ORDINANCE NO. 2019-05-05

AN ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE FOR THE PLACEMENT OF WIRED TELECOMMUNICATIONS FACILITIES PROVIDING FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF TELECOMMUNICATIONS SERVICES WITHIN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF EDGEWOOD, KENTUCKY FOR A TWENTY (20) YEAR DURATION, IMPOSING A FRANCHISE FEE IN THE SUM OF ONE POINT NINE PERCENT (1.9%) OF FRANCHISEE'S GROSS RECEIPTS PER YEAR ARISING FROM FRANCHISEE'S (1) SALE OF TELECOMMUNICATIONS SERVICES TO CUSTOMERS OR SUBSCRIBERS INSIDE THE CORPORATE LIMITS OF THE CITY OF EDGEWOOD AND (2) LEASE OR CONTRACT OF USAGE OF FRANCHISEE'S TELECOMMUNICATIONS SYSTEM OR FACILITIES; RESERVING THE RIGHT TO INCREASE THE STATED FRANCHISE FEE UP TO FIVE PERCENT (5%) OF FRANCHISEE'S GROSS RECIPTS; AND FURTHER PROVIDING FOR COMPLIANCE WITH RELEVANT LAWS, REGULATIONS AND STANDARDS; USAGE LIMITATIONS, INDEMNIFICATION, INSURANCE, CANCELLATION OR TERMINATION, AND SUCH OTHER TERMS AND CONDITIONS CONTAINED IN THE ATTACHED WIRED TELECOMMUNICATIONS FRANCHISE AGREEMENT; AND BID REQUIREMENTS; ALL EFFECTIVE ON DATE OF PASSAGE.

WHEREAS, the Constitution of the Commonwealth of Kentucky, Sections 163 and 164, and Chapter 96 of the Kentucky Revised Statutes, authorize municipal corporations to require public utilities, including providers of telecommunications services within their boundaries, to operate under franchise agreements and to grant utilities the right to use public right-of-way on such terms and conditions as are deemed reasonable and necessary; and further KRS 82.082 authorizes the City to exercise any and all powers within its boundaries that are not in conflict with the Kentucky Constitution or state statutes; and

WHEREAS, the City Council of the City of Edgewood, Kentucky, has found and determined that the construction, installation, operation, maintenance and utilization of a telecommunications franchise over, across or under public right-of-way in the City of Edgewood, benefits said utility and the customers it serves, and the City Council has further found and determined that the construction, installation, removal, maintenance and/or repair of utility-owned facilities and other infrastructures does periodic and unavoidable disturbance that gradually results in the degradation of the City's streets and sidewalks, for which the City is entitled to reasonable compensation in order to offset and recover the costs of reconstructing, removing, repairing or resurfacing damaged public right-of-way; and,

WHEREAS, in order to protect the health, safety and welfare of the citizens of Edgewood, Kentucky, to protect and preserve the City's public right-of-way and infrastructure and to provide for the orderly administration of the franchise contemplated herein, it is necessary

and appropriate to require the successful franchisee to conduct its business and operations in a lawful manner in compliance with the terms and conditions set forth hereinbelow.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF EDGEWOOD:

SECTION I

There is hereby created a non-exclusive franchise to enter upon, lay, acquire, construct, operate, maintain, install, use, and repair, in the "**Right-Of-Way**" of the City, a "**Telecommunications System**," "**Facilities**," "**Franchisee Poles**" and related equipment and appurtenances, all as defined and described in that certain Wired Telecommunications Franchise Agreement, a copy of which is attached hereto and made a part hereof as Exhibit A (the "**Franchise Agreement**") and which is being offered and proposed by the City to the utility company desiring to submit a bid for the purchase of the non-exclusive franchise described herein and in the Franchise Agreement. Under the proposed terms and conditions of the Franchise Agreement, the utility company will provide "**Telecommunications Services**" utilizing its Telecommunications System, Facilities and Franchisee Poles. As provided in the Franchise Agreement, the Telecommunications System and Facilities will consist of or include such plant, equipment, fixtures, appurtenances and other facilities in the Right-of-Way necessary to furnish and deliver, and used in the provision of, Telecommunications Services and not owned by the City, including but not limited to cables, wires, poles, pipes, conduits, ducts, conduit systems, pedestals, communications and signal lines and equipment. Telecommunications Services, as provided in the Franchise Agreement, do not include "**Commercial Mobile Radio Services**," "**Personal Communications Services**," "**Multichannel Video Services**," or "**Cable Services**." Further, the term Facilities excludes "small cell towers," "small cell systems," "wireless communications facilities," "cellular antenna towers," and certain "transmission equipment," all as provided in the Franchise Agreement.

The utility company shall have the right to use the public Right-of-Way, as such term is specifically defined in the Franchise Agreement, and such term does not include (1) any park or recreational area of the City, (2) public buildings, structures or infrastructure, or (3) public land upon which any governmental or public building, fire station, police station or school may or may not be situated.

SECTION II

The Franchise term shall be for an initial period of Ten (10) and will automatically be renewed for two (2) additional terms of five (5) years, unless the City or utility company provides notice to the other Party of intention not to renew. The total length of term cannot exceed twenty (20) years.

The Franchise to be granted is not exclusive and the City expressly reserves the right to grant other Persons rights, privileges or authorizations similar to those specified herein and in the Franchise Agreement. Additionally, the City specifically reserves the right to grant at any time during the term of the Franchise Agreement such additional franchises, licenses or permits to other utility companies, cable operators and/or providers.

All rights and privileges granted in this ordinance and the Franchise Agreement are, at all times during the term of the Franchise Agreement, subject to all lawful exercises of the police

and legislative powers of the City. The utility company shall comply with all Applicable Law, as such term is defined in the Franchise Agreement, including all ordinances and regulations which the City has adopted or shall adopt, applying to the public generally and to other franchisees, grantees or licensees similarly situated.

SECTION III

This Ordinance and any Franchise Agreement awarded pursuant to it shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. Neither this Ordinance nor any Franchise Agreement awarded pursuant to it create a contractual relationship with or right of action in favor of a third party against either the City or the utility Company.

SECTION IV

It shall be the duty of the City's Mayor, or his or her designee, to offer for sale at public auction the Franchise and privileges created hereunder. Said Franchise and privileges shall be sold to the highest and best bidder or bidders at a time and place fixed by the City's Mayor after he or she has given due notice thereof by publication or advertisement as required by law. In awarding the Franchise and the associated Franchise Agreement, the City shall consider the technical, managerial, and financial qualifications of the bidder to perform its obligations under the Franchise and the associated Franchise Agreement.

SECTION V

Bids and proposals for the purchase and acquisition of the Franchise and privileges hereby granted and set forth more specifically in the Franchise Agreement shall be in writing and shall be delivered to the City's Mayor, or his or her designee, upon the date(s) and time(s) fixed by him or her in said publication(s) or advertisement(s) for receiving the same. Thereafter, the City's Mayor shall report and submit to the City Council, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval. The City Council reserves the right, for and on behalf of the City, to reject any and all bids for the said Franchise and privileges; and, in case the bids or proposals reported by the City's Mayor shall be rejected by the Council, it may direct, by resolution or ordinance, said Franchise and privileges to be again offered for sale, from time to time, until a satisfactory bid or proposal shall be received and approved. In this regard, the City's Mayor, or his or her designee, is authorized to negotiate with and offer to the bidder such terms and conditions that may differ with or modify those terms and conditions presently contained in the Franchise Agreement, as he or his or her designee believe are lawful and appropriate.

In addition, any bid or proposal submitted by utility company or person not already owning within the territorial limits of the City a plant, equipment, and/or Facilities sufficient to render the service required by this Ordinance must be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent (5%) of the fair estimated cost of the Telecommunications System, Facilities and Franchisee Poles required to render the Telecommunications Services, which check or cash shall be forfeited to the City in case the bid or proposal should be accepted and the bidder should fair, for thirty (30) days after the confirmation of the sale, to pay the price and to give a good and sufficient bond in a sum equal to one-fourth (1/4) of the fair estimated cost of the Telecommunications System and Facilities to be constructed, conditioned that it shall be enforceable in case the

purchaser/bidder should fair, within sixty (60) days, to establish and begin rendering the Telecommunications Services in the manner set forth in this Ordinance and the awarded Franchise Agreement. Such deposit need not be made the by utility company or any person already owning within the territorial limits of the City a plant, equipment, and/or Facilities sufficient to render the Telecommunications Services required by this Ordinance and the subsequently awarded Franchise Agreement.

SECTION VI

This Ordinance shall be in full force and effect from and after its reading, adoption and publication. This Ordinance may be published in abbreviated form.

JOHN LINK, MAYOR

Date: May 20 2019

ATTEST:

BELINDA NITSCHKE, CITY CLERK

FIRST READING: 5/6/19

SECOND READING: 5/20/19

PUBLISHED: _____