

ORDINANCE NO. 3056

AN ORDINANCE GRANTING THE FRANCHISE, PRIVILEGES AND RIGHTS TO WILDFLOWER TELECOMMUNICATIONS, LLC, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, ACQUIRE, OPERATE AND MAINTAIN A COMMUNICATIONS SYSTEM IN THE CITY OF PAOLA, KANSAS, AND TO USE THE STREETS, ROADS, ALLEYS, POLES, AND OTHER PUBLIC PLACES WITHIN SAID CITY FOR SUCH PURPOSES.

Be it Ordained by the Governing Body of the City of Paola, of the State of Kansas that:

SECTION 1. Wildflower Telecommunications, LLC DBA IdeaTek Communications, its successors and assigns (herein referred to as "Grantee") shall operate its telecommunications local exchange service in the City of Paola, State of Kansas, ("herein referred to as "City"). The plant construction and appurtenances used in or incident to providing telecommunication services and to the maintenance of a telecommunication system by Grantee in said City shall be subject to such changes as may be considered necessary by the City in the exercise of its inherent powers and Grantee shall exercise its right to place, remove, construct, and reconstruct, extend and maintain its said plant and appurtenances as the business and purposes for which it is or may be incorporated may from time to time require along, across, on, over, through, above and under all the public streets avenues, alleys, bridges and the public grounds and places within the limits of said City as the same from time to time may be established.

SECTION 2. Grantee, on the request of any person shall remove or raise or lower its wires temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the party or parties requesting the same, and Grantee may require such payment in advance. Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

SECTION 3. Permission is hereby granted to Grantee to make all necessary excavations in the public streets, roads, alleys, sidewalks or other public places, all in accordance with the ordinances applicable to such excavations by public utilities or others securing such permission and as required by Section 9 herein of this franchise agreement.

SECTION 4. Grantee agrees to pay to the City as full compensation for granting the rights and privileges herein a fee of Five Percent (5%) of gross receipts as set out in K.S.A. 12-2001 et.al., and amendments thereto for local exchange service rendered wholly within the corporate limits of the City. The Grantee shall comply with all reporting provisions set forth in K.S.A. 12-2001 et.al. and shall make payments on a quarterly basis as therein provided .

SECTION 5. Permission is hereby granted to permit any telephone, electric light, or power wire attachments by the City or Grantee, on the poles of the other which must follow guidelines set forth in the National Electric Safety Code (NESC).

SECTION 6. As required in K.S.A. 12-2001(e), nothing herein contained shall be construed as giving to Grantee any exclusive privileges, nor shall it affect any prior or existing rights of existing telecommunications local exchange service providers to maintain a telecommunications system within the City.

SECTION 7. The term of this ordinance shall be for five (5) years from the date on which it takes effect. Thereafter, this franchise will renew for one (1) additional five (5) year term, unless either party notifies the other party of its intent to terminate or renegotiate the franchise at least one hundred and eighty (180) days before the termination of the then current term. After ten

(10) years, this franchise shall renew for additional one (1) year terms until either party notifies the other party of its intent to terminate or renegotiate the franchise at least one hundred and eighty (180) days before the termination of the then current term. An additional term shall be deemed a continuation of this franchise and not as a new franchise or amendment.

SECTION 8. Conditions of Street Occupancy. All transmission and distribution structures, poles, other lines and equipment installed or erected by Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins and of such Public Ways.

SECTION 9. Restoration of Public Ways. If during the course of Grantee's constructions, operation, or maintenance of the system there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

SECTION 10. Relocation at Request of the City. Upon its receipt of reasonable advance notice, not to be less than 30 days, Grantee shall, at its own expense protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of Grantee when lawfully required by City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas, or water pipes, or any other type of structures or improvement by City; but, Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to Grantee.

SECTION 11. Trimming of Trees and Shrubbery. Grantee shall have the authority to trim trees or other natural growth overhanging any of its system in the Service Area so as to prevent branches from coming in contact with Grantee's wires, cables, or other equipment, which shall be done in accordance with industry standards. Grantee shall reasonably compensate City or property owner for any damages caused by such trimming, and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the system undertaken by Grantee. Such replacement shall satisfy any all obligations Grantee may have to City or property owner pursuant to the terms of this Section.

SECTION 12. Safety Requirements. Construction, installation, and maintenance of the system shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Grantee or the Grantee's system shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

SECTION 13. Insurance Requirements. Grantee shall maintain in full force and effect during the term of the Franchise, at its own cost and expense, Comprehensive General Liability Insurance in the amount of \$1,000,000, Business Auto Coverage in the amount of \$1,000,000 and Workers' Compensations limits as required by the statutes of the state of Kansas. Such insurance shall designate City as an additional insured.

SECTION 14. Indemnification. Grantee agrees to indemnify, save and hold harmless, and defend City, its officers, boards, and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death) which arise out of Grantee's construction, operation or maintenance of its system, including, but not limited to, reasonable attorneys' fees and costs.

SECTION 15. Transfer of Franchise. All of the rights and privileges and all of the obligations, duties and liabilities created by this Franchise shall pass to and be binding upon the successors of the City and the successors and assigns of Grantee; and the same shall not be assigned or transferred without written approval of the City Council, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment or hypothecation of the Franchise by Grantee as security for debt without such approval; and provided further that transfers or assignments of this Franchise between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities which are controlled or managed by the same person, persons, or entities, shall be permitted without the prior approval of the City (“intracompany transfers”). Grantee shall notify City in writing within 30 days of the closing of such intracompany transfer.

SECTION 16. Actions of City. In any action by City or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner.

SECTION 17. Notice. Unless expressly otherwise agreed between the parties, every notice or response to be served upon City or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to City shall be addressed as follows:

Express Delivery or Packages Only:

City of Paola
Attn: City Manager
P.O. Box 406
19 East
Paola, Kansas 66071

The notices or responses to Grantee shall be addressed as follows:

IdeaTek Systems
Attention: Daniel Friesen
P.O. Box 258
102 N. Main
Buhler, KS 67522

City and Grantee may designate such other address or addresses from time to time by giving written notice to the other party.

SECTION 18. Descriptive Headings. The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

SECTION 19. Application and Publication Fees. The Grantee shall pay to the City a one time application fee of \$250.00 and the actual expenses of publishing of the Ordinance adopted pursuant and set forth in K.S.A. 12-2001(e)(4) and K.S.A. 12-2001(g).

SECTION 20. Severability. If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term

or provision hereof, all of which shall remain in full force and effect for the term of the Franchise,
or any renewal or renewals thereof.

Passed and adopted this 23rd day of April, 2013 subject to applicable federal, state, and
local law.

CITY OF PAOLA, KANSAS

By: _____
Mayor

Attest:

City Clerk

Accepted this ____ day of April, 2014, subject to applicable federal, state and local law.

Wildflower Communications, LLC/DBA IdeaTek Communications

By: _____
President/Executive

Attest:

Secretary

