

ORDINANCE NO. 12-820

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

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

Section 1. Wildflower Telecommunications, LLC DBA IdeaTek Communications, its successors and assigns (herein referred to as “Wildflower”) shall operate its communications system and all business incidental to or connected with conducting of a communications business and system in the City of South Hutchinson, State of Kansas, (herein referred to as “City”). The plant construction and appurtenances used in or incident to the provision of communication services and to the maintenance of a communication business and system by Wildflower in said City shall be subject to such changes as may be considered necessary by the City in the exercise of its inherent police powers and Wildflower shall exercise its right to place, remove, construct, and reconstruct, extend and maintain its said plant and appurtenances as the business and purposes for which it is or may be incorporated may from time to time require along, across, on, over, through, above and under all public streets, avenues, alleys, bridges, and the public grounds and places within the limits of said City as the same from time to time may be established by City.

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

Section 3. Permission is hereby granted to Wildflower to trim trees upon and overhanging streets, alleys, sidewalks and public places of said City so as to prevent the branches of such trees from coming in contact with the wires and cables of Wildflower, all the said trimming upon request by the City will be done under the supervision and direction of any city official to whom said duties have been or may be delegated.

Section 4. Permission is hereby granted to Wildflower to make all necessary excavations in the public streets, roads, alleys, sidewalks or other public places, all in accordance with the ordinances applicable to such excavations by public utilities or others securing such permission. All services which shall be laid or installed under this grant shall be so located and laid as not to obstruct or interfere with any water pipes,

drains, sewers, or other structures already installed. Wildflower shall provide, prior to commencing work, information to the City concerning work to be performed in the streets, avenues, bridges, parks, parking areas and public places of the City, as the City may from time to time require for purposes of record keeping. The City may require that the information be provided on its standard permit form, but without requiring approval, consent, or fees. In the event of an emergency, Wildflower shall have the right to commence work without having first provided such form(s). Wildflower shall, without expense to the City, and in a manner satisfactory to the duly authorized representatives of the City, replace such paving or surface in substantially as good condition as before said work was commenced.

Section 5. Wildflower agrees to pay to the City as full compensation for granting the rights and privileges herein a 5% fee per access line as set out in K.S.A. 12-2001(j), and amendments thereto for local exchange service and a 5% fee on the gross revenue of any dark fiber maintenance fees rendered wholly within the corporate limits of the City. Payment will be made on a quarterly basis and shall commence with the first cycle of the monthly billing cycle beginning after this franchise becomes effective.

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

Section. 7. Wildflower, its successors and assigns, in the construction, maintenance and operation of its communication business and system, shall use all reasonable and proper precaution to avoid damage or injury to persons or property, and shall hold and save harmless the City from any and all damage, injury, and expense caused by the negligence of Wildflower, its successors and assigns, or its or their agents or servants.

Section 8. The term of this Ordinance shall be for five (5) years from the date on which it takes effect. Thereafter, this franchise will renew for one (1) additional five (5) year term, unless either party notifies the other party of its intent to terminate or renegotiate the franchise at least one hundred and eighty (180) days before the termination of the then current term. After ten (10) years, this franchise shall renew for additional one (1) year terms until either party notified the other party of its intent to terminate or renegotiate the franchise at least one hundred and eighty (180) days before the termination of the then current term. An additional term shall be deemed a continuation of this franchise and not as a new franchise or amendment.

Upon termination all overhead or aerial lines shall be removed from the City by Wildflower.

Amendments under this section, if any, shall be made by ordinance as prescribed by statute. Except as provided within this section the franchise shall remain in effect according to its terms pending completion of any review or renegotiation provide by this subsection.

- A. Upon written request of either the City or Wildflower, the franchise shall be reopened and renegotiated at any time upon any of the following events:

- a. Change in federal, state or local law, regulation or order which materially affects any rights or obligation of either the City or Wildflower, including, but not limited to, the scope of the grant to Wildflower of the compensation to be received by the City.
- b. Change in the structure or operation of the telecommunications industry which materially affects any rights or obligations of either the City or Wildflower, including, but not limited to, the scope of the grant to Wildflower or the compensation to be received by the City.
- c. Any other material and unintended change or shift in the economic benefit to the City or Wildflower relied upon and anticipated upon entering into this franchise.

Section 9. This franchise Ordinance shall take effect and be in force from and after its passage, approval by the City, acceptance by Wildflower, and publication in the official City newspaper. Wildflower shall have sixty (60) days after the final passage and approval of this franchise Ordinance to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this franchise Ordinance and when so accepted, this franchise Ordinance and acceptance shall constitute a contract between the City and Wildflower and said contract shall be deemed effective on the date Wildflower files acceptance with the City.

Section 10. The franchise is granted pursuant to the provisions of K.S.A. 12-2001 and amendments thereto. Should the Kansas Corporation Commission take any action with respect to this franchise Ordinance and any amendment thereto which precludes Wildflower from recovering from its customers any cost or fees provided for hereunder, the parties hereto shall renegotiate this franchise Ordinance in accordance with the Commission's ruling.

Section 11. Wildflower shall be responsible for payment of all costs and expenses of publishing this franchise Ordinance or its summary, and any amendments thereto.

PASSED AND APPROVED THIS 2ND DAY OF OCTOBER, 2012.

Weldon Cook, Mayor

ATTEST:

Denise McCue, City Clerk