

ORDINANCE NO. _____

An ordinance renewing a franchise granted to the State of California Department of Transportation (CALTRANS) (Ordinance No. 168735) to install and maintain an Information Technology System (System) in the public right-of-way in the area described as follows: along Main Street from Second Street to Route 101; along Spring Street from Second Street to Route 101; along Aliso Street between Los Angeles Street and Spring Street; and at Vermont Avenue across Rosewood Avenue in the downtown Los Angeles area.

WHEREAS, in 1993, CALTRANS requested permission of the City of Los Angeles (City) to encroach into portions of the public right-of-way, with a permanent installation consisting of an Information Technology System;

WHEREAS, in 1993, the Los Angeles City Council granted to CALTRANS a 21-year Information Technology System franchise, with an automatic 10-year renewal, for the placement of conduit in the City's public right-of-way in the area described above (CF No. 93-0556 and Los Angeles City Ordinance No. 168735);

WHEREAS, the infrastructure that was installed continues to be a part of the CALTRANS network that serves the needs of the State and residents of California. Specifically, the system is an integral part of the CALTRANS network that collects and distributes data as part of the CALTRANS District 7 Advanced Transportation Management System (ATMS) and the Regional Integration of Intelligent Transportation Systems (RIITS);

WHEREAS, these CALTRANS systems provide data to various services in the region. This includes the Changeable Message Signs (CMS) that are used on highways to provide road information and Amber alerts to travelers. In addition, the Los Angeles County Metropolitan Transportation Authority (Metro) uses RIITS to support the exchange of transportation information and resources between and within government organizations for regional operational mobility improvements;

WHEREAS, in 1993, the City Council also approved modifications and exclusions to standard provisions of Information Technology System franchises for the CALTRANS franchise. This included the waiver of the performance bond and franchise fee requirements for CALTRANS;

WHEREAS, CALTRANS has now applied to renew said Information Technology System franchise for ten years, which is the maximum allowed under the City Charter for a franchise renewal, and seeks to continue the waiver of the performance bond and franchise fee requirements;

WHEREAS, the City Council has determined that renewal of the CALTRANS franchise and that continued waiver of the associated requirements for a performance bond and franchise fee is appropriate;

WHEREAS, Los Angeles Administrative Code Section 13.62 requires that this permission be granted by a franchise and issued by the City Council; and

WHEREAS, the following ordinance is adopted notwithstanding and as an exception to the other provisions of Division 13 of the Los Angeles Administrative Code.

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. GRANT OF AUTHORITY

1.1 Grant of Authority

Notwithstanding and as an exception to Division 13 of the Los Angeles Administrative Code, but in accordance with Los Angeles Administrative Code Section 13.62 and Charter Sections 240 and 390, the City hereby grants CALTRANS (Franchisee), a limited franchise to install and maintain an Information Technology System (System), which will encroach into portions of the public right-of-way in the Encroachment Area, as defined in Section 1.3.

1.2 Acceptance

Acceptance of the terms of this Franchise by the Franchisee shall be conclusively established by a writing reflecting those terms or by commencement of construction by the Franchisee or its agent or contractor. A replacement Franchise, as required by Section 2.11, shall not be issued, or deemed to have been issued, without this writing.

1.3 Encroachment Area

The areas subject to encroachment by the Information Technology System (Encroachment Area) to be constructed pursuant to this Franchise are the public right-of-way as described as follows: along Main Street from Second Street to Route 101; along Spring Street from Second Street to Route 101; along Aliso Street between Los Angeles Street and Spring Street; and at Vermont Avenue across Rosewood Avenue in the downtown Los Angeles area.

1.4 System Description

“Information Technology System” or “System” means the following:

- Two 3” empty conduits from First Street to 101 via Main Street
- One 4” conduit with 2-72 Single Mode Fiber Optics (SMFO) from Aliso to First Street via Spring Street

- One 3" conduit with 72 SMFO from First Street via Main Street to 100 S Main Street
- One 3" conduit with 24 SMFO from 100 Main Street via Main Street across First Street to Los Angeles City Hall (LADOT)
- One 3" conduit with 12 SMFO from 101 across Rosewood via Vermont Avenue to 437 North Vermont Avenue (CHP-Building)

1.5 Limited Purpose

The authorized purpose of construction of the System is to provide pathways for the System described in Section 1.4, which pathways would not be possible without permission to cross the City's public right-of-way separating the two, or more, structures.

This Franchise shall endure only so long as the purpose remains valid. In the event any material fact justifying the limited purpose of the Franchise no longer exists, the City Council may revoke the Franchise in accordance with the procedures set forth in Section 8.1, below.

1.6 Limitations on Use

The privileges granted by this Franchise are limited to installation of the System to be used solely for the Information Technology System purposes of the Franchisee. These purposes include only voice, video, and data transmissions originating or terminating at the facilities mentioned in Section 1.4 or at another location contiguous to these facilities and under common ownership and use of the Franchisee.

Use of the System for telecommunications signal transmissions of any other type is expressly outside the scope of the authority granted by this Franchise. Use of the System for purposes outside the scope of the authority granted by this Franchise shall be deemed a material violation of this Franchise, and the Franchise shall then be subject to revocation by the City Council in accordance with the procedures set forth in Section 8.1.

1.7 Effective Date

This Franchise shall become effective on the earliest date after passage provided for by the City Charter and/or applicable law.

Sec. 2. GENERAL CONDITIONS

2.1 Non-Exclusivity

Nothing in this Franchise shall affect the right of the City to grant to any person a Franchise, consent, or right to occupy and use the streets or public right-of-way,

or any part of the streets or public right-of-way, for the construction, operation, or maintenance of an Information Technology System within all or a portion of the Encroachment Area or anywhere else in the City.

2.2 Non-User

If the Franchisee fails to complete construction of the System within six months of the date this ordinance is adopted by the City Council, the authority granted by this Franchise shall terminate, except that the Franchisee may request an extension of time to complete construction.

2.3 Priority of Public Works

Nothing in this Franchise shall abrogate the right of the City to perform any public work or public improvement of any description, including, without limitation, all work authorized by applicable law. In the event the System interferes with the construction, operation, maintenance, or repair of any public work or public improvement, the Franchisee, after reasonable notice from the City, shall, at its own cost and expense, promptly protect, alter, or relocate the System, or any part of the System, as reasonably directed by the City. In the event the Franchisee refuses or neglects to protect, alter, or relocate all or part of the System, the City shall have the right, in connection with the performance of the public work or public improvement, to break through, remove, alter, or relocate all or any part of the System without any liability to the City, except the liability as is directly caused by the City's willful misconduct or gross negligence, and the Franchisee shall promptly pay to the City the costs incurred by the breaking through, removal, alteration, or relocation of the System.

2.4 No Waiver of Regulatory Authority

Except as expressly stated here, nothing in this Franchise shall be construed as a waiver of any code or ordinance of the City or the City's right to require the Franchisee or any person utilizing the System to secure all appropriate Franchises or authorizations for this use.

2.5 Compliance with Laws

The Franchisee shall comply with: (i) all applicable laws and all requirements of the State of California, the FCC, and any other federal or State agency or authority of competent jurisdiction; (ii) all local laws, rules, regulations, and all orders or other directives of the City issued pursuant to the police powers of the City; and (iii) all rules and regulations and all other directives of the City issued pursuant to this Franchise.

2.6 Material Violation

Failure to comply with the requirements set forth in Sections 1.6, 3.1, 3.2, or 5.1 shall constitute a material violation of the Franchise. In the event the Franchisee fails to comply with one of the above-referenced sections, the City Council may revoke the franchise granted herein and terminate this Franchise in accordance with the procedures provided in Section 8.

2.7 Conflict with Other Installations

No privilege or exemption is granted or conferred by this Franchise except those specifically prescribed herein. Any privilege claimed under this Franchise by the Franchisee in any street shall be subordinate to any prior lawful occupancy of the street.

2.8 Authorization of Additional Franchise Facilities

Franchisee shall not install additional conduits or lines, replace conduits or lines, or construct or install facilities other than those described in Sections 1.1 through 1.4 without prior authorization from the City. Franchisee may seek this authorization by filing an application with the City as set forth in Los Angeles Administrative Code Section 13.11, *et seq.* Upon receipt of the application from the City Clerk, the Information Technology Agency (ITA) shall report to the City Council a recommendation relative to the application. Facilities constructed, installed, or replaced pursuant to any authorization by the City Council shall be subject to all the provisions of this Franchise and to any additional conditions relating to construction, specifications, operation, and utilization of the facilities, or other conditions as may be prescribed by the authorization.

2.9 Term

The term of this Franchise shall run from July 1, 2024 through and include June 30, 2034.

2.10 Rights Upon Termination

The termination, expiration, or revocation of this Franchise shall not operate as a waiver or release of any obligation of the Franchisee or any other person, as applicable, arising pursuant to this Franchise prior to its termination. All these obligations shall survive the termination, expiration, or revocation of this Franchise.

2.11 Renewal

The Franchisee shall apply for a replacement Franchise at least 12 months prior to the expiration of this Franchise.

Sec. 3. TRANSFERS AND HYPOTHECATIONS

3.1 Restrictions Against Transfers

This Franchise is a privilege to be held in personal trust by the Franchisee. Except as provided in Section 3, neither the Franchise nor any rights or obligations of the Franchisee in, or pursuant to, the Franchise or the System, shall be transferred in part or as a whole, by assignment, trust, mortgage, lease, sublease, pledge, or other hypothecation, or sold, transferred, leased, assigned, or disposed of in part or as a whole, either by forced sale, merger, consolidation, or otherwise; nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any person or entity; nor shall a change in control of the System occur, either by act of the Franchisee, by operation of law, or otherwise, without the consent of the City, which consent shall not be unreasonably withheld or delayed, and which shall be expressed by ordinance and then only under conditions as may be prescribed in the ordinance.

3.2 Effect of Unauthorized Action

The taking of any action described in Section 3.1 without the prior consent of the City shall be deemed a material violation of this Franchise, and the Franchise shall then be subject to revocation by the City Council in accordance with the procedures set forth in Section 8.1.

3.3 Exceptions

Nothing contained in this section shall be deemed to prohibit or require City approval of any assignment, pledge, lease, sublease, mortgage, or other transfer or hypothecation of all or any part of the stock (or other evidence of ownership in) or assets (not including the Franchise) of the Franchisee or the System, or any right or interest therein, for securing an indebtedness, provided that each assignment, pledge, lease, sublease, mortgage, or other transfer or hypothecation shall be subject to this Franchise and applicable law.

3.4 Approval Procedure

Pursuant to Los Angeles Administrative Code Section 13.11, *et. seq.*, the Franchisee shall file with the City Clerk a written application for any action affecting this Franchise.

Franchisee shall promptly notify the General Manager of ITA, in writing, of any application filed with the City Clerk and requiring consent of the City. All correspondence to the General Manager of ITA shall be sent to:

General Manager
Information Technology Agency
Room 1400, City Hall East
200 N. Main Street
Los Angeles, CA 90012

ITA shall complete its review of the petition as promptly as is reasonably possible and, thereafter, shall forward the petition and its recommendation to the City Council for final action.

Sec. 4. SYSTEM REQUIREMENTS

4.1 Construction

Throughout the term of this Franchise, the Franchisee shall construct, install, operate, and maintain the System in a manner consistent with all laws, ordinances, and construction standards of the City.

Any change regarding construction of the System from the description set forth in Section 1.4 shall be subject to the approval of the City as set forth in Section 2.8. The Franchisee is aware that Franchisee's proposed use of the public right-of-way requires approvals from various City departments, including, but not limited to, the Department of Public Works and the Department of Water and Power. This Franchise does not exempt the Franchisee from the necessity of obtaining any permits required by any City office or department.

4.2 Plans

The Franchisee shall file with ITA prints, plans, and maps showing the proposed and as-built location of each conduit, pole, or other portion of the System to be installed (and, if using existing poles or conduits, the location of each pole attachment or conduit to be entered), and the location of each manhole or other opening installed to gain access to the System and or its components.

4.3 Quality of Work

All work involved in the construction, operation, maintenance, repair, and removal of the System shall be performed with due diligence and using materials of good and durable quality.

4.4 Safety

The Franchisee shall, at its own cost and expense, take all necessary efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, and security personnel; and, at night, suitable and sufficient lighting.

No less than 24 hours of advance notice shall be provided to ITA prior to commencing construction activities.

4.5 Street Work

In connection with the construction, operation, maintenance, repair, or removal of the System, the Franchisee shall, at its own cost and expense, protect any and all existing structures belonging to the City. The Franchisee shall obtain the prior approval of the City before altering any water main, sewage, or drainage facility, or any other municipal structure in any public right-of-way or street. Any alteration shall be made by the Franchisee, at its sole cost and expense, and in a manner reasonably prescribed by the City. The Franchisee shall also be liable, at its own cost and expense, to replace or repair and restore to as close to its prior condition as is reasonably possible, and in a manner reasonably specified by the City, any public right-of-way, street, or municipal structure involved in the construction of the System that is disturbed or damaged as a result of any work by, or on behalf of, the Franchisee pursuant to this Franchise. The Franchisee agrees to comply with all applicable local, state, and federal statutes, ordinances, codes, rules, and regulations, including, but not limited to, the street damage restoration fee ordinance, building codes, and traffic regulations. The Franchisee further agrees that any contractor constructing the System shall similarly comply with all applicable statutes, ordinances, codes, rules, and regulations.

The Franchisee shall, at its own expense, protect, support, temporarily disconnect, relocate in the same street or public right-of-way, or remove from any street or public right-of-way any System when required by the Board of Public Works or by any other governmental agency acting in a governmental capacity, by reason of traffic conditions, public safety, street vacation, freeway construction, or any public improvement or structure. The privileges and obligations as to abandonment of the System in place, provided in Section 4.6, shall apply when a governmental agency requires a permanent removal or relocation of the System.

Upon failure of the Franchisee to commence, pursue, or complete any repair or restoration work required of it by law or by the provisions of this Franchise in any street or public right-of-way, the City, at its option and according to law, may cause the work to be done, and the Franchisee shall pay to the City the cost of the work in the itemized amounts reported by the City to the Franchisee within 30 days after receipt of the itemized report.

4.6 Removal or Abandonment

In the event the use of the System is permanently discontinued, or upon termination, expiration, or revocation of this Franchise, the City shall have the right to require the Franchisee to remove, at the Franchisee's own expense, all portions of the System from the Encroachment Area. The Franchisee shall promptly remove all portions of the System, other than any portions that the Board of Public Works may authorize to be abandoned in place. Facilities to be abandoned in place shall be abandoned in the manner as the Board of Public Works shall prescribe. Upon abandonment of any facility in place, the Franchisee shall submit to the City an instrument satisfactory to the City Attorney and ITA transferring to the City the ownership of the facility.

4.7 Completion and Performance Bond

Franchisee's obligations to obtain and maintain a completion and performance bond for the System are waived.

Sec. 5. FRANCHISEE'S OBLIGATIONS

5.1 Franchisee's obligations to pay a franchise fee to the City are waived.

Sec. 6. OVERSIGHT AND REGULATION

6.1 Notices

Notice of a public meeting relating to this Franchise shall be posted not less than 72 hours prior to the meeting, and shall remain posted until after the meeting.

The Franchisee shall maintain an address on file with ITA and with the City Clerk. Notices to the Franchisee shall be addressed or delivered to the Franchisee at that address.

Notices to the City required by law or by this Franchise shall be delivered in person or by first class, receipted mail, or certified mail as appropriate, to the City Clerk, Room 395, City Hall, 200 North Spring Street, Los Angeles, California 90012, and to the General Manager of ITA at the address set forth in Section 3.4, not less than ten business days prior to the day on which the party giving the notice shall commence any activity that requires the giving of notice. In computing business days, Saturdays, Sundays, and holidays recognized by the City shall be excluded.

All required notices shall be in writing.

6.2 Inspections

Upon reasonable notice to the Franchisee, the City may conduct any reasonably necessary inspection of the portion of the System sited in the public right-of-way for the purpose of ensuring compliance with the terms of the Franchise. The Franchisee shall cooperate in providing access to all such portions of the System, and to any other location on private property necessary to access the System or otherwise effect the inspection. The reasonable costs of such inspections shall be borne by the Franchisee.

Sec. 7. LIABILITY AND INSURANCE

7.1 Indemnification of City

Except for the active negligence or willful misconduct of the City, or any of its boards, officers, agents, employees, assigns, and successors in interest, Franchisee undertakes and agrees to defend, indemnify, and hold harmless the City and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorney's fees and costs of litigation, damage, and liability of any nature whatsoever, for death or injury to any person, including Franchisee's employees and agents, and damage or destruction of any property of either party to this Franchise or of third parties, arising in any manner by reason of the negligent acts, errors, omissions, or willful misconduct incident to the performance of this Franchise by the Franchisee. The provisions of this paragraph survive expiration or termination of this Franchise.

7.2 Insurance Requirement

During the term of this Franchise and without limiting the Franchisee's indemnification of the City pursuant to Section 7.1, the Franchisee shall provide and maintain, at its own expense, continuously during the terms specified below, a program of insurance as listed in Sections 7.3 through 7.5 covering installation, operation, and removal of the System, as applicable, commencing no later than the effective date of this Franchise and subject to the following conditions:

The City shall be named as an additional insured and the loss payee in all insurance policies.

Prior to commencement of any operations under this Franchise, evidence of insurance shall be submitted to the City Administrative Officer, Risk Management, for approval, which approval shall not be unreasonably withheld.

With respect to the interests of the City, this insurance shall not be cancelled, reduced in coverage or limits, or non-renewed except after 60 days of written notice, by hand delivery or certified mail, has been given to the City

Administrative Officer, 200 North Main Street, 12th Floor, Los Angeles, California 90012, Attention: Risk Management.

The appropriate City Special Endorsement forms, obtainable from the City Administrative Officer, are the preferred forms of evidence of insurance. Alternatively, the Franchisee may submit two certified copies, with original signatures, of the full policies containing the appropriate cancellation notice language and additional insured/loss payee language as specified in this section.

7.3 General Liability

The Franchisee shall provide insurance with combined single limits of \$1,000,000 per occurrence for bodily injury and property damage during System construction and removal. This insurance must cover: premises and operations, completed operations, contractual liability, independent contractors, and collapse and underground hazards. This coverage is only required during System construction and removal of all or any part of the System.

7.4 Automobile Liability

The Franchisee shall provide insurance with combined single limits of \$1,000,000 per occurrence for bodily injury and property damage during System construction, and removal, including coverage for owned automobiles, non-owned automobiles, and hired automobiles. This coverage is only required during construction and removal of all or any part of the System.

7.5 Worker's Compensation and Employer's Liability

By acceptance of this Franchise, the Franchisee certifies that it is aware of the provisions of California Labor Code Section 3700, *et seq.*, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with those provisions. A minimum limit of \$1,000,000 per employee is required for Employer's Liability with a Waiver of Subrogation in favor of the City. This coverage is only required during construction and removal of all or any part of the System.

Sec. 8. TERMINATION AND RELATED RIGHTS

8.1 Revocation

In the event that the Franchisee violates or fails to comply with any material condition of this Franchise, including, but not limited to, Sections 1.6, 3.1, 3.2, or 5.1, the City Council shall exercise its right to revoke the Franchise in accordance with the following procedures:

(a) The General Manager of ITA shall notify the Franchisee, in writing, of an alleged failure to comply with a material provision of this Franchise. The Franchisee shall cure the alleged material breach of the Franchise Agreement within 45 days after receipt of the notice. In the event the alleged failure cannot be reasonably cured within 45 days, and provided the Franchisee commences to cure within 30 days and diligently pursues the cure to completion, the Franchisee can seek extension of the cure period by providing to the General Manager of ITA a written presentation explaining why the breach cannot be cured within 45 days and providing a date certain for completion of the cure.

(b) The General Manager of ITA shall investigate whether a failure to comply with a material provision has occurred, whether the failure is excusable, and whether the failure has been cured or will be cured by the Franchisee.

(c) If the General Manager of ITA determines that a failure to comply with a material provision has occurred and that the failure is either not excusable or will not be cured by the Franchisee, then the General Manager of ITA shall so notify the City Clerk and the City Council in a written report.

(d) Within 60 days of receipt of a report from the General Manager of ITA, the City Council or its duly designated Committee shall notice a public hearing at which the Franchisee shall have the opportunity to respond to the claim that a material breach has occurred and to present facts and arguments in refutation or excuse of the alleged breach.

(e) After the conclusion of a public hearing, or at any time upon its own motion, the City Council or its duly designated Committee may determine to recommend or order revocation by the City Council. All final City determinations with respect to the revocation or termination of the Franchise must be made by the City Council as set forth in the Los Angeles Administrative Code.

8.2 Termination Defined

The termination of this Franchise and the termination of Franchisee's privileges under this Franchise shall become effective upon the earliest to occur of: (i) the revocation of the Franchise by action of the City Council, as provided in Section 8.1; (ii) the abandonment of the System, in whole or material part, as defined in Section 4.6, by the Franchisee, without the express prior approval of the City; (iii) non-use of the Franchise privileges as set forth in Section 2.2; or (iv) the expiration of the term of the Franchise, as set forth in Section 2.9.

8.3 Removal Upon Termination

Upon any termination of this Franchise, the Franchisee shall, at its own cost and expense, promptly remove that part of the Facility located in the streets and public right-of-way, and shall replace or repair and restore to serviceable

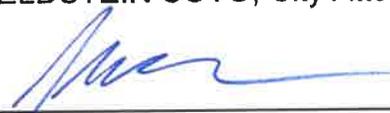
condition each affected street, public right-of-way, and governmental structure therein, in a manner as may be reasonably specified by the City.

If the Franchisee fails to remove the System from the streets and public right-of-way within 90 days of a City request to do so, or fails to repair or restore any street in conformance with the manner specified by the City, the City shall be permitted to initiate and/or complete the work at the expense of the Franchisee. In the event of any acquisition of the System by the City pursuant to Section 4.6, and subject to the requirements of applicable law, the City may lease, sell, operate, or otherwise dispose of all or any part of the System.

Sec. 9. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with City Council policy, either in a daily newspaper circulated in the City or by posting for ten days in three public places in the City: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

HYDEE FELDSTEIN SOTO, City Attorney

By 
JOSHUA M. TEMPLET
Deputy City Attorney

Date 11/13/2024

File No. _____

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The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____