

SPONSOR: Brown/Elliott

ORDINANCE NO. 64-10

AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF JACKSON, OHIO, AND THE JACKSON COUNTY ECONOMIC DEVELOPMENT BOARD, FOR MARKETING BROADBAND UPON CITY OWNED WATER TOWERS, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JACKSON, STATE OF OHIO, as follows:

Section One. The Service Director is authorized to enter into an Agreement between the City of Jackson, Ohio, and The Jackson County Economic Development Board (JCEDB), to allow JCEDB exclusive authority to market the City's water towers to prospective broadband providers, in order to provide broadband service on a countywide basis. A copy of the Agreement is attached hereto as Exhibit "A".

Section Two. This Ordinance is hereby declared to be an emergency Ordinance necessary for the immediate preservation of the public peace, health, or safety of the City of Jackson, in that it is necessary to enter into this agreement as soon as possible in order that JCEDB may proceed with the countywide broadband initiative. Therefore, this Ordinance shall go into effect upon passage and approval by the Mayor, as provided in Ohio Revised Code Section 731.30.

Section Three. In the event this Ordinance receives a majority vote for passage but fails to receive the required number of votes to pass as an emergency, then this Ordinance shall be deemed to have passed but with no emergency clause and shall take effect at the earliest time permitted by law.

Section Four. It is hereby found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that the deliberations of this Council that resulted in such formal actions, were in a meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Date: 9/13/10

Renee B. Deane
PRESIDENT OF COUNCIL

Tera Brown
CLERK OF COUNCIL

Approved:

Date: 9/13/10

Randy R. Hunt
MAYOR

Exhibit “A”

AGREEMENT

This agreement made this _____ day of _____, 2010 between the City of Jackson, an Ohio municipality with its address being 145 Broadway Street, Jackson, Ohio 45640 ("OWNER") and Jackson County Economic Development Board, an Ohio not-for-profit corporation whose address is 200 Broadway Street, Jackson, Ohio 45640 ("MARKETER").

RECITALS

MARKETER desires to obtain from OWNER and OWNER desires to grant MARKETER the exclusive right to market and lease space to providers of multi-point broadband Internet access upon water towers, water tanks, radio transmissions towers, cable television towers, and similar structures owned by OWNER on January 1, 2010 or thereafter acquired.

In consideration of their mutual promises and covenants, the parties hereto agree:

APPOINTMENT

OWNER appoints MARKETER as the exclusive agent for OWNER to market space upon structures owned by OWNER.

During the term of this Agreement, OWNER agrees not to allow any entity, including OWNER itself, to market space for multi-point Internet access and related services.

TERM

The term of this Agreement will begin on the date first stated above and will end on _____, subject to the following:

(1) Provided MARKETER is not in default in this Agreement, or any of its terms or provisions, OWNER may elect, by written notice to MARKETER at least _____ days prior to the end of the original term of this Agreement, to extend this Agreement on the same terms and condition hereof, for a period of _____ years, commencing _____.

(2) MARKETER may on _____ days' written notice to OWNER, terminate this Agreement for any reason, without cause, but without prejudice to any rights of either party to moneys due or to become due as a result of the marketing efforts of MARKETER.

(3) OWNER may on _____ days' written notice to MARKETER, terminate this Agreement for any reason, without cause, but without prejudice to any rights of either party to moneys due or to become due as a result of the marketing efforts of MARKETER.

(4) If the MARKETER is or becomes insolvent, or enters into a composition with its creditors or if a receiver is appointed for it, or if MARKETER files any petition or application under any bankruptcy laws or acts, or is adjudicated bankrupt, then OWNER will have the right to terminate this agreement upon giving notice to MARKETER at least _____ days before the time when the termination is to take effect and at the expiration of the _____ days, this Agreement will becomes null and void, but without prejudice to the rights of either party to money due or to become due under this Agreement.

REPRESENTATIONS

OWNER represents, covenants and warrants as follows:

(1) OWNER is a municipal corporation formed and in good standing in the State of Ohio, and is not now operating under the jurisdiction of the United States Bankruptcy Court, or pursuant to an arrangement with its creditors under any chapter of the United States Bankruptcy Act.

(2) OWNER has the right to enter into this Agreement with MARKETER to market space upon its structures.

(3) OWNER has not granted and will not, without prior written consent of MARKETER, grant to any person, entity or organization, the right to market space covered by this agreement and will not itself or by its employees or agents make any such efforts.

MARKETER

Representations of Marketer

MARKETER covenants and warrants as follows:

(1) MARKETER is a not for profit corporation formed and in good standing in the State of Ohio.

(2) MARKETER will use its best efforts to market the space covered by this agreement.

ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this agreement will be binding unless executed in writing by all the parties to this agreement. No waiver of any of the provisions of this agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party against whom an assertion of waiver is made.

BINDING EFFECTS ON SUCCESSORS AND ASSIGNS

This agreement will bind and inure to the benefit of the successors and assigns of the parties.

FEES

OWNER agrees that MARKETER shall be entitled to a fee, being a percentage of the lease fees received by OWNER which shall continue so long as said lease fees are received by owner. The exact percentage shall be determined prior to any lease by OWNER.

NOTICES

All notices, requests, demands and other communications under this agreement will be in writing and will be deemed to have been given on the date of service if served personally on the party to whom notice is to be given or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or

certified, postage prepaid, and unless either party should notify the other of a change of address, properly addressed, as follows:

TO OWNER: City of Jackson
145 Broadway Street
Jackson, Ohio 45640

TO MARKETER: Jackson County Economic Development Board
200 Broadway Street
Jackson, Ohio 45640

INTERPRETATION

This agreement will be governed by the laws of the State of Ohio.

TIME OF ESSENCE

Time is of the essence as to all portions of this agreement.

CAPTIONS

The subject headings of the paragraphs and subparagraphs of this agreement are included for purposes of convenience only and will not affect the construction or interpretation of any of its provisions.

SEVERABILITY

In the event any section, paragraph or portion of this agreement would be or is deemed to be by any court having lawful jurisdiction of the subject matter of this agreement void, voidable or invalid for any reason, this agreement will be otherwise valid and enforceable as if the void, voidable or invalid section, paragraph or portion of this agreement had not been a part of this agreement in the first instance.

AUTHORITY TO BIND

Each person executing this agreement warrants that he or she has full and legal authority to execute this agreement for and on behalf of the respective parties and to bind the parties. The parties have executed this agreement at Jackson, Ohio on the date and year first above written.

By:

JACKSON COUNTY ECONOMIC DEVELOPMENT CORPORATION

By:

CITY OF JACKSON
