7, 2008

Mayor Newberry chaired the meeting, calling it to order at 3:00 pm. All Council Members, except Andrea James were in attendance.

I. Public Comment – Issues on Agenda - None

II. Requested Rezonings/Docket Approval - None

III. Approval of Summary

Motion by Gorton to approve the September 30, 2008 work session summary, seconded by Blevins motion passed without dissent.

IV. Budget Amendments - None

V. New Business

Motion by DeCamp to approve new business , seconded by Stinnett, motion passed without dissent.

VI. Continuing Business/Presentation

Budget & Finance Committee Update by Stevens with no motions coming forward.

Family Care Center Health Clinic Update – Commissioner Helms introduced Mark Birdwhistell and Dr. Jay Perman and gave background on the Family Care Center which opened in 1989 to serve teen mother and young children and received a primary care center license in April, 1990. The presentation highlighted the partnership with UK healthcare experts, concentrating on three critical issues, compliance, accountability and access, saying that both UK and LFUCG were working together to deal directly with these issues.

Several council members commented on the team's work and were pleased with the UK partnership. When asked what the council might do to enhance their endeavors, they were told that patience and good communication were key.

Recognition of Customer Services Employees was postponed until a later date.

Introduction of Junior Fire Chief – Meredith, a 5th grader from Athens-Chilesburg Elementary was named as this years Junior Fire Chief as part of Fire Prevention Week.

Monument to the Fallen – Lt. Jeff Garris presented a proposal to erect a monument honoring seven firefighters who have lost their lives in the line of duty. The proposed site is Phoenix Park next to the Law Enforcement monument. Lt. Garris advised the council of fund raising efforts and cost of construction. He said information regarding making donations could be obtained from the FOF website.

Gorton congratulated the FOF for their efforts and hoped the monument might be ready by 2010 in conjunction with the World Equestrian Games. Lt. Garris said the goal was to dedicate the memorial one year from now if adequate funding was obtained.

A motion by Gorton requesting council to approve $10,000.00 from fund balance for the proposed Monument to the Fallen, seconded by Beard, motion passed without dissent.

Beard asked about the relation between the site for the monument and the proposed parking garage structure at Phoenix Park. Lt. Garris explained the monument plan has been on the drawing board for three years and even though they are aware of the recent proposals of a parking garage and Centre point, they did not know how yet if site for the monument would be affected.

Lexington Fayette Emergency Operations – presentation by Commissioner Bennett was postponed until later in the work session, since a portion will be discussed during closed session and a portion discussed during open session.

Council Report

Gorton announced a book sale starting Sat. Oct. 11 through Oct. 19 at Mill Pond Center.

A motion by Gorton to refer the draft ordinance on Newtown Pike to the Planning Committee, seconded by DeCamp passed without dissent.

A motion by Stinnett asking that an update on the Day Treatment Center be referred to the Planning Committee, seconded by McChord passed without dissent.

Gorton advised Stinnett the October agenda of the Planning Committee was full. Stinnett agreed to wait until November to add the Day Treatment Center update.

Stinnett announced a joint meeting of the fifth and sixth districts at 6:00 pm on Thursday, October 9. He also gave an update of road projects currently underway in the sixth district. He asked Logan Askew, Commissioner of Law to review and offer an opinion on the Neighborhood Development Fund (NDF) and council reports on GTV3 policies regarding any stipulations imposed 30 days prior to an election. He specifically wanted to know how any stipulations might apply when a council member was running either opposed or unopposed.

McChord again reminded the public about the Second Sunday event and gave status of trails in the ninth district.

Stevens announced the One World Film Festival, October 11 & 12.

A motion by Stevens to approve payment of $2750.00 from the Council Office's Economic Development Fund to Commerce Lexington for the Equine Industry Task Force, seconded by Lane passed without dissent.

Henson announced a ribbon cutting Sat., Oct. 11 for the new community center at the Village Drive apartments. She also announced a library branch dedication.

Gray announced the First Annual Art Shelter Summit, Sat., Oct. 11 to be held 8:30 at the Old Distillery on Manchester St.

Beard expressed opposition of residents of the fourth district regarding Tates Creek sidewalk money and said he would like to see a public meeting to discuss the project. Mayor Newberry suggested he and Beard meet to brainstorm a way to accomplish public input and allow those residents to be heard.

Mayor's Report - None

Public Comment – Issues Not on Agenda

Two speakers addressed the council

A motion by Lane to go into closed session for two purposes: (1) pursuant to KRS 61.810(1) (m) in order to discuss infrastructure records and plans related to the Pubic Safety Operations Center that are exempt from disclosure under KRS 61.878(1) (m) and: (2) pursuant to KRS 61.810(1) (b) and (g) in order to discuss an economic development matter involving real property. An open discussion would like affect the value of a specific piece of property to be acquired for public use and would jeopardize the siting, retention, expansion or upgrading of a business, seconded by Gorton passed without dissent.

Open session adjourned at 4:25 pm

A motion by Blues to reconvene into open session, seconded by Crosbie, passed without dissent.

Commissioner Bennett told the council it was time to advertise for the first round of construction bids for the emergency operating center. He said the name of the facility has been broadened to public safety operations center. He asked the architect to give an overview of the Coldstream Master Plan which includes a 16 acre site which will now house the facility.

Blues referred to the change in location for the facility and stated there was a need for better communication regarding the relocation. He stated the new site chosen was near two neighborhoods in his district and he was concerned how any impact. He asked about the second access and where it comes out and if there would be any issues with radio, TV reception in those neighborhoods. He suggested a public meeting be held to hear citizen input on relocation and construction of this facility.

David Lucas, Enhanced 911 said Coldstream offered the LFUCG the alternate site which is twice as big, it offers a better elevation. Lucas added the buildings size needed to be increase due to a miscalculation about how much space was required for mechanical systems.

Vice Mayor Gray asked for further explanation regarding the increased cost of $42.8 million and was told there were two main components, 1) the need for dual sources for everything such as master generators, etc. 2) need for the facility be ballistic consistent by having bullet proof construction. Gray asked if they were asked to go back to the drawing board to cut cost, could there be a reduction.

Bennett said the original design for the project had all been done "in house"; however the cost of the project grew after LFUCG hired professional help to design the facility.

Several other council members had questions and comment about the presentation all revolving around the increased size, cost and relocation the project.

Work session adjourned at 6:45 pm

Budget Information For New Business Items

October 14, 2008 Work Session

Item	Number	Amount	Fund	Name / Description
A	539-08		6002	Health Insurance Fund
B	545-08	NA		
C	546-08	NA		
D	547-08	NA		
E	540-08	NA		
F	544-08	NA		
G	542-08	NA		
H	543-08	456.10	1101	General Service District – General Fund
I	548-08	NA		
J	549-08	NA		

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539-08

Jim Newberry, Mayor

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Division of Human Resources

MEMORANDUM

TO: Mayor Jim Newberry
Senior Advisor Joe Kelly
Council Members

FROM: Michael Allen, Director
Division of Human Resources

DATE: September 29, 2008

SUBJECT: Pricing Implementation and Prescription Benefit Services Agreement

Attached please find a contract for the Pricing Implementation and Prescription Benefit Services Agreement with Caremark, L.L.C. to administer the Lexington-Fayette Urban County Governments Pharmacy Benefit for the period November 1, 2008 through October 31, 2011.

There is no administrative fee. The Lexington-Fayette Urban County Government will receive a rebate of $2.80 for each retail claim and $15.96 for each mail order claim.

Log # 09-0027

539-08

Pricing Implementation Document
Lexington-Fayette Urban County Government

MAIL	
BRAND	AWP – 24.5% + $0.00 dispensing fee
GENERIC	AWP – 61.0% + $0.00 dispensing fee
ELECTRONIC CLAIM ADMINISTRATION FEE	$0.00 per claim
[illegible]	
BRAND	Lower of U&C or AWP – 16.5% + $1.60 dispensing fee
GENERIC	Lowest of U&C or AWP-16.5% + $1.60 dispensing fee or Caremark MAC + $1.60 dispensing fee
	Generic effective rate guarantee of AWP-59.0% (MAC and non-MAC combined) + $1.60 dispensing fee
ELECTRONIC CLAIM ADMINISTRATION FEE	$0.00 per claim
MANUAL CLAIM ADMINISTRATION FEE	$1.50 per claim
[illegible]	[illegible]
MAIL	$15.96 per claim
RETAIL	$2.80 per claim
[illegible]	
	AWP -16.5% + $0.00 dispensing fee Administration Fee $0.00

The pricing set forth above is contingent upon the following assumptions:

- An effective date of 11/01/2008, with an expiration date of 10/31/2011, provided this document is executed by Client and received by Caremark before 11/1/2008. In order for Caremark to implement the pricing as set forth above by the effective date, this document must be signed by Lexington-Fayette Urban County Government ("Client") and returned to Caremark before 10/01/2008.
- Execution of a three-year agreement.
- Caremark shall be the exclusive mail service provider.
- Caremark shall be the exclusive specialty provider.
- Rebate guarantees are based upon fully-funded plan designs, which allow a 90 day supply at mail and claim utilization and plan design(s) are as represented by Client.
- Rebate guarantees for mail and retail are measured and reconciled in the aggregate.
- Rebates will be effective the first day of the first calendar quarter following Caremark's receipt of this executed document.
- Qualifying three tier plan designs will have at least a $15.00 co-payment differential between preferred and non-preferred brand prescriptions, a $15.00 differential in the minimum co-payment for coinsurance, or a differential of coinsurance 1.5 times between the preferred and non-preferred brand (for example, if preferred brand coinsurance was 20%, non- preferred brand would need to be 30% to qualify).
- Retail pharmacy rates may vary and the amount paid to the retail pharmacy may not be equal to the amount billed to Client and Caremark shall retain any difference.
- Caremark may exclude the following from any retail pricing guarantee:
  - Specialty/biotech drugs;
  - 100% member-paid plans;
  - Generics that enter the market with supply limitations or restrictions that limit marketplace competition;
  - Compound drugs.

Pricing Implementation Document
Lexington-Fayette Urban County Government

- The participating retail pharmacy may collect from the plan participant the lower of the applicable co-pay or the discounted price or the retail pharmacy's usual and customary price.
- Client agrees not to participate in any other formulary or similar discount program, or enter into any direct or indirect contracts with pharmaceutical manufacturers with respect to the products and services dispensed to Client's plan participants.

Pricing Assumptions

a) Caremark reserves the right to modify or amend the financial provisions in this document in the event of:
   - A change in the scope of services to be performed by Caremark or the assumptions upon which the financial provisions included in this document are based and/or any government imposed or industry wide change that would impede Caremark's ability to provide the pricing described in this document, including any prohibition or restriction on Caremark's ability to receive rebates from pharmaceutical manufacturers;
   - A change in Client's alignment with Caremark's PDL;
   - Implementation or addition of a high deductible health plan/consumer-driven health plan option;
   - Implementation or addition of 100% member paid plan;
   - A greater than twenty percent (20%) change in the total number of plan participants from the number provided during pricing negotiations; or
   - A change in the coverage of Medicare eligible plan participants, irrespective of the resulting change in total number of plan participants, as defined above.

b) In the event First DataBank, Medi-Span or other nationally available AWP reporting source discontinues the reporting of AWP or changes the manner in which AWP is calculated, then Caremark reserves the right to modify the pricing terms of this document, to be effective as of the date of such discontinuation or change, so as to maintain the parties' relative economic positions as existed immediately before the effective date of such discontinuation in reporting or change in the calculation of AWP, as measured across all products on an aggregate basis. Such modifications may include the utilization of alternate pricing benchmarks.

Caremark and Client each certify that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C § 1320a-7b(b) ("Anti-Kickback Statute"), or the federal "Stark Law," set forth at 42 U.S.C § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement. Further, Caremark shall ensure that individuals meeting the definition of "Covered Persons" (as such term is defined in the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and AdvancePCS) shall comply with Caremark's Compliance Program, including training related to the Anti-Kickback Statute and the Stark Law. In addition, Caremark's Code of Conduct and policies and procedures on the Anti-Kickback Statute and Stark Law may be accessed at http://www.caremark.com/wps/portal/_s.155/3370?cms=CMS-2-007764."

The pricing and terms within this document supersede and amend the Sponsor Agreement between Caremark and Client and any terms of the Sponsor Agreement are hereby rendered null and void. If Client does not sign a Prescription Benefit Services Agreement by the effective date, then all the standard terms and conditions in Caremark's template Prescription Benefit Services Agreement will apply, except as may be modified by this document.

545-08

Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Division of Community Development

TO: JIM NEWBERRY, MAYOR
URBAN COUNTY COUNCIL

FROM: PAULA KING, DIRECTOR
DIVISION OF COMMUNITY DEVELOPMENT

DATE: OCTOBER 6, 2008

SUBJECT: REQUEST COUNCIL AUTHORIZATION TO EXECUTE AMENDMENT TO AGREEMENT WITH AIDS VOLUNTEERS, INC., FOR USE OF HOME INVESTMENT PARTNERSHIPS FUNDS FOR SUPPORT OF TENANT BASED RENTAL ASSISTANCE PROJECT

On April 10, 2006 (Ordinance # 104-2005), Council approved execution of an agreement with AIDS Volunteers, Inc., providing an allocation of $88,000 in Home Investment Partnerships Program funds, in accordance with the 2005 Consolidated Plan, for operation of a Tenant Based Rental Assistance Program for persons of very low-income. The agreement provided for project completion by June 30, 2008. AIDS Volunteers, Inc., has requested additional time to complete the project activities.

The amendment to agreement provides for a twelve-month extension to the performance period for project completion, through June 30, 2009. No additional funds are needed.

Council authorization to execute the amendment to agreement is hereby requested.

Paula King, Director

Xc: Kyna Koch, Commissioner, Department of Finance and Administration

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546-08

Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Division of Community Development

TO: **JIM NEWBERRY, MAYOR**
URBAN COUNTY COUNCIL

FROM: **PAULA KING, DIRECTOR**
DIVISION OF COMMUNITY DEVELOPMENT

DATE: **OCTOBER 6, 2008**

SUBJECT: **REQUEST COUNCIL AUTHORIZATION TO EXECUTE LEASE WITH AIDS VOLUNTEERS, INC., FOR 851 TODDS ROAD**

The Lexington-Fayette Urban County Government received federal funds from the U.S. Department of Housing and Urban Development in 1994 for the development of housing facilities for persons with AIDS. One of the properties developed with these funds was a community residence, Solomon House, located at 851 Todds Road. The purpose of this facility is to provide housing and support services to low-income persons with severe cases of AIDS. AIDS Volunteers, Inc. (AVOL), a private, nonprofit organization, is the sponsor for this project. The property was originally leased to AVOL for operation and management in 1996. Since that time, AVOL has complied with all lease requirements and with all federal regulations.

The lease for this facility has expired and a new lease with AVOL is proposed. The proposed lease makes AVOL fully responsible for costs of maintenance and operation of the community residence. The lease is for a period of one year, renewable for three additional 12-month periods, at a cost to AVOL of $10.00 per year.

Council authorization to execute the lease is hereby requested.

Paula King

Paula King
Director

Xc: Kyna Koch, Commissioner, Department of Finance and Administration

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547-08

Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Division of Community Development

TO: JIM NEWBERRY, MAYOR
URBAN COUNTY COUNCIL

FROM: PAULA KING, DIRECTOR
DIVISION OF COMMUNITY DEVELOPMENT

DATE: OCTOBER 6, 2008

SUBJECT: REQUEST COUNCIL AUTHORIZATION TO EXECUTE LEASE WITH AIDS VOLUNTEERS, INC., FOR 1807 DALTON COURT

The Lexington-Fayette Urban County Government received federal funds from the U.S. Department of Housing and Urban Development in 1994 for the development of housing facilities for persons with AIDS. One of the properties developed with these funds was an apartment building, Rainbow House, located at 1807 Dalton Court. The purpose of this facility is to provide housing and support services to homeless and near homeless low-income persons who are HIV positive. AIDS Volunteers, Inc. (AVOL), a private, nonprofit organization, is the sponsor for this project. The property was originally leased to AVOL for operation and management in 1996. Since that time, AVOL has complied with all lease requirements and with all federal regulations.

The lease for this facility has now expired and a new lease with AVOL is proposed. The proposed lease makes AVOL fully responsible for costs of maintenance and operation of the apartment house. The lease is for a period of one year, renewable for three additional 12-month periods, at a cost to AVOL of $10.00 per year.

Council authorization to execute the lease is hereby requested.

Paula King

Paula King
Director

Xc: Kyna Koch, Commissioner, Department of Finance and Administration

HORSE CAPITAL OF THE WORLD

200 East Main Street 6th Fl Lexington, KY 40507 (859)258-3070 (859)258-3081 fax www.lfucg.com

F:\WP51\HCD\GRANTS\FEDERAL\US DEPT OF HUD\[illegible]\A\9-Bluesheet memo--lease for 1807 Dalton Ct.doc

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540-08

LEXINGTON DIVISION OF POLICE

150 East Main Street • Lexington, KY 40507 • (859) 258-3600

TO: Mayor Jim Newberry
Urban County Council

FROM: Chief Ronnie Bastin
Division of Police

DATE: September 29, 2008

RE: Internal Revenue Service Agreement

Please find attached blue sheet and documentation for an Agreement between the Internal Revenue Service and the Lexington-Fayette Urban County Government. This agreement allows for the reimbursement of certain expenses to the Division of Police for costs incurred as participants in joint operations/tasks forces with a Department of the Treasury law enforcement agency. I have attached three (3) original agreements requiring the Mayor's signature and Commissioner Kyna Koch in her assignment as Chief Financial Officer.

Upon approval and signing, please forward original agreements to the Chief's Office to acquire additional signatures.

If you have any question or require additional information, please contact my office.

R Bastin
Ronnie Bastin
Chief of Police

Attachment

cc: Tim Bennett, Commissioner of Public Safety

AGREEMENT BETWEEN TREASURY LAW ENFORCEMENT AGENCIES and LOCAL, COUNTY AND STATE LAW ENFORCEMENT AGENCIES FOR THE REIMBURSEMENT OF EXPENSES

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This agreement is entered into by the Lexington Fayette Urban County Government and Internal Revenue Service, Criminal Investigation, for the purpose of receiving reimbursable costs incurred by the Lexington Fayette Urban County Government in providing resources to joint operations/task forces.

Payments may be made to the extent they are included in the Treasury law enforcement agency's Fiscal Year Plan, and the monies are available within the Treasury Forfeiture Fund to satisfy the request(s) for reimbursable overtime expenses.

I. LIFE OF THIS AGREEMENT

This agreement is effective on the date it is signed by both parties and terminates on the last day of the current Fiscal Year. Agreements are required on a Fiscal Year basis and must be renewed, if appropriate, by September 30th of each Fiscal Year for the following Fiscal Year.

II. AUTHORITY

This agreement is established pursuant to the provisions of 31 U.S.C. 9703, the Treasury Forfeiture Fund Act of 1992, which provides for the reimbursement of certain expenses of local, county, and state law enforcement agencies incurred as participants in joint operations/task forces with a Department of the Treasury law enforcement agency.

III. PURPOSE OF THIS AGREEMENT

This agreement establishes the procedures and responsibilities of both the Lexington Fayette Urban County Government and the Criminal Investigation, Internal Revenue Service, for the reimbursement of certain overtime and other expenses pursuant to 31 U.S.C. 9703.

IV. NAME OF TASK FORCE/JOINT OPERATION (If Applicable)

The Name of this Task Force is Financial Crimes Task Force

Projected Dates of Remaining Operation: 10/01/2008 to 09/30/2009.

V. CONDITIONS AND PROCEDURES

A. Assignment of Lexington Fayette Urban County Government Officers

To the maximum extent possible, Lexington Fayette Urban County Government shall assign dedicated officer(s) to the Task Force/Joint Operations.

The Lexington Fayette Urban County Government shall provide the Criminal Investigation, Internal Revenue Service, with the names, titles, badge or ID numbers of the officer(s) assigned to the Task Force/joint Operation in an attachment to this agreement.

B. Requests for Reimbursement of Overtime Expenses

1. The Lexington Fayette Urban County Government may request reimbursement for payment of overtime expenses directly related to work performed by its officer(s) assigned as members of a Joint Task Force/Operation with the Criminal Investigation, Internal Revenue Service, for the purpose of conducting official Treasury investigations.

2. The Lexington Fayette Urban County Government shall provide the Criminal Investigation, Internal Revenue Service, within 10 days of the signing of this agreement, a mandatory ACH Vendor Payment Enrollment Form for Electronic Funds Transfer.

3. Invoices submitted for the payment of overtime to Lexington Fayette Urban County Government officer(s) shall be submitted on the agency's letterhead. The invoice shall be signed by an authorized representative of that agency.

4. The Lexington Fayette Urban County Government will submit all requests for reimbursable payments together with appropriate documentation to the Criminal Investigation, Internal Revenue Service, , ATTN: (Walter Woosley, Supervisory Special Agent, 1500 Leestown Road, #200, Lexington, KY 40511, (859) 244-2411.

   The Lexington Fayette Urban County Government shall certify that the request is for overtime expenses incurred by the Lexington Fayette Urban County Government for Participation with a joint operation conducted with the Criminal Investigation, Internal Revenue Service. The Lexington Fayette Urban County Government shall also certify that requests for reimbursement of overtime expenses have not been made to other Federal law enforcement agencies who may also be participating with the task force/joint operation.

The Lexington Fayette Urban County Government acknowledges that they remain fully responsible for their obligations as the employer of the officer(s) assigned to the task force/joint operation and are responsible for the payment of overtime earnings, withholdings, insurance coverage and all other requirements by law, regulation, ordinance or contract regardless of the reimbursable overtime charges incurred.

5. All requests for reimbursement of costs incurred by the Lexington Fayette Urban County Government must be approved and certified by the Criminal Investigation, Internal Revenue Service. The Treasury law enforcement agency shall countersign the invoices for payment.

6. All requests for reimbursement of costs are to be received by Criminal Investigation, Internal revenue Service no later than 15 days after the previous month end. These requests for reimbursement are to be for a full month time period, from the first day to the last day of the month. *There should not be invoices covering only part of the month, as in 1/10/04 – 1/25/04.*

7. The Lexington Fayette Urban County Government is limited to a maximum reimbursement for all overtime expenses in connection with this operation of 30,0000per year under this agreement. By statute, no single officer may earn more than $15,000.00 per fiscal year in overtime regardless of the number of agreements he/she is authorized on. Travel and related expenses should not exceed a maximum of ($ 27,000.00) for this task force/joint operation for the Fiscal Year period.

8. The total dollar value of this agreement may be adjusted at anytime by Criminal Investigation, Internal Revenue Service based upon the following:

   A) The Criminal Investigation, Internal Revenue Service may modify the total dollar obligation, resulting in an increase or decrease, if they determine that the original obligated amount is not commensurate with the rate of reimbursable requests, based on their analysis of submitted reimbursement requests.

   B) The adjustments to the total dollar value of this agreement may result in a partial and/or total reduction of reimbursement funds requested. Any modification made to an authorized agreement will be documented in writing and immediately provided to the impacted state and local agency.

C. PROGRAM AUDIT

This agreement and its procedures are subject to audit by the Criminal Investigation, Internal Revenue Service, Department of the Treasury, Office of Inspector General, the General Accounting Office, and other government designated auditors. The Lexington Fayette Urban County Government agrees to permit such audits and agrees to maintain all records relating to these transactions for a period of not less than three years; and in the event of an on-going audit, until the audit is completed.

These audits may include reviews of any and all records, documents, reports, accounts, invoices, receipts or expenditures relating to this agreement; as well as the interview of any and all personnel involved in these transactions.

540-08

D. **REVISIONS**

The terms of this agreement may be amended upon the written approval of both the Lexington Fayette Urban County Government and the Criminal Investigation, Internal Revenue Service. The revision becomes effective upon the date of approval.

E. **NO PRIVATE RIGHT CREATED**

This is an internal government agreement between a Treasury Law Enforcement Agency and the Lexington Fayette Urban County Government, a Local/County/State Law Enforcement Agency, and is not intended to confer any right or benefit to any private person or party.

****

Signature	Signature
Printed Name Title Lexington Fayette Urban County Government	Printed Name Title Criminal Investigation Nashville Field Office Internal Revenue Service
Date:	Date:
Signature	Signature
Printed Name Title Chief Financial Officer Lexington Fayette Urban County Government	Printed Name Title Criminal Investigation Internal Revenue Service Washington, DC
Date:	Date:

Ronnie Bastin

Signature

Ronnie Bastin Chief of Police

Printed Name Title
Lexington Fayette Urban County Government, Division of Police

Date: 9/30/08

544-08

Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Division of Enhanced 9-1-1

October 2, 2008

TO: Mayor Jim Newberry and Urban County Council

FROM: David Lucas, Enhanced 9-1-1 Director

RE: Address changes for Enhanced 9-1-1 compliance

This request will change street names and individual numbers to addresses within various Council Districts. The attached listing reflects the individual addresses to be changed that are located within the 1st, 2nd, 7th, 8th and 10th Council Districts.

The street name and/or number changes are needed to ensure the proper operation of the Enhanced 9-1-1 system. The corrections eliminate several confusing, duplicate and/or improperly named and numbered addresses in Fayette County.

The official date of change should be thirty (30) days from date of passage, to allow for new sign placement, utility and Post Office notification and final citizen notification.

The following documents are attached:

1. Administrative review form (Blue sheet).
2. Spreadsheet listing of each address change and associated Council District number.
3. Individual address list/Draft of Resolution.

Addressing Office 101 East Vine Street, Ste 516 Lexington, KY 40507 (859)425-2236 www.lfucg.com/Addressing

Law Department List For: 9/30/2008

ID	Old Num	Old Dir	Old Street	Old Type	Old Unit	New Num	New Dir	New Street	New Type	New Unit	AKA Address	Council
679	447-451		Ash	St		451		Ash	St			2
758	3216		Bracktown	Rd		3217		Bracktown	Rd			2
673	769-771		Breathitt	Ave		771		Breathitt	Ave			2
678	935-937		Charles	Ave		937		Charles	Ave			2
716	501		Douglas	Ave		751		Douglas	Loop			1
717	505		Douglas	Ave		755		Douglas	Loop			1
718	509		Douglas	Ave		759		Douglas	Loop			1
719	513		Douglas	Ave		763		Douglas	Loop			1
720	517		Douglas	Ave		767		Douglas	Loop			1
721	521		Douglas	Ave		771		Douglas	Loop			1
666	737		Florence	Ave		735		Florence	Ave			2
680	1408-1436	N	Forbes	Rd		1422	N	Forbes	Rd			2
665	413-417		Georgetown	St		417		Georgetown	St			2
660	371		Glen Arvin	Ave		369		Glen Arvin	Ave			2
789	501		Glen Arvin	Ave		651		Glen Arvin	Cir			1
790	505		Glen Arvin	Ave		655		Glen Arvin	Cir			1

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ID	Old Num	Old Dir	Old Street	Old Type	Old Unit	New Num	New Dir	New Street	New Type	New Unit		
791	509		Glen Arvin	Ave		659		Glen Arvin	Cir			1
792	513		Glen Arvin	Ave		663		Glen Arvin	Cir			1
793	517		Glen Arvin	Ave		667		Glen Arvin	Cir			1
794	521		Glen Arvin	Ave		671		Glen Arvin	Cir			1
742	460		Price	Rd		410		Greenwood	Ave			2
663	300-320		Hickory	St		306		Hickory	St			2
649	779		Newtown	Pike		1		Imperial	Ct			1
689	657-679		Kennedy	Rd		673		Kennedy	Rd			1
676	1401-1413		Leestown	Rd		1401		Leestown	Rd			2
677	1417-1419		Leestown	Rd		1417		Leestown	Rd			2
674	1437		Leestown	Rd		1439		Leestown	Rd			2
672	1445		Leestown	Rd		1441		Leestown	Rd			2
697	1205	N	Broadway			208		Legends	Ln			1
661	320		Lima	Dr		250		Lima	Dr			2
662	435-437		Lindberg	Dr		437		Lindberg	Dr			2
736	736		Lochmere	Pl		734		Lochmere	Pl			7
706	2117		Ft Harrods	Dr		3401		Lyon	Dr			10

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669	331-333	Newtown	Pike	333	Newtown	Pike		2
670	439	Newtown	Pike	429	Newtown	Pike		2
671	501-503	Newtown	Pike	501	Newtown	Pike		2
767	3712	Trent	Cir	2801	Styx	Ct		8
766	3708	Trent	Cir	2805	Styx	Ct		8
765	3704	Trent	Cir	2809	Styx	Ct		8
763	1300	Trent	Blvd	2813	Styx	Ct		8
764	1304	Trent	Blvd	2817	Styx	Ct		8
652	836	Whitney	Ave	846	Whitney	Ave		2
651	370	Price	Rd	955	Whitney	Ave		2

542-08

Mayor Jim Newberry

LEXINGTON - FAYETTE URBAN COUNTY GOVERNMENT

Division of Engineering

MEMORANDUM

To: Mayor Jim Newberry
Urban County Council

From: Charles M. Saylor, P.E.
Municipal Engineer Sr.

Date: September 29, 2008

Re: Resolution Authorizing Acceptance of Deed of Permanent Drainage Easement/Construction of Polo Club Boulevard – 2550 Winchester Road

The purpose of this memorandum is to request a resolution authorizing the acceptance of a deed for a permanent drainage easement and temporary construction easement for construction of Polo Club Boulevard and necessary drainage structures across a portion of the Cowgill Property located at 2550 Winchester Road. Construction of this section of Polo Club Boulevard will result in the connection of Man o' War Boulevard to Winchester Road. The deed will be at no cost to the LFUCG and will result in the recordation of a permanent drainage easement.

Approved by:

Marwan Rayan, P.E.
Urban County Engineer

James M. Webb, Acting Commissioner
Department of Public Works and Development

MR:CMS

Attachments

c: Hillard Newman, P.E.
Ed Gardner
File

Lexington-Fayette Urban County Council

543-08

October 7, 2008

Re: Council Office Copier Lease Co-Terminus Agreement

Council Staff have requested the addition of an internal hole punch and an expanded paper deck to the newly leased Canon iRC 5185i Council Office copier. The additional cost for these items will be $ 45.61 per month. Sufficient funds exist in the Equipment Lease account to cover this additional cost.

Rebecca Langston
Council Administrator

Lexington-Fayette Government Center 200 East Main Street Lexington, Kentucky 40507 (859) 258-3200
Lexington-Fayette County Horse Capital of the World www.lfucg.com fax (859) 258-3838

548-08

Lexington-Fayette Urban County Government

Jim Newberry, Mayor

TO: Mayor Jim Newberry
Urban County Council
Joseph Kelly, SAM

FROM: Anthony Wright, Director
Mayor's Office of Economic Development

DATE: October 7, 2008

RE: Baptist Healthcare Systems, Inc. Bonds

This is to request adoption of a resolution requesting that the Kentucky Economic Development Finance Authority issue Bonds in an amount not to exceed $123,530,291 for Baptist Healthcare Systems, Inc. (Central Baptist Hospital) in order to loan the proceeds thereof to the Corporation to finance and refinance the costs of acquisition, construction, renovation and installation of certain additions and improvements, including equipment, at the Hospitals for their "Prior Project" and the "2008 Project".

Lexington-Fayette Urban County Government (LFUCG) shall have no expense in connection with the Project or the issuance of the Bonds, therefore the adoption of this resolution shall not impose any financial liability or responsibility on LFUCG. The Department of Law has a draft resolution in its possession.

Sincerely,

Anthony L Wright

Anthony Wright
Director

cc: Glenda George, Department of Law
File

Lexington-Fayette Government Center
200 East Main Street • Lexington, Kentucky 40507 • (859) 258-3100 • FAX (859) 258-3194
mayor@lfucg.com

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549-08

Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Department of General Services

To: Mayor Jim Newberry
Urban County Council

From: Kimra Cole
Commissioner General Services

Date: October 7, 2008

Re: Franchise Agreements – Telecommunications

The current franchise agreements between the LFUCG and the local telecommunications providers have expired. Therefore, it is time to renew the Telecommunications Ordinance and authorize a new round of bids for non-exclusive franchise agreements for telecommunications services in Fayette County.

The new franchise agreements will each be for a 3-year duration from the time of final Council approval. There is no financial impact since all fees related to telecommunication franchises are collected at the State level.

Please contact me or David Barberie in the Department of Law should you have any questions related to these agreements.

200 East Main Street Lexington, KY 40507 (859) 258-3900 Fax (859) 258-3909

DRAFT
549-08

ORDINANCE NO. ____-2008

AN ORDINANCE CREATING AND ESTABLISHING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE AND PROVIDING FOR: THE PLACEMENT OF FACILITIES FOR THE GENERATION, TRANSMISSION, DISTRIBUTION AND SALE OF TELECOMMUNICATIONS SERVICES WITHIN THE PUBLIC RIGHTS-OF-WAY; COMPLIANCE WITH ALL APPLICABLE EXISTING AND FUTURE LOCAL LAWS AND ORDINANCES AND REGULATIONS; INCORPORATION BY REFERENCE OF THE PROVISIONS OF SECTION 253 OF THE TELECOMMUNICATIONS ACT OF 1996, KRS 136.600, ET SEQ., CHAPTERS 17, 17B AND 17C OF THE CODE OF ORDINANCES, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, AND THE APPLICABLE ZONING LAWS; DEFINITIONS; CONSTRUCTION, INSTALLATION, MAINTENANCE AND FACILITY STANDARDS; SEPARATE CABLE FRANCHISE REQUIRED FOR CABLE SERVICES; COMPLIANCE WITH VARIOUS NATIONAL AND STATE STANDARDS AND REGULATIONS; MATERIALS AND EQUIPMENT QUALITY; DUE REGARD FOR RIGHTS OF GOVERNMENT AND OTHERS IN PERFORMING WORK IN THE RIGHTS-OF-WAY; PLACEMENT OF LIGHTS OR SIGNALS; UNDERGROUNDING OF FACILITIES IN SOME INSTANCES; TEMPORARY MOVING OF WIRES; TREE TRIMMING; ADDITIONAL PERFORMANCE GUARANTEES OF UP TO $200,000 ON PROJECTS WITH CONSTRUCTION COSTS EXCEEDING $100,000; AN INDEMNIFICATION AND HOLD HARMLESS PROVISION; COMMERCIAL GENERAL LIABILITY INSURANCE POLICY CONSISTENT WITH THE PROVISIONS OF THE PUBLIC RIGHT-OF-WAY ORDINANCE; COMPLIANCE WITH NON-DISCRIMINATION AND AFFIRMATIVE ACTION REQUIREMENTS; NOTICE OF FILING FOR A GENERAL BASE RATE INCREASE OR TRANSFER OF CONTROL BEFORE THE PUBLIC SERVICE COMMISSION; A THREE YEAR DURATION; NO VESTED RIGHTS FOR INSTALLATION OR EMPLACEMENT OF FACILITIES OTHER THAN THOSE PROVIDED IN FRANCHISE OR AT LAW; NOTIFICATION OF ASSIGNMENT WITH CONSENT NOT TO BE UNREASONABLY WITHHELD; THE FOLLOWING PENALTIES RECOVERABLE FOR VIOLATIONS AFTER COMPANY IS PROVIDED THE OPPORTUNITY TO PRESENT EVIDENCE TO THE COMMISSIONER OF PUBLIC WORKS AND DEVELOPMENT OR HIS DESIGNEE, WITH SUCH DECISIONS APPEALABLE TO A COURT OF COMPETENT JURISDICTION: $500 A DAY FOR FAILURE TO COMPLETE CONSTRUCTION PROJECTS BY NO LATER THAN THE END OF THE FRANCHISE, WITH THE OPTION OF PROVIDING SUITABLE PERFORMANCE BOND OR OTHER PROTECTION TO GOVERNMENT IN LIEU OF SUCH PENALTY, AND $100 A DAY FOR FAILURE TO PROVIDE DATA AND REPORTS REQUESTED BY GOVERNMENT AS REQUIRED BY THE ORDINANCE, OR FOR FAILURE TO TIMELY PAY THE FRANCHISE FEE OR AN ITEMIZED BILL; A $100 A DAY PENALTY APPEALABLE TO A COURT OF COMPETENT JURISDICTION FOR A FAILURE TO COMPLY WITHIN THIRTY DAYS TO A COUNCIL RESOLUTION DIRECTING COMPLIANCE WITH A PROVISION OF THE ORDINANCE; NON-WAIVER AND CONTINUED PERFORMANCE AND ENFORCEMENT UPON GOVERNMENT'S FAILURE TO INSIST ON SPECIFIC PERFORMANCE; THE PAYMENT OF PENALTIES NOT AN EXCUSE FOR NON-PERFORMANCE; SYSTEM TO BE MAINTAINED IN REASONABLE OPERATING CONDITION AT ALL TIMES ABSENT EXCUSING CONDITION OR EVENT; CUSTOMER INQUIRIES AND BUSINESS HOURS CONSISTENT WITH ANY PUBLIC SERVICE COMMISSION ORDER; TERMINATION UPON WILLFUL VIOLATIONS OF THE FRANCHISE, WILLFUL EVASION OF PROVISIONS OF THE FRANCHISE, FRAUD AND DECEIT UPON THE GOVERNMENT, OR KNOWINGLY MAKING MATERIAL MISREPRESENTATIONS, AND PROCEDURES FOR TERMINATING THE FRANCHISE; THIRTY DAYS ADVANCE WRITTEN NOTICE OF FORECLOSURE OR JUDICIAL SALE OR LEASE TERMINATION INVOLVING ALL OR PART OF COMPANY'S FACILITIES IN FAYETTE COUNTY, WITH NOTIFICATION TO BE TREATED AS TRANSFER OR ASSIGNMENT; GOVERNMENT'S RIGHT TO CANCEL FRANCHISE THIRTY DAYS AFTER THE APPOINTMENT OF A RECEIVER OR TRUSTEE UNLESS CERTAIN CONDITIONS ARE MET; SALE AT PUBLIC AUCTION OF THE FRANCHISE AND DUE ADVERTISEMENT REQUIREMENTS THEREON; WRITTEN BIDS, RIGHT TO REJECT, PAYMENT OF FIVE PERCENT OF THE ESTIMATED COST OF THE SYSTEM UNLESS THE COMPANY ALREADY HAS SUFFICIENT FACILITIES TO PROVIDE THE FRANCHISE SERVICES, AND PAYMENT OF $500 FOR ADVERTISEMENT AND ADMINISTRATIVE COSTS WITH ANY EXCESS AMOUNTS EXCEEDING ACTUAL COSTS TO BE RETURNED TO BIDDER(S) WITHIN THIRTY DAYS; ACKNOWLEDGEMENT THAT TELECOMMUNICATIONS TAX ACT PRECLUDES COLLECTION OF TRADITIONAL FRANCHISE FEE WITH AN AGREEMENT TO NEGOTIATE SUCH A FEE IN GOOD FAITH IN THE EVENT THAT THE ACT IS FOUND UNLAWFUL; PAYMENT OF PERMITTING AND INSPECTION FEES WITH RIGHT TO SEEK TARIFF APPROVAL FROM THE PUBLIC SERVICE COMMISSION; AGREEMENT TO ENTER INTO GOOD FAITH NEGOTIATIONS ON A POLE ATTACHMENT AGREEMENT; ADDITIONAL CONSTRUCTION AND NOTIFICATION REQUIREMENTS FOR NEW PROVIDERS OR FOR CERTAIN SUBSTANTIAL REBUILDS OR EXPANSIONS OF FACILITIES; ADDITIONAL PERFORMANCE AND SECURITY REQUIREMENTS FOR CONSTRUCTION BY NEW PROVIDERS; BIDS MUST ACCEPT THE CONDITIONS OF THIS ORDINANCE AND MAY INCLUDE ADDITIONAL CONSIDERATION PAYMENTS; VIOLATIONS OF THE FRANCHISE SHALL BE

CONDITION FOR FORFEITURE, LAW OF KENTUCKY APPLIES; VENUE IN FAYETTE COUNTY; NO THIRD-PARTY RIGHTS; ANY UNLAWFUL PROVISION IS SEVERABLE; AND FRANCHISE EFFECTIVE WHEN THE COUNCIL ACCEPTS THE BID(S); ALL EFFECTIVE ON DATE OF PASSAGE.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – There is hereby created a non-exclusive franchise granting to the purchaser thereof whose bid may be accepted, the discretionary right to construct, erect, operate and maintain upon, through, along, under and over the streets, alleys, avenues, public roads, highways, bridges, viaducts, sidewalks and other public ways of Fayette County, a telecommunications system embracing underground conduits, manholes, telephone poles, cables, boxes, wires, fixtures, fiber, electrical conductors and other apparatus, equipment and facilities necessary, essential, used or useful to and in the operation of a telecommunications system, including telephone exchange service (as defined by 47 USC §153(47)) and exchange access (as defined by 47 USC §153 (16)), subject to all of the provisions of this Ordinance. This franchise does not excuse the franchisee from complying with any and all applicable existing and future local laws and ordinances, as may be adopted or amended in the future, and their pursuant regulations.

Section 2 - The Lexington-Fayette Urban County Government has already adopted legislation and regulations pertaining to, and including but not limited to, permitting, construction, street project and other related activities by franchisees and others in its Rights-of-way. Therefore, the following are incorporated herein by reference, and shall apply as if fully set forth herein:

(a) The terms and provisions of Section 253 of the Telecommunications Act of 1996, and as it may be amended in the future;

(b) The terms and provisions of KRS 136.600, et seq. (the "Telecommunications Tax Act"), and as it may be amended in the future;

(c) The terms and provisions of Chapter 17, of the Code of Ordinances, Lexington-Fayette Urban County Government (the "Code"), and as it may be amended in the future, pertaining to utilities or Right-of-way construction;

(d) The terms and provisions of Chapters 17B and 17C of the Code, and as they may be amended in the future; and

(e) The terms and provisions of the Lexington-Fayette Urban County Government Zoning Ordinance (the "Zoning Ordinance"), and as it may be amended in the future.

Section 3 – The person, firm, or corporation which shall become the purchaser of said franchise, or any successor or assignee of such person, shall hereinafter be referred to as the "Company", and the Lexington-Fayette Urban County Government shall hereinafter be referred to as the "Government". The definitions and terminology contained in the applicable provisions of the Code are hereby incorporated herein by reference.

Section 4 – The Company shall have the non-exclusive right and privilege of constructing, erecting, operating and maintaining a telecommunications system for the purpose of providing telecommunications or telecommunications services, upon, through, along, under and over the Rights-of-way within Fayette County as they now exist or may hereafter be extended; subject to the provisions hereof and to all powers (including police power) inherent in, conferred upon or reserved to the Government, including but not limited to those contained in the Code. Telecommunications or Telecommunications Services includes the providing or offering for rent, sale or lease, whether for money or other value, of plant, equipment, Facilities, or other property for the transmittal of voice, data, image, graphics, and other communications between or among points by wire, fiber optics, or other similar Facilities; and includes telephone exchange service (as defined by 47 USC §153(47)) and exchange access (as defined by 47 USC §153 (16); "telecommunications service", or "enhanced service" as such terms are now, or may in the future be, defined under federal law; services connecting interexchange carriers or competitive carriers for the purpose of voice or data transmission; services connecting interexchange carriers to any entity, other than another interexchange carrier, or telephone or telecommunications company providing local exchange services, for the purpose of voice or data transmission; services providing private line point to point service for end users of voice and data transmission; nonentertainment video, videoconferencing, or point to point private line service; or any other intrastate or interstate telecommunication services which the Kentucky Public Service Commission or the FCC has authorized. This franchise does not include the right or privilege to provide cable service (as defined by 47 USC §522 (6)) or open video service (as defined by 47 CFR 76.1500 (a)), which shall be subject to separate franchising requirements, and also does not apply to the provision of any wireless service as defined by law, unless the providers of such services have Facilities located within the Rights-of-way.

Section 5 - In addition to complying with other applicable law, the Company agrees that:

(a) All working Facilities and conditions used during construction, installation and maintenance of Facilities (including clearance of wires and cables above the Rights-of-way and placement of any underground facilities) shall comply with the standards of the Occupational

Safety and Health Administration, the National Electric Safety Code, and the National Electric Code. In the operation of system, the Company shall conform to all standards required by applicable state or federal law or regulation;

(b) All materials and equipment used or installed in construction shall be of first class quality, and any defect in the work, materials or equipment, whether latent or patent, will be remedied by the Company at its cost;

(c) Construction, reconstruction, maintenance, or removal of any Facilities, shall be performed with due regard for the rights of the Government and others, and shall not unnecessarily interfere with, or in any way injure the property of the Government or others under, on, or above the ground, or otherwise unduly interfere with the public use of the Rights-of-way;

(d) Placement of lights, danger signals or warning signs shall be undertaken by the Company in compliance with applicable law; and

(e) Unless exempted by the Government, Facilities shall be installed underground at any location where all other utilities' Facilities that are used to provide customer service are then being installed underground, or when otherwise required under the Code, and shall be in conformance with the applicable requirements of this Ordinance and those set forth in the Code, the Zoning Ordinance, or any other applicable local law or regulation. The Company assumes all responsibility for damage or injury resulting from its placement or maintenance of any above-ground Facilities.

Section 6 - (a) The Company shall, at the request of any person holding a moving permit issued by the Government, temporarily raise or lower its wires to permit the moving of buildings or other structures. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than five (5) days advance notice to arrange for such temporary wire changes.

(b) The Company shall have the authority to trim trees upon the overhanging Rights-of-way so as to prevent the branches of such trees from coming in contact with the wires or cables of the Company. Any trimming, removal or other disturbance of trees shall conform to all applicable law or regulation.

Section 7 - In addition to any performance bond(s) required pursuant to Section 17C-23 of the Code, the Company may, with respect to aspects of those significant projects in excess of one hundred thousand dollars ($100,000.00) which are not addressed in Section 17C-23 but which do involve the Rights-of-way, be required to post an additional project performance bond(s). This bond (or bonds) shall be set in an amount and duration to be determined by the Government upon discussing and verifying the scope of such a project with the Company, and shall be in favor of the Government to be issued by an entity subject to jurisdiction and venue in Fayette County, Kentucky. In no event shall the total cumulative amount of such bonds exceed two hundred thousand dollars ($200,000.00) per year, and as an alternative, the Company may choose to post one such bond to cover all of its projects on an ongoing basis.

Section 8 - The Company shall defend, indemnify, and hold harmless the Government consistent with the indemnification and hold harmless provisions as set forth in Section 17C-17 of the Code, and as it may be amended in the future.

Section 9 - The Company shall maintain in full force and effect a commercial general liability insurance policy consistent with the insurance provisions set forth in Section 17C-16 of the Code, and as it may be amended in the future.

Section 10 - The Company shall comply with all applicable federal, state or local non-discrimination and affirmative action requirements of any laws, regulations and executive directives, and shall not discriminate in its employment practices against any employee or applicant for employment because of race, color, religion, national origin, sex, age or physical handicap.

Section 11 - In the event that the Company files for a transfer of control of the Company, or a general rate case with the Kentucky Public Service Commission it will furnish the Mayor or his designee with timely notice of such filing.

Section 12 - (a) The franchise hereby created shall be for a period of time not to exceed three (3) years from the date of acceptance by the Government of the initial bid(s) for the franchises created herein. This franchise is not exclusive, and the Government reserves the right to grant similar franchises to more than one Company. All franchises awarded pursuant to this Ordinance are intended to terminate at the same time. Therefore any Company awarded a franchise pursuant to this Ordinance shall only be awarded a franchise that is equal in duration to the remaining term of the initial franchise(s).

(b) This franchise creates no vested rights in the Company other than those provided by this franchise or at law, and any installation or emplacement of Facilities by the Company in the Rights-of-way is at the Company's risk.

(c) The Company is hereby given the right to assign the franchise created by this Ordinance to any person, firm or corporation able, ready and willing to carry out the terms of this franchise, but shall, prior to such assignment, provide at least sixty (60) days advance written notice to the Government and obtain its consent, which consent shall not be unreasonably withheld. This provision is not intended to apply to assignments to a parent, subsidiary or affiliate of the Company, or in those instances in which the Company has filed for a transfer of control before the Public Service Commission. Such inter-corporate transfers or transfers subject to the jurisdiction of the Public Service Commission shall require notice to the Government upon closing or approval, or as otherwise provided herein.

Section 13 - (a) If, after the Company is provided the opportunity to appear and present evidence before the Government's Commissioner of Public Works and Development or his designee, the Government finds that the Company has violated any of the following provisions of this Ordinance, the following penalties shall be recoverable. The decision of the Commissioner shall be the final administrative decision and shall be in writing and provide the basis for the decision. The decision may be appealed to a court of competent jurisdiction.

(1) For failure to complete or remove any construction project by no later than the ending term of any franchise awarded pursuant to this Ordinance or any extension thereof, the Company shall forfeit five hundred dollars ($500.00) per day or part thereof that the violation continues; in lieu of a penalty, the Company may post a performance bond, letter of credit or other surety acceptable to the Government in an amount sufficient to complete such construction projects. This section shall not apply to any projects for which performance bonds or other surety is already pledged.

(2) For failure to provide data and reports requested by the Government and as required by this Ordinance the Company shall forfeit on hundred dollars ($100.00) per day or part thereof that the violation continues.

(3) For failure to pay a permit fee when due pursuant to local law, the Company shall forfeit one hundred dollars ($100.00) per day or part thereof that the violation continues.

(b) If the Company fails to comply within thirty (30) days of any Council resolution directing compliance with any other provisions of this Ordinance, the Company shall forfeit one hundred dollars ($100.00) per day or part thereof that the violation continues. The decision of the Council may be appealed to a court of competent jurisdiction.

(c) The Company shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Company's performance or to seek the Company's compliance with any one or more of such terms or conditions. Payment of penalties shall not excuse non-performance under this Ordinance. The right of the Government to seek and collect penalties as set forth in this section is in addition to its right to terminate and cancel as set forth in Section 15 of this Ordinance.

Section 14 - The Company shall maintain its System in reasonable operating condition at all normal times during the term of this Franchise. An exception to this is automatically in effect when service furnished by the Company is interrupted, impaired or prevented by fires, strikes, riots or other occurrences beyond the control of the Company, or by storms, floods or other casualties, in any of which events the Company shall do all things reasonably within its power to restore normal service within a reasonable period of time. If applicable, the Company will maintain normal business hours at its headquarters located in Lexington, Kentucky, to receive customer inquiries in accordance with any relevant Kentucky Public Service Commission order(s).

Section 15 - (a) In addition to all other rights and powers pertaining to the Government by virtue of the franchise or otherwise, the Government, by and through its Council, reserves the right to terminate and cancel the franchise and all rights and privileges of the Company hereunder in the event that the Company:

(1) Willfully violates any provision of the franchise or any material rule, order, or determination of the Government made pursuant to the franchise, except where such violation is without fault or through excusable neglect or due to a force majeure act;

(2) Willfully attempts to evade any provision of the franchise or practices any fraud or deceit upon the Government;

(3) Fails to begin or complete construction as provided under the franchise;

(4) Knowingly makes a material misrepresentation of any fact in the application, proposal for renewal, or negotiation of the franchise; or

(5) Entry of a final and non-appealable order by the Public Service Commission of Kentucky which revokes any authority of the Company to provide service in Fayette County, Kentucky.

(b) The Government may make a written demand that the Company do or comply with any such provision, rule, order or determination. The Company will be provided the opportunity to appear and present evidence before the Government's Commissioner of Public Works and Development or his designee, whose decision shall be the final administrative decision, and shall be in writing and provide the basis for the decision. If the violation by the Company continues for a period of thirty (30) days following such a decision by the Commissioner without written proof that the corrective action has been taken or is being actively and expeditiously pursued by the Company, the Government may place its request for termination of the franchise as early as the next regular Council meeting agenda. The Government shall cause to be served upon Company, at least ten (10) days prior to the date of such Council meeting, a written notice of intent to request such termination and the time and place of the meeting, legal notice of which shall be published in the Lexington Herald-Leader, or another newspaper of general circulation published in Lexington, Fayette County, Kentucky.

(1) It shall be a defense to any attempt to terminate and cancel the franchise that the Company was relying on federal law, state law, or a valid tariff in acting or not acting on the issue in dispute.

(2) The Council shall consider the request of the Government and shall hear any person interested therein, and shall determine in its discretion, whether or not any violation by the Company was with just cause.

(3) If such violation by the Company is found to have been with just cause, the Council shall direct the Company to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable within the Government's lawful authority.

(4) If the Council determines such violation by the Company was without just cause, then the Council may, by resolution, declare that the franchise of the Company shall be terminated and forfeited unless there is compliance by the Company within such reasonable period as the Council may fix. Any such determination by the Council is a final appealable action to a court of competent jurisdiction.

Section 16 - The Company shall provide the Government, in the form and manner required by the appropriate court or judicial body, at least thirty (30) days advance written notice, if at all possible, of the foreclosure or other judicial sale of all or a substantial part of the Company's Facilities within Fayette County, or upon the termination of any lease covering all or a substantial part of its Facilities, and such notification shall be treated as a notification that a transfer or assignment of the franchise has taken place.

Section 17 - The Council shall have the right to cancel this franchise thirty (30) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

(a) Within thirty (30) days after his election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,

(b) Such receiver or trustee, within said thirty (30) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the franchise granted to the Company.

Section 18 - It shall be the duty of the Mayor or his designee as soon as practicable after the passage of this Ordinance to offer for sale at public auction said franchise and privilege. In the event that additional interested bidders are identified or express an interest in obtaining a franchise after this initial offering, the additional offering and advertisement to accommodate such bidders is hereby authorized. Said franchise and privilege shall be sold to the highest and best bidder or bidders at a time and place fixed by the Mayor or his designee after he has given due notice thereof by advertisement in at least one (1) issue of the Lexington Herald-Leader, or another newspaper of general circulation published in Lexington, Fayette County, Kentucky. This advertisement shall appear not less than seven (7) days nor more than twenty-one (21) days before the date of bid opening.

Section 19 - Bids and proposals for the purchase and acquisition of the franchise hereby created shall be in writing and shall be delivered to the Mayor or his designee upon the date and at the time fixed by him or her in said advertisement for receiving same. Thereafter, the Mayor shall report and submit to the Council, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval. The Council reserves the right, for and on behalf of the Government, to reject any and all bids for said franchise; and, in case the bids reported by the Mayor shall be rejected by the Council, it may direct said franchise and privilege to be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and approved. Each bid made by a corporation or person not already owning Facilities within the territorial limits of Fayette County sufficient to render the service required by this Ordinance, shall be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent (5%) of the fair estimated cost of the system required to render the service, which check or cash shall be forfeited to the Government in case the bid should be accepted and the bidder should fail, for thirty (30) days after the confirmation of the sale, to pay the price and to give a good and sufficient performance bond in favor of the Government in a sum equal to one-fourth (1/4) of the fair estimated cost of the system to be erected, conditioned that it shall be enforceable in case the Company should fail, within one hundred eighty (180) days, to establish and begin rendering the service in the manner set forth in this Ordinance. Upon rendering the initial service, this bond may be replaced by the performance bond required by Section 22(b), if applicable. Bids shall include such documentation as is necessary to support the bidder's determination of the fair estimated cost of the system required to render the service and compliance with all applicable state, federal and local statutes, ordinances and regulations. The Government reserves the right to review any of bidder's supporting documentation which justify bidder's determination of the estimated cost and compliance with laws and regulations. In addition, each bid shall be accompanied by a non-refundable payment to the Government in the amount of five hundred dollars ($500.00) to cover the Government's cost of advertising and other administrative expenses incurred. In the event that the total amount submitted by all bidders exceeds the Government's actual costs, it will refund the overcharge to each Company on a pro rata basis within thirty (30) days.

Section 20 - The Government and Company acknowledge that pursuant to the Telecommunications Tax Act, the Commonwealth of Kentucky collects a tax in lieu of a traditional franchise fee assessment by the local government, and that the Government is precluded from the collection of additional fees that are not directly related to the advertisement of this franchise or the management, inspection or permitting of construction in the Rights-of-way. Therefore, in the event that the Telecommunications Tax Act, or the portion thereof pertaining to the collection of franchise fees by a local government, is found unlawful by a court of competent jurisdiction, the Company and the Government shall negotiate in good faith to establish a new franchise fee.

(a) Notwithstanding the above, the Company shall be required to pay the Government an amount intended to adequately compensate it for its permitting and inspection of the Company's construction activities in the Rights-of-way pursuant to Chapter 17C of the Code as required by said ordinance. The Company may seek tariff approval from the Kentucky Public Service Commission for the recovery of such payment, and may elect to pay for its permit fees upon application for each respective permit, if approved by the Government. These permitting fees are subject to change during the term of the franchise based upon an audit of the actual cost of permitting for the Government or a change in the amount of the respective permitting fees found in Section 17C-22 of the Code, as may be amended. In the event of such a change, the Company shall be provided at least sixty (60) days advance written notice.

(b) Upon the execution of this Franchise Agreement, the Company and the Government agree to enter into good faith negotiations on a pole attachment agreement.

Section 21 - In addition to all other requirements, and except to the extent prohibited by law, any Company not already owning Facilities within the Rights-of-way sufficient to render Telecommunications Services within Fayette County, or any Company that is required pursuant to law to file for a certificate of convenience and necessity from the Kentucky Public Service Commission in order to replace or significantly upgrade or expand a substantial portion of its existing Facilities within the Rights-of-way, shall also be required to perform the following requirements during the construction, replacement, upgrade or expansion of its network system unless the Council determines that any or all of such requirements are not necessary to adequately protect the interests of the Government:

(a) In addition to obtaining any and all permits required pursuant to the Code, the Company shall submit for the Government's approval a comprehensive schedule of construction of its Facilities system network no later than one (1) month after the Government's acceptance of the Company's bid. The schedule shall include sufficient detail for Government to determine the time and locations of construction activities and shall also depict the anticipated time frame of identifiable tasks required for construction purposes, as delineated by the Government. No construction related activities may be conducted in the Rights-of-way until the schedule is approved by the Government. In addition, at thirty (30) day intervals during construction, the Company shall provide the Government with a plan of construction activities setting forth a general description of the activities to be undertaken during the following thirty (30) days and designating the geographical area of Fayette County that will be affected. Approval by the Government of these plans shall constitute a condition which must be met prior to undertaking any construction activities.

(b) The Company shall furnish traffic control plans, including site-specific hours of construction, to the Government no later than seven (7) days prior to the commencement of any construction activities. Such plans are subject to approval or modification by the Government. No construction related activities may be conducted in the Rights-of-way without an approved traffic control plan.

(c) The Company shall provide the Government a local telephone contact number, staffed twenty-four (24) hours per day, to enable the Government to report any concerns regarding construction of the system network. In the event that the Government reports any concerns to the Company, the Company shall respond within a reasonable time as specified by

Government or as specified elsewhere in this Ordinance. The Company shall perform the required repair or correct any adverse impact to Government's use or operations or the use or operations of a third party caused by the Company's construction activities in the Rights-of-way at no cost to the Government.

(d) Fourteen (14) days prior to commencement of construction, and every thirty (30) days thereafter during construction the Company shall publish, at its sole cost, a notice containing a map depicting where construction will occur in the Lexington Herald-Leader. Additionally, such notice shall provide a general description of construction activities and a telephone number to be called by citizens with questions concerning construction activities. A copy of said notice(s) shall be provided to the Government.

(e) The Company shall provide at least fourteen (14) days notice to other utilities in Fayette County of its interest in seeking construction permits to open the street before it applies for any street cut permit. The Government shall provide the Company with a listing of all such utilities and their points of contact upon request. Such notice shall inform the other utility companies of the Company's intent to undertake construction in the affected areas and state that the other utility companies must notify the Government and the Company within seven (7) days of receipt of such notice of their desire to simultaneously lay conduit, or other Facilities, in any trench opened by the Company.

(f) Failure to comply with the above provisions, or the Code may, in the sole discretion of the Government:

(1) Be the basis for the Government to reasonably require that the Company perform more extensive restoration work than otherwise anticipated by a permit; and

(2) May result in the Company being assessed an additional premium on any permit fee to recoup any additional costs or expenses reasonably associated with the Company's failure.

(g) Unless otherwise provided an extension by the Council, the Company must make telecommunications services available within Fayette County within one hundred eighty (180) days from the date of the award of the franchise. This requirement shall not apply to a Company that does not provide, or has no intention of providing, any services to Fayette County subscribers.

(h) The Company shall maintain accurate network design drawings, maps and improvement plans of the network system, in a form acceptable to the Government, in a manner consistent with industry construction standards. The Company shall furnish the Government, without charge, with a complete set of "as-built" drawings within sixty (60) days of completion of construction of the network system. Such maps and improvement plans shall also be furnished to Government in digital form and shall be provided pursuant to a lawful protective agreement.

Section 22 - In addition to all other requirements, and except to the extent prohibited by law, any Company not already owning Facilities within the Rights-of-way sufficient to render Telecommunications Services within Fayette County, shall also be required to perform the following requirements during the construction of its network system unless the Council determines that any or all of such requirements are not necessary to adequately protect the interest of the Government:

(a) Within ten (10) days after the award of this franchise, the Company shall deposit with the Government's Division of Revenue a one-year irrevocable renewable letter of credit from a Fayette County financial institution in the amount of fifty thousand dollars ($50,000.00). The form and content of such letter of credit shall be approved by the Government. The letter of credit shall be used to insure the faithful performance by the Company of all provisions of this franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the Government having jurisdiction over its acts or defaults under this franchise, and the payment by the Company of any claims, liens and taxes due the Government which arise by reason of the construction, operation or maintenance of the system network.

(1) The letter of credit shall be maintained at fifty thousand dollars ($50,000.00) during the entire term of this franchise, even if amounts have to be withdrawn pursuant to this section.

(2) If the Company fails to pay to the Government any compensation within the time fixed herein; or, fails, after ten (10) days notice to pay to the Government any taxes due and unpaid; or, fails to repay the Government, within such ten (10) days, any damages, costs or expenses which the Government is compelled to pay by reason of any act or default of the Company in connection with this franchise; or, fails, after three (3) days notice of such failure by the Government to comply with any provision of this franchise which the Government reasonably determines can be remedied by demand on the letter of credit, the Government may immediately request payment of the amount thereof, with interest and any penalties, from the letter of credit. Upon such request for payment, the Government shall notify the Company of the amount and date thereof.

(3) The rights reserved to the Government with respect to the letter of credit are in addition to all other rights of the Government and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Government may have.

(4) The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Government, by registered mail, a written notice of such intention to cancel or not to renew."

(b) If necessary, after the initial service requirement is met and the bond required by Section 19 of this Ordinance no longer protects the Government, the Government may require the Company to file with the Government a Performance Bond in the amount of Five Hundred Thousand Dollars ($500,000.00) in favor of the Government. This bond shall be maintained throughout the construction period. In lieu of the above mentioned performance bond, the Company may deposit with the Government's Department of Revenue an irrevocable letter of credit from a Fayette County financial institution in the amount of Five Hundred Thousand Dollars ($500,000.00). The form and content of such letter shall be approved by the Government.

(1) In the event the Company fails to comply with the Code or any law, Ordinance or regulation governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of the franchise, including the Company's proposal which is incorporated herein by reference, there shall be immediately recoverable, jointly and severally, from the principal and surety of the bond or the letter of credit, any damages or loss suffered by the Government as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Company, plus a reasonable allowance for attorney's fees, including the Government legal staff, and costs, up to the full amount of the bond.

(2) Upon completion of construction the Company's initial service area the requirement of this additional performance bond shall be waived.

(3) The bond or letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this bond [letter of credit] may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Government, registered mail, a written notice of such intent to cancel or not to renew."

(4) The rights reserved to the Government with respect to the performance bond or letter of credit are in addition to all other rights of the Government, and no action, proceeding or exercise of a right with respect to such performance bond or letter of credit shall affect any other right the Government may have.

Section 23 - Bids offered for purchase of this franchise shall state the bidder's acceptance of the conditions set forth in this Ordinance. If any bid shall include an offer of payment over and above the terms of the franchise, then a certified check for said amount, payable to the Lexington-Fayette Urban County Government, shall be deposited with the Government. This amount shall be in addition to the provision for any payments contained in

Sections 19 and/or 20 of this Ordinance. Any check deposited pursuant to this section by an unsuccessful bidder shall be returned when the Council shall have accepted the bid or bids which in its judgment is or are the highest and best.

Section 24 - Any violation by the Company or successor or authorized Company representative of the provisions of this franchise or any material portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this franchise and all rights hereunder after written notice to the Company and continuation of such violations, failure or default, as set forth herein.

Section 25 - This Ordinance and any franchise awarded pursuant to it shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. The venue for any litigation related to this Ordinance or any franchise shall be in the court of competent jurisdiction in Fayette County, Kentucky.

Section 26 - This Ordinance and any franchise awarded pursuant to it does not create a contractual relationship with or right of action in favor of a third party against either the Government or the Company.

Section 27 - If any section, sentence, clause or phrase of the Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the Ordinance.

Section 28 - The franchise created by this Ordinance shall become effective when the bid for it is accepted by the Council.

Section 29 - This Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

00180847