

VILLAGE OF WARRENSBURG, ILLINOIS

ORDINANCE NO. 758

**AN ORDINANCE AUTHORIZING AND APPROVING
NON-EXCLUSIVE FRANCHISE AGREEMENT FOR
INTERNET SERVICE INFRASTRUCTURE WITH A.C.T.S., LLC**

**ADOPTED BY
THE BOARD OF TRUSTEES OF
THE VILLAGE OF WARRENSBURG**

THIS 16th DAY OF FEBRUARY, 2021

**Published in pamphlet form by authority of the Board of Trustees of
the Village of Warrensburg, Macon County, Illinois,
this 16th day of February, 2021**

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NON-EXCLUSIVE FRANCHISE AGREEMENT FOR
INTERNET SERVICE INFRASTRUCTURE WITH A.C.T.S., LLC**

WHEREAS, the Village of Warrensburg ("Warrensburg"), has identified that reliable, high speed internet service is a critical component of conducting business in the Warrensburg community; and

WHEREAS, Warrensburg recognizes that reliable, high speed internet service is a important aspect to improve the lives of families, businesses, farmers, and other residents of Warrensburg for all components of life from health care to education; and

WHEREAS, increasing the opportunity for reliable, high speed internet service will also help provide community connectivity to serve students, faculty, local governments, and assist in disaster recovery services and data, video and audio communication; and

WHEREAS, A.C.T.S., LLC, an Illinois Limited Liability Company ("A.C.T.S.") offers fixed wireless internet and fiber internet service in central Illinois; and

WHEREAS, A.C.T.S. has offered to provide improved internet service in the Warrensburg community under the terms and conditions as setforth in the attached Non-Exclusive Franchise Agreement for Internet Service Infrastructure; and

WHEREAS, Warrensburg wishes to accept the offer of A.C.T.S. and enter into a non-exclusive franchise agreement.

NOW, THEREFORE BE IT HEREBY ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WARRENSBURG:

Section 1: The Non-Exclusive Franchise Agreement for Internet Service between the Village of Warrensburg, Illinois, and A.C.T.S., LLC, an Illinois Limited Liability Company, for a period of ten (10) years, with options to renew by mutual agreement of the parties for successive periods of ten (10) years, in substantially the same form as attached hereto and made apart hereof, be and is hereby authorized and approved.

Section 2: The President of the Board of Trustees and the Village Administrative Clerk be and are hereby authorized to execute the agreement.

Section 3: The Village Administrative Clerk of the Village of Warrensburg shall certify to the adoption of this Ordinance and shall cause it to be published in pamphlet form and this Ordinance shall take effect upon its passage and publication in pamphlet form, as so certified, in the manner, form, and time as provided by the laws of the State of Illinois.

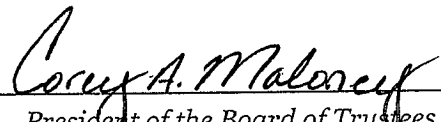
TRUSTEES:

Ray Ewing	Aye - <u>X</u>	Nay - <u> </u>	Absent - <u> </u>
Douglas Fisher	Aye - <u>X</u>	Nay - <u> </u>	Absent - <u> </u>
Leland Hackl	Aye - <u>X</u>	Nay - <u> </u>	Absent - <u> </u>
Kerry Hood	Aye - <u>X</u>	Nay - <u> </u>	Absent - <u> </u>
Nelson E. Lock	Aye - <u>X</u>	Nay - <u> </u>	Absent - <u> </u>
John Oakley	Aye - <u>X</u>	Nay - <u> </u>	Absent - <u> </u>
Corey Maloney	Aye - <u> </u>	Nay - <u> </u>	Absent - <u> </u>

PRESENTED, PASSED and APPROVED this 16th day of February, 2021.

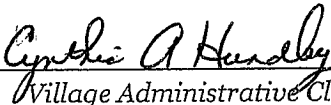
RECORDED this 16th day of February, 2021.

Approved:



President of the Board of Trustees of the
Village of Warrensburg, Illinois

ATTEST:



Village Administrative Clerk of the
Village of Warrensburg, Illinois

**NON-EXCLUSIVE FRANCHISE AGREEMENT FOR
INTERNET SERVICE INFRASTRUCTURE**

THIS AGREEMENT is entered into this _____ day of _____, 20____ by and between _____ (Name of City) _____, an Illinois municipal corporation whose address is _____, Illinois (hereinafter referred to as "City") and A.C.T.S., LLC, an Illinois limited liability company duly organized and qualified to do business in the State of Illinois, whose address is 881 E. 2700 North Rd., Moweaqua, Illinois (hereinafter referred to as "ACTS").

WHEREAS, ACTS desires to provide internet service to businesses and residences within City; and

WHEREAS, in order to provide said internet service, ACTS must access specified rights-of-way within the jurisdictional limits of City; and

WHEREAS, City and ACTS have negotiated terms under which ACTS shall install, construct, and maintain internet service infrastructure within said rights-of-way; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt of which is hereby acknowledged, the parties stipulate and agree as follows:

1. **Grant of Non-Exclusive Franchise.** City hereby grants ACTS a non-exclusive franchise to construct, maintain, and operate internet service infrastructure in, over, under, across, and through the public rights-of-way of City in areas approved by City. This non-exclusive franchise is granted for the sole purpose of allowing ACTS to provide internet service to its customers. The granting of this non-exclusive franchise shall not prohibit City from granting other non-exclusive franchises or making other uses of City's rights-of-way. The granting of this non-exclusive franchise shall in no way interfere with City's use of the rights-of-way for any purpose.

2. **Internet Service to City.**

a. In exchange for the non-exclusive franchise granted herein, ACTS shall provide internet service to all City government facilities without charge for the duration of this Agreement. City has the sole discretion to contract with other providers for the delivery of internet services during the term of this franchise. ACTS agrees to meet with the Mayor annually to discuss the delivery of services to City facilities and other customers pursuant to this agreement. City will provide ACTS 30 days' notice in the event it desires to terminate internet services with ACTS. In the event of termination of internet services to City facilities by City, the parties agree to meet in good faith to make other arrangements for compensation to City for ACTS use of City rights of way. If the parties are unable to reach agreement, then compensation shall be determined by a 3 member arbitration panel and be based on compensation provided by similar providers to other comparable cities in Illinois. Each party shall select one arbitrator and the two arbitrators chosen by the parties shall select the third arbitrator.

b. ACTS shall provide internet services in a reasonable and workmanlike manner in accordance with standards established within the internet service provider community at a rate no less than 250 megabytes per second.

c. City acknowledges and agrees that the internet services provided under this Agreement are subject to, and may be limited by, routine maintenance, use of internet services by other subscribers, weather conditions, acts of God, and other unforeseen circumstances. Further, internet services may be limited by conditions affecting the internet at locations not owned or controlled by ACTS.

d. EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN, ACTS DOES NOT WARRANT THE QUALITY OF THE INTERNET SERVICES PROVIDED UNDER THE TERMS OF THIS AGREEMENT, OR THE ACCURACY, CORRECTNESS, OR RESULTS OF SAID SERVICES. THE INTERNET SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT CONTAIN ANY WARRANTIES, EXPRESS OR IMPLIED. THE INTERNET SERVICES ARE PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS.

e. City shall be solely responsible for protecting its data and network accessibility while using internet services provided by ACTS.

3. **Term.** The initial term of this Agreement shall be for a period of ten (10) years, commencing on the Effective Date. This Agreement may be renewed by mutual agreement of the parties for a successive period of ten (10) years provide that ACTS makes a written request for renewal not more than three hundred sixty-five (365) days nor less than one hundred eighty (180) days prior to the expiration of the current term.

4. **Scope of Non-Exclusive Franchise.** The non-exclusive franchise granted herein shall extend to and include only those portions of streets, alleys, avenues, sidewalks, and other public ways as may be necessary to carry out the purpose of the non-exclusive franchise. Subject to City ordinances of general application governing work in municipal rights of way ACTS shall have the privilege to construct, operate, and maintain underground conduits, subways and vaults, and place wires and cables therein, and to make all necessary excavations therefore, in, over, under, across, and through all or any of the portions of the streets, alleys, avenues, sidewalks, and other public ways. ACTS shall have the privilege to utilize existing City-owned infrastructure (if any) within the public rights-of-way as may be specifically approved by City in writing in order to construct, maintain, and operate internet service infrastructure with the least interference with the public use of said rights-of-way.

5. **Indemnification.** ACTS hereby agrees to indemnify, defend, and hold harmless the City, its mayor, supervisor, officers, trustees, employees, and insurance carriers, individually and collectively, from all losses, claims, suits, judgments, demands, expenses, subrogation, attorney's fees, costs or actions of any kind and nature resulting from personal injury to any person, including employees of ACTS or any contractor or subcontractor employed by ACTS.

including bodily injury and death. ACTS further agrees to indemnify, defend, and hold harmless the same parties for damages to any property, arising or alleged to have arisen out of the acts or omissions of ACTS, its contractors, subcontractors, officers, agents, and employees while exercising any rights or privileges granted by this Agreement. The terms and provisions of this section are intended to be for the sole benefit of City and ACTS and are not intended to benefit any third party.

6. Insurance Requirements.

a. During all terms of this Agreement ACTS shall maintain a comprehensive general liability insurance policy at its sole expense issued by a company authorized to do business in the State of Illinois. Said policy shall name City as an additional insured on a primary and non-contributory basis and shall include underground property damage coverage. Said policy shall protect City against liability for loss occurring as a result of bodily injury and property damage occasioned by the installation, removal, maintenance, repair, or operation of the internet service infrastructure which is the subject of this Agreement. Said policy shall maintain the following minimum coverage:

- (1). Each occurrence (bodily injury and property damage): \$1,000,000.00
- (2). General Aggregate: \$2,000,000.00

b. ACTS shall maintain workers compensation insurance in the minimum amount required under Illinois law during all terms of this Agreement.

c. On or before the Effective Date, ACTS shall provide City with a certificate of insurance evidencing insurance policies which comply with the requirements of this Agreement.

7. **Assignment.** The rights granted to ACTS by this Agreement shall not be assigned or transferred without the express written consent of City.

8. Location and Construction of Infrastructure.

a. Internet service infrastructure constructed, maintained, and operated by ACTS within City rights-of-way shall be located and constructed so as not to:

- (1). Interfere with usual travel of automobiles and/or pedestrians;
- (2). Interfere with the rights or reasonable convenience of property owners who adjoin public rights-of-way;
- (3). Interfere with access or use of any water or fire hydrant;
- (4). Obscure the vision of or installation of any traffic control device;
- (5). Obscure light from any street light;
- (6). Cross any water or sewer line except at a 90-degree angle;
- (7). Damage irrigation, landscaping, or trees owned or maintained by City;
- (8). Damage any communications lines owned or maintained by City.
- (9). Place internet service infrastructure in paved sidewalk area unless specifically authorized by City.

b. If ACTS violates the requirements of this section, City shall notify ACTS in writing and ACTS shall remediate the violation within 30 days.

9. Permits Required.

a. ACTS shall submit written proposals to and obtain written permits from City prior to the installation of any poles, underground conduits, or fixtures.

b. Any excavation or other work performed by ACTS or its agents in public rights-of-way shall be done in compliance with City's permit requirements.

10. Restoration Upon Completion of Work.

a. Immediately upon completion of work within public rights-of-way, ACTS shall refill and compact any trench or excavation to the satisfaction of City.

b. Within 10 days from completion of work within public rights-of way, ACTS shall restore or replace at its sole expense any pavement, sidewalk, curb, gutter, grass, landscaping material, or structure damaged in the course of its work to the satisfaction of City.

c. If ACTS fails to comply with the requirements of this section, City may perform the restoration work and ACTS shall reimburse City for all costs incurred.

11. Relocation of Infrastructure. ACTS shall promptly remove or relocate its infrastructure without charge or cost to the City, whenever a public right-of-way or other public property is being constructed, paved, resurfaced, relocated, or otherwise altered or improved, and existing ACTS internet service infrastructure would interfere with that work. City shall provide ACTS 90 days written notice to remove or relocate the infrastructure within the public right-of-way.

12. Termination. In the event of a material breach of this Agreement, the non-breaching party shall provide written notice of the alleged breach. Upon receipt of said notice, the breaching party shall have 30 days to cure or take substantial steps to cure the breach. If the breaching party fails to cure or take substantial steps to cure the breach within 30 days, the non-breaching party may elect to terminate this Agreement immediately by providing written notice of its election to the breaching party.

13. Compliance with Law. All work performed by ACTS or its agents pursuant to this Agreement shall be performed in compliance with all federal, state, and local laws, regulations, or ordinances.

14. No Joint Venture. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between City and ACTS. ACTS acknowledges that any and all responsibilities pursuant to ACTS' service agreements with its customers shall be the sole

responsibility of ACTS and the City shall have no responsibility to accept or respond to service calls by ACTS' customers.

15. **Severability.** If any provision or subpart of this Agreement is held to be invalid by any tribunal of competent jurisdiction, such part shall be deemed automatically adjusted, if possible. If not, the provision shall be deemed severed from the Agreement, and all other provisions and subparts shall remain in full force and effect.

16. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties. Any representations promises or statements not set forth in this Agreement are of no force and effect, and have not been relied upon.

17. **Amendment.** This Agreement may only be amended by a written instrument signed by each party hereto.

18. **Execution.** This Agreement may be executed in any number of counterparts, and sent as "pdf" and by e-mail, each of which shall be deemed an original and which, taken together, shall constitute the full Agreement.

19. **Headings.** The headings assigned to designate subparts of this Agreement are for organizational purposes only, and do not constitute any binding legal effect.

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed as of the date set forth above.

_____, an
Illinois City

A.C.T.S., LLC, an Illinois limited
liability company

BY: _____
Mayor

BY: _____
Brandon Rarick, Its Manager

Attest: _____
Clerk

STATE OF ILLINOIS)
) SS
COUNTY OF MACON)

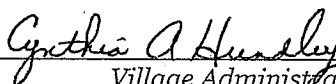
CERTIFICATE

I, CYNTHIA A. HUNDLEY, certify that I am the duly appointed Village Administrative Clerk of the Village of Warrensburg, Macon County, Illinois.

I further certify that on the 16th day of February, 2021, the President and Board of Trustees of the Village of Warrensburg passed and approved Ordinance No. 758, entitled "An Ordinance Authorizing and Approving Non-Exclusive Franchise Agreement for Internet Service Infrastructure with A.C.T.S., LLC.", which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 758, including Ordinance and cover sheet thereof was prepared, a copy of such Ordinance was posted in the Warrensburg Village Hall, the Barclay Public Library, and Warrensburg Post Office, commencing February 17, 2021, and continuing for at least 10 days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the Village Administrative Clerk.

DATED at Warrensburg, Illinois this 17th day of February, 2021.



Village Administrative Clerk of the
Village of Warrensburg, Illinois