

ORDINANCE NO. G-1153

A FRANCHISE AGREEMENT GRANTING IDEATEK TELECOM, LLC, A WHOLLY OWNED SUBSIDIARY OF IDEATEK SYSTEMS, INC., ACCESS TO THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF JUNCTION CITY, KANSAS AS A COMPETITIVE INFRASTRUCTURE PROVIDER AND AS A PROVIDER OF TELECOMMUNICATIONS SERVICES AND DESCRIBING THE TERMS RELATED TO EACH GRANT.

WHEREAS, IdeaTek Telecom, LLC, a wholly owned subsidiary of IdeaTek Systems, Inc., a Kansas corporation ("IdeaTek") is a telecommunications provider which owns, maintains, operates and/or controls, in accordance with regulations promulgated by the Federal Communications Commission and the Kansas Corporation Commission (hereinafter "KCC"), telecommunications networks and facilities within the state of Kansas.

WHEREAS, IdeaTek has represented to and notified the City that it intends to operate and maintain facilities in the City's public right of way (the "ROW"), including fiber network and future additions or modifications thereto, for the purpose of providing local exchange service, as defined in K.S.A. 12-2001, and telecommunications services as defined in K.S.A. 12-2001 and K.S.A. 17-1902(3) ("IdeaTek Services").

WHEREAS, IdeaTek has represented to and notified the City that it also intends to install fiber network and facilities and components of such fiber network, including distributed antenna system facilities, (the "Network") for purposes of leasing, licensing, selling, or otherwise conveying the facilities, or the capacity or bandwidth of such facilities, to one or more third-party customers of IdeaTek ("Customers"), for the use in the provision of wireless telecommunications services by such Customers directly to end users within the corporate limits of the City of Junction City, Kansas ("Infrastructure Services").

WHEREAS, Some features of the Network include, without limitation, antenna nodes, poles, equipment cabinets, underground and above ground fiber optic cable, fiber handholes and enclosures, fiber repeaters and related equipment, and will include other equipment as technology evolves, in a configuration and at locations to be filed, identified and approved through the City right-of-way permit process ("Facility" or "Facilities").

WHEREAS, Portions of a specific component of the Facilities, a distributed antenna system ("DAS Facility" or "DAS Facilities"), may be located on streetlights, stand-alone poles, third party utility poles, and other structures located on or within the Public ROW, to the extent permitted under this ordinance, and will be connected to underground and above ground fiber optic cable, fiber handholes and enclosures, fiber repeaters, and related equipment.

WHEREAS, IdeaTek desires to obtain from City as permitted by Law (as defined herein), and City is willing to grant to IdeaTek as required by Law, franchises and the nonexclusive right to access the ROW to locate, place, attach, install, operate, use, control,

repair, replace, upgrade, enhance and maintain the Facilities and the DAS Facilities in a manner consistent this Agreement.

WHEREAS, in reliance upon the representations of IdeaTek as set forth in the foregoing whereas clauses, the City agrees to provide IdeaTek the right to access to the ROW both as a competitive infrastructure provider and as a provider of telecommunications services in a manner consistent this Agreement.

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

**ARTICLE 1
GRANT OF FRANCHISE**

1.1 **Grant of Franchise and Permitted Installation.** IdeaTek is granted a non-exclusive franchise to, and may, at IdeaTek's sole cost and expense and during the term of and subject to the conditions of this ordinance ("Agreement"), locate, construct, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities for the purposes of: (a) providing the IdeaTek Services within the City in the capacity of a "provider" under K.S.A. 17-1902(a)(2); and (b) providing the Infrastructure Services to IdeaTek's Customers, in the capacity of a "competitive infrastructure provider" under K.S.A. 17-1902(a)(4). IdeaTek shall undertake and perform any work authorized by this Agreement in a skillful and workmanlike manner.

1.1.1 **Installation Specifications.** The installation of the Facilities shall be made in accordance with plans and specifications as may be approved by the City and after obtaining all necessary permits for all work in the ROW. The City shall process each valid and administratively complete application for requested permits and approvals within forty-five (45) days from the application date, and under exceptional circumstances the time may be extended an additional forty-five (45) days upon agreement of the Parties. The Parties understand and agree that Facilities outside of the ROW may require additional easements from third parties for underground fiber to connect to Network within the ROW. All additional easements, and costs associated therewith, shall be the sole responsibility of IdeaTek. IdeaTek shall also be solely responsible for obtaining any and all permits and/or approvals for the portion of its Facilities located outside the ROW, including any zoning approvals, if applicable. The location, depth of the fiber underground, and any other requirements shall be approved in writing by the City prior to construction of the Facilities at that specific location. Approval of plans and specifications and the issuance of any permits by the City shall not release IdeaTek from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. IdeaTek shall be responsible for notifying the City and all other relevant parties immediately upon discovery of such omissions and/or errors and with obtaining any amendments for corrected City-approved permits, as may be necessary. IdeaTek shall be responsible for all costs associated with the permitting process, including, but not limited to, repairs and replacement of ROW. Such permits and approval requirements detailed in this

section shall not be unreasonably withheld, conditioned or delayed by the City and any conditions or requirements shall be in accordance with federal, state, and local laws.

1.1.2 Temporary Construction. The installation of the Facilities shall be performed in accordance with traffic control plans for temporary construction work that are approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed.

1.1.3 Construction Schedule. At least ten (10) days prior to the installation of the Facilities, IdeaTek shall deliver to the City a schedule for the proposed work related to the construction of the Facilities, as well as a list of the names of all agents and contractors of IdeaTek authorized by IdeaTek to access the ROW on IdeaTek's behalf.

1.1.4 Coordination of Work. IdeaTek shall be responsible for coordination of work to avoid any interference with existing utilities, substructures, facilities and/or operations of the City or other utilities within the ROW. IdeaTek 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 IdeaTek in the event of an emergency. IdeaTek shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by IdeaTek to the City may be made by telephone to the City Clerk or the City Engineer. IdeaTek shall be solely responsible for communicating with Kansas One-Call.

1.1.5 Inspection by City. The City shall have reasonable access to inspect any work conducted by IdeaTek during the installation, maintenance and/or repairs of the Facilities. Said inspection(s) shall be made by the City Engineer and/or his/her authorized representative.

1.1.6 Other Utility Providers. When necessary, and at its sole cost and expense, IdeaTek shall coordinate with other utility providers for other needed utility services. IdeaTek and the City will reasonably cooperate with the other utility providers regarding the location of any meter, pole, and other apparatuses required for each Site.

1.1.7 Existing Utility Poles. IdeaTek may attach its Facilities to an existing utility pole pursuant to a properly executed agreement with the pole owner, provided, however, that any necessary replacement of the pole in order to accommodate the attachment shall be subject to Law and the proper exercise of the City's police powers, and in no instance shall IdeaTek erect a new pole within an existing aerial pole line absent the City's prior authorization.

1.2 Compliance with Laws. Notwithstanding anything contained herein to the contrary, this Agreement, and each provision hereof, are subject to the terms and conditions of all applicable federal, state and local Laws and the Parties shall comply with any such Laws in the exercise of their rights and performance of their obligations under this Agreement. "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, including but not limited to, ordinances and regulations of the City relating to the use and occupancy of the ROW, 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.

1.3 **Permits.** IdeaTek shall obtain all ministerial permits (the "Permits") and pay those fees associated therewith relating to the installation of the Network as currently required and allowed by Law.

1.3.1 **Right of Way Permits.** IdeaTek shall obtain any necessary right of way permits from the City for the installation of the Network and for any other work within the ROW and shall pay all applicable fees associated therewith.

1.3.2 **Building Permits.** IdeaTek shall obtain any necessary building permits from the City for the installation of the Network and for any other work within the ROW, and shall pay all applicable fees associated therewith. In particular, separate permits shall be required for electric service for each location of the Facilities requiring such service.

1.3.3 **Compliance with Permits.** All work within the ROW shall be performed in strict compliance with all applicable Permits and Law.

1.3.4 **Fee Increases.** If prior to the second anniversary of the date hereof, the City increases the permitting fees described in the Sections above, and if with respect to all similarly situated franchisee license agreements executed by the City in such 2-year period the franchisee or licensee is subject to a similar fee provision, then IdeaTek will pay to the City the increased fees as if the increased fee schedule had been in effect as of the date hereof upon being billed therefor by the City.

1.4 **Placement of Facilities.** IdeaTek shall coordinate the placement of its Facilities in the ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City Engineer, and in accordance with Law.

1.5 **New Stand-Alone Poles and Related Facilities.** It is understood that in connection with the DAS Facilities, IdeaTek may build new stand-alone poles approximating the size of standard street light or utility poles, including ancillary equipment for connection of antennae located on new stand-alone poles to utilities and fiber optic cable, which would comply with all right of way and building permits applicable to utility providers in the City, Law and the provisions of Section 4.3 hereof ("New Poles"). The Parties agree that in areas where there are existing street light poles, utility poles and similar structures, IdeaTek will use its best efforts to work with the owner of that existing pole or structure to collocate the DAS Facility but only when the pole or structure owner is willing to allow such attachment and where such attachment is feasible from a safety, technical, and engineering (structural and radio frequency coverage) perspective.

1.5.1 **City Use of New Stand-Alone Poles.** The Parties understand and agree that at no cost to the City, the City may use any New Poles for City purposes, including but not limited to streetlights and other lighting so long as such use does not interfere with IdeaTek's use of its

Network or Facilities. IdeaTek shall reasonably cooperate with the City when using the New Poles.

1.5.2 City-Owned Lights. Except for the installation of the lights and ancillary equipment on or in the New Poles and/or as set forth in section 1.5.3, below, IdeaTek shall not be responsible for maintenance, repair, or replacement of City-owned lights, light bulbs and equipment or equipment owned by third parties authorized by the City on the New Poles.

1.5.3 Damage to New Poles. If a New Pole falls or is damaged such that there is an imminent threat of harm to persons or property, then the City may cause the New Pole to be removed to the side of the street or a location that City believes reasonably eliminates the risk of such imminent threat of harm to persons or property. IdeaTek shall, after written notice from the City that any New Pole has been damaged or removed, cause the New Pole to be repaired or replaced within thirty (30) days after the City's written notice. The cost to repair and/or replace any New Pole, including the replacement City streetlight, bulb and ancillary equipment shall be paid by IdeaTek; provided, however, that if the New Pole is damaged or destroyed by the City or a third party user that the City has given the right to use the New Pole, then the City and/or its third party user shall pay the cost to repair and/or replace the New Pole. To the extent that IdeaTek seeks reimbursement for a third party either directly or through applicable insurance, the City shall assign to IdeaTek any rights the City may have against such third party for such claim.

1.6 Franchise and Permit Fees. IdeaTek is solely responsible for the payment of all lawful franchise and permit fees in connection with IdeaTek's performance under this Agreement.

1.6.1 Franchise Fees.

(a) **Infrastructure Services.** In consideration of this Franchise Agreement for Infrastructure Services, IdeaTek agrees to remit to the City a franchise fee of five percent (5%) of IRU Revenues. "IRU Revenues" means all revenues derived from the Infrastructure Services, including but not limited to RF telecommunications service revenue and any other operating revenue derived from leasing, licensing, or otherwise selling or conveying the right to use IdeaTek's dark fiber or other Facilities, and indefeasible rights of use; and

(b) **IdeaTek Services.** In consideration of this Franchise Agreement for IdeaTek Services, IdeaTek agrees to remit to the City a franchise fee of five percent (5%) of Gross Revenues. "Gross Revenues" means only those revenues derived from services provided within the corporate boundaries of the City which include: (A) recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; (D) line status verification/busy interrupt revenue; and (E) local operator assistance revenue; (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated

services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross revenues. Gross revenues shall be reduced by bad debt expenses that are attributable to Sections (A) through (G) as referenced within this Section 1.6.1.

(c) Uncollectible and late charges shall not be included within IRU Revenues or Gross Revenues.

(d) IdeaTek shall pay the franchise fees described in subparagraphs (a) and (b) above (each a "Franchise Fee") on the 15th day of the month following each calendar quarter in which the IRU Revenues and Gross Revenues are received.

1.6.2 DAS Facility License Fee. In addition to all fees required by Law and this Agreement, a one-time permit and license fee of \$1,000.00 for each DAS Facility installed within the ROW of the City, up to 40 DAS Facilities shall be paid by IdeaTek. After the 40th installation, the fee will be the then current fee charged by the City for similar access, with a minimum fee of \$1,000.00 for each Facility. IdeaTek shall pay the DAS Facility Permit Fee the 15th day following the month after each DAS Facility is installed within the ROW.

1.6.3 ROW Fees. In accordance with Law, IdeaTek shall pay the City such fees required by the City in connection with use of the ROW, including such fees as required by the City ordinances and established by City resolutions, governing the use of the ROW. These fees must be competitively neutral and may not be unreasonable or discriminatory.

1.6.4 Accounting Matters. IdeaTek shall keep accurate books of account at its principal office in Buhler, Kansas, or such other location of its choosing for the purpose of determining the amounts due to the City under §1.6 above. No more than once per year, the City may inspect IdeaTek's books of account relative to the application of the franchise fees required under subsection 1.6.1 of this Agreement any time during regular business hours on thirty (30) days' prior written notice and may audit the books from time to time at the City's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under § 1.6 – 1.7 above. The City agrees to hold in confidence any non-public information it learns from IdeaTek to the fullest extent permitted by Law.

1.7 Access to the Facilities.

1.7.1 IdeaTek Access to Facilities for Repair. IdeaTek will be given reasonable access to each of the Facilities in the ROW for the purposes of routine installation, repair, maintenance or removal of Facilities. If any such maintenance activities have the potential to result in an interruption of any City services at the Facility, IdeaTek shall provide the City with a minimum of three (3) days prior written notice of such maintenance activities. Such maintenance activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services.

1.7.2 **City Observation.** IdeaTek shall allow a representative of the City to observe any repair, maintenance or removal work performed at the Facilities.

ARTICLE 2 TERM AND TERMINATION

2.1 **Term.** This Franchise Agreement shall be effective from the effective date for ten (10) years thereafter. Thereafter, this Agreement shall automatically renew for successive terms of one (1) year unless written notice is given by either IdeaTek or the City to the other one hundred twenty (120) days or more prior to the expiration of the initial term, or any successive term, of its intention to terminate the same at the expiration of the then current term. In no event, shall the City be permitted to terminate IdeaTek's right under this Agreement to place Facilities in the ROW unless terms of the Agreement are breached and/or local, state, or federal law permit.

2.2 **90-Day Remedy Period.** If the Agreement is breached by IdeaTek, then IdeaTek shall have no more than ninety (90) days from written notice from the City of the breach to either remedy the breach or remove its equipment and restore the Facilities, as set forth in Article 3, below. If IdeaTek fails to remedy the breach or remove its equipment during said ninety (90) day period, IdeaTek shall forfeit all rights, privileges and franchise granted herein, and the City may recover from IdeaTek all unpaid amounts due to the City hereunder, as well as costs incurred by the City in enforcing this Agreement, including costs of removal and restoration required in Article 3 below.

2.3 **Termination of Use.** Notwithstanding Section 2.1 above, IdeaTek may terminate its use of any part or the entire Network by providing the City with ninety (90) days prior written notice. In the event of any such termination, IdeaTek's payment obligations to the City shall terminate simultaneously with the termination of use, provided IdeaTek removes its equipment and restores the Facilities, as set forth in Article 3 prior to the termination date.

ARTICLE 3 REMOVAL AND RELOCATION

3.1 **Removal Due to Public Project.** Upon receipt of a written demand from the City pursuant to this Article 3, IdeaTek, at its sole cost and expense, shall remove and relocate any part of the Network, constructed, installed, used and/or maintained by IdeaTek under this Agreement, whenever the City reasonably determines that the removal and/or relocation of any part of the Network is needed for any of the following purposes: (a) due to any work proposed to be done by or on behalf of the City or any other governmental agency, including but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility, installation of curbs, gutters or landscaping and installation, construction, maintenance or operation of any underground or aboveground facilities such as sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines, telephone lines, cable television lines and tracks; (b) because any part of the Network is interfering with or adversely affecting the proper operation of City-owned light poles, traffic signals, or other City facilities; or (c) to protect or preserve the public health and safety. The City shall cooperate with IdeaTek in relocating any

portion of the Network removed pursuant to this Section 3.1 in a manner that allows IdeaTek to continue providing service to its customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of that portion of the Network relocated under this Section 3.1. No permitting or other fees may be charged by the City for a removal and relocation occurring under this Section.

3.2 Removal Due to Termination. No later than ninety (90) days after termination of this Agreement pursuant to the provisions of this Agreement, IdeaTek shall, at its sole cost and expense, remove the Network or the terminated portion thereof and, if such removal disturbs the locations or adjacent property (including ROW or City real property), restore each Facility and its adjacent property to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by IdeaTek to the Facility or adjacent property, or as otherwise required by the City. For New Poles, IdeaTek shall install a new streetlight or facility as directed by City Engineer, or his or her designee. Alternatively, the City may allow IdeaTek, in the City's sole and absolute discretion, to abandon the Network, or any part thereof, in place and convey it to the City.

3.3 Abandonment. In the event IdeaTek ceases to operate and abandons the Network, or any part thereof, for a period of ninety (90) days or more, IdeaTek shall, at its sole cost and expense and within the time period specified in Section 3.2, vacate and remove the Network or the abandoned part thereof. If such removal disturbs the Facility or adjacent property (including ROW or City real property), IdeaTek shall also, at its sole cost and expense, restore the Facility or adjacent property to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by IdeaTek to the Facility or adjacent property. Alternatively, the City may allow IdeaTek, in the City's sole and absolute discretion, to abandon the Network, or any part thereof, in place and convey it to the City.

3.4 No Relocation Compensation. The parties understand and agree that neither the City nor IdeaTek is entitled to compensation for any relocation of its Network that may be required under Section 3.1. IdeaTek acknowledges that IdeaTek is not entitled to relocation assistance or any other compensation or benefits under the Uniform Relocation Assistance Act or any other applicable provision of Law upon termination of this Agreement.

ARTICLE 4 MAINTENANCE AND REPAIR

4.1 Electricity Use. IdeaTek be solely responsible for and shall pay for the electricity and other utilities services it consumes in its operations at the rate charged by the servicing utility company. If IdeaTek collocates any Facility on any street light or utility poles of the City or leased by the City from a utility company, IdeaTek shall, at its sole expense, provide separate utility service and/or metering to such Facility.

4.2 Maintenance and Repair. IdeaTek shall, at IdeaTek's sole cost and expense, perform all maintenance and repairs reasonably needed to maintain the Network in good condition and neat and orderly appearance, and in compliance with all applicable Laws. In the

event any part of the Network requires replacement because such part cannot be repaired, IdeaTek shall, at IdeaTek's sole cost and expense, replace the irreparable part of the Network. IdeaTek shall not cause rubbish, garbage or debris on or around its Network or the Facilities and shall not permit any rubbish, garbage or debris to accumulate on or around in any enclosed areas around the Facilities. If the City gives IdeaTek written notice of a failure by IdeaTek to maintain the Facilities, IdeaTek shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

4.3 **Appearance.** IdeaTek shall cooperate with the City on all issues of aesthetics and appearance. IdeaTek shall follow all legally binding City policies, state and local ordinances with respect to aesthetics. All locations of DAS Facilities must be aesthetically approved by the City Manager or his or her designee.

4.4 **Repair of ROW.** IdeaTek 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 IdeaTek's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of the Network in the ROW. IdeaTek shall promptly repair such damage and return the 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. IdeaTek's obligations under this Section 4.4 shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the ROW by IdeaTek to the City.

4.5 **Bond.** IdeaTek shall provide a bond in an amount determined by the City to represent the estimated cost of IdeaTek's obligations under Sections 3 and 4 of this Agreement, which the City may require IdeaTek to increase from time to time to reflect the reasonable estimated cost of performing such obligations, to secure performance of IdeaTek's obligations under Sections 3 and 4, not to exceed \$100,000.

ARTICLE 5 TAXES

5.1 **Taxes.** IdeaTek agrees that it will be solely responsible for the payment of any and all applicable taxes, fees and assessments levied on its ownership, use and maintenance of the Network and this Agreement. Pursuant to the Kansas Revenue and Taxation Code, the City hereby advises, and IdeaTek recognizes and understands, that IdeaTek's use of the ROW and/or the New Poles may create a possessory interest subject to real property taxation and that IdeaTek may be subject to, and responsible for, the payment of real property taxes levied on such interest. IdeaTek will cooperate with the Geary County Assessor in providing any information necessary for the Assessor to make a property tax determination. IdeaTek reserves the right to challenge any such assessment, and the City agrees to cooperate with IdeaTek in connection with any such challenge.

ARTICLE 6 INDEMNIFICATION

6.1 **Indemnity.** IdeaTek shall indemnify, defend, and hold harmless the City, its councilmembers, officers employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent resulting from activities undertaken by IdeaTek pursuant to this Agreement, except to the extent arising from or caused by the gross negligence or willful misconduct of the City, its councilmembers, officers, employees, agents, or contractors. The City shall promptly notify IdeaTek of any claim, action or proceeding covered by this Section 6.1.

6.2 **Waiver of Claims.** IdeaTek waives all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any portion of the Network, or any loss or degradation of the services provided by the Network resulting from any event or occurrence except for any loss, damage, or injury to any portion of the Network, or any loss or degradation of the services provided by the Network resulting from the gross negligence or willful misconduct of the City.

6.3 **Limitation of City's Liability.** The City will be liable, if at all, only for the cost of repair to damaged portions of the Facilities arising from the gross negligence or willful misconduct of City, its employees, agents, or contractors. The City, its agents, officers, employees, or contractors, shall not be liable for any damage from any cause whatsoever to the Facilities, specifically including, without limitation, damage, if any, resulting from the City's maintenance operations adjacent to the Facilities or from vandalism or unauthorized use of the Facilities, except to the extent such damage is caused by the gross negligence or willful misconduct of City, its agents, officers, employees or contractors. The City will in no event be liable for indirect or consequential damages. Nothing in the Agreement shall be deemed to affect the rights, privileges and immunities of the City as set forth in the Kansas Tort Claims Act,

6.4 **Limitation of IdeaTek's Liability.** In no event shall IdeaTek be liable for indirect or consequential damages in connection with or arising from this Agreement, or its use of the Network, New Poles, and ROW.

ARTICLE 7 INSURANCE

7.1 **Minimum Insurance Requirements.** IdeaTek shall obtain and maintain at its sole cost and expense for the duration of this Agreement insurance pursuant to the terms and conditions described in this Article.

(a) **Minimum Insurance.** IdeaTek shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(i) **General Liability:** A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 combined single-limit per-occurrence for bodily injury, personal injury, death, loss and property damage resulting from wrongful or negligent acts by IdeaTek. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(ii) **Automobile Liability:** A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 combined single-limit per-accident for bodily injury and property damage covering any vehicle utilized by IdeaTek in performing the work covered by this Agreement

(iii) **Workers' Compensation and Employer's Liability:** Workers' compensation limits as required by the Labor Code, and Employer's Liability limits of \$1,000,000 per accident.

(b) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions shall not exceed \$25,000; provided, however, if IdeaTek's insurance policy expressly provides (i) that the insurer is required to pay covered claims with no deduction for all or any part of the IdeaTek's deductible, and (ii) insurer's obligation to pay covered claims is triggered irrespective of whether or not the insured pays the deductible, then IdeaTek's deductible shall not exceed \$100,000 for Comprehensive General Liability Insurance, \$100,000 for Comprehensive Vehicle Liability Insurance and \$250,000 for Workers' Compensation and Employer's Liability coverage.

(c) **Other Insurance Provisions.** The policies shall contain, or be endorsed to contain, the following provisions:

(i) **General Liability and Automobile Liability Coverage.**

(1) The City, and its elected and appointed council members, board members, commissioners, officers and officials (the "Insureds") shall be named as additional insureds on all required insurance policies, except for Workers' Compensation and Employer's Liability policies.

(2) IdeaTek's insurance coverage shall be primary insurance as respects the Insureds with respect to the matters covered by this Agreement. Any insurance or self-insurance maintained by the Insureds shall be in excess of IdeaTek's insurance and shall not contribute with it.

(3) Any failure of IdeaTek to comply with reporting provisions of the policies shall not affect coverage provided to the Insureds.

(4) IdeaTek's insurance shall apply separately to each of the Insureds against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Each of the Insureds is subject to all policy terms and conditions and has an obligation, as an Insured, to report claims made against them to the insurance carrier.

(ii) **Worker's Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the Insureds for losses arising from work performed by IdeaTek in the ROW.

(iii) **All Coverages.** Except for non-payment of premium, each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled or reduced in coverage or limits by the insurer except after thirty (30) days' prior written notice has been given to the City. If for any reason insurance coverage is canceled or reduced in coverage or in limits, IdeaTek shall within two (2) business days of notice from the insurer, notify the City by phone or fax of the changes to or cancellation of the policy and shall confirm such notice via certified mail, return receipt requested.

(d) **Acceptability of Insurers.** Insurance shall be placed with insurers with an A.M. Best rating of no less than A-VII.

(e) **Verification of Coverage.** IdeaTek shall furnish the City with certificates of insurance required by this Article 7. The certificates for each insurance policy are to be signed by a person, either manually or electronically, authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences.

(f) **Secondary Parties.** In the event IdeaTek hires any subcontractors, independent contractors or agents ("Secondary Parties") to locate, place, attach, install, operate, use, control, replace, repair or maintain the Network, IdeaTek shall require the Secondary Parties to obtain and maintain insurance commensurate to the work such Secondary Parties perform.

ARTICLE 8 DEFAULT

8.1 Default.

8.1.1 **Defined.** A "Default" shall be deemed to have occurred under this Agreement if a party fails to cure such within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

8.1.2 **Remedies.** Upon the failure of a party to timely cure any breach after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may, subject to the terms of Section 6.3 (Limitation of Liability), terminate this Agreement and pursue all remedies provided for in this Agreement and/or any remedies it may have under applicable law or principles of equity relating to such breach.

8.2 City Termination Right. In addition to the remedies set forth in Section

8.1.2, the City shall have the right to terminate this Agreement if (i) the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the ROW: or (ii) if IdeaTek's licenses are

terminated, revoked, expired, or otherwise abandoned. Such termination rights shall be subject to IdeaTek's rights to just compensation, if any, for any taking of a protected property right.

8.3 **No Waiver.** A waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matter subsequently occurring.

8.4 **Interest.** If IdeaTek fails to make any payment under this Agreement when due, such amounts shall accrue interest from the date such payment is due until paid, including accrued interest, at an annual rate of ten percent (10%) or, if lower, the highest percentage allowed by law.

ARTICLE 9 INTERFERENCE

9.1 **Non-Interference with Non-Public Safety Communications Systems.** IdeaTek shall operate the Network in a manner that will not cause interference with City non-public safety communications systems and to the services and facilities of other licensees or lessees of City property located at or near the Facilities that were in operation prior to the installation of the Network or that are in operation prior to any modifications IdeaTek may make to the Network.

9.2 **Non-Interference with Public Safety Communications Systems.** IdeaTek's Network and Facilities shall not cause interference with public safety communications systems operated by City or any other public agency regardless of the date such systems or any components thereof have been placed in service. Nor shall IdeaTek's Network and Facilities cause interference with the City's use of the New Poles for their intended purpose as streetlights, traffic lights, and/or stand-alone light poles.

9.3 **Correction of Interference.** If such interference with the Facilities described in Sections 9.1 and 9.2 occur, IdeaTek shall, upon receipt of written notice thereof from City, immediately commence commercially reasonable, diligent, efforts to correct or eliminate such interference. If such interference cannot be corrected by-IdeaTek to the reasonable satisfaction of City within the cure period set forth for in the City's notice, which notice shall not be less than 30 days absent an emergency or danger to public health and safety requiring shorter notice, such interference shall be deemed a material breach under this Agreement and City may terminate this Agreement. Interference caused by actions of IdeaTek's Customer(s) remain the responsibility of IdeaTek.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 **City Property.** Except for rights granted herein for use of the ROW, nothing contained herein shall be deemed to grant to IdeaTek any right, easement or license to use any real or personal property of the City. Any such use, if requested and granted, shall be governed by separate agreement between the City and IdeaTek in form and content acceptable to each, in their sole and absolute discretion.

10.2 **Nonexclusive Use.** IdeaTek acknowledges that this Agreement does not provide IdeaTek with exclusive use of the ROW and that City retains the right to permit other providers of communications services to install equipment or devices in the ROW.

10.3 **Most Favored Nation.** 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 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 IdeaTek with those more favorable benefits and terms. The City shall notify IdeaTek promptly of the existence of such more favorable benefits and terms and IdeaTek shall have the right to receive the more favorable benefits and terms immediately. If requested in writing by IdeaTek, the City shall amend this Franchise Agreement to contain the more favorable terms and conditions.

10.3.1 **Most-Favored Municipality.** Should IdeaTek 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 IdeaTek modify this Franchise Agreement to incorporate the same or substantially similar superior benefits.

10.4 **Notices.** All notices which shall or may be given pursuant to this Agreement shall be in writing and served by (1) electronic mail; and (2) personally served or transmitted through first class United States mail, or by express mail providing for overnight delivery, postage prepaid, to the following address or such other address of which a party may give written notice:

City: City of Junction City
700 N. Jefferson
Junction City, KS 66442
Attention: City Clerk

With a copy to:

Catherine Logan
Lathrop & Gage LLP
City Attorney
10851 Mastin, Suite 1000
Overland Park, KS 66210
clogan@lathropgage.com

IdeaTek: IdeaTek Telecom, LLC
102 N. Main Street
Buhler, KS 67522
Attention: Daniel Friesen
(620) 543-5003
Daniel@ideatek.com

With a copy to:

C. Edward Watson
Foulston Siefkin
1551 N. Waterfront Pkwy, Suite 100
Wichita, KS 67228
cewatson@foulston.com

Such notice shall be deemed made when personally delivered; if mailed via first class U.S. Mail, such notice shall be deemed made three (3) calendar days after the date of deposit in the U.S. Mail; if mailed via express/overnight mail, such notice shall be deemed made two (2) calendar days after the date of deposit in a designated overnight delivery mailbox or other like facility. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

10.5 Sublease/Assignment. If IdeaTek assigns, sublets, enters into a franchise license or concession agreement, changes ownership of the Network or voting control of IdeaTek, mortgage, encumber, pledge, hypothecate or other transfer (including any transfer by operation of law this Agreement or any interest therein) IdeaTek will provide notice of a transfer within a reasonable time.

10.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors, assigns and transferees.

10.7 Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this Agreement. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

10.8 Severability. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision or provisions shall be deemed separable from the remaining

provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

10.9 Governing Law. 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 Geary County or the state courts located in Geary County, Kansas.

10.10 Survival of Terms. 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.

10.11 Captions and Paragraph Headings. Captions and paragraph headings used herein are for convenience only. They are not a part of this Agreement and shall not be used in construing this Agreement.

10.12 Drafting. The parties agree that this Agreement is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party.

10.13 Execution in Counterparts. This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

10.14 Authority to Execute This Agreement. Each person or persons executing this Agreement and acceptance on behalf of a party, warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations under this Agreement without the approval or consent of any other person or entity.

10.15 No Warranty by the City. The City makes no representations or warranties regarding the suitability, condition or fitness of the locations for the installation, maintenance or use of the New Poles or the Facilities.

10.16 Agreement Applicable Only to the Facilities. This Agreement shall not be construed to permit construction, installation, maintenance or use of Facilities on any property other than the Facilities.

10.17 No Abrogation of Legal Responsibilities. The City's execution of this Agreement shall not abrogate, in any way, IdeaTek's responsibility to comply with all permitting requirements or to comply with all Laws with respect to its performance of the activities permitted under this Agreement.

10.18 **Contractual Interpretation.** In the interpretation and application of its rights under this Agreement, the City will act in a reasonable, non-discriminatory, and competitively neutral manner in compliance with Law.

ARTICLE 11

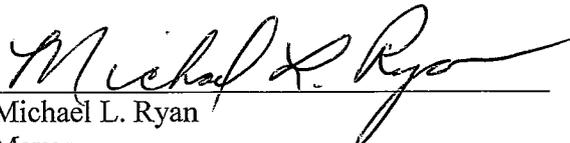
IDEATEK'S ACCEPTANCE; EFFECTIVE DATE

11.1 **Acceptance of Terms.** IdeaTek shall have thirty (30) days after the passage and approval of this ordinance to file with the City Clerk its acceptance, in writing, of the provisions, terms and conditions of this ordinance, which acceptance shall be duly acknowledged before an officer authorized by law to administer oaths; and when so accepted, this ordinance and acceptance shall constitute a contract between the City and IdeaTek subject to the provisions of the laws of the state of Kansas, and such contract shall be deemed effective on the date of publication pursuant to Section 11.3 below.

11.2 **Summary of Ordinance for Publication.** Upon receipt of IdeaTek's written acceptance of this ordinance, the City Clerk is directed to publish a summary of this ordinance certified by the City Attorney in the Daily Union

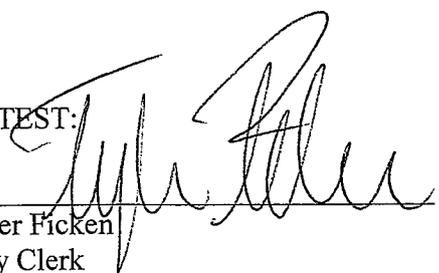
11.3 **Effective Date of Ordinance.** This ordinance shall take effect and be in full force from and after its passage by the governing body, receipt of IdeaTek's written acceptance of terms, and publication of a summary thereof in the official newspaper of the City.

PASSED AND ADOPTED THIS 19th DAY OF August, 2014.



Michael L. Ryan
Mayor

ATTEST:



Tyler Ficken
City Clerk

