

Ordinance No. 2459 Summary

On May 14, 2018, the City of Bonner Springs, Kansas, adopted Ordinance No. 2459 granting a franchise agreement to Verizon Enterprise Solutions in exchange for service within the City of Bonner Springs, Kansas. A complete copy of this Ordinance is available at www.bonnersprings.org or at the Bonner Springs City Clerk's Office, 205 East Second Street. This summary certified by Danny C. Trent, City Attorney.

ORDINANCE NO. 2459

A CONTRACT FRANCHISE ORDINANCE GRANTED TO VERIZON ENTERPRISE SOLUTIONS, A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER PROVIDING LOCAL EXCHANGE SERVICE WITHIN THE CITY OF BONNER SPRINGS, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BONNER SPRINGS, KANSAS:

SECTION 1: Pursuant to K.S.A. 12-2001 and amendments thereto, a contract franchise ordinance is hereby granted to Verizon Enterprise Solutions (“Verizon”), a telecommunications local exchange service provider providing local exchange service within the City of Bonner Springs, Kansas (“City”), subject to the provisions set forth hereafter. The initial term of this contract franchise ordinance shall be for a period of five (5) years beginning April 23, 2018, and ending April 30, 2023. Thereafter, this contract franchise ordinance will automatically renew for additional one (1) year terms (hereinafter the “renewal term”), unless either party notifies the other party of its intent to terminate the contract franchise ordinance at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this contract franchise ordinance and not as a new contract franchise ordinance or amendment. Pursuant to K.S.A. 12-2001(b)(2) under no circumstances shall this contract franchise ordinance exceed twenty (20) years from the effective date of the initial term of the contract franchise ordinance. Compensation for said contract franchise ordinance shall be established pursuant to Section 3 of this ordinance.

SECTION 2: For the purpose of this contract franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

“Access line” shall mean and be limited to retail billed and collected residential lines; business lines; fiber lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations serviced 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.

“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.

“Access line fee” means a fee determined by a city, up to a maximum as set out in K.S.A. 12-2001 and amendments thereto, to be used by a telecommunications local exchange service provider in calculating the amount of access line remittance.

“Access line remittance” means the amount to be paid by a telecommunications local exchange service provider to a city, the total of which is calculated by multiplying the access line fee, as determined in the city, by the number of access lines served by that telecommunications local exchange service provider within that city for each month in that calendar quarter.

“Gross receipts” means only those receipts collected from within the corporate boundaries of the city enacting the franchise and which are derived from the following: (A) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; and (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. 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 a telecommunications local exchange service provider 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 in the city.

“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.

“Telecommunications local exchange service provider” means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service or any wireless telecommunications local exchange service provider.

“Telecommunications 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 3: Compensation made pursuant to this contract franchise ordinance shall be paid on a quarterly basis without invoice or reminder from the City and paid not later than forty-five (45) days after the end of the remittal period. For the initial term of this contract franchise ordinance, said compensation shall be a sum equal to five percent (5%) of gross receipts. Compensation during the renewal term of the contract franchise ordinance shall continue to be based on a sum equal to the initial term and compensation shall be paid as provided for in this section.

The City may provide notice to Verizon prior to ninety (90) days before the end of the calendar year of the initial term or a renewal term that it intends to increase or decrease the percentage of gross receipts or amount per month per access line for the following calendar year. Any increased access line fee or gross receipt fee shall be fixed for a period of three (3) years, pursuant to K.S.A. 12-2001(l) and amendments thereto, and be made in compliance with the public notification procedures set forth in K.S.A. 12-2001(m) and amendments thereto. Any increased fee shall be collected and remitted under the terms of this contract franchise ordinance.

In the event the City elects compensation based on a gross receipts fee, nothing herein precludes the City from switching to an access line fee provided the City notifies Verizon prior to ninety (90) days before the end of the calendar year that it intends to elect an access line fee for the following calendar year. Alternatively, in the event the City elects compensation based on an access line fee, nothing herein precludes City from switching to a gross receipts fee provided City notifies Verizon prior to ninety (90) days before the end of the calendar year that it intends to elect a gross receipts fee for the following calendar year.

The City may also assess any of the following fees against Verizon:

1. A permit fee in connection with issuing each construction permit to set fixtures in the public right-of-way within that city as provided in K.S.A. 17-1901, and amendments thereto, to compensate the city for issuing, processing and verifying the permit application;
2. An excavation fee for each street or pavement cut to recover the costs associated with construction and repair activity of the provider, their assigns, contractors or subcontractors, or both, with the exception of construction and repair activity required pursuant to subsection (l) of this act related to construction and maintenance activities directly related to improvements for the health, safety and welfare of the public; provided, however, imposition of such excavation fee must be based upon a regional specific or other appropriate study establishing the basis for such costs which takes into account the life of the city street prior to the construction or repair activity and the remaining life of the city street. Such excavation fee is expressly limited to activity that results in an actual street or pavement cut;

3. Inspection fees to recover all reasonable costs associated with city inspection of the work of the provider in the right-of-way;
4. Repair and restoration costs associated with repairing and restoring the public right-of-way because of damage caused by the provider, its assigns, contractors or subcontractors, or both, in the right-of-way; and
5. A performance bond, in a form acceptable to the city, from a surety licensed to conduct surety business in the state of Kansas, insuring appropriate and timely performance in the construction and maintenance of facilities located in the public right-of-way.

SECTION 4: The City shall have the right to examine, upon written notice to the telecommunications local exchange service provider, no more than once per calendar year, those records necessary to verify the correctness of the compensation paid pursuant to this contract franchise ordinance. If the gross receipts or access line fee is determined to be erroneous, Verizon shall revise the gross receipts or access line fee accordingly and make payment upon such corrected gross receipts or access line fee.

SECTION 5: As a condition of this contract franchise ordinance, Verizon is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) and/or the Kansas Corporation Commission (KCC), subject to Verizon's right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. Verizon shall also comply with all applicable laws, statutes and/or ordinances, subject to Verizon right to challenge in good faith such laws, statutes and/or ordinances.

SECTION 6: Location of Facilities. Subject to the provisions of this Contract Franchise, Company shall have the right to construct, maintain, and operate its Facilities along, across, upon and under the public Right-of-Way. Such facilities shall be so constructed and maintained as to not obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use of the public Right-of-Way by other utilities, Company facilities shall not interfere with the City's water mains, sewer mains or other municipal use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition. The Company's use of the public Right-of-Way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The Governing Body acknowledges that as of the date of this Ordinance, the Company and its facilities are in compliance with the provisions of this Section 6.1.

SECTION 7: Excavation and Construction. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner that minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable state and federal codes. All public and private property whose use conforms

to restrictions in easements disturbed by Company construction or excavation activities shall be restored as soon as practicable by the Company at its expense to substantially its former condition. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The City reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time after notice from the City.

SECTION 8: Relocation of Company Facilities. If at any time the City requests the Company to relocate any company facilities installed or maintained in streets or other public places in order to permit the City to change street grades, pavements, sewers, water mains or other City works, such relocation shall be made by the Company at its expense. Following relocation, the Company, at its expense, shall restore all property to substantially its former condition.

SECTION 9: Service to New Areas. If during the term of this Franchise the boundaries of the City are expanded, the Company may, subject to the terms of Company's applicable tariff provisions, extend service to the newly incorporated areas. Service to annexed areas shall be in accordance with the terms of this Franchise agreement. The City will promptly notify Company in writing of any geographic areas annexed by the City during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Company by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Company may reasonably require in ascertaining whether there exist any customers of Company receiving telecommunications services in the annexed area. To the extent there are such Company customers therein, then the Gross Receipts of Company derived from the sale and distribution of services to such customers shall become Subject to the Franchise fee provisions hereof effective on the first day of Company's billing cycle immediately following Company's receipt of the Annexation Notice. The failure by the City to advise Company in writing through proper Annexation Notice of any geographic areas which are annexed by the City shall relieve Company from any obligation to remit any Franchise fees to City based upon Gross Receipts derived by Company from the sale and distribution of telecommunications services to customers within the annexed area until City delivers an Annexation Notice to Company in accordance with the terms hereof.

SECTION 10: Restoration of Service. In the event the Company's telecommunications services system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

SECTION 11: Supply and Quality of Service. The Company shall make available an adequate supply of telecommunications services to provide service in the City. The Company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient service to the City.

SECTION 12: Safety Regulations by the City. The City reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided that such regulations are not destructive of the rights granted herein. The Company agrees to comply with all such regulations, in the construction, maintenance and operation of its facilities and in the provision of telecommunications services within the City.

SECTION 13: Inspection, Audit and Quality Control. The City shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the City and its residents. The City also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Ordinance at all reasonable times at Company's principal offices where said records are kept and maintained. The Company agrees to cooperate with the City in conducting the inspection and/or audit and to correct any discrepancies affecting the City's interest in a prompt and efficient manner.

SECTION 14: Nothing stated or contained herein shall be construed as giving Verizon any exclusive privileges, nor shall it affect any prior or existing rights of Verizon to maintain a telecommunications system within the City.

SECTION 15: Verizon shall collect and remit compensation as described in Section 3 on those access lines that have been resold to another telecommunications local exchange service provider.

SECTION 16: The City agrees to provide Verizon with notification in the event that it annexes property into the corporate boundaries of the City that would require Verizon to collect and pay a franchise fee on access lines or gross receipts which prior to the annexation of the property Verizon was not required to collect and/or pay. The City agrees to provide Verizon with notification in the event the City renumbers or renames any streets that would require Verizon to collect and pay a franchise fee on access lines or gross receipts which prior to the renumbering or renaming of the streets Verizon would not have been required to collect and/or pay. The City agrees that in the event the City does not provide Verizon with notice of an annexation or renumbering and/or renaming of the streets, Verizon shall not be liable to the City for payment of franchise fees on the annexed property or renumbered and/or renamed streets for any time period prior to the City providing the required notice to Verizon.

SECTION 17: The City agrees that pursuant to K.S.A. 12-2001(j) (1), (2) and amendments thereto, that the franchise fee imposed under this contract franchise ordinance must be assessed in a competitively neutral manner, may not unduly impair competition, must be nondiscriminatory and must comply with state and federal law.

SECTION 18: Company shall at all times maintain with the City a point of contact who shall be available at all times to act on behalf of Company in the event of an emergency. Company shall provide the City with said contact's name, address, telephone number,

fax number and email address. Emergency notice by Company to the City may be made by telephone to the City Clerk. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or overnight delivery by a nationally recognized courier. All written notices shall be deemed delivered upon actual receipt or refusal of delivery.

The City:

City of Bonner Springs, Kansas
Attn: City Clerk
P.O. Box 38; 205 E. Second
Bonner Springs, KS 66012
Fax: 913-441-1366 Phone: 913-667-1716
Email: cityclerk@bonnersprings.org

Company:

Verizon Enterprise Solutions
Attn:
STREET ADDRESS
CITY, STATE ZIP
Fax: Phone:
Email:

or, to replacement addresses that may be later designed in writing.

SECTION 19: Company Responsibilities. It shall be the responsibility of Company to take adequate measures to protect and defend its Facilities in the public Right-of-Way from harm or damage. If Company fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Company's Facilities.

SECTION 20: City Indemnity. Company shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Company, any agent, officer, director, representative, employee, affiliate or subcontractor of Company, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the public Right-of-Way.

SECTION 21: City Negligence. The indemnity provided by Section 20 above does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Company and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Company and does not create or grant any rights, contractual or otherwise, to any other person or entity.

SECTION 22: Notice. Company and City shall promptly advise the other in writing of any known claim or demand against Company or the City related to or arising out of Company's or the City's activities in the public Right-of-Way.

SECTION 23: Minimum Insurance. During the term of this Contract Franchise, Company shall obtain and maintain insurance coverage at its sole expense. Should Company elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Company shall provide not less than the following insurance:

- a) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed equal to the amount required by Kansas law;
- b) Employers' liability limit with a limit of \$1,000,000 each accident/disease/policy limit law; and
- c) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Six Million Dollars (\$6,000,000) combined single limit per occurrence for bodily injury and property damage liability, including personal Injury, The City shall be included as an additional insured as its interest may appear with respect to liability arising from Company's operations under this Contract Franchise.

SECTION 24: Self Insurance. As an alternative to the requirements of Section 23 above, Company may demonstrate to the satisfaction of the City that it is self-insured and as such Company has the ability to provide coverage in an amount not less than Ten Million Dollars (\$10,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Company, or alleged to so have been caused or occurred. The Company's self-insurance of its obligations and risks undertaken pursuant to this Franchise will be under a Company approved plan of self-insurance maintained in accordance with sound accounting and risk-management practices.

SECTION 25: Insurance Certificate. Company shall, as a condition of this Contract Franchise, prior to the commencement of any work and within ten (10) days of any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, reasonably satisfactory in form and content to the City, evidencing that the above insurance is in force. The Company shall endeavor to provide thirty (30) days prior written notice of intent to non-renew, cancellation or material adverse change to City. Upon request by the City, Company shall make Company's policies or parts thereof as requested available for the City's review. Upon completion of such review, the policies will be returned to the Company.

SECTION 26: Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this contract franchise ordinance shall not

constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

SECTION 27: Force Majeure. This non-exclusive Franchise, grant, and privilege is granted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction. However, Verizon shall not be required to perform any covenant or obligation in this Ordinance, or to be liable in damages to City, so long as the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an act of God, force majeure or by the other party. An "act of God" or "force majeure" is defined for purposes of this Ordinance as strikes, lockouts, sit-downs, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and/or any other cause not reasonably within the control of Company or which by the exercise of due diligence Company is unable wholly or in part, to prevent or overcome.

SECTION 28: Pursuant to K.S.A. 17-1902, City represents and warrants that all benefits, terms and conditions in this Contract franchise are and, during the term of this Contract franchise, will continue to be no less favorable to company than those currently being offered to or that may be offered and agreed to by City and any other local exchange carrier, telecommunications carrier, video services provider, competitive infrastructure provider or Internet Protocol services provider, regardless of the form or nature of the agreement with any other carrier or provider.

SECTION 29: Verizon has entered into this contract franchise ordinance as required by the City and K.S.A. 12-2001 and amendments thereto. 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 of competent jurisdiction, either the City or Verizon may elect to terminate the entire contract franchise ordinance. In the event a court of competent jurisdiction invalidates K.S.A. 12-2001 and amendments thereto, if Verizon is required by law to enter into a contract franchise ordinance with the City, the parties agree to act in good faith in promptly negotiating a new contract franchise ordinance.

SECTION 30: In entering into this contract franchise ordinance, neither the City's nor Verizon's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the contract franchise ordinance, neither the City nor Verizon waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Verizon may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of this contract franchise ordinance or any present or future laws, ordinances, and/or rulings which may be the basis for the City and Verizon entering into this contract franchise ordinance.

SECTION 31: Saving Clause. If any portion of this Franchise Ordinance is declared illegal or void by a court of competent jurisdiction, the remainder of the Ordinance shall survive and not be affected thereby.

SECTION 32: The parties agree that in the event of a breach of this contract franchise ordinance by either party, the non-breaching party has the right to terminate the contract franchise ordinance. Prior to terminating the contract franchise ordinance, the non-breaching party shall first serve a written notice upon the breaching party, setting forth in detail the nature of the breach, and the breaching party shall have thirty (30) days thereafter in which to cure the breach. If at the end of such thirty (30) day period the non-breaching party deems that the breach has not been cured, the non-breaching party may take action to terminate this contract franchise ordinance.

SECTION 33: This contract franchise ordinance is made under and in conformity with the laws of the State of Kansas. The contract franchise ordinance shall not be effective until the ordinance granting the same has been adopted as provided by law.

Passed by the Council this 14th day of May, 2018.

Approved by the Mayor this 14th day of May, 2018.

(SEAL)

Jeff Harrington, Mayor

ATTEST:

APPROVED AS TO FORM:

Amber McCullough, City Clerk

Danny C. Trent, City Attorney