

ORDINANCE NO. TF-2612,A

AN ORDINANCE AMENDING AND REPEALING SECTION 1. DEFINITIONS, SECTION 10. TERM AND TERMINATION DATE AND SECTION 14. ACCEPTANCE OF TERMS OF ORDINANCE NO. TF-2612 GRANTING TO EVEREST MIDWEST LICENSEE, LLC (NEW NAME, SUREWEST KANSAS LICENSES, LLC), ITS SUCCESSORS AND ASSIGNS, A CONTRACT FRANCISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATION SYSTEM IN THE CITY OF OVERLAND PARK, KANSAS.

WHEREAS, through the adoption of Ordinance No. TF-2612, the City of Overland Park, Kansas, granted Everest Midwest Licensee, LLC, a contract franchise to construct, operate and maintain a telecommunications system within the City; and

WHEREAS, Section 1. Definitions of Ordinance No. TF-2612 at subparagraph h. "Grantee," provides that the term "Grantee" means Everest Midwest Licensee, LLC, a telecommunications Local exchange service provider providing Local exchange service within the City, and Everest Midwest Licensee, LLC has recently informed the City that it has changed its name to SureWest Kansas Licenses, LLC; and

WHEREAS, Section 10. Term and Termination Date, of Ordinance No. TF-2612 provides that the term of the franchise shall terminate as of May 31, 2010; and

WHEREAS, the parties desire to amend the franchise to reflect the new corporate name of the "Grantee"; and

WHEREAS, the parties desire to extend the term of the franchise granted by Ordinance No. TF-2612 and to make necessary amendments to Section 14. Acceptance of Terms resulting from said amendment.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS:

SECTION 1. Section 1 of Ordinance No. TF-2612 is hereby amended to read as follows:

SECTION 1. DEFINITIONS.

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission

media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications Local exchange service provider or private line service arrangements.

- b. "Access line count" - means the number of Access lines serving consumers within the corporate boundaries of the City on the last day of each month.
- c. "Access line fee" - means a fee in an amount determined by the City, up to a maximum as set out in K.S.A. 12-2001(j), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
- d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined by the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.
- e. "City" - means the City of Overland Park, Kansas.
- f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.
- g. "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide Telecommunication services.
- h. "Grantee" - means SureWest Kansas Licenses, LLC, a telecommunications Local exchange service provider providing Local exchange service within the City. References to Grantee shall also include as appropriate any and all successors and assigns.
- i. "Gross receipts" - shall mean only those receipts collected from within the corporate boundaries of the City enacting the Contract franchise and which are derived from the following: (1) Recurring Local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange Access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring Local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee's Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications Local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from Gross receipts. Gross receipts shall

be reduced by bad debt expenses. Uncollectible and late charges shall not be included within Gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of Gross receipts, such services shall be included from the date of the offering of such services within the City.

- j. "Local exchange service" - means local switched telecommunications service within any Local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term Local exchange service shall not include wireless communication services.
- k. "Public right-of-way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- l. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

SECTION 2. Section 10 of Ordinance No. TF-2612 is hereby amended to read as follows:

SECTION 10. TERM AND TERMINATION DATE.

- a. The parties agree to extend the term of this Contract franchise through May 31, 2013. Thereafter, this Contract franchise will renew for two (2) additional one (1) year terms, unless either party notifies the other party of its intent to terminate or renegotiate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional term(s) provided for in this Section 10 shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.
- b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.
- c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the

City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

- d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this Section.
- e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

SECTION 3. Section 14 of Ordinance No. TF-2612 is hereby amended to read as follows:

SECTION 14. ACCEPTANCE OF TERMS.

Grantee shall have fifteen days after the final approval and publication of this Ordinance No. TF-2612,A to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Ordinance No. TF-2612,A amending certain provisions of Ordinance No. TF-2612, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, the Contract franchise previously granted by Ordinance No. TF-2612 as amendment by Ordinance No. TF-2612,A shall constitute a continuing contract between the City and Grantee subject to the terms and conditions of said ordinances and the provisions of the laws of the State of Kansas, and such contract shall be deemed effective on the date Grantee files acceptance with the City. Further, the Grantor and the Grantee hereby acknowledge and agree that should there exist any period of time between May 31, 2010, the original Termination date set forth in Ordinance No. TF-2612, and the date the Grantee files the written acceptance required herein, all of the provisions of Ordinance No. TF-2612 relating to the granting of a Contract franchise shall be deemed to have remained in effect during said period.

SECTION 4. Nothing shown in this amendment alters, varies or affects any of the terms, provisions or conditions of Ordinance No. TF-2612 other than as stated herein.

SECTION 5. Section 1, Section10 and Section 14 of Ordinance No. TF-2612 are hereby repealed.

SECTION 6. Effective Date. This Contract franchise ordinance shall take effect and be in force from and after June 7, 2010, and after its publication in an official City newspaper and after the Grantee files its written acceptance as required by Section 14, above.

PASSED by the Governing Body of the City of Overland Park this 7th day of June, 2010.

APPROVED by the Mayor this 7th day of June, 2010.

Carl Gerlach, Mayor

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

Michael R. Santos
Deputy City Attorney