

**ORDINANCE NO. 2019-O-06**

**ORDINANCE CONFIRMING THE SALE AND AWARDING A NON-EXCLUSIVE FRANCHISE TO MCI/VERIZON FOR A TERM OF FIVE (5) YEARS FOR A TELECOMMUNICATIONS FRANCHISE AGREEMENT AND FOR THE CONSTRUCTION, PLACEMENT, MAINTENANCE AND OPERATION OF A TELECOMMUNICATIONS SYSTEM AND FACILITIES FOR THE TRANSMISSION, DELIVERY, PROVISION AND SALE OF TELECOMMUNICATIONS SERVICES ALONG, IN, ON, OVER AND UNDER THE PUBLIC RIGHT-OF-WAY WITHIN THE CITY OF INDEPENDENCE, KENTUCKY ("CITY"); ALL UPON THE TERMS, CONDITIONS AND COVENANTS CONTAINED IN THE WIRED TELECOMMUNICATIONS FRANCHISE AGREEMENT.**

---

**WHEREAS**, Resolution No. 2019-R-07, adopted by the City Council, on August 5, 2019, (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 on August 23, 2019, the City received a timely bid from MCI/VERIZON ("Franchisee") to acquire said telecommunications franchise; and

**NOW THEREFORE, BE IT ORDAINED BY THE CITY OF INDEPENDENCE, COUNTY OF KENTON, COMMONWEALTH OF KENTUCKY:**

**SECTION I**

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 Wired 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. The Franchise Fee is hereby established at One and Three Tenths percent (1.3%)

of the Gross Receipts and shall be paid, together with other compensation and payments due thereunder, on a quarterly a basis within thirty (30) days after the expiration of each calendar quarter, all as provided in the Franchise Agreement. Should the City exercise said right to increase the Franchise Fee, the City shall receive a monthly payment of up to five (5) percent of Gross Receipts per month received by Franchisee from (1) Franchisee's sale of Telecommunications Services (which includes businesses, industrial facilities and dwellings) inside the City's corporate limits and (2) all other sources as provided in the Franchise Agreement.

The Franchise granted and awarded in this Ordinance only authorizes Franchisee to provide the Telecommunications Services specifically authorized in the Franchise Agreement and set forth in Exhibit B thereto. Neither this Ordinance nor the Franchise Agreement authorizes Franchisee to provide 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.

## **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 five (5) years with three five (5) year renewals 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**

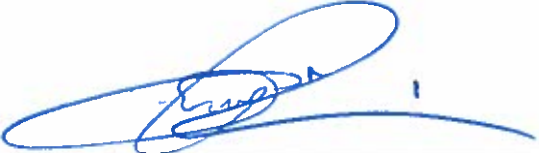
That the statements set forth in the Preamble to this Ordinance are hereby incorporated in this Ordinance by reference, the same as if set forth at length herein.

## **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 VIII**

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

  
\_\_\_\_\_  
Christopher J. Reinersman, Mayor

ATTEST:

  
\_\_\_\_\_  
Gina Gabbard, City Clerk

First Reading: October 7, 2019

Second Reading: November 4, 2019

Ayes: 6

Nays: 0

Publication Date: 11/25/2019