

ORDINANCE NO. - 1123

AN ORDINANCE GRANTING TO TWIN VALLEY COMMUNICATIONS, INC., A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF HAYSVILLE, KANSAS.

This Contract Franchise ("Franchise or Agreement") is entered into as of May 13, 2024 ("Effective Date") by and between the City of Haysville, a municipal corporation (the "City"), and Twin Valley Communications, Inc. d/b/a Twin Valley ("TVC").

RECITALS

a. TVC owns, maintains, operates and/or controls telecommunications and Internet Facilities serving TVC's customers. Such Facilities are in public rights-of-way (hereinafter "ROW"), among other locations, in the State of Kansas.

b. TVC seeks to enter the City of Haysville's Right of Way, and other real property of the City, to install, maintain and operate fiber network Facilities (the "Network"), so that TVC and/or its underlying customers (the "Customers") may provide data, telecommunications, broadband Internet, and related services to the residents and visitors of the City (the "Services").

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

SECTION 1. DEFINITIONS.

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number.

a. "Contract Franchise" - means this Ordinance granting the right, privilege and franchise to TVC to provide services within the City.

b. "Distributed antenna systems" ("DAS Facility") – mean certain components of the Network consisting of distributed antenna systems which may be located on existing or new streetlights, stand-alone poles, third party utility poles, and other structures located on or within the ROW as permitted under this Contract Franchise ordinance, and which will be connected to TVC's Facilities.

c. "Facilities" means any portion of a system located in, along, over, upon, under, or through the right-of-way and may include, without limitation, antenna nodes, poles, streetlight poles, equipment cabinets, underground and above ground fiber optic cable, fiber handholes and

enclosures, fiber repeaters and related equipment, DAS Facility, and will include other equipment as technology evolves, in a configuration and at locations to be filed and identified through the City permit process

d. "Laws" or "Law" as used in this Agreement means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the City or other governmental entity or agency having joint or several jurisdiction over the Parties' activities under this Agreement or having jurisdiction that is applicable to any aspect of this Agreement that are in force on the Effective Date and as they may be enacted, issued or amended during the term of this Agreement.

e. "TVC" - means Twin Valley Communications, Inc. d/b/a Twin Valley, a competitive telecommunications local exchange service provider providing local exchange, Internet services, and other telecommunications services within the City. References to TVC shall also include as appropriate any and all successors and assigns.

f. "Gross receipts" - shall be defined as set forth in K.S.A. 12-2001(c)(6). Uncollectible and late charges, taxes, surcharges, and other pass-through charges shall not be included within gross receipts.

g. "Right-of-way" or "ROW" means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes, including but not limited to overhead lighting facilities, and including utility easements wherein the City now or hereafter acquires the right and authority to locate or permit the location of utilities consistent with communications facilities. 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.

SECTION 2. GRANT OF CONTRACT FRANCHISE.

a. There is hereby granted to TVC this nonexclusive Contract Franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public Right-of-way for the purpose of supplying services to customers within the corporate boundaries of the City, for the term of this Contract Franchise, subject to the terms and conditions of this Contract Franchise.

b. The grant of this Contract Franchise by the City shall not convey title, equitable or legal, in the public right-of-way, and shall give only the right to occupy the public right-of-way, for the purposes and for the period stated in this Contract Franchise.

c. This authority to occupy the public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.

a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract Franchise, TVC shall have the right to construct, maintain and operate its Facilities along, across, upon and under the public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. TVC shall participate in the Kansas One Call utility location program.

c. TVC may attach its Facilities to an existing City-owned utility pole pursuant to the current National Electric Safety Code.

d. It is understood that TVC may build new Facilities in the City which would comply with all applicable Laws. If the City has no formal third-party utility installation policy or permit process, TVC will not be obligated to make application for new facility installations unless and until such time a formal process is implemented by the City in a reasonable and non-discriminatory form and enforced among all third-party utility installations.

e. If the City has a utility installation process or permit policy applicable to the installation of the TVC's Facilities, the City will approve or deny any application by the TVC no later than 14-days from submission of a complete application. Failure of the City to deny with reasonable specificity TVC's application within 14-days will be considered approval of the application by the City.

f. TVC will always attempt to provide reasonable notice to the City for any new installation and give the City reasonable time to provide input on the placement/location of new Facilities.

g. No notice is necessary to the City for Facility maintenance unless such maintenance will require street closure, and in such event, TVC will use reasonable efforts to coordinate such closure with the City.

h. TVC shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by TVC's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of the Network in the City's ROW. TVC shall promptly repair such damage and return the City's ROW and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards or to the property owner if not the City. TVC's obligations

under this section 3.h shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the City's ROW by TVC to the City.

i. Whenever by reason the City deems it necessary to alter, change, adapt, or conform any portion of TVC's Facilities located in the Right-of-way, the City shall provide reasonable notice and such alterations or changes shall be made within a reasonable time by TVC, as ordered in writing by the City, without claim for reimbursement or compensation for damages against the City; provided, however, that this provision is not intended to require TVC to alter, change, adapt, or conform any portion of its Facilities without reimbursement or compensation where the right to locate the same (whether by private right-of-way grant, utility easement or otherwise), was acquired prior to the designation of the location as a Right-of-way.

j. All Facilities shall be laid or installed under this Franchise shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers, or other structures already installed. TVC shall provide, prior to commencing work, information to the City concerning work to be performed in the streets, avenues, bridges, parking areas, and public places of the City, as the City may from time to time require for purposes of record keeping. The City may require that the information be provided on its standard permit form, but without requiring approval, consent, or fees. In the event of an emergency, TVC shall have the right to commence work without having first provided such information or form(s).

SECTION 4. COMPENSATION TO THE CITY.

a. A one-time permit and license fee of \$1,000.00 for each DAS Facility installed within the Public Right of Way of the City shall be paid by TVC.

b. Franchise compensation shall be paid on a quarterly basis paid not later than forty-five (45) days after the end of the remittal period equal to five percent (5%) of Gross Receipts.

SECTION 5. RECORD REVIEW.

The City shall have the right to examine, upon sixty (60) days' prior written notice to TVC, no more than once per calendar year and at City's own cost and expense, those records necessary to verify the correctness of the compensation paid pursuant to this Contract Franchise ordinance.

SECTION 6. RESOLD SERVICES.

TVC shall collect and remit compensation as described in Section 4 on those access lines that have been resold to another telecommunications local exchange service provider.

SECTION 7. INDEMNITY AND HOLD HARMLESS.

a. It shall be the responsibility of TVC to take adequate measures to protect and defend its facilities in the public right-of-way from harm or damage. If TVC fails to accurately or

timely locate facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their gross negligence. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near TVC's facilities.

b. TVC 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 TVC, any agent, officer, director, representative, employee, affiliate or subcontractor of TVC, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

c. TVC or City shall promptly advise the other in writing of any known claim or demand against TVC or the City related to or arising out of TVC's activities in the Public right-of-way.

d. TVC WILL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOST PROFITS, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY, WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.

SECTION 8. INSURANCE REQUIREMENT.

a. During the term of this Contract Franchise, TVC shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should TVC elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. TVC shall provide not less than the following insurance:

(1) Workers' compensation as provided for pursuant to the laws of the state of Kansas with an employers' liability limit equal to the amount required by law.

(2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with an aggregate limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. Upon request, the City shall be included as an additional insured with respect to liability arising from TVC's operations under this Contract Franchise.

SECTION 9. REVOCATION AND TERMINATION.

In case of failure on the part of TVC to comply with any of the material provisions of this Contract Franchise, or if TVC should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract Franchise, the City shall abide by the requirements of K.S.A. 12-2001 which requires reasonable notice and an opportunity for a public hearing before the City governing body before a Contract Franchise ordinance may be revoked.

SECTION 10. RESERVATION OF RIGHTS.

a. In granting its consent hereunder, TVC does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

b. In entering into this Contract Franchise, neither the City's nor TVC's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract Franchise, neither the City nor TVC waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or TVC may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

SECTION 11. FAILURE TO ENFORCE.

The failure of either the City or the TVC to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the TVC unless said waiver or relinquishment is in writing and signed by both the City and the TVC.

SECTION 12. TERM AND TERMINATION DATE.

a. This Contract Franchise shall be effective for a term of ten (10) years from the effective date of this Contract Franchise ordinance. Thereafter, this Contract Franchise will renew for additional one (1) year terms, unless either party notifies the other party of its intent to terminate or renegotiate the Contract Franchise at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract Franchise and not as a new franchise or amendment.

b. Upon written request of either the City or TVC, this Contract Franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or TVC, including but not limited to the scope of the Contract Franchise granted to TVC or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or TVC may elect to terminate the entire Contract Franchise. In the event of such invalidity, if TVC is required by law to enter into a Contract Franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract Franchise.

d. Amendments under this section, if any, shall be made by Contract Franchise ordinance as prescribed by statute. This Contract Franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new Contract Franchise ordinance or an amendment to this Contract Franchise upon the termination date of this Contract Franchise, the parties by written mutual agreement may extend the termination date of this Contract Franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract Franchise and not as a new Contract Franchise ordinance or amendment.

SECTION 13. POINT OF CONTACT AND NOTICES.

TVC shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of TVC in the event of an emergency.

All other notices between the parties shall be in writing and shall be made by personal delivery or by depositing such notice in the U.S. Mail, Certified Mail, return receipt requested. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. "Business day" for purposes of this section shall mean Monday through Friday, City and/or TVC observed holidays excepted.

The City: City of Haysville Attn: City Clerk PO Box 404 Haysville, KS 67060 amillspaugh@haysville-ks.com	TVC: Twin Valley Attn: Scott Leitzel VP of Operations 112 S. Lee Clearwater, KS 67026
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or to replacement addresses that may be later designated in writing.

SECTION 14. CONFIDENTIALITY.

Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 et seq and amendments thereto. TVC agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of TVC, or of the City at the written request of TVC, in seeking to safeguard the confidentiality of information provided by TVC to the City under this Contract Franchise.

SECTION 15. COMPETITIVE NEUTRALITY.

The City agrees that under K.S.A. 12-2001 and K.S.A 17-1902, and other state and federal laws, this Contract Franchise ordinance must be competitively neutral and may not be unreasonable or discriminatory to any telecommunications provider operating in the City.

SECTION 16. MOST-FAVORED MUNICIPALITY.

Most-Favored Municipality. Should TVC after the Parties' execution and delivery of this Agreement enter into a franchise agreement with another municipality of the same size or smaller than the City in this State, which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such agreement, are in the City's opinion substantially superior to those in this Franchise Agreement, the City shall have the right to require that TVC modify this Franchise Agreement to incorporate the same or substantially similar superior benefits.

SECTION 17. MOST FAVORED PROVIDER.

All of the benefits and terms granted by the City herein are at least as favorable as the benefits and terms granted by the City to any future franchisee of the public ROW engaged in the same or similar business described in this Franchise Agreement. Should the City enter into any subsequent agreement of any kind no matter what nomenclature is attached thereto with any other franchisee during the term of this Franchise Agreement, which Agreement provides for benefits or terms more favorable than those contained in this Franchise Agreement, then this Franchise Agreement shall be deemed to be modified effective as of the date of such more favorable agreement to provide TVC with those more favorable benefits and terms. The City shall notify TVC promptly of the existence of such more favorable benefits and terms and TVC shall have the right to receive the more favorable benefits and terms immediately. If requested in writing by TVC, the City shall amend this Franchise Agreement to contain the more favorable terms and conditions.

SECTION 18. SEVERABILITY.

If any clause, sentence, or section of this Contract Franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or TVC may elect to declare the entire Contract Franchise invalidated if the portion declared invalid is, in the judgment of the City or TVC, an essential part of the Contract Franchise.

SECTION 19. FORCE MAJEURE.

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond TVC's or the City's control.

SECTION 20. SUMMARY PUBLICATION.

Pursuant to K.S.A. 12-2007(b), summary of the ordinance shall be published one time in the following format:

Ordinance No. _____ Summary

On _____, the City of Haysville, Kansas, passed Ordinance No. _____. The ordinance grants a franchise to TWIN VALLEY COMMUNICATIONS, INC. to construct, operate and maintain a telecommunications system in the City of Haysville, Kansas. A complete copy of the ordinance is available at www.haysville-ks.com or in the office of the city clerk located at 200 W. Grand Ave., Haysville, Kansas, free of charge. This summary is certified by the city attorney.

SECTION 21. GENERAL PROVISIONS.

- a. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors, assigns and transferees.
- b. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof.
- c. This Agreement shall be interpreted and enforced according to, and the parties' rights and obligations governed by, the domestic law of the State of Kansas or applicable federal law, without regard to laws regarding choice of applicable law. Any proceeding or action to enforce this Agreement, or otherwise directly related to this Agreement shall occur in the federal court with jurisdiction over Reno County or the state courts located in Reno County, Kansas.
- d. All of the terms and conditions in this Agreement related to payment, removal due to termination or abandonment, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this Agreement.
- e. In the interpretation and application of its rights under this Franchise Agreement, the City will act in a reasonable, non-discriminatory, and competitively neutral manner in compliance with all applicable federal, state, and local laws and regulations.
- f. This Franchise Agreement ordinance is made under and in conformation with and is subject to the laws of the State of Kansas.