

ORDINANCE NO. – 2102

**A CONTRACT FRANCHISE ORDINANCE GRANTED TO IDEATEK TELCOM, LLC, A
TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER PROVIDING
LOCAL EXCHANGE SERVICE WITHIN THE CITY OF KINGMAN, KANSAS.**

This Contract Franchise Ordinance (sometimes hereinafter referred to as “Franchise Agreement” or “Agreement” or “Ordinance”) is entered into by and between the City of Kingman, a municipal corporation (the “City”), and IdeaTek Telcom LLC (“IdeaTek”).

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF
KINGMAN, 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. "Access line count" means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.

b. "Access line fee" means a fee determined by a city, up to a maximum as set out in K.S.A. 2019 Supp. 12-2001 and amendments thereto, to be used by a telecommunications local exchange service provider in calculating the amount of access line remittance.

c. "Access line remittance" means the amount to be paid by a telecommunications local exchange service provider to a city, the total of which is calculated by multiplying the access line fee, as determined in the City, by the Access line count.

d. "City" means the City of Kingman, Kansas.

e. "Contract Franchise" means this Ordinance granting the right, privilege and franchise to IdeaTek to provide services within the City.

f. “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 IdeaTek’s Facilities.

g. "Effective Date" means the date this Franchise Agreement becomes effective, which shall be the date this ordinance is adopted as provided by law.

h. "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

i. "Gross receipts" means only those receipts collected from within the corporate boundaries of the City enacting the franchise and which are derived from the following: (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; (E) local operator assistance revenue; and (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 of lease of unbundled network elements, non-regulated 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 receipts. Gross Receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If a telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services in the City.

j. "IdeaTek" means IdeaTek Telcom, LLC, a competitive telecommunications local exchange service provider providing local exchange, Internet services, and other telecommunications services within the City. References to IdeaTek shall also include as appropriate any and all successors and assigns.

k. "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.

l. "Local exchange service" means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

m. "Provider" shall mean a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187 and amendments thereto, or a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto.

n. "Public Improvement" means any existing or contemplated public facility, building, or capital improvement project, financed by the City, including, without limitation, streets, alleys, sidewalks, sewer, water, drainage, Public right-of-way improvement, and Public Projects.

o. "Public Project" means any project planned or undertaken and financed by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature paid for with public funds.

p. "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 the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts. 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.

q. "Telecommunications local exchange service provider" means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service or any wireless telecommunications local exchange service provider.

r. "Telecommunications services" means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

SECTION 2. GRANT OF CONTRACT FRANCHISE.

a. There is hereby granted to IdeaTek 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 on 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, IdeaTek 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. IdeaTek's use of the Public right-of-way shall always be subject and subordinate to the City's use of the Public right-of-way for any public purpose. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. IdeaTek shall coordinate the installation of its Facilities in the Public right-of-way in a manner which minimizes adverse impact on Public Improvements, as reasonably determined by the City. IdeaTek shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the municipal code of the City and amendments thereto.

c. IdeaTek shall participate in the Kansas One Call utility location program.

d. All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Public right-of-way damaged, displaced, or removed by IdeaTek shall be fully repaired or replaced to its prior condition or to existing municipal standards as are then in existence within 30 days of commencing such activity under this contract franchise by IdeaTek without cost to the City.

e. IdeaTek shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the location of its

Facilities located within the Public right-of-way when requested by the City. Such location and identification shall be promptly communicated in writing to the City without cost to the City, its employees, agents or authorized contractors. IdeaTek shall designate and maintain an agent, familiar with the Facilities, who is responsible for providing timely information needed by the City for the design and replacement of Facilities in the Public right-of-way during and for the design of Public Improvements. At the request of IdeaTek, the City shall provide accurate and timely field locations of proposed projects in the event IdeaTek is required to install new and/or relocate its Facilities.

f. IdeaTek shall promptly locate, remove, relocate, or adjust any Facilities located in the Public right-of-way if reasonably necessary and requested by the City for a Public Project. Such location removal, relocation, or adjustment for a particular Public Project shall be performed by IdeaTek without expense to the City, its employees, agents, or authorized contractors, and shall be specifically subject to rules and regulations of the City pertaining to such. If additional location, removal, relocation, or adjustment is the result of the inaccurate or mistaken information of IdeaTek, IdeaTek shall be responsible for costs associated with such without expense to the City.

g. The City will continue to provide a location in the Public right-of-way for IdeaTek's Facilities as part of a Public Project, provided that IdeaTek has cooperated promptly and fully with the City in the design of its Facilities as part of the Public Project.

h. It shall be the responsibility of IdeaTek to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If IdeaTek fails to accurately locate Facilities when requested, it shall have no claim for costs or damages against the City. IdeaTek shall be responsible to the City and its agents, representatives, and authorized contractors for all damages including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of IdeaTek to perform any of its obligations under this Ordinance. The above general provisions notwithstanding, the City and its authorized contractors shall take reasonable precautionary measures including calling for utility locations through Kansas One Call and exercising due caution when near IdeaTek's Facilities.

i. Before IdeaTek may install new poles under this Agreement, it shall request permission in writing along with a detailed attachment plan and drawing for each pole line, together with necessary maps, indicating specifically the poles to be placed and placement of lines on the pole. If, in the judgment of the City, erection/construction of new poles would be a safety hazard, would adversely affect business, or is otherwise undesirable in the City's sole discretion, the City may reject IdeaTek's request. In the event that existing poles cannot accommodate IdeaTek's needs and the erection of new poles are requested by IdeaTek and approved by the City, IdeaTek shall be responsible for paying all costs and fees associated therewith. IdeaTek shall further be responsible for the attachment and reattachment of existing utilities occupying the poles currently in place. IdeaTek shall install any necessary down guys

and anchors, as necessary at the City's discretion, consistent with industry standards to offset strain on any such new poles.

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 IdeaTek.

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.

c. Upon written request by the City, but no more than once per quarter, IdeaTek shall submit to the City a certified statement showing the manner in which the franchise fee was calculated.

d. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 2019 Supp. 12-2001, and amendments thereto.

e. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

SECTION 5. RECORD REVIEW.

The City shall have the right to examine, upon sixty (60) days' prior written notice to IdeaTek, 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.

IdeaTek 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 IdeaTek to take adequate measures to protect and defend its facilities in the public right-of-way from harm or damage. If IdeaTek 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 IdeaTek's facilities.

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

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

d. NEITHER PARTY SHALL 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, IdeaTek 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 IdeaTek 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. IdeaTek 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 IdeaTek's operations under this Contract Franchise.

b. IdeaTek shall, as a material condition of this contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be canceled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice.

SECTION 9. REVOCATION AND TERMINATION.

In case of failure on the part of IdeaTek to comply with any of the material provisions of this Contract Franchise, or if IdeaTek should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract Franchise, IdeaTek shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this contract franchise, it shall first serve a written notice upon IdeaTek, setting forth in detail the neglect or failure complained of, and IdeaTek shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this contract franchise by an affirmative vote of the City Commission present at the meeting and voting, setting out the grounds upon which this contract franchise is to be revoked and terminated; provided, to afford IdeaTek due process, IdeaTek shall first be provided reasonable notice of the date, time and location of the City Commission's consideration, and shall have the right to address the City Commission regarding such matter; and further provided, if the nature of the default is such that it cannot be reasonably cured within the above said sixty (60) day period, and the City Commission believes IdeaTek has in good faith timely commenced its cure and is diligently pursuing the completion of the same, IdeaTek may, in the City's sole discretion, be given a reasonable additional period of time to complete its cure. Nothing herein shall prevent either party from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Commission to revoke and terminate this contract franchise, IdeaTek shall have thirty (30) days to appeal such decision to the District Court of Kingman County, Kansas. This contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless IdeaTek has instituted such an appeal. If IdeaTek does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of IdeaTek to comply with any of the provisions of this contract franchise or the doing or causing to be done by IdeaTek of anything prohibited by or in violation of the terms of this contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of IdeaTek is due to any cause or delay beyond the control of IdeaTek or to bona fide legal proceedings.

SECTION 10. RESERVATION OF RIGHTS.

a. In granting its consent hereunder, IdeaTek 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 IdeaTek'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 IdeaTek waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or IdeaTek 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 IdeaTek 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 IdeaTek unless said waiver or relinquishment is in writing and signed by both the City and the IdeaTek.

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 IdeaTek, 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 IdeaTek, including but not limited to the scope of the Contract Franchise granted to IdeaTek 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 IdeaTek may elect to terminate the entire Contract Franchise. In the event of such invalidity, if IdeaTek 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. TRANSFER AND ASSIGNMENT.

This contract franchise is granted solely to IdeaTek and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment of this contract franchise may occur without written consent of the City any entity controlling, controlled by or under common control with IdeaTek. The parties acknowledge that said City consent shall only be with regard to the transfer or assignment of this contract franchise, and that, in accordance with Kansas Statute, the City does not have the authority to require City approval of transfers of ownership or control of the business or assets of IdeaTek. In the event of any transfer or assignment of either this contract franchise or IdeaTek's business or assets, IdeaTek shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment. Additionally, IdeaTek's obligations under this contract franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment. In the event an entity acquires substantially all of the assets of IdeaTek, said successor entity shall be allowed to operate under this contract franchise for up to one hundred and eighty (180) days from the date of transfer; provided, within thirty (30) days from the date of transfer said successor entity makes application with the City for either a new ordinance or the transfer of this contract franchise, and provides the City with written evidence satisfying the obligations under this contract franchise with regard to indemnity, bonding and insurance.

SECTION 14. POINT OF CONTACT AND NOTICES.

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.

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 IdeaTek observed holidays excepted.

The City: City of Kingman, Kansas Attn: City Manager PO Box 168 Kingman, KS 67068	IdeaTek: IdeaTek Telcom Attn: Contract Notifications PO Box 407 Buhler, KS 67522 Daniel@ideatek.com
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or to replacement addresses that may be later designated in writing.

SECTION 15. 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. IdeaTek agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of IdeaTek, or of the City at the written request of IdeaTek, in seeking to safeguard the confidentiality of information provided by IdeaTek to the City under this Contract Franchise.

SECTION 16. 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 17. MOST-FAVORED MUNICIPALITY.

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.

SECTION 18. 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 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.

SECTION 19. 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 IdeaTek may elect to declare the entire Contract Franchise invalidated if the portion declared invalid is, in the judgment of the City or IdeaTek, an essential part of the Contract Franchise.

SECTION 20. FORCE MAJEURE.

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

SECTION 21. 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 _____, passed Ordinance No. _____.
The ordinance grants a franchise to IDEATEK TELCOM, LLC to construct, operate
and maintain a telecommunications system in the City of _____, Kansas.
A complete copy of the ordinance is available at www. _____ or in the
office of the city clerk located at _____, _____, Kansas, free of
charge. This summary is certified by the city attorney.*

Pursuant to statute, IdeaTek shall be responsible for payment of all actual costs and expenses of publishing this contract franchise, a summary and/or any amendments thereof.

SECTION 22. GENERAL PROVISIONS.


- a. This Franchise 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 Franchise Agreement constitutes the entire agreement between the parties relating to the subject matter hereof.
- c. This Franchise 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 Kingman County or the state courts located in Kingman County, Kansas.
- d. All of the terms and conditions in this Franchise 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 Ordinance and acceptance thereof shall constitute a contract between the City and IdeaTek subject to the provisions of the laws of the State of Kansas.
- g. By signing this Franchise Agreement, the representative of IdeaTek hereby represents that such person is duly authorized to execute this Franchise Agreement on behalf of IdeaTek and that IdeaTek agrees to be bound by the provisions herein.

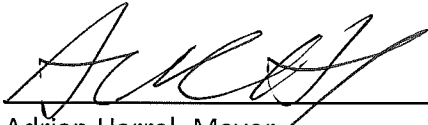
[Signatures Begin on Following Page]

PASSED, ADOPTED AND APPROVED by the Governing Body of the City of Kingman, Kansas this ____ day of February, 2023.

BOARD OF CITY COMMISSIONERS
OF KINGMAN, KANSAS

ATTEST:


Cindy Conrardy, City Clerk


Adrian Harrel, Mayor
City of Kingman

Approved as to Form:

Cody R. Smith, City Attorney

APPROVED AND ACCEPTED:

IDEATEK TELECOM, LLC

Daniel P. Friesen, CIO