

RESOLUTION 2014-010

A RESOLUTION CONSENTING TO THE TRANSFER OF FRANCHISE PURSUANT TO SECTION 15 OF 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; ADOPTED AS ORDINANCE NO 3056 ON APRIL 23, 2013.

WHEREAS, on April 23, 2013, the Governing Body of the City of Paola adopted Ordinance No. 3056 granting a Franchise Agreement to Wildflower Telecommunications, LLC, its successors and assigns, to construct, acquire, operate and maintain a communications system in the City of Paola, Kansas; and

WHEREAS, Section 15 of said Ordinance No 3056 provides for the “Transfer of Franchise” as follows:

“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.”

AND WHEREAS, Section 16 of said Ordinance No 3056 provides for the “Actions of City” as follows:

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.

AND WHEREAS, on December 2, 2014, the City Attorney, City Manager and City Clerk of the City of Paola were notified via email by the law firm of Cafer Perberton, LLC, that IdeaTek, formerly Wildflower Telecommunications, LLC, is in the process of selling a portion of its Kansas operations, including those in the Paola city limits, to another telecommunications company;

NOW THEREFORE BE IT RESOLVED by the governing Body of the City of Paola, Kansas that it hereby consents to and approves the assignment and transfer of the Franchise Agreement to IdeaTek, formerly Wildflower Telecommunications, LLC, to Zayo Group, LLC.

BE IT FURTHER RESOLVED that this Resolution shall constitute written approval of the City Council as provided by Section 15 of said Ordinance No 3056;

AND, BE IT FURTHER RESOLVED that the Mayor is authorized and directed to execute any and all supporting documents and certificates required for the assignment and transfer of said Franchise Agreement.

PASSED, APPROVED AND ADOPTED this 9th day of December, 2014.

Artie Stuteville, Mayor

[Seal]

ATTEST:

Daniel G. Droste, City Clerk