

ORDINANCE _____

ORDINANCE CONFIRMING THE SALE AND AWARDING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO CINCINNATI BELL EXTENDED TERRITORIES LLC (DBA ALTA FIBER CONNECTED) FOR THE PLACEMENT OF CABLE SYSTEMS PROVIDING FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF CABLE SYSTEMS WITHIN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF ERLANGER, KENTUCKY, FOR AN INITIAL PERIOD OF FIVE (5) YEARS FROM THE EFFECTIVE DATE WITH A POSSIBLE (5) YEAR RENEWAL; 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 CABLE SERVICES FRANCHISE AGREEMENT; AND BID REQUIREMENTS; ALL EFFECTIVE ON DATE OF PASSAGE.

WHEREAS, Resolution No. 09-03-24-02, adopted by the City Council, on September 17, 2024, (the “**Establishment Resolution**”), provided for the creation, establishment and sale of a non-exclusive Franchise, for a term of five (5) years, to acquire, construct, install, maintain, repair, operate, use and enter upon, in the public right-of-way of the City a Telecommunications System, Facilities, and Franchisee Poles (as such terms and other capitalized terms hereinafter are defined in the Franchise Agreement referenced below) and related equipment and appurtenances for the transmission, distribution, delivery and sale of Telecommunications Services from points either within or without the corporate limits of this City, to this City and the inhabitants thereof, and from and through this City to persons, corporations and municipalities beyond the limits thereof, and for the sale of Telecommunications and other related Telecommunications purposes; and

WHEREAS, the said Establishment Resolution, as required by Section 164 of the Kentucky Constitution, also established a sealed bid process which includes advertising the invitation for bids, and awarding the Franchise to the successful bidder(s); and

WHEREAS, after publication of said advertisement, the City received a timely bid from Cincinnati Bell Extended Territories, LLC (DBA Altafiber Connected. (“**Franchisee**”) to acquire said telecommunications franchise; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ERLANGER, KENTUCKY, AS FOLLOWS:

SECTION I

The City has conducted a public hearing with the reading of this Ordinance and determined that the Franchisee satisfies the following conditions:

1. The technical ability, financial condition and legal qualification of the Franchisee to provide the services, facilities and equipment for that system; and
2. Whether Franchisee's plans for its Cable System are adequate in light of community needs; and
3. Whether the Franchisee can meet the future cable-related needs and interests in light of the costs; and

Based upon the foregoing recitals and acting in accordance with Sections 163 and 164 of the Constitution of the Commonwealth of Kentucky and applicable Kentucky law, and subject to the terms, conditions and covenants set forth in that certain Telecommunications Franchise Agreement for Telecommunications Services and Facilities in the Right-of-Way, a copy of which is attached hereto and made a part hereof as "Attachment A" (hereinafter the "**Franchise Agreement**"), that a non-exclusive Telecommunications Franchise created by this Ordinance and the Establishment Ordinance be, and it hereby is, granted and awarded to Franchisee and its permitted assigns, for the cost of advertising and the sale of a Telecommunications System and Telecommunications Services Franchise, plus the Application Fee, the Franchise Fee and such other compensation, all as set forth in the Franchise Agreement. Franchisee shall make payments at the times and in conformance with the requirements of KRS 136.600 - 136.660 ("Excise Tax") and said payments shall be in lieu of any Franchise Fees paid to the City. If the City elects to collect Franchise Fees in lieu of the Excise Tax, the Franchise Fee shall be in an amount equal to five percent (5%) of Franchisee's gross revenue derived from all sources from the operation of Franchisee's Cable Communications System to provide cable service within the territorial limits of the City ("Franchise Fee").

The Franchise granted and awarded in this Ordinance only authorizes Franchisee to provide the Telecommunications Services specifically authorized in the Franchise Agreement.

SECTION II

The term of the Franchise granted in this Ordinance and as provided in Section 6 (Term) of the Franchise Agreement shall be for a period of ten (5) years with one five (5) year renewal at both parties option.

SECTION III

All prior ordinances, municipal orders, or policies or parts thereof in conflict herewith, are to the extent of such conflict, hereby repealed.

SECTION IV

That the mayor of the City is hereby authorized to sign the Franchise Agreement to memorialize the sale and award by the City to the Franchisee of said Franchise subject to the terms and conditions reflected in the Establishment Ordinance and this Ordinance. Further, the mayor is hereby authorized to negotiate such changes to the Franchise Agreement as he or she may deem

necessary or desirable, so long as such changes do not affect the overall substance of this Ordinance and the Franchise Agreement.

SECTION V

That the statements set forth in the Preamble to this Ordinance are hereby incorporated in this Ordinance by reference, the same as if set forth at length herein.

SECTION VI

All rights and privileges granted in this Ordinance and the Franchise Agreement are, at all times during the aforesaid term, subject to all lawful exercise of the police and legislative powers of the City. Franchisee shall comply with all applicable laws, ordinances and regulations which the City has adopted or shall adopt, applying to the public generally and to other franchisees, licensees, or grantees.

SECTION VII

That if any section, sentence, clause or phrase of this Ordinance is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Ordinance.

SECTION VIII

This Ordinance shall be in effect when read, passed and published according to law. This Ordinance may be published in abbreviated form.

ADOPTED THIS _____ DAY OF _____, 2024.

1st Reading: _____, 20__.

2nd Reading: _____, 20__ . Vote: ___ Yes, ___ No.

APPROVED:

By: Jessica Fette, Mayor
City of Erlanger

ATTEST:

Sherry Hoffman, City Clerk