

ORDINANCE NO. BL2018-1125

An ordinance authorizing the Metropolitan Department of Law to compromise and settle its claims against Teleport Communications America, LLC (formerly TCG Midsouth, Inc.) for unpaid right-of-way franchise fees and all expenses related to the litigation of such claims; and authorizing the establishment of a franchise arrangement with Teleport.

WHEREAS, the Metropolitan Government (“Metro”) brought a lawsuit against Teleport Communications America, LLC, (“Teleport”), formerly TCG Midsouth, Inc. (“TCG”) in 2002, which is currently pending in Davidson County Chancery Court as consolidated Case No. 02-749-III (“the Lawsuit”); and,

WHEREAS, the Lawsuit relates to disputes between Metro and Teleport concerning the telecommunications franchise issued by Metro to Teleport’s predecessor in interest, TCG, by Ordinance No. O97-913 on or about September 29, 1997, and subsequently assigned to Teleport, and consists of a “Telecommunications Franchise Contract by and between the Metropolitan Government of Nashville and Davidson County and TCG Midsouth, Inc.” incorporating Substitute Ordinance No. 094-1103, including Amendment 1 thereto, as codified at Metropolitan Code §§ 06.26.010 *et seq.*, (the “Franchise”); and,

WHEREAS, the Franchise expired on its own terms on September 29, 2012; and,

WHEREAS, in the Lawsuit, Metro brought claims, *inter alia*, seeking to enforce certain terms of the Franchise or otherwise collect compensation from Teleport for use of the public rights-of-way, and Teleport brought counterclaims and/or defenses asserting, *inter alia*, that the monetary and in-kind compensation provisions of the Franchise are unenforceable; and,

WHEREAS, Metro and Teleport wish to resolve the Lawsuit (including all claims, counterclaims and defenses raised, and expenses incurred) by signing the attached Settlement Agreement (Exhibit A) which includes certain payment terms for funds to be paid by Teleport to Metro and which also includes the establishment of a new franchise arrangement with Teleport going forward.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: The Metropolitan Department of Law is authorized to compromise and settle Metro’s claims against Teleport for unpaid right-of-way franchise fees, and for all expenses incurred in the litigation concerning those claims, pursuant to the terms and conditions as contained in the attached Settlement Agreement (Exhibit A). The Settlement Agreement is hereby approved and the Director of Law is hereby given the authority to execute the Settlement Agreement.

Section 2: The franchise arrangement with Teleport, going forward, as described in paragraphs 6-10 of the Settlement Agreement (Exhibit A), is hereby established.

Section 3: The proceeds of the Settlement Agreement shall be deposited into the Undesignated Fund Balance of General Fund of the General Services District.

Section 4: Be it further enacted, that this ordinance shall take effect immediately after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:

INTRODUCED BY:

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Keith Durbin  
Director, Information Technology Services

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APPROVED AS TO  
AVAILABILITY OF FUNDS:

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Member(s) of Council

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Talía Lomax-O'dneal  
Director of Finance

APPROVED AS TO FORM  
AND LEGALITY:

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Jon Cooper  
Director of Law