

ORDINANCE NO. 5375

AN ORDINANCE GRANTING HOME COMMUNICATIONS, INC. (HCI), A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE FOR FIBER OPTIC BACKHAUL, PRESCRIBING THE TERMS AND CONDITIONS THEREOF, AND RELATING THERETO, AND REPEALING ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH OR CONFLICTING WITH THE TERMS THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LINDSBORG, KANSAS:

In consideration of the benefits to be derived by the City of Lindsborg, Kansas, (the “City”) and its inhabitants, there is hereby granted to Home Communications, Inc. (HCI), a Kansas corporation, and its successors and assigns, (the “Grantee”) the right, privilege and authority for a period of fifteen (15) years from the effective date of this Ordinance and continuing annually until either party gives notice of change, to occupy and use public right of way as shown in Exhibit A., for the placing and maintaining of fiber optic lines, together with all necessary and desirable appurtenances for the installation and maintenance of said fiber optic line.

COMPENSATION IN LIEU OF TAX

As further consideration for the granting of this franchise, and in lieu of any City occupation, license or revenue taxes, the Grantee shall pay to the City a fee of \$125.00 for each instance of installation of fiber optic in the public right of way. The fee shall be to offset review, administration, and record keeping costs associated with review of Grantee’s plans and for the monitoring and inspecting Grantee’s work, Grantee’s restoration of public infrastructure and Grantee’s maintenance of traffic control devices.

REASONABLE CARE REQUIRED

That the Grantee, its successors, and assigns, in the construction, maintenance, and operation of its electric transmission, distribution, shall use all reasonable and proper precaution to avoid damage or injury to persons or property, and shall hold and save harmless the City of Lindsborg, Kansas, from any and all damages, injury and expense caused by the negligence of said Grantee, its successors and assigns or its or their agents or servants.

INDEMNITY

- a) Grantee 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 kind 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 occupant, 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.

- b) 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. If an occupant and the city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with Kansas law 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.
- c) This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

ACCEPTANCE REQUIRED

After approval of this Ordinance by the City, the Grantee shall file with the City Clerk of the City of Lindsborg, Kansas, its unconditional written acceptance of this Ordinance. Said Ordinance shall become effective and be in force and shall be and become a binding contract between the parties hereto, their successors and assigns, from and after the expiration of sixty (60) days from its final passage, approval and publication as required by law, and acceptance by said Grantee. This Ordinance shall be published in the official City paper and take effect and be in force on Aug. 2, 2022.

REPEAL OF PROVISIONS IN CONFLICT

That any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed.

ASSIGNABILITY

The franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made, provided, however, that the franchise may be assigned by the Grantee without action by the City to any creditworthy entity which succeeds to all or substantially all of the fiber optic business of the Grantee. In the event of such assignment to a successor, the Grantee shall be released from all obligations which are assumed in writing by such successor and the assignee shall have executed an assumption of the franchise being assigned.

ACCEPTANCE

That this Ordinance, when accepted as above provided, shall constitute the entire agreement between the City and the Grantee relating to this franchise and the same shall supersede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written.

LAW APPLICABLE

This Franchise is granted pursuant to the provisions of K.S.A. 12-2001.

SUMMARY OF ORDINANCE FOR PUBLICATION

Ordinance No. 5375 Summary

On August 1, 2022, the City of Lindsborg, Kansas, passed Ordinance No. 5375. The ordinance establishes a franchise for fiber optic backhaul for HCl. A complete copy of the ordinance is available at www.lindsborgcity.org or in the office of the City Clerk, 101 S. Main Street, free of charge. This summary is certified by the City Attorney to be legal, accurate, and sufficient.

ADOPTED AND PASSED by the governing body of the City of Lindsborg, Kansas on Aug. 1, 2022 and **APPROVED** by the governing body **AND SIGNED** by the Mayor.

ATTEST:



Clark Shultz, Mayor



Roxie Sjogren, CMC
City Clerk