

**A. CALL TO ORDER/ROLL CALL**

\_\_Nisly \_\_Schmidt \_\_Weber \_\_Garretson \_\_Fairbanks \_\_Scofield

**B. PLEDGE OF ALLEGIANCE**

**C. APPROVAL OF AGENDA (ADDITIONS/DELETIONS)**

**D. CITIZEN COMMENTS**

**E. HEARINGS, PRESENTATIONS, PROCLAMATIONS & RECOGNITIONS**

1. Appointment of Jeanelle Simpson as city clerk

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

2. Appointment of Jeff Schenk to City Council

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

**F. CONSENT AGENDA**

1. Approval of Minutes – Regular Meeting, September 19, 2022
2. Approval of Invoices

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

**G. ACTION ITEMS**

1. Resolution No. 22-593 Authorizing the Sale of Bonds

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

2. Ordinance No. 22-08 Authorization to Levy Special Assessments

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

3. Resolution No. 22-594 Development Agreement between City of South Hutchinson and IdeaTek

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

4. Bank Account Authorization and Signer Changes

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

**H. DISCUSSION ITEMS**

1. Dog Licenses & Registration Issues
2. Water Rights Application Appeal/Groundwater Management District

- I. **CITY ADMINISTRATOR'S REPORT**
- J. **GOVERNING BODY COMMENTS**
- K. **EXECUTIVE SESSION**
- L. **ADJOURNMENT**

**Meeting Date:** October 10, 2022  
**Department:** Administration  
**Prepared By:** Joseph Turner, City Administrator  
**Agenda Title:** Mayoral Appointment of City Clerk and City Council Member

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**Background/Analysis** – There are two mayoral appointments requiring ratification by the council.

City Clerk Denise McCue officially retired on Friday, October 7<sup>th</sup>. Jeanelle Simpson was hired to replace her and now needs to be appointed as city clerk.

Additionally, Councilwoman Megan Weber resigned her seat at the conclusion of our last meeting because she was going to be moving out of the city limits.

Mayor Matt Nisly identified Jeff Schenk as his selection to fill the remainder of Weber’s term which expires in 2023.

Jeff Schenk moved to Hutchinson around 26 years ago. Last year, he moved across the river with his wife and children to South Hutchinson. They have really enjoyed the small town feel and the quieter streets. He has worked in government for the past 15 years in the field of engineering and currently is employed by the City of Hutchinson.

“I have found South Hutchinson to be a great place to live and hope to help continue moving it forward,” Schenk said.

In his free time, Jeff loves to spend time relaxing with friends and family and enjoys smoking foods.

**Recommendation Actions** –

1. Motion to appoint Jeanelle Simpson as city clerk.
2. Motion to appoint Jeff Schenk to the city council

Immediately following Mr. Schenk’s appointment, City Clerk Simpson will administer the oath of office.

**Meeting Date:** October 10, 2022  
**Department:** Administration  
**Prepared By:** Joseph Turner, City Administrator  
**Agenda Title:** Consent Agenda

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**Background/Analysis** – Consent agendas are designed to take routine business items, non-controversial items, and other matters where a consensus has been reached and combine them into one single motion and vote. Items on the consent agenda should not be discussed or debated by the governing body. Any member of the governing body may elect to pull an item from the consent agenda for a separate vote.

Notable Items:

- Approval of Minutes from September 19, 2022 regular meeting
- Approval of Invoices

**Recommendation** – Motion to approve the consent agenda as presented.

**Exhibit A** – Minutes from September 19, 2022 Regular Meeting

**Exhibit B** – AP Invoices



**A. CALL TO ORDER/ROLL CALL**

**X Nisly X Schmidt X Weber X Garretson X Fairbanks X Scofield**

**B. PLEDGE OF ALLEGIANCE**

**C. APPROVAL OF AGENDA (ADDITIONS/DELETIONS)**

**D. CITIZEN COMMENTS**

**E. HEARINGS, PRESENTATIONS, PROCLAMATIONS & RECOGNITIONS**

**1. 2023 Budget Year Revenue Neutral Rate Hearing – Resolution No. 22-592**

Mayor Nisly opened the Budget Year 2023 Revenue Neutral Rate Hearing and allowed for public comment before considering motions to close the hearing and to adopt Resolution No. 22-592.

**ACTION:** Motion to close the Budget 2023 Revenue Neutral Rate Hearing:

Motion: Schmidt Second: Weber Vote 5-0

**ACTION:** Motion to adopt Resolution No. 22-592 to Levy a Property Tax Rate Exceeding the Revenue Neutral Rate calculated at 41.886 mills

Motion: Garretson Second: Schmidt Vote 5-0

**2. 2023 Budget Hearing**

Mayor Nisly opened the 2023 Budget Hearing and allowed for public comment before considering motions to close the hearing and to adopt Resolution No. 22-592.

**ACTION:** Motion to close the Budget 2023 Revenue Neutral Rate Hearing:

Motion: Weber Second: Schmidt Vote 5-0

**ACTION:** Motion to adopt the proposed 2023 budget setting the mill levy at 43.500 mills.

Motion: Schmidt Second: Garretson Vote 5-0

**F. CONSENT AGENDA**

- 1. Approval of Minutes – Regular Meeting, August 22, 2022
- 2. Approval of Invoices

**ACTION:** Motion to approve the Consent Agenda.

**Motion:** Schmidt **Second:** Weber **Vote:** 5-0

**G. ACTION ITEMS**

- 1. Remove former utility clerk Jamie Arneson as a signer to all accounts at Simmons Bank

**ACTION:** Motion to remove utility clerk Jamie Arneson as a signer from all our bank accounts at Simmons

**Motion:** Weber **Second:** Scofield **Vote:** 5-0

2. Ordinance No. 22-07 Water Bill Base Rate Charge Amendment

**ACTION:** Motion to approve Ordinance No. 22-07 “AN ORDINANCE AMENDING CERTAIN PROVISIONS OF CHAPTER 15, ARTICLE 1, SECTION 15-131 OF THE CODE OF THE CITY OF SOUTH HUTCHINSON, KANSAS, RELATED TO MONTHLY RATES FOR WATER.”.

**Motion:** Schmidt                      **Second:** Scotfield                      **Vote:** 5-0

3. League of Kansas Municipalities Voting Delegate

**ACTION:** Motion to name City Administrator, Joseph Turner as the League of Kansas Municipalities voting delegate:

**Motion:** Schmidt                      **Second:** Scotfield                      **Vote:** 5-0

H. **DISCUSSION ITEMS**

- 1. Water Rates
- 2. Code Enforcement
- 3. IdeaTek Fiber Project

I. **CITY ADMINISTRATOR’S REPORT**

J. **GOVERNING BODY COMMENTS**

K. **EXECUTIVE SESSION**

L. **ADJOURNMENT**

**ACTION:** Motion to adjourn the meeting:

**Motion:** Scotfield                      **Second:** Fairbanks                      **Vote:** 5-0

**Invoice Approval List  
October 10, 2022**

<b>Gen Gov</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
101-101-6000	Electric Billing	Evergy	\$427.57
101-101-6000	Phone Service	Vaspian	\$118.50
101-101-6002	JUS Annual Software Lease	Advantage Computer	\$633.33
101-101-6002	Cougar Software Assurance	Advantage Computer	\$407.00
101-101-6002	Insurance Fee	Freedom Claims	\$4,164.39
101-101-6002	Drug Test	Hutchinson Clinic PA	\$50.00
101-101-6002	Computer Support	Leading Edge Technology	\$137.57
101-101-6002	Microsoft License	Leading Edge Technology	\$18.00
101-101-6002	Attorney Service	Mark Tremaine	\$2,000.00
101-101-6002	Permit 69 Renewal	United States Postal Service	\$275.00
101-101-6003	Janitorial Services	FreshCo Cleaning & Restoration	\$150.00
101-101-7000	Ink for Postage Meter	Pitney Bowes Inc.	\$182.58
101-101-7002	Water	Culligan	\$21.00
101-101-7002	Re-key Lock	Pat's Key & Lock	\$135.00
101-101-7005	Reimbursement	Joseph Turner	\$350.00
			<b>\$9,069.94</b>
<b>Police</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
101-102-6000	Electric Billing	Evergy	\$764.23
101-102-6000	Phone Service	Vaspian	\$288.00
101-102-6002	Postage & Amazon Prime	First Bank Card	\$31.49
101-102-6002	Computer Support	Leading Edge Technology	\$899.09
101-102-6004	Auto Detailer	Carquest Auto Parts	\$7.35
101-102-6004	Measuring Wheel	First Bank Card	\$26.87
101-102-6005	MiFi Aircards	Verizon	\$120.03
101-102-6005	Cell Phones	Verizon	\$164.36
101-102-7001	Food/conference	First Bank Card	\$39.53
101-102-7002	Water	Culligan	\$21.00
101-102-7003	Fuel	Bridgman Oil	\$1,502.90
101-102-7004	Brakes, Engine, and Oil Change	Allen Samuels	\$455.99
101-102-7006	Seatbelt Extenders & GPS	First Bank Card	\$85.08
101-102-7006	Keys and Oil/Filter Change	Allen Samuels	\$453.41
101-102-7006	Keys for 2009 CV/2014 Ddg Chrg	Carkeys Express	\$595.00
101-102-7015	HP Probook Notebooks	Leading Edge Technology	\$2,728.84
			<b>\$8,183.17</b>
<b>Street</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
101-103-6000	Electric Billing	Evergy	\$478.48
101-103-6000	Phone Service	Vaspian	\$85.00
101-103-6002	Computer Support	Leading Edge Technology	\$123.24
101-103-6002	Engineering Services	Schwab Eaton	\$5,560.00
101-103-6003	Uniform Cleaning	Unifirst	\$91.48
101-103-6005	Cell Phones	Verizon	\$24.26
101-103-7002	Hydraulic Hose for Backhoe	B&B Hydraulics	\$212.38
101-103-7002	Antifreeze & Oil filters	Carquest Auto Parts	\$153.32
101-103-7002	Int Door Handle	O'Reilly Auto Parts	\$89.99
101-103-7002	Chainsaw Chain	Prairieland Partners	\$48.00
101-103-7002	Firestone Tire	Tom & Dan's Tire Service	\$160.99
101-103-7003	Fuel	Bridgman Oil	\$454.59
			<b>\$7,481.73</b>

**Invoice Approval List  
October 10, 2022**

<b>Fire</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
101-104-6000	Electric Billing	Evergy	\$586.72
101-104-6000	Phone Service	Vaspian	\$67.50
101-104-6002	Computer Support	Leading Edge Technology	\$132.80
101-104-6004	Annual Ladder Test	UL LLC	\$1,645.00
901-000-8023	E-80 Tires	Cooper Tire Service	\$2,946.60
101-104-6005	Cell Phones & Tablets	Verizon	\$144.29
101-104-7002	Water	Culligan	\$16.80
101-104-7002	Gloves, Towels, and Soap	Janitorial Supply	\$176.21
101-104-7003	Fuel	Bridgman Oil	\$65.85
101-104-7003	Fuel/Diesel	WEX Bank	\$201.50
101-104-7004	Stickers, Helmets, & Pencils	First Bank Card	\$359.75
			<b>\$6,343.02</b>
<b>Park</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
101-105-6000	Electric Billing	Evergy	\$230.58
101-105-6003	Janitorial Services	Freshco Cleaning & Restoration	\$100.00
			<b>\$330.58</b>
<b>Court</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
101-106-6016	Judge Services	Larry Bolton	\$1,100.00
101-106-6016	Attorney Services	Rick Roberts	\$1,100.00
101-106-6018	Court Appointed Attorney	Law Office of Ben Fisher	\$75.00
101-106-6018	Court Appointed Attorney	Law Office of Ben Fisher	\$75.00
101-106-6018	Court Appointed Attorney	Law Office of Ben Fisher	\$75.00
101-106-6018	Court Appointed Attorney	Law Office of Ben Fisher	\$75.00
101-106-6018	Court Appointed Attorney	Law Office of Ben Fisher	\$75.00
101-106-6018	Court Appointed Attorney	Law Office of Ben Fisher	\$75.00
101-106-6018	Court Appointed Attorney	Law Office of Ben Fisher	\$75.00
101-106-6018	Court Appointed Attorney	Law Office of Ben Fisher	\$75.00
101-106-6018	Court Appointed Attorney	Shawnah K. Bennett	\$75.00
101-106-6018	Court Appointed Attorney	Shawnah K. Bennett	\$75.00
101-106-7001	Mileage for Conference	Katie Marcum	\$253.75
101-106-7015	Laptop, Desktop, & Mouse	Leading Edge Technology	\$2,841.36
101-106-7015	Network Switch	Leading Edge Technology	\$34.95
			<b>\$6,155.06</b>
<b>Non-Dept</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
101-109-6000	Street Lights	Evergy	\$5,765.11
101-109-6000	Electrical Billing	Evergy	\$613.77
101-109-6026	Refuse Service	Nisly Brothers Trash Serv	\$9,119.82
			<b>\$15,498.70</b>
		<b>GENERAL TOTAL</b>	<b>\$53,062.20</b>



**Invoice Approval List  
October 10, 2022**

<b>Water</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
201-000-6000	Electric Billing	Evergy	\$4,874.16
201-000-6000	Locates	Kansas One Call	\$34.20
201-000-6002	JUS Annual Software Lease	Advantage Computer	\$633.33
201-000-6002	Cougar Software Assurance	Advantage Computer	\$407.00
201-000-6002	Computer Support	Leading Edge Technology	\$164.80
201-000-6002	Water Rights Application	Professional Engineering Consult	\$800.00
201-000-6003	Uniform Cleaning	Unifirst	\$91.48
201-000-6005	Cell Phones	Verizon	\$145.75
201-000-7002	Shipping-Water Samples	First Bank Card	\$21.30
201-000-7002	Omni 2 T2 Meter	Core & Main	\$1,221.01
201-000-7002	Water	Culligan	\$21.00
201-000-7003	Fuel	Bridgman Oil	\$261.61
201-000-8013	Water Protection Fee	KS Dept of Revenue WPF	\$2,571.79
			<b>\$11,247.43</b>
<b>Sewer</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
301-000-6000	Electric Billing	Evergy	\$12,988.66
301-000-6000	Locates	Kansas One Call	\$34.20
301-000-6000	Phone Service	Verizon	\$319.95
301-000-6002	JUS Annual Software Lease	Advantage Computer	\$633.34
301-000-6002	Cougar Software Assurance	Advantage Computer	\$407.00
301-000-6002	Computer Technology	Leading Edge Technology	\$164.80
301-000-6003	Grit Removal	Reno County Solid Waste	\$41.00
301-000-6003	Uniform Cleaning	Unifirst	\$91.48
301-000-6005	Cell Phones	Verizon	\$105.72
301-000-7002	Exit Signs and screws	Lowe's	\$132.28
301-000-7002	Headlights	Carquest	\$26.30
301-000-7002	Water	Culligan	\$21.00
301-000-7002	Boots	Ty Dunn	\$149.99
301-000-7002	YSI Pro 20i DO Meter	USA Bluebook	\$969.78
301-000-7002	Shipping on Balast	Xylem Water Solutions USA, Inc.	\$15.00
301-000-7002	Balast Ecoray	Xylem Water Solutions USA, Inc.	\$870.00
301-000-7003	Fuel	Bridgman Oil	\$205.69
			<b>\$17,176.19</b>
<b>Special Hwy</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
401-000-6002	Concrete Ave F & Adams	Mid America Redi-Mix	\$6,203.26
			<b>\$6,203.26</b>
<b>CID/Loves</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
705-000-6004	3rd Qtr CID Loves	Love's Travel Stops & Country Store	\$8,770.81
			<b>\$8,770.81</b>
<b>ASAP</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
801-000-6004	Restitution	Orlando Montoya	\$100.00
801-000-6004	Restitution	South Hutchinson Municipal Court	\$100.00
			<b>\$200.00</b>

**Invoice Approval List  
October 10, 2022**

<b>Com Ctr</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
811-000-6000	Electric Billing	Evergy	\$481.15
811-000-6004	Janitorial Services	Freshco Cleaning & Restoration	\$400.00
811-000-7002	Trashbags & Wall Anchor Kit	Westlake Ace Hardware	\$49.68
811-000-7002	Light Batteries	Dynamic Electronics Sales & Serv	\$11.99
			<b>\$942.82</b>
<b>Equip Res</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
901-000-8021	(Qty 2) 2009 Ford Intercep	Allen Samuels	\$3,500.00
901-000-8023	Hood/Thermal Camera	Danko	\$758.56
901-000-8023	Voice Pagers/Amplifier Charger	TBS Electronics	\$2,430.00
901-000-8023	Fire Shelter	First Bank Card	\$951.90
			<b>\$7,640.46</b>
<b>Cap. Improve</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
902-000-8029	Scott Blvd Bridge Replacement	Mies Construction	\$181,915.86
			<b>\$181,915.86</b>
		<b>GRAND TOTAL</b>	<b>\$287,159.03</b>

**Meeting Date:** October 10, 2022  
**Department:** Administration  
**Prepared By:** Joseph Turner, City Administrator  
**Agenda Title:** Resolution No. 22-593 – Authorizing the Offering of Bonds for Sale

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**Background/Analysis** – Resolution No. 22-593 authorizes the City to issue general bond obligations to pay the costs of improvements and issuance related to the IdeaTek fiber optic project.

The principal amount of the bonds shall not exceed \$1,660,000 and the interest rate shall not exceed 7.00%. IdeaTek will receive up to \$1,500,000 in proceeds from the sale of these bonds to build out its network.

The funds from the sale of these bonds will be assessed against the parcel the City previously sold to the company, including the attached infrastructure. Thus, future bond payments will be made with funds collected from IdeaTek via the special assessments attached to the parcel.

Special Counsel Austin Parker will be available via telephone while representatives from Gilmore & Bell and IdeaTek will be present to answer any questions about this process.

**Financial Impact** – None.

**Recommendation** – Staff recommends the council approve Resolution No. 22-593 and authorize the mayor to sign all related documents.

**Exhibit C** – Excerpt of Minutes for Resolution No. 22-593  
Resolution No. 22-593  
Certificate Deeming Preliminary Official Statement Final

Gilmore & Bell, P.C.  
10/04/2022

**EXCERPT OF MINUTES OF A MEETING  
OF THE CITY COUNCIL OF  
THE CITY OF SOUTH HUTCHINSON, KANSAS  
HELD ON OCTOBER 10, 2022**

The City Council (the "Governing Body") met in regular session at the usual meeting place in the City at 6:00 P.M., the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

\* \* \* \* \*

(Other Proceedings)

The matter of providing for the offering for sale of Taxable General Obligation Bonds, Series 2022, came on for consideration and was discussed.

Councilmember \_\_\_\_\_ presented and moved the adoption of a Resolution entitled:

**A RESOLUTION AUTHORIZING THE OFFERING FOR SALE OF TAXABLE  
GENERAL OBLIGATION BONDS, SERIES 2022, OF THE CITY OF SOUTH  
HUTCHINSON, KANSAS.**

Councilmember \_\_\_\_\_ seconded the motion to adopt the Resolution. Thereupon, the Resolution was read and considered, and, the question being put to a roll call vote, the vote thereon was as follows:

Aye: \_\_\_\_\_.

Nay: \_\_\_\_\_.

The Mayor declared the Resolution duly adopted by the Governing Body and the Clerk designated the same Resolution No. 22-593.

\* \* \* \* \*

(Other Proceedings)

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**CERTIFICATE**

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the Governing Body of the City of South Hutchinson, Kansas, held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

(SEAL)

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Clerk

Gilmore & Bell, P.C.  
10/04/2022

**RESOLUTION NO. 22-593**

**A RESOLUTION AUTHORIZING THE OFFERING FOR SALE OF TAXABLE GENERAL OBLIGATION BONDS, SERIES 2022, OF THE CITY OF SOUTH HUTCHINSON, KANSAS.**

**WHEREAS**, the City of South Hutchinson, Kansas (the “Issuer”) has previously authorized certain improvements described as follows (the “Improvements”):

<u>Project Description</u>	<u>Ord. No.</u>	<u>Authority (K.S.A.)</u>	<u>Amount</u>
Fiber Optic Network Improvements	22-03	12-6a26 <i>et seq.</i>	\$1,500,000*
*exclusive of cost of issuance & capitalized interest			

**WHEREAS**, the Issuer proposes to issue its general obligation bonds to pay the costs of the Improvements, including costs of issuance and capitalized interest; and

**WHEREAS**, the City Council of the Issuer (the “Governing Body”) has selected the firm of Stifel, Nicolaus & Company, Incorporated, Wichita, Kansas (the “Purchaser”), as underwriter for one or more series of general obligation bonds of the Issuer in order to provide funds to finance the Improvements; and

**WHEREAS**, the Issuer desires to authorize the Purchaser to proceed with the offering for sale of said general obligation bonds and related activities; and

**WHEREAS**, one of the duties and responsibilities of the Issuer is to prepare and distribute a preliminary official statement relating to said general obligation bonds; and

**WHEREAS**, the Issuer desires to authorize the Purchaser, in conjunction with the City Administrator, Clerk, and Gilmore & Bell, P.C., Wichita, Kansas, the Issuer’s bond counsel (“Bond Counsel”), to proceed with the preparation and distribution of a preliminary official statement and all other preliminary action necessary to sell said general obligation bonds; and

**WHEREAS**, due to the volatile nature of the municipal bond market and the desire of the Issuer to achieve maximum benefit of timing of the sale of said general obligation bonds, the Governing Body desires to authorize the Mayor (or member of the Governing Body authorized to exercise the power and duties of the Mayor in the Mayor’s absence) (the “Mayor”), to confirm the sale of such general obligation bonds, if necessary, prior to the meeting of the Governing Body to adopt the necessary ordinance and resolution providing for the issuance thereof.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH HUTCHINSON, KANSAS, AS FOLLOWS:**

**Section 1.** The Purchaser is hereby authorized to proceed with the offering for sale of the Issuer’s Taxable General Obligation Bonds, Series 2022 (the “Bonds”). The offering for sale of the Bonds shall be accomplished in consultation with the City Administrator, Clerk and Bond Counsel. The confirmation of the sale of the Bonds shall be subject to publication of a notice of intent to sell the Bonds as hereinafter set forth, the execution of a bond purchase agreement between the Purchaser and the Issuer

(the “Bond Purchase Agreement”) in a form approved by Bond Counsel and the Issuer’s legal counsel, the passage of an ordinance and adoption of a resolution by the Governing Body authorizing the issuance of the Bonds and the execution of various documents necessary to deliver the Bonds. The Mayor is hereby authorized to execute the Bond Purchase Agreement subject to the following parameters: (a) the principal amount of the Bonds shall not exceed \$1,660,000; and (b) the true interest cost of the Bonds shall not exceed 7.00%.

**Section 2.** The Purchaser, in conjunction with the Clerk and Bond Counsel, is hereby authorized to cause to be prepared a Preliminary Official Statement relating to the Bonds (the “Preliminary Official Statement”). The Issuer hereby consents to the use and public distribution by the Purchaser of the Preliminary Official Statement in connection with the offering for sale of the Bonds.

**Section 3.** For the purpose of enabling the Purchaser to comply with the requirements of Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”), the Mayor and Clerk or other appropriate officers of the Issuer are hereby authorized: (a) to approve the form of the Preliminary Official Statement, and to execute the “Certificate Deeming Preliminary Official Statement Final” in substantially the form attached hereto as *Exhibit A* as approval of the Preliminary Official Statement, such official’s signature thereon being conclusive evidence of such official’s and the Issuer’s approval thereof; (b) covenant to provide continuous secondary market disclosure by annually transmitting certain financial information and operating data and other information necessary to comply with the Rule to the Municipal Securities Rulemaking Board, as applicable; and (c) take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Purchaser to comply with the requirement of the Rule.

**Section 4.** The Issuer agrees to provide to the Purchaser within seven business days of the date of the Bond Purchase Agreement or within sufficient time to accompany any confirmation that requests payment from any customer of the Purchaser, whichever is earlier, sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of the Rule and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

**Section 5.** The Mayor, City Administrator, Clerk, and the other officers and representatives of the Issuer, the Purchaser and Bond Counsel are hereby authorized and directed to take such other action as may be necessary to carry out the sale of the Bonds.

The transactions described in this Resolution may be conducted, and documents related to the Bonds may be sent, received, executed, and stored, by electronic means or transmissions. Copies, telecopies, electronic files and other reproductions of original executed documents (or documents executed by electronic means or transmissions) shall be deemed to be authentic and valid counterparts of such documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 6.** This Resolution shall be in full force and effect from and after its adoption.

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**ADOPTED** by the City Council on October 10, 2022.

(SEAL)

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Mayor

ATTEST:

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Clerk



**EXHIBIT A**

**CERTIFICATE DEEMING  
PRELIMINARY OFFICIAL STATEMENT FINAL**

\_\_\_\_\_, 2022

To: Stifel, Nicolaus & Company, Incorporated  
Wichita, Kansas

Re: City of South Hutchinson, Kansas, Taxable General Obligation Bonds, Series 2022

The undersigned are the duly acting Mayor and Clerk of the City of South Hutchinson, Kansas (the "Issuer"), and are authorized to deliver this Certificate to the purchaser (the "Purchaser") of the above-referenced bonds (the "Bonds") on behalf of the Issuer. The Issuer has previously caused to be delivered to the Purchaser copies of the Preliminary Official Statement (the "Preliminary Official Statement") relating to the Bonds.

For the purpose of enabling the Purchaser to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission (the "Rule"), the Issuer hereby deems the information regarding the Issuer contained in the Preliminary Official Statement to be final as of its date, except for the omission of such information as is permitted by the Rule, such as offering prices, interest rates, selling compensation, aggregate principal amount, principal per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters.

**CITY OF SOUTH HUTCHINSON, KANSAS**

By: \_\_\_\_\_  
Title: Mayor

By: \_\_\_\_\_  
Title: Clerk

**Meeting Date:** October 10, 2022  
**Department:** Administration  
**Prepared By:** Joseph Turner, City Administrator  
**Agenda Title:** Ordinance No. 22-08 – Levying Assessments in the Amount of \$1,660,000

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**Background/Analysis** – Ordinance No. 22-08 allows the City to levy assessments for the purpose of paying the costs associated with the City of South Hutchinson Fiber Optic Project Community Improvement District against the parcel described in the attached document and generally identified as being located at the northwest corner of Washington St. and Avenue C.

The assessment process is typically subject to certain notice and publication requirements. As owner of 100% of the property to be assessed, IdeaTek will sign the attached waiver so that the City may move directly to the assessment ordinance.

**Financial Impact** – None.

**Recommendation** – Staff recommends the council approve Ordinance No. 22-08 and authorize the mayor to sign related documents.

**Exhibit D** – Waiver of Maximum Assessment Proceedings  
Excerpt of Minutes for Ordinance No. 22-08  
Ordinance No. 22-08  
Summary of Ordinance No. 22-08 for newspaper publication

## WAIVER OF MAXIMUM ASSESSMENT PROCEEDINGS

TO THE GOVERNING BODY OF THE CITY OF SOUTH HUTCHINSON, KANSAS:

The undersigned (the "Owner"), hereby states that the Owner is the record owner of 100% of the hereinafter described real estate (the "Property") situated in the City of South Hutchinson, Reno County, Kansas (the "City"), which Property is liable for special assessment for the costs of constructing the following described improvements (the "Improvements"):

### **City of South Hutchinson Fiber Optic Project Community Improvement District Improvements**

#### **Ordinance No. 22-03**

Construction of a new facility to house certain improvements necessary in the creation of a fiber optic communication network for the benefit of the City of South Hutchinson, Kansas and its environs, including costs for infrastructure located outside the District but contiguous to any portion of the District and such infrastructure is related to a project within the District or substantially for the benefit of the District.

The Owner hereby further states that the Owner has received a copy of the proposed maximum assessments attached as **Exhibit A** hereto relating to the Improvements, which have been prepared by or on behalf of the City.

After being advised of the Owner's right to a public hearing and other matters related to the Improvements, the Owner hereby agrees to the following:

1. Waiver of formal notice of and the holding of a public hearing by the governing body of the City for the purpose of considering and assessing maximum special assessments against the Property in accordance with K.S.A. 12-6a30 and K.S.A. 12-6a09(c);
2. Consent to the levy of special assessments against the Property in the amounts hereinafter described (the "Special Assessment") by appropriate proceedings of the governing body of the City;
3. Waiver of the thirty (30) day period after publication of the assessment ordinance of the City to contest the levy of the Special Assessment;
4. Waiver of any period established by the governing body of the City for the prepayment of the Special Assessment;
5. Consent that the City may immediately, if necessary, proceed to issue its general obligation bonds to finance the costs of the Improvements in accordance with K.S.A. 12-6a26 *et seq.*

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Dated: October \_\_, 2022

Signature	Amount of Maximum Assessment	Property Owned and Liable for Assessment
<p><i>IDEATEK TELCOM, LLC</i></p> <p>By: _____                      Title: Director of Bus. Development &amp; Authorized Agent</p>	<p>\$1,660,000</p>	<p>The South 35.00 feet of Lot 14, West Avenue "C", Original Town of South Hutchinson, Reno County, Kansas TOGETHER WITH the North 15.00 feet of West Avenue "C" and the West 10.00 feet of South Washington Street, both reverting thereto by reason of vacation.</p>

**EXHIBIT A**

**PROPOSED MAXIMUM ASSESSMENTS  
CITY OF SOUTH HUTCHINSON FIBER OPTIC PROJECT  
COMMUNITY IMPROVEMENT DISTRICT IMPROVEMENTS**

<b>Amount of Proposed Maximum Assessment</b>	<b>Property Owned and Liabile for Assessment</b>
\$1,660,000	The South 35.00 feet of Lot 14, West Avenue "C", Original Town of South Hutchinson, Reno County, Kansas TOGETHER WITH the North 15.00 feet of West Avenue "C" and the West 10.00 feet of South Washington Street, both reverting thereto by reason of vacation.

Gilmore & Bell, P.C.  
10/04/2022

**EXCERPT OF MINUTES OF A MEETING  
OF THE GOVERNING BODY OF  
THE CITY OF SOUTH HUTCHINSON, KANSAS  
HELD ON OCTOBER 10, 2022**

The City Council (the "Governing Body") of the City of South Hutchinson, Kansas (the "City") met in regular session at the usual meeting place in the City at 6:00 p.m., the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

\*\*\*\*\*

(Other Proceedings)

There was presented to the Governing Body the following items relating to the City of South Hutchinson Fiber Optic Project Community Improvement District Improvements, authorized by Ordinance No. 22-03 of the City:

- **WAIVER OF MAXIMUM ASSESSMENT PROCEEDINGS**
- **AN ORDINANCE LEVYING MAXIMUM SPECIAL ASSESSMENTS ON CERTAIN PROPERTY TO PAY THE COSTS OF COMMUNITY IMPROVEMENT DISTRICT IMPROVEMENTS IN THE CITY OF SOUTH HUTCHINSON, KANSAS, AS HERETOFORE AUTHORIZED BY ORDINANCE NO. 22-03 OF THE CITY; AND PROVIDING FOR THE COLLECTION OF SUCH SPECIAL ASSESSMENTS.**

Councilmember \_\_\_\_\_ moved (a) that said Waiver of Maximum Assessment Proceedings be accepted; and (b) that said Ordinance be passed. The motion was seconded by Councilmember \_\_\_\_\_. Said Ordinance was duly considered, and upon being put, the motion for the passage of said Ordinance was carried by the vote of the governing body, the vote being as follows:

Aye: \_\_\_\_\_.

Nay: \_\_\_\_\_.

Thereupon, the Mayor declared the Ordinance duly passed and the Ordinance was then duly numbered Ordinance No. 22-08, was signed and approved by the Mayor and attested by the City Clerk and the Ordinance or a summary thereof was directed to be published one time in the official newspaper of the City.

\*\*\*\*\*

(Other Proceedings)

**CERTIFICATE**

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the City Council of the City of South Hutchinson, Kansas, held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

(SEAL)

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City Clerk

**WAIVER OF MAXIMUM ASSESSMENT PROCEEDINGS**



Gilmore & Bell, P.C.  
10/04/2022

**ORDINANCE NO. 22-08**

**AN ORDINANCE LEVYING MAXIMUM SPECIAL ASSESSMENTS ON CERTAIN PROPERTY TO PAY THE COSTS OF COMMUNITY IMPROVEMENT DISTRICT IMPROVEMENTS IN THE CITY OF SOUTH HUTCHINSON, KANSAS, AS HERETOFORE AUTHORIZED BY ORDINANCE NO. 22-03 OF THE CITY; AND PROVIDING FOR THE COLLECTION OF SUCH SPECIAL ASSESSMENTS.**

**WHEREAS**, the governing body of the City of South Hutchinson, Kansas (the “City”) has heretofore created the City of South Hutchinson Fiber Optic Project Community Improvement District and authorized certain improvements thereon (the “Improvements”) to be constructed pursuant to K.S.A. 12-6a26 *et seq.* (the “Act”); and

**WHEREAS**, the owners of 100% of the real property set forth below (the “Property”) have executed a waiver of maximum assessment proceedings (the “Waiver”): (a) waiving formal notice of and holding of a public hearing regarding the levy of maximum special assessments upon the Property (the “Assessments”); (b) consenting to the levy of the Assessments; (c) waiving the 30-day period following the publication of the ordinance levying the Assessments to contest the Assessments; (d) waiving the prepayment period for the Assessments; and (e) consenting to the immediate issuance, if necessary, of general obligation bonds to finance the costs of the Improvements in accordance with the Act.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SOUTH HUTCHINSON, KANSAS:**

**Section 1. Levy of Assessments.** For the purpose of paying the costs of the following described Improvements:

**City of South Hutchinson Fiber Optic Project Community Improvement District Improvements**

**Ordinance No. 22-03**

Construction of a new facility to house certain improvements necessary in the creation of a fiber optic communication network for the benefit of the City of South Hutchinson, Kansas and its environs, including costs for infrastructure located outside the District but contiguous to any portion of the District and such infrastructure is related to a project within the District or substantially for the benefit of the District;

there are hereby levied and assessed the amounts set forth below (with such clerical or administrative amendments thereto as may be approved by the City Attorney) against the following property located in the City:

<b>Description of Property</b>	<b>Amount of Maximum Assessment</b>
The South 35.00 feet of Lot 14, West Avenue “C”, Original Town of South Hutchinson, Reno County, Kansas TOGETHER WITH the North 15.00 feet of West Avenue “C” and the West 10.00 feet of South Washington Street, both reverting thereto by reason of vacation.	\$1,660,000

**Section 2. Payment of Assessments.** The amounts so levied and assessed in *Section 1* of this Ordinance shall be due and payable from and after the date of publication of this Ordinance or a summary thereof.

**Section 3. Certification.** The Assessments shall be certified by the City Clerk to the Clerk of Reno County, Kansas, in the same manner and at the same time as other taxes are certified and will be collected in 20 annual installments, together with interest on such amounts at a rate not exceeding the maximum rate therefor as prescribed by the Act. Interest on the assessed amount remaining unpaid between the effective date of this Ordinance and the date the first installment is payable, but not less than the amount of interest due during the coming year on any outstanding bonds issued to finance the Improvements, shall be added to the first installment. The interest for one year on all unpaid installments shall be added to each subsequent installment until paid.

**Section 4. Effective Date.** This Ordinance shall be effective upon passage by the governing body, approval by the Mayor and publication of the Ordinance or a summary thereof once in the official City newspaper.

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**PASSED** by the City Council of the City of South Hutchinson, Kansas, on October 10, 2022 and **APPROVED AND SIGNED** by the Mayor.

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**CERTIFICATE**

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on October 10, 2022; that the record of the final vote on its passage is found on page \_\_\_\_ of journal \_\_\_\_; and that the Ordinance or a summary thereof was published in *The Ninnescah Valley News* on October 14, 2022.

DATED: October \_\_, 2022.

\_\_\_\_\_  
City Clerk

(Published in *The Ninnescah Valley News* on October 14, 2022)

**SUMMARY OF ORDINANCE NO. 22-08**

On October 10, 2022, the governing body of the City of South Hutchinson, Kansas passed an ordinance entitled:

**AN ORDINANCE LEVYING MAXIMUM SPECIAL ASSESSMENTS ON CERTAIN PROPERTY TO PAY THE COSTS OF COMMUNITY IMPROVEMENT DISTRICT IMPROVEMENTS IN THE CITY OF SOUTH HUTCHINSON, KANSAS, AS HERETOFORE AUTHORIZED BY ORDINANCE NO. 22-03 OF THE CITY; AND PROVIDING FOR THE COLLECTION OF SUCH SPECIAL ASSESSMENTS.**

The Ordinance levies maximum special assessments on certain property located in the City described as: City of South Hutchinson Fiber Optic Project Community Improvement District Improvements. The amounts of the special assessments and the property benefitted are described in the Ordinance. The special assessments shall be certified by the City Clerk to the Clerk of Reno County, Kansas, in the same manner and at the same time as other taxes are certified and will be collected in annual installments, together with interest on such amounts at a rate not exceeding the maximum rate therefor as prescribed by law. A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, City Hall, 2 S. Main, South Hutchinson, Kansas 67505. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at [www.southhutch.com](http://www.southhutch.com).

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: October 10, 2022.

\_\_\_\_\_  
City Attorney

**Meeting Date:** October 10, 2022  
**Department:** Administration  
**Prepared By:** Joseph Turner, City Administrator  
**Agenda Title:** Resolution No. 22-594 – Development Agreement with IdeaTek

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**Background/Analysis** – Resolution No. 22-594 approves the attached development agreement between the City of South Hutchinson and IdeaTek which sets for the rights and obligations of each party concerning the buildout of a fiber optic network.

The attached draft Development Agreement between the City of South Hutchinson and IdeaTek is the result of many conversations between the various parties and an exhaustive back-and-forth between the respective attorneys. Our attorney, Austin Parker, believes that this document is the “best deal” we can negotiate and sign.

The following summary attempts to identify and quantify the risk factors for your consideration.

### **Risk Assessment**

First and foremost, it is important to recognize that there is some risk associated with this project. However, I do not believe the risk is excessive or reckless on the part of the governing body. Moreover, the reward potential and its associated benefits vastly outweighs the “worst-case” scenario.

#### Subordination

Our Development Agreement contains language concerning a subordination clause in Article IV subsection C. In the traditional sense, a subordination clause places the lienholder in a secondary position to a senior debtholder. For example, the holder of a second mortgage on a traditional home loan will only have their debts satisfied if the value of the asset exceeds the amount owed to the entity holding the first mortgage. This is not an ideal situation and whenever you are asked to subordinate your interest or position you need to fully examine and assess the consequences of that decision.

IdeaTek refuses to move off the issue of subordination as it is a requirement of their lender which currently funds their entire portfolio of projects.

Consequently, by subordinating our interest, we effectively incur risk if the network that is built by IdeaTek is devalued and not worth the amount owed. I will explore this in more detail below.

## IdeaTek Default

Our project with IdeaTek accounts for a tiny fraction of their current portfolio that is growing with each passing month as they are awarded new funding for projects. If they default on our project, it will likely trigger clauses in agreements with their lender whereby they could be forced to pay off existing debt obligations on the other projects. This would be a cataclysmic doomsday event scenario for the company.

However, in the event of default, their lender would acquire control of the network and then either take steps to operate it and/or sell it to another company.

In theory, the lender could operate the network and siphon the revenue generated by the customers and away to pay for other debt obligations arising from the acquisition of the IdeaTek portfolio. This is extremely unlikely if the network has a significant number of subscribers and is profitable. It would be foolish for the lender to default and not pay the special assessments because it would eventually result in the asset going to tax sale.

At a tax sale, the City could bid on the project in the amount of outstanding special assessments owed and effectively take control of it unless they were outbid by another entity. However, if the City was to be outbid the high bidder would cure the default and make the City whole on the debt payments incurred.

## **Worst-Case Scenarios**

The ultimate worst-case scenario in my estimation is for IdeaTek to either:

1. Encounter financial difficulties and enter some form of bankruptcy/dissolution; or
2. Build out the network and not acquire enough subscribers to cover their costs, or at least a significant portion of their costs

In the first scenario, their lender would again take control of the network and either operate it or sell it to someone else who would operate it.

In the second scenario, IdeaTek could default and abandon the project. Although a default might theoretically trigger various clauses on the rest of their portfolio with respect to their lender, I do not see the lender exercising those clauses if IdeaTek is honoring its obligations on the rest of their portfolio. Practically, however, because we represent a tiny fraction of their portfolio, I foresee that there would have to be significant losses for IdeaTek to incur the reputational harm that would result from default even if it would not trigger action by their lender concerning their other outstanding debt.

Our debt financing through the CID structure is much more competitive on rate and terms than traditional lending options. Additionally, IdeaTek has already taken steps to build out portions of their network in South Hutchinson because the market has already responded favorably. For these reasons, I believe it is unlikely that IdeaTek would default.

If I am mistaken, the network will eventually be auctioned off for sale at a county tax sale. If the network does not have enough subscribers to attract a buyer at the tax sale, the City would bid the minimum amount due, essentially paying itself on the special assessments

owed, and then take ownership of the network and operate it. Since we would not be motivated by profit, but simply recouping our investment, it is reasonable to conclude that our rates would be significantly cheaper than the for-profit alternatives. We believe that it is highly likely that our low subscription rates would attract enough customers to cover the underlying bond payment.

### Risk Profile

In consultation with our attorney, Austin Parker, we believe the risk profile decreases with each passing year as the debt service gets paid down and feel that the greatest risk is in the beginning years of the project.

Though we ultimately think the risk is very low, it would be prudent to set aside enough funds to cover up to three years of debt service to account for the period of time between a potential default and tax sale.

**Financial Impact** – No direct or immediate impact.

**Recommendation** – Staff recommends the council approve Resolution No. 22-594 and authorize the mayor to sign all related documents.

**Exhibit E** – Resolution No. 22-594 and Excerpt of Minutes

**Exhibit F** – Development Agreement

**EXCERPT OF MINUTES OF A MEETING  
OF THE CITY COUNCIL OF  
THE CITY OF SOUTH HUTCHINSON, KANSAS  
HELD ON OCTOBER 10, 2022**

The City Council (the "Governing Body") met in regular session at the usual meeting place in the City at 6:00 P.M., the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

\* \* \* \* \*

(Other Proceedings)

The matter of approving a development agreement regarding a fiber optic communications network in the City came on for consideration and was discussed.

Councilmember \_\_\_\_\_ presented and moved the adoption of a Resolution entitled:

**A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT RELATING  
TO THE CONSTRUCTION AND OPERATION OF A FIBER OPTIC  
COMMUNICATIONS NETWORK IN THE CITY.**

Councilmember \_\_\_\_\_ seconded the motion to adopt the Resolution. Thereupon, the Resolution was read and considered, and, the question being put to a roll call vote, the vote thereon was as follows:

Aye: \_\_\_\_\_.

Nay: \_\_\_\_\_.

The Mayor declared the Resolution duly adopted by the Governing Body and the Clerk designated the same Resolution No. 22-594.

\* \* \* \* \*

(Other Proceedings)

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**CERTIFICATE**

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the Governing Body of the City of South Hutchinson, Kansas, held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

(SEAL)

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Clerk

**RESOLUTION NO. 22-594**

**A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT RELATING TO THE CONSTRUCTION AND OPERATION OF A FIBER OPTIC COMMUNICATIONS NETWORK IN THE CITY.**

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**WHEREAS**, the City of South Hutchinson, Kansas (the “City”) has previously authorized certain improvements described as follows (the “Improvements”):

<u>Project Description</u>	<u>Ord. No.</u>	<u>Authority (K.S.A.)</u>	<u>Amount</u>
Fiber Optic Network Improvements *exclusive of cost of issuance & capitalized interest	22-03	12-6a26 <i>et seq.</i>	\$1,500,000*

**WHEREAS**, the City proposes to contract with Ideatek Telcom, LLC and its affiliates, successors, and assigns (collectively, “Ideatek”) for the construction of the Improvements and subsequent operation of a fiber optic communications network in the City (collectively the “Project”); and

**WHEREAS**, there has been presented to the City Council of the City (the “Governing Body”) a development agreement between the City and Ideatek (the “Development Agreement”) setting forth each parties rights and responsibilities with respect to the Project; and

**WHEREAS**, the Governing Body finds the Development Agreement to be acceptable to the City and deems it advisable to authorize the Mayor or designee (the “Mayor”) to execute the Development Agreement as set forth herein.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH HUTCHINSON, KANSAS, AS FOLLOWS:**

**Section 1.** The Development Agreement is approved in substantially the form presented this date. The Mayor is authorized to execute the Development Agreement on behalf of the City with such changes as the Mayor, City Administrator and City Attorney deem advisable, the Mayor’s execution of the Development Agreement to be conclusive evidence of the approval of such changes.

**Section 2.** This Resolution shall be in full force and effect from and after its adoption.

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**ADOPTED** by the City Council on October 10, 2022.

(SEAL)

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Mayor

ATTEST:

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Clerk

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this “Agreement”), is made and entered into this 10th day of October, 2022 by and between the **CITY OF SOUTH HUTCHINSON, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “City”); and **Ideatek Telcom, LLC**, a Kansas limited liability company (the “Developer”) (with the “Developer” and the “City” collectively referred to as the “Parties” and each a “Party”).

### RECITALS

WHEREAS, the City has authority to create a community improvement district (“CID”), pursuant to K.S.A. § 12-6a26 *et seq.* (the “CID Act”), for the purpose of financing certain projects and costs as defined therein. Under the CID Act, the owners of all of the land area within the proposed CID boundaries may petition the City to request the creation of a CID and to impose special assessments on the real property upon which the district is located;

WHEREAS, the Developer is now the owner of certain land in the City located at the northeast corner of the intersection of West Avenue C and South Washington Street within the City (the “Project Site”);

WHEREAS, on June 20, 2022, the City and Developer submitted a proper petition (the “Petition”) to the City requesting the formation of a community improvement district (the “District”). A copy of the Petition is attached hereto as **Exhibit A**. A legal description and map of the boundaries of the District is set forth on **Exhibit B** attached hereto;

WHEREAS, on July 18, 2022, the City approved the creation of the District through the adoption of Ordinance No. **22-03** (the “CID Ordinance”). As was contemplated in the Petition, the CID Ordinance approved certain public and private improvements within the District (the “CID Improvements”), as well as certain improvements outside of the District, along with administrative and operating expenses to be incurred within the District, all more particularly described on **Exhibit C** attached hereto (collectively, the “CID Costs”), to be financed to be financed by full faith and credit CID bonds issued by the City as authorized by K.S.A. 12-6a36 (the “CID Bonds”), such CID Bonds shall be general obligations of the City and payable by special assessments levied on the Project Site, and, if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City; and

WHEREAS, the Parties now desire to enter into this Agreement to formalize the construction and financing of the CID Improvements.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE I DEFINITIONS

**A. Definitions of Words and Terms.** Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

1. "Agreement" means this Development Agreement, as the same may be amended in accordance with the terms hereof.
2. "Bond Documents" means collectively the Ordinance and Resolution of the City authorizing the issuance and prescribing the details of the CID Bonds.
3. "CID" means the community improvement district established pursuant to the CID Act.
4. "CID Act" means K.S.A. § 12-6a26 *et seq.*
5. "CID Bonds" means community improvement district full faith and credit general obligation bonds issued by the City to finance all or a portion of the CID Projects, if any.
6. "CID Bond Fund" means the fund which shall be created and administered by the City and which will be described and defined in the Bond Documents, as set forth in Section III.C below.
7. "CID Costs" means, collectively, the costs of the CID Improvements and other eligible expenses related to the Project to the extent such expenses are "costs" of a "project" as defined in the CID Act, the estimated amounts of which are shown in **Exhibit C**, which also includes any administrative and legal fees. In the event KSA 12-6a27(f) is subsequently amended or construed by a judicial or attorney general opinion to include in the definition of "cost" interest accrued on borrowed money after the period of construction, post-construction costs of private financing shall then also be deemed included in "CID Costs."
8. "CID Improvements" means the design and construction of the Project, including all eligible hard and soft costs related thereto, including, but not limited to, infrastructure outside the district as permitted by the CID Act.
9. "CID Ordinance" means Ordinance No. **22-03** adopted by the City on **July 18, 2022**.
10. "CID Proceeds" means the \$1,500,000 of net bond proceeds available to Developer for payment or reimbursement of CID Costs from the CID Bonds.
11. "CID Special Assessments" means special assessments which shall be levied against the real property within the Project Site when the CID Bonds are issued by the City as described in Section III.D.

12. "City" means the City of South Hutchinson, Kansas.
13. "City Representative" means the City Manager or his or her designee(s) as evidenced by a written certificate furnished to the Developer containing the specimen signature of such person or persons and signed by the City Manager.
14. "Developer" means Ideatek Telcom, LLC, and its successors and assigns.
15. "District" means the that area approved by the Ordinance as a community district, the boundaries of which are shown and legally described on Exhibit B attached hereto.
16. "Event of Default" means any event or occurrence as defined in Article VI of this Agreement.
17. "Force Majeure" means events causing delays as described in Article VI.F below.
18. "Network" the fiber-based network and equipment constructed by Developer and including all infrastructure within and without the district.
19. "Parties" means the City and the Developer.
20. "Petition" means the petition filed with the City on June 20, 2022 requesting the formation of a CID, a copy of which is attached as Exhibit A.
21. "Project" means the design and construction of a fiber optic network in the City, including a centralized facility within the District to house certain fiber optic network improvements, and all improvements related and appurtenant thereto.
22. "Project Site" means that certain real property owned by Developer and generally located at the northeast corner of the intersection of West Avenue C and South Washington Street within the City.
23. "State" means the State of Kansas.
24. "Term" means the earlier of twenty-two (22) years following the date of the issuance of the CID Bonds or the earlier termination of the CID as specifically provided for herein.

## **ARTICLE II DEVELOPMENT OF THE PROJECT**

A. Design and Construction of the Project. Developer shall, subject to the terms of this Agreement, have the sole right, and the responsibility, to design, manage, operate and construct the Project. Developer shall receive no separate fee from the City for acting as construction manager or developer of the Project. Before commencement of construction or development of any buildings, structures or other work or improvement, the Developer shall obtain

any and all permits which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work. The City hereby agrees to work with Developer to expedite such permits for Developer.

B. Costs of the Project. The Developer shall be responsible for and will directly incur all of the CID Costs related to the design and construction of the Project; provided however that the Developer shall be reimbursed for the CID costs or Developer may draw on the CID Proceeds to directly pay such CID Costs, all as more particularly set forth in the terms of this Agreement.

C. Commitment to Construct and Complete the Project. Provided that the City issues the CID Bonds and makes the bond proceeds available to Developer for reimbursement of CID Costs as set forth herein on or before November 1, 2022 then Developer hereby agrees to construct the Project and commence operation of the network in the City on or before November 1, 2024. The timely performance of the Developer in the prior sentence is subject to "Force Majeure" as defined in Article VI.F below. The parties hereby agree that the dates set forth herein may from time to time be amended by mutual agreement of Developer and the City based on unforeseen circumstances.

### **ARTICLE III CID FINANCING**

A. Method of Financing. Reference is hereby made to the estimated CID Costs for the Project, which are attached hereto and estimated as set forth in Exhibit C, and by this reference made a part hereof. The Project will be funded by a combination of Developer's private equity, debt and/or CID Proceeds (as defined below). Subject to the terms and conditions of this Agreement, a portion of the costs of the Project which are eligible for payment or reimbursement under the CID Act shall be directly funded and/or reimbursed in whole or in part by the CID Proceeds. The City hereby understands and agrees that the estimates of expenses related to the CID Costs may change prior to and during the expenditure of the CID Costs. Unless otherwise agreed by the Parties in writing, all payments or reimbursements of CID Costs with CID Proceeds shall be made by the City solely to the Developer.

B. CID Bonds. It is contemplated by the parties that all or a portion of the CID Costs will be funded by CID bonds and/or temporary notes (the "CID Bonds") which are issued by the City, based on a pledge of CID Special Assessments (as defined below) and are a general obligation of the City. It is further contemplated that unaffiliated third parties would purchase CID Bonds in an amount which would yield net bond proceeds available to Developer for payment or reimbursement of CID Costs in an amount which is not less than \$1,500,000 (the "CID Proceeds"). The \$1,500,000 of CID Proceeds described in the prior sentence is net of any costs of issuance and interest of any CID Bond. Beyond an amount equal to \$1,500,000 of CID Proceeds, the balance of the costs of the Project shall be paid without reimbursement by Developer.

C. CID Bond Revenue Fund. When CID Bonds are issued by the City for the Project, the CID Proceeds shall be held in the funds and accounts described in the Bond Documents and disbursed to Developer by the City as set forth herein and in the Bond Documents, and the CID Special Assessments collected by the City thereafter shall be deposited into a fund which shall be created and administered by the City and which will be described and defined in the Bond Documents and which, for purposes of this Agreement shall be referred to as the "CID Bond Fund". The CID Special Assessments in the CID Bond Fund will be utilized to first pay principal and interest payments required under CID Bonds at such times as such payments may be required under the Bond Documents. The specifics of the issuance and repayment of the CID Bonds for the Project shall be in accordance with the Bond Documents, to be approved by ordinance of the City, in accordance with this Agreement.

D. Special Assessments. Developer hereby agrees that special assessments shall be levied against the real property within the Project Site (the "CID Special Assessments") when the CID Bonds are issued by the City and such CID Special Assessments shall be based upon the amount of the CID Bonds issued by the City and shall be fixed for the term of the CID Bonds. The City agrees that the Developer shall have the right to reasonably approve the amount of the CID Special Assessments and the timing for the commencement of such CID Special Assessments, provided however that Developer understands and agrees that the CID Special Assessments must fully amortize the amount of the CID Bonds over the life of the CID Bonds. The City also agrees that the CID Bonds shall also be structured in a manner that provides for prepayment of the CID Special Assessments (in whole or in part) without penalty as permitted by K.S.A. 12-6a30. Developer hereby acknowledges that State law prescribes the levy, payment, and discharge of the CID Special Assessments, including foreclosure proceedings in the event the CID Special Assessments are not paid.

E. Certificate of Expenditures. In connection with the CID Costs for the Project, Developer shall certify all costs and expenditures in accordance with the following:

(1) Developer shall submit to the City a Certificate of Expenditure in the form attached hereto as Exhibit D setting forth the amount for which reimbursement is sought, and identification of the relevant CID Costs. Developer shall certify to the City that it shall only use the CID Proceeds for the reimbursement of CID Project Costs, as described in the Certificate of Expenditure.

(2) Each Certificate of Expenditure shall be accompanied by such bills, contracts, invoices, lien waivers or other evidence as the City shall reasonably require to document appropriate payment.

(3) The City reserves the right to have its engineer, staff or other agents or employees inspect all work in respect of which a Certificate of Expenditure is submitted, to examine Developer's records relating to all CID Costs to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.



1.1 (4) The City shall have fourteen (14) calendar days after receipt of any Certificate of Expenditure to review and pay or reimburse Developer. If the submitted documentation demonstrates that: (a) the costs described in the Certificate of Expenditure directly relates to CID Costs and the costs are eligible under the CID Act; (b) the expense was paid or has been incurred by or through Developer; (c) Developer is not in default under this Agreement beyond any applicable grace and cure periods; and (d) there is no fraud on the part of Developer, then the City hereby directs the City staff to approve the Certificate of Expenditure and cause reimbursement to Developer for the cost of the CID Improvements within fourteen ([14]) days following the City's receipt of the Certificate of Expenditure, pursuant to the terms of this Agreement. If the City reasonably disapproves of the Certificate of Expenditure, the City shall notify Developer in writing of the reason(s) for such disapproval within such fourteen (14) day period. Approval of a Certificate of Expenditure will not in any event be unreasonably withheld, conditioned or delayed by the City.

F. Payment of Costs of Issuance; No Other City Administrative Expenses and/or Legal Fees. The parties hereby agree that all of the Developer's and the City's legal fees and other costs of issuance related to the CID Bonds and/or related to this Agreement shall be paid for with the CID Proceeds (in all events with net CID Proceeds available to pay or reimburse CID Costs related to the Project in an amount equal to \$1,500,000). However, following the issuance of the CID Bonds, the parties hereby agree that neither the Developer nor the CID will pay or reimburse any City administrative expenses or legal fees related to the CID Bonds, the Project or this Agreement.

#### **ARTICLE IV DEVELOPER'S PRIVATE FINANCING**

A. Developer Financing. The City hereby agrees that the Developer may finance all or a portion of the CID Costs (and any additional costs of the Project) with a loan or any other private financing. Nothing herein shall be deemed to preclude Developer from obtaining such private financing or pledging the network and/or the Project Site as collateral for any such financing.

B. Collateral Assignment. The City also agrees that if Developer obtains private financing as described in Section IV.A above or has, or in the future obtains any other unrelated private financing, it may pledge the Project Site and improvements thereon as collateral, and its lender(s) (the "Lender") may require an estoppel from the City and/or a collateral assignment of this Agreement and/or the CID Proceeds. The City hereby agrees to cooperate with any such Lender and provide any estoppels or collateral assignments that are reasonably required by such Lender(s). The City also agrees that it will not cause or take any action that would cause any lien, other than permitted by law or as set forth in subsection C below, to be placed on the Project without prior consent from Developer and any parties to a Developer financing.

C. City's Security Interest and Subordination. Notwithstanding the foregoing, the City shall have the option to obtain a secured interest in any portion of the CID Improvements paid for with CID Proceeds, and Developer will execute commercially reasonable security agreements or

other instruments as may be necessary to evidence the City's secured interest in such CID Improvements, subject always to a subordination of any such security interest to the Lender and its lien as set forth herein. The City hereby subordinates and subjects the security interest described in the prior sentence and all of the City's rights thereunder to the Lender and any security interest or lien held by such Lender from time to time. If, at any time, the Lender or any person or entity or any of their successors or assigns who shall acquire the interest of Developer in the Project Site, the CID Improvements and/or this Agreement through a foreclosure of the Lender's lien, or the exercise of a power of sale under the Lender's lien, a deed-in-lieu of foreclosure, an assignment-in-lieu of foreclosure or otherwise (each, a "New Owner"), then such New Owner shall succeed to the interests of the Developer to the Project Site, the CID Improvements and/or this Agreement. The City hereby agrees to attorn to and accept any such New Owner as the owner of the CID Improvements and as "Developer" under this Agreement, and any such New Owner shall be bound by and perform all of the obligations imposed by the Agreement. Nothing contained herein shall prevent the Lender from naming or joining the City in any foreclosure or other action or proceeding initiated by the Lender to the extent necessary under applicable law in order for Lender to avail itself of and complete the foreclosure or other remedy, but such naming or joinder shall not be in derogation of the rights of the City as set forth in this Agreement and shall not in any way extinguish the CID Bonds financing for the Project, or terminate the CID Special Assessments levied against the Project Site. Notwithstanding the foregoing, the City shall have the self-help rights regarding the CID Improvements that are set forth in Article VI.G until such time as a New Owner shall succeed to the interests of the Developer to the Project Site, the CID Improvements and/or this Agreement.

## **ARTICLE V NETWORK OPERATIONS**

A. Network Ownership. The City hereby agrees that at all times during and after construction of the Project, Developer shall retain all legal ownership of the network, and the City shall not assert any claim to ownership of the network or the Project at any time, unless otherwise prescribed in this Agreement.

B. Network Use, Maintenance and Operation. The Project, including the network, shall be at all times used, maintained operated by Developer (or by the assignees of Developer with the permission and authority of the Developer) in its sole discretion. Developer will at all times have sole discretion over the use, operation and maintenance of the network and the Project for its commercial and business purposes and the City hereby agrees that Developer may use and operate the network in a manner deemed necessary or desirable by Developer in its discretion.

C. Compliance with Law. Developer will at all times during the Term of this Agreement comply with all applicable laws and regulations related to the Project or the Project Site.

D. Service Rate Commitments. Developer hereby agrees that for a period of three (3) years (hereafter, "Introductory Period") following the date Developer commences operation of the network in the City, it will provide special residential service pricing (hereafter, "Introductory Rate") to the residents of South Hutchinson as set forth in attached Exhibit E and subject to

Developer's residential service agreement terms and conditions. During the Introductory Period, Developer reserves the right to increase the Introductory Rate by no more than 5% per annum. Following the Introductory Period, Developer shall have the right to increase its rates consistent with its normal business practices in its sole discretion.

## **ARTICLE VI DEFAULTS AND REMEDIES**

A. Defaults - General. The following events shall constitute an Event of Default under this Agreement:

1. Subject to the extensions of time set forth in subsection F below (Enforced Delay), failure or delay by any Party to perform any term or provision of this Agreement, after receiving written notice and failing to cure, as set forth in paragraph (2) below, constitutes a default under this Agreement. A Party claiming a default (claimant) shall give written notice of default to the other parties, specifying the default complained of.

2. The claimant shall not institute proceedings against a Party, nor be entitled to damages if the other Party within thirty (30) days from receipt of such written notice, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within thirty (30) days from the date of receipt of such notice or if such cure, correction or remedy by its nature cannot be effected within such thirty (30) day period, such cure, correction or remedy is diligently and continuously prosecuted until completion thereof.

B. Remedies on Default. Whenever any Event of Default by the City shall have occurred and be continuing, subject to applicable cure periods, the Developer may pursue any remedy at law and in equity, except as provided below. Whenever any Event of Default by the Developer shall have occurred and be continuing, subject to applicable cure periods, the City may (1) pursue any remedy at law and in equity, except as provided below, and/or (2) refuse to approve any further Certificates of Expenditures and make any disbursements of CID Proceeds until such Event of Default is cured by the Developer and/or (3) terminate this Agreement. Notwithstanding any other provision of this Agreement to the contrary, and absent any negligence or willful acts of the respective party, in no event shall the Developer or the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement, or otherwise. For the purposes of this Section, consequential damages shall include, but not be limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred by the non-defaulting Party. Further, specific performance shall not be available to the City to require the Developer to construct any improvements within the District.

C. Legal Actions.

1. Institution of Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in a county district court in Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas.

2. Applicable Law. The laws of the State of Kansas shall govern the interpretation and enforcement of this Agreement.

3. Acceptance of Service of Process.

(a) In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

(b) In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon an officer or agent of the Developer and shall be valid whether made within or without the State of Kansas or in such other manner as may be provided by law. In the event the Developer no longer has an officer or registered agent to serve, the Secretary of State is hereby irrevocably appointed to accept service for the Developer.

D. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

E. Inaction Not a Waiver of Default. Any failures or delays by a Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

F. Enforced Delay; Extension of Times of Performance.

1. In the event that either party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God; strikes; lockouts; failure of power or other insufficient utility service; riots; insurrection; environmental remediation required by the appropriate government authorities; discovery of cultural, archeological or paleontological resources or endangered species; any lawsuit seeking to restrain, enjoin, challenge or delay construction; war; terrorism; labor difficulties (including jurisdictional labor disputes); judicial or administrative writ, order or decree; legislative decisions or actions, or delay by, applicable local, State or federal governments; casualties at the job site and resulting in direct physical damage to the Project, or occurring off-site and directly disrupting or delaying the supply of labor or materials to the Project; global pandemic or other public health emergencies; moratoria on the issuance of applicable permits or other governmental approvals; or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement ("Force Majeure"), then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. .

2. Time of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developer.

G. The City's Self Help Rights to Operate. In the event that Developer, or (following a foreclosure by Developer's Lender), Developer's Lender or a New Owner shall fail to continuously operate the Project for the provision of high-speed internet via fiber cable distribution lines throughout the City of South Hutchinson, Kansas for a period of more than 30 days after written notice from the City, then the City shall have a right to temporarily operate the Project in order to continue high speed fiber optic internet service provision within the City of South Hutchinson and to generate revenue to make scheduled special assessment payments towards the CID Bonds and other financing paying for the Project. However, the City's rights to operate the Project as set forth herein shall terminate if and when (a) the Lender (or Lender's successor in interest) shall foreclose on its security interest in and to the Project and a New Owner takes possession of the CID Improvements, the Project Site and/or the Project, or (b) the City forecloses upon its security interest in the CID Improvements as described in subsection H below.

H. City Foreclosure of the City's Security Interest. Subject and always subordinate to the security interest of Developer's Lender(s) as set forth in Article IV, if Developer defaults in the payment of the CID Special Assessments, and the City thereafter forecloses on its security interest described in Article IV.C, Developer agrees that the City will assume all of Developer's right, title and interest to the CID Improvements and may operate the same thereafter as the owner of such CID Improvements.

## **ARTICLE VII GENERAL PROVISIONS**

A. Termination of the CID. The City shall not terminate the CID prior to the expiration of its Term, except as provided by law, or as requested by the Developer.

B. Modification of the District. From time to time during the Term, the Developer may request, and the City shall reasonably consider, any modification to the District, in accordance with the CID Act.

C. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the Parties, upon official action of the City's governing body approving said amendment, and by the execution of said amendment by the Parties or their successors in interest. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the Parties shall take such reasonable measures including, but not limited to, reasonable amendment of this Agreement to cure such invalidity where the invalidity contradicts the clear intent of the Parties in entering into this Agreement.

D. No Other Agreement. Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersedes all prior agreements, negotiations and discussions, both written and oral, relative to the subject matter of this Agreement and is a full integration of the agreement of the Parties.

E. Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In no such event shall the validity or enforceability of the remaining valid portions hereof be affected.

F. Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

To the Developer:

Ideatek Telcom, LLC  
ATTN: Legal Notice  
111 Old Mill Lane  
Buhler, Kansas 67522

With copies to: legal@ideatek.com

To the City:

City Manager  
City of South Hutchinson  
600 E Avenue C  
South Hutchinson, Kansas

With copies to:

\_\_\_\_\_

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

G. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

H. Recordation of Agreement. The Parties agree to execute and deliver a memorandum of this Agreement in proper form for recording in the real property records of Reno County, Kansas.

I. Consent or Approval. Except as otherwise provided in this Agreement, whenever consent or approval of either Party is required, such consent or approval shall not be unreasonably withheld.

(a) J. Representations and Warranties of Developer. Developer represents and warrants to the City as follows:

(i) Organization. Developer is a Kansas limited liability company duly formed and validly existing under the laws of the State Kansas (the "State"). Developer is duly authorized to conduct business in each other jurisdiction in which the nature of its properties or its activities requires such authorization. Developer shall (1) preserve and keep in full force and effect its corporate or other separate legal existence and (2) remain qualified to do business and conduct its affairs in the State and each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification.

(ii) Authority. The execution, delivery and performance by Developer of this Agreement are within Developer's powers and have been duly authorized by all necessary action of Developer.

(iii) No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the organizational documents of Developer or any provision of law, statute, rule or regulation to which Developer is subject, or to any judgment, decree, license, order or permit applicable to Developer, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which Developer is a party, by which Developer is bound, or to which Developer is subject.

(iv) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution and delivery by Developer of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the performance by Developer of this Agreement or the consummation of the transactions contemplated hereby except for zoning, building and other customary permits to be obtained from the UG or other governmental units.

(v) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with the terms hereof.

(b) K. Representations and Warranties of the City.

(vi) Authority. The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and

validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.

(vii) No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the ordinances, rules, regulations of the City or the laws of the State nor result in a breach, conflict with or be inconsistent with any terms, covenants, conditions or provisions of any indenture, agreement or other instrument by which the City is bound or to which the City is subject.

(viii) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution and delivery by the City of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the performance by the City of this Agreement or the consummation of the transactions contemplated hereby.

(ix) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

1.2 L. Headings. The Article and Section headings shall not be treated as a part of this Agreement or as affecting the true meaning of the provisions hereof.

1.3 M. Time. Time is of the essence in this Agreement.

N. Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

**IDEATEK TELCOM, LLC**

By: \_\_\_\_\_  
Thomas Garrett, Director of Business Development

**ATTEST:**

**CITY OF SOUTH HUTCHINSON, KANSAS**

By: \_\_\_\_\_  
Matt Nisly, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Denise McCue, City Clerk

\_\_\_\_\_  
Austin Parker #\_\_\_\_\_  
Special Counsel for City of South Hutchinson

\_\_\_\_\_  
Ethan S. Kaplan #24307  
General Counsel for Ideatek Telcom, LLC

INDEX OF EXHIBITS

Exhibit A      CID Petition  
Exhibit B      Legal Description and Map of CID District  
Exhibit C      Budget/CID Costs  
Exhibit D      Certificate of Expenditure Form  
Exhibit E      Service Rate Tiers

Gilmore &amp; Bell, P.C.

06/15/2022

**PETITION****REQUESTING THE CREATION OF A COMMUNITY IMPROVEMENT DISTRICT  
(CITY OF SOUTH HUTCHINSON FIBER OPTIC PROJECT)**

**TO:** The Mayor and City Council (the "Governing Body")  
City of South Hutchinson, Kansas

1. The undersigned, being the contract owner or owner of record (collectively, the "Owner") of 100% of the land area within the proposed community improvement district set forth in *Section 1(a)* below (the "District"), said District to be located within the City of South Hutchinson, Kansas (the "City"), does hereby request that the Governing Body create the District and authorize the projects hereinafter set forth in the manner provided by K.S.A. 12-6a26 *et seq.*, as amended (the "Act"). In furtherance of such request, the Owner hereby states as follows:

(a) The legal description of the property to be contained in the proposed District is as follows:

The South 35.00 feet of Lot 14, West Avenue "C", Original Town of South Hutchinson, Reno County, Kansas TOGETHER WITH the North 15.00 feet of West Avenue "C" and the West 10.00 feet of South Washington Street, both reverting thereto by reason of vacation.

(b) The general nature of the proposed projects to be constructed and undertaken within the proposed District is as follows (collectively, the "Project"):

Construction of a centralized facility to house fiber optic network improvements and all improvements related and appurtenant thereto.

(c) The public purpose of the Project is to provide a fiber optic communication network for use within the City and its environs.

(d) The estimated cost of the proposed Project is \$1,500,000, to be increased at the pro rata rate of 1 percent per month from and after the date of passage of an ordinance creating the District.

(e) It is anticipated that the costs of the Project, interim interest and associated financing costs will be financed by full faith and credit general obligation bonds of the City as authorized by K.S.A. 12-6a33 and K.S.A. 12-6a36, payable from special assessments levied as set forth in subsection (f) hereof; and if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City.

(f) 100% of the costs of the Project shall be assessed on all real property within the boundaries of the District on an equal per square foot basis. Where the ownership of any parcel within the District is or may be divided into two or more parcels, the assessment to the parcel so divided shall be assessed to each ownership or parcel on a square foot basis.

(g) No community improvement district sales tax is proposed for the District.

(h) The proposed District is generally located at the northwest corner of the intersection of S. Washington Street and W. Avenue C in the City. A map generally outlining the boundaries of the proposed District is attached as *Exhibit A* hereto and incorporated by reference herein.

2. Names may not be withdrawn from this Petition by the signers hereof after the Governing Body commences consideration of this Petition, or, later than seven (7) days after the filing hereof, whichever occurs first.

3. The undersigned consent to any special assessments described herein without regard to benefits conferred by the Project.

4. The undersigned and the contract purchaser set forth below each hereby waive the right be notified, by certified mail or otherwise, of the public hearing to be held by the Governing Body concerning the advisability of creating the District.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

Name	Date	Property Owned Within Proposed Community Improvement District
<p><b>CITY OF SOUTH HUTCHINSON, KANSAS, as contract seller</b></p> <p><i>Matt Nisly</i></p> <p>By: <i>Matt Nisly</i> Title <i>Mayor</i></p>	<p><i>6-20-2022</i></p>	<p>All</p>
<p><b>IdeaTek Telcom, LLC, as contract purchaser</b></p> <p><i>Thomas Garrett</i></p> <p>By: Title: Director of Bus. Development &amp; Authorized Agent.</p>	<p><i>06/20/2022</i></p>	<p>All</p>

\*\*\*\*\*

THIS PETITION was filed in my office on June 20th, 2022; and was examined, considered and found sufficient by the Governing Body of the City, Kansas on June 20th, 2022.

*Denise McCue*  
\_\_\_\_\_  
City Clerk



**Exhibit C**

Final version not received in time for publication with packet.

**Exhibit D**

Final version not received in time for publication with packet.



# Internet Freedom for SOUTH HUTCHINSON



Reliable, high-speed internet with unlimited data is no longer negotiable—it's a necessity. That's why IdeaTek is bringing gigabit fiber to South Hutchinson. So you can have the freedom to do more and be more.

## SOUTH HUTCHINSON FIBER INTERNET OPTIONS

**INTRO**  
**100/100 Mbps**  
**\$39<sup>95</sup>**  
 per month  
*\*Regular Pricing: \$50/mo.*

**GIGABIT**  
**1,000/1,000 Mbps**  
**\$65<sup>95</sup>**  
 per month  
*\*Regular Pricing: \$90/mo.*

**SUPER GIG**  
**2,000/2,000 Mbps\***  
**\$97<sup>95</sup>**  
 per month  
*\*Regular Pricing: \$140/mo.*

\*In select markets.

Premium Wi-Fi available for \$10 a month.



**NO CONTRACT**



**NO DATA CAPS**



**NO THROTTLING**



For more information visit [IdeaTek.com](http://IdeaTek.com) | 855-IDEATEK

**Meeting Date:** October 10, 2022  
**Department:** Administration  
**Prepared By:** Joseph Turner, City Administrator  
**Agenda Title:** Bank Account Authorization Changes

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**Background/Analysis** – City Clerk Denise McCue is no longer with the organization as of Friday, October 7<sup>th</sup>.

Our bank requires council action to add and remove authorized signers.

**Financial Impact** – None.

**Recommendation** – Staff recommends the council vote to remove Denise McCue as a signer to all accounts at Simmons Bank, including Certificates of Deposit, and to add Jeanelle Simpson as an authorized signer for the same.

CITY SALES TAX													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2017	16,145.57	16,987.60	18,262.12	16,873.87	18,279.71	22,832.76	16,972.56	20,072.61	17,717.09	18,810.89	22,009.36	15,479.48	220,443.62
2018	17,126.80	16,721.92	16,974.30	15,360.20	17,809.87	16,801.84	19,119.45	19,954.16	19,321.10	21,131.72	17,555.00	13,065.07	210,941.43
2019	21,386.54	18,030.74	16,969.14	16,162.34	20,093.09	17,501.23	17,980.89	16,207.60	22,634.98	17,593.51	21,227.64	20,458.10	226,245.80
2020	20,099.08	20,513.44	19,147.44	17,604.04	24,066.23	24,650.88	21,161.63	26,713.04	21,828.47	24,534.88	22,107.44	22,486.04	264,912.61
2021	23,018.32	27,016.24	24,670.73	21,656.91	27,005.88	29,136.54	26,206.27	22,316.73	26,762.28	24,516.00	22,633.47	30,038.70	304,978.07
2022	25,618.40	24,785.31	29,597.25	28,029.09	25,160.36	27,735.27	22,787.06	26868.38	36,388.73				246,969.85
	2,600.08 11.30%	(2,230.93) -8.26%	4,926.52 19.97%	6,372.18 29.42%	(1,845.52) -6.83%	(1,401.27) -4.81%	(3,419.21) -13.05%	4,551.65 20.40%	9,626.45 35.97%				19,179.95 8.42%

CITY SPECIAL SALES TAX (403 - Street/Economic Development)

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2017	8,072.79	8,493.80	9,131.07	8,436.94	9,139.85	11,416.39	8,486.29	10,036.31	8,858.55	9,405.45	11,004.68	7,739.74	110,221.86
2018	8,563.40	8,360.97	8,487.15	7,680.11	8,904.94	8,400.93	9,559.72	9,977.08	9,660.55	10,565.86	8,777.50	6,532.54	105,470.75
2019	10,693.28	9,015.38	8,484.58	8,081.18	10,046.55	8,750.62	8,990.45	8,103.81	11,317.50	8,796.76	10,613.83	10,229.05	113,122.99
2020	10,049.54	10,256.73	9,573.73	8,802.03	12,033.12	12,325.44	10,580.82	13,356.53	10,914.24	12,267.45	11,053.71	11,243.02	132,456.36
2021	11,509.16	13,508.11	12,335.36	10,828.45	13,502.93	14,568.26	13,103.13	11,158.36	13,381.14	12,258.00	11,316.73	15,019.35	152,488.98
2022	12,809.19	12,392.65	14,798.62	14,014.54	12,580.17	13,867.63	11,393.53	13,434.18	18,194.37				123,484.88
	1,300.03 11.30%	(1,115.46) -8.26%	2,463.26 19.97%	3,186.09 29.42%	(922.76) -6.83%	(700.63) -4.81%	(1,709.60) -13.05%	2,275.82 20.40%	4,813.23 35.97%				9,589.98 8.42%

COUNTY SALES TAX DISTRIBUTION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2017	27,826.66	35,438.33	25,572.53	26,750.30	28,508.61	28,550.72	27,437.31	28,229.90	29,227.90	28,710.07	31,450.98	26,223.75	343,927.06
2018	28,708.06	41,252.15	26,387.02	26,158.62	28,746.57	27,718.43	28,795.37	30,087.86	27,281.56	31,095.74	28,498.35	26,831.95	351,561.68
2019	29,534.85	38,522.06	27,784.09	27,223.71	31,118.52	27,698.38	29,978.89	33,158.36	40,299.91	29,498.39	31,053.37	30,754.93	376,625.46
2020	30,432.40	33,277.99	27,831.42	26,346.71	30,732.33	31,743.47	33,427.72	37,020.00	33,479.89	34,573.33	35,964.01	32,318.84	387,148.11
2021	29,830.79	40,186.30	33,936.56	29,213.34	35,930.04	33,850.09	35,244.36	32,554.82	35,284.22	37,791.15	33,388.73	38,244.69	415,455.09
2022	34,232.35	43,521.35	34,545.33	33,693.72	33,042.50	40,360.43	33,503.19	39,795.78	45,687.21				338,381.86
	4,401.56 14.76%	3,335.05 8.30%	608.77 1.79%	4,480.38 15.34%	(2,887.54) -8.04%	6,510.34 19.23%	(1,741.17) -4.94%	7,240.96 22.24%	10,402.99 29.48%				32,351.34 10.57%

COMMUNITY IMPROVEMENT DISRICT (CID)\*

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2017									2,826.84	2,194.44	4,742.34	1,590.62	11,354.24
2018	2,089.48	1,260.25	2,730.48	1,241.73	1,765.64	2,231.87	3,615.45	1,402.77	1,404.89	2,896.25	196.71	1,520.29	22,355.81
2019	2,931.09	1,595.72	1,505.30	827.68	1,048.35	160.73	1,691.17	3,011.36	1,897.28	168.33	1,688.29	1,848.29	18,373.59
2020	3,502.56	465.60	3,616.63	1,801.85	2,577.93	1,919.06	1,863.86	1,994.48	1,916.23	2,041.99	1,939.40	1,893.60	25,533.19
2021	1,855.25	1,937.58	2,772.04	981.78	2,007.38	1,954.12	1,865.66	2,095.23	2,163.56	2,183.60	1,450.71	2,354.63	23,621.54
2022	2,102.88	2,583.97	2,265.43	2,154.18	2,436.66	2,392.96	2,132.92	2,170.45	4,467.44				22,706.89
	247.63 13.35%	646.39 33.36%	(506.61) -18.28%	1,172.40 119.42%	429.28 21.39%	438.84 22.46%	267.26 14.33%	75.22 3.59%	2,303.88 106.49%				5,074.29 28.78%

\* City retains 5% of the amounts collected above

## MONTHLY WATER RIGHTS PERFECTION REPORT

<b>2022 Water Usage (gal.)</b>				
	Well #3	Well #4	Well #5	Total
January	3,901,600	10,857,400	5,757,600	20,516,600
February	274,300	12,465,100	6,934,000	19,673,400
March	60,500	13,965,900	7,496,700	21,523,100
April	38,500	14,306,200	9,280,400	23,625,100
May	51,000	14,855,200	9,563,700	24,469,900
June	1,290,300	15,354,200	10,942,800	27,587,300
July	87,100	18,206,500	14,646,000	32,939,600
August	500	19,710,000	14,597,800	34,308,300
September	2,011,800	16,887,700	12,412,700	31,312,200
October	0	0	0	0
November	0	0	0	0
December	0	0	0	0
	7,715,600	136,608,200	91,631,700	235,955,500
Auth. Qty.	139,610,000	144,310,000	148,110,000	349,433,000
Amt. to Perfect	n/a	7,701,800	56,478,300	n/a

\*Green columns are water files eligible for perfection

\*\*White columns are water files that need to be perfected

## Activity Report Oct. 10th, 2022

- South Hutchinson Grade School Fire Prevention presentation will be on Oct. 12<sup>th</sup>
- HCC Fire Science Student Firefighter Association will be assisting with the haunted house for the Trunk or Treat Oct. 30<sup>th</sup>
- The Kansas Firefighter Recruitment and Safety Grant Program has approved a grant of \$11,365.00, to put towards updating helmets and boots for the Fire Department.
- Attended Chiefs meeting on Oct. 5<sup>th</sup>. The County is anticipating a bad grass fire season due to lack of rain. Working on joint training to prepare for the approaching wildfire season.
- SHFD will be hosting zoom training for Electric Car Fires for the area on 11/14. With the training starting at 18:30, Chief Barajas Brooks will have to miss the City Council Meeting that evening due to hosting training.



## PUBLIC WORKS REPORT

To: Honorable Mayor and City Council

From Ronnie Pederson, Public Works Superintendent

Re: Public Works Superintendent report for October 10<sup>th</sup>, 2022, City Council Meeting

Date: October 6<sup>th</sup>, 2022

### Streets

- Mowed irrigated city property.
- Mowed rough cut city property.
- Tractor mowing.
- Replaced door handle on service truck and changed light bulbs.
- Added fire extinguisher to fueling station.
- Greased equipment.
- Worked on safety audit issues to be resolved for the state.
- Replaced hydraulic line on backhoe.
- The splash pad has been shut down for the season.
- The F and Adams intersection concrete project will be completed by end of the day on Monday, October 10. (90 yard)

### Water

- Weekly checks and inspections completed.
- Monthly KDHE water samples collected for analysis.
- One call utility locates.
- Replaced fire hydrant on Mills rd.
- Flushed dead end water lines.
- Repaired water meter setters.

### Wastewater

- Daily and weekly inspections completed.
- Monthly maintenance completed.
- One call utility locates.
- Wasted sludge at wastewater facility.
- Monthly KDHE state test collected and sent for analysis.
- Cleaned clarifiers and UV bulbs and channels.
- Utility maintenance contractors completed the manhole rehab project for the city. (800 vertical feet) With this being done all sewer manholes in the city have now been rehabbed with concrete.
- PEC engineering firm working on estimate for design plan consultation of Digester diffuser project.

## **CITY ADMINISTRATOR'S REPORT**

**To:** Honorable Mayor and City Council

**From:** Joseph Turner, City Administrator

**Re:** City Administrator Report for October 10<sup>th</sup> Regular City Council Meeting

**Date:** October 7, 2022

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### **New Utility Clerk – Rene Thompson**

Since our last council meeting, Rene Thompson has joined the organization and serves as our new utility clerk. We are excited to have her here with us.

### **Adams & Avenue F Street Repairs**

All concrete repair work related to this project should be completed by Monday evening.

### **Scott Blvd Bridge**

With the approval of this week's invoices, all financial obligations related to the project have been fulfilled.

### **KDHE Consent Order**

Ronnie and I, along with our PEC consultants, met with Tyson Foods representatives to get a progress update on their efforts to reduce chlorides and phosphorous. We had a really productive meeting and recent efforts on their part have them optimistic that they may be dialed in on identifying some solutions to bring them into compliance with respect to chlorides.

Note that it is our intention to bring a wastewater ordinance that places limits on the amount of chlorides and phosphorous our utility customers can send to our wastewater plant by the end of the year.

### **League of Kansas Municipalities (LKM) Conference**

I will be attending the LKM annual conference for the first time this weekend. I will be out of the office on Monday as the conference concludes midday.