AN ORDINANCE GRANTING HAVILAND TELEPHONE COMPANY, INC., (DBA HAVILAND BROADBAND) A LICENSE TO OPERATE AND MAINTAIN A COMMUNICATIONS SYSTEM IN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF GREENSBURG, KANSAS, PRESCRIBING THE TERMS AND CONDITION OF SAID GRANT.

WHEREAS, The City seeks to:
1. Adequately compensate itself for occupancy and maintenance of the City Right-of-way by all Communications Services,
2. Fully protect the public and the City from any harm caused by private, commercial use of Right-of-way, including but not limited to reducing the risk of loss of service or personal or property injury from errant excavation,
3. Protect the regulatory authority of the City in a manner consistent with federal and State law, and
4. Promote the entry and occupancy of Right-of-way by communications providers in a competitively neutral manner, maximize the available space for such providers by requiring coordination, colocation, and planned construction of infrastructure in the Right-of-way;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GREENSBURG, KANSAS:

SECTION 1. Definitions. For the purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another is intended. Words used in the present tense include the future tense, words in the singular number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.
A. "City" means the City of Greensburg, Kansas.
B. "Facilities" means any portion of a Communications System located in, along, over, upon, under, or through the Right-of-Way.
C. "Agreement" means the license agreement that is governed by this Ordinance and agreed to by Licensor.
D. "Licensor" means the Haviland Telephone Company, Inc. who is granted a license pursuant to this Ordinance and that entity's agents and employees.
E. "License Fee" means the fee imposed by the City on a license pursuant to this Ordinance.
F. "Public Project" means any project planned or undertaken by the City or any governmental entity for construction, reconstruction,
maintenance, or repair of public facilities or improvements, or any other purpose of a public nature.

G. "Public Project for Private Development" means a Public Project, or that portion thereof, arising solely from a request or requirement of a third party (non-City or governmental) primarily for the benefit and use of a third party.

H. "Right-of-Way" means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include area on, above and below present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. This term shall not include any county, state, or federal right-of-way or any property owned or controlled by any person or agency other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. Right-of-Way shall not include property owned or held by City and not typically considered Right-of-Way such as City Parks and City Buildings. The term does not include easements obtained by private easements in platted subdivisions or tracts.

I. "Communications System" or "System" means the cables, wires, lines, optic fiber, and any associated converters, equipment, or other facilities designed, constructed or occupied by a Licensor or others for the purpose of producing, receiving, amplifying or distributing wireless information communications service to or from locations within the City.

SECTION 2. Nonexclusive. Nothing herein contained shall be construed as giving to the Licensor any exclusive privileges, nor shall it affect any prior or existing rights of the Licensor to maintain a Communications system or related business within the City.

SECTION 3. Grant.

A. The City hereby grants to Haviland Telephone Company, Inc., (hereinafter referred to as "the Licensor" or "the Company") a license which conveys the right, privilege, and authority to construct, operate, and maintain Facilities in, through and along the City’s Right-of-Way for the purposes of supplying wired or wireless Communications Services on a nonexclusive basis within the City.

B. The Company shall continue to operate its Communications system and all business incidental to or connected with the conducting of its business and system in the City. The plant, construction and appurtenances used in or incidental to the offering of Communications and other services and to the maintenance of such system and business by the Company in the City shall remain as now planned and constructed, subject to such changes as may be considered necessary by the City in the exercise of its inherent powers and by the Company in the conduct of its business.
C. The Company shall continue to exercise its right to place, remove, construct and reconstruct, extend and maintain its plant and appurtenances along, across, on, over, through, above and under all the public streets, avenues, alleys, bridges, utility easements and all public grounds and places within the limits of the City.

SECTION 4. Excavations; Underground Facility Locating Service.
A. Prior to any underground excavations by Licensor in the public streets, roads, alleys, sidewalks or other public places, Licensor must submit written plans for approval by the City.
B. The City shall promptly, and in no event more than 30 days, with respect to facilities in the public right-of-way, process each valid and administratively complete application of a provider for any permit, license or consent to excavate, locate lines, construct facilities, make repairs, effect traffic flow, or for other similar approvals, and shall make reasonable effort not to unreasonably delay or burden the Company in the timely conduct of its business.
C. If there is an emergency necessitating response work or repair, the Company may begin that repair or take any action required under the circumstances, provided that the Company notifies the City promptly after beginning the work and timely thereafter meets any permit or other requirements, had there not been such an emergency.
D. The Licensor must continue to participate fully in Kansas One Call to insure that damage and/or interference with other underground facilities' occupants is minimized. The City will notify the Company either directly or through voluntary participation in Kansas One Call of its excavation plans in public Right-of-way, to avoid damage to Company facilities pre-existing in public Right-of-way.

SECTION 5. Relocation of Facilities.
A. The Licensor shall not be responsible for the expenses of relocation to accommodate any new Public Project for Private Development. The expenses attributable to such a project shall be the responsibility of the third party upon the request and appropriate documentation of the Licensor. Before such expense may be billed to the third party, the Licensor shall be required to coordinate with the third party and the City on the design and construction to ensure that the work required is necessary and done in a cost effective manner. Upon the request of the Licensor or the third party, the allocation of expense attributable to the project shall be made in the reasonable determination of the City. Eligible third parties may request to have the City specially assess those expenses billed by the Licensor under this section.
B. The City will use its best efforts, but is not required, to continue to provide a location in the Right-of-Way for the Licensor's Facilities as part of a Public Project, provided that the Licensor has cooperated promptly
and fully with the City in the design of its Facilities as part of the Public Project.

SECTION 6. License Fees.
A. The City requires the Company as a provider of information Communications, and not a local exchange service provider [KSA 12-2001(s)], to contribute to city rights-of-way maintenance. Accordingly, the company will annually pay $500 per mile of communication facility toward such maintenance. No other sales, excise, use or other tax shall be included in the calculation of such taxes.
B. The Company shall submit payment to the City each August 1 based on its internal property records as of the previous December 31. The City maintains a right to review these records on notice to the Company.

SECTION 7. Term. The License shall remain in effect for 15 years from the anniversary of its adoption, or until December 31, 2034, whichever date is the earlier, unless either party shall notify the other in writing of its intention to terminate this agreement. The notice of intention to terminate shall be served by either party on the other at least six (6) months prior to the date of such termination.

SECTION 8. Non-assignable. No Licensor shall sell, transfer, lease, assign, sublet, or dispose of in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation, or otherwise, a License granted hereunder or any of the rights and privileges granted by such License.

SECTION 9. Enforcement; Attorney Fees. The City shall be entitled to enforce this Ordinance, and, any License granted pursuant to it, though all remedies lawfully available, and Company shall pay City reasonable attorneys' fees in the event that the Company is determined judicially to have violated the terms of this Ordinance or License.

SECTION 10. Indemnification.
A. The Company shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kinds and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the provider, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents,
employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors.  

B. If a provider and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law.

**SECTION 11. Previous Easement Agreement**

A. The 2013 Easement Agreement approved on March 18, 2013, is merged into this agreement and the work performed under the 2013 Easement Agreement is subject to the provisions of this new agreement.

**SECTION 12. Effective date; procedures.**

A. This ordinance shall become effective upon publication, or September 1st, 2019, whichever comes first.  

B. Publication costs shall be reimbursed by the Company to the city, upon presentation of publication costs’ receipts.

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Matthew Christenson

Mayor  

8-7-2019

(For the Company)

(Title)

(Date)