

ORDINANCE NO. 13-2

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

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

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 Andale, State of Kansas, (herein referred to as “City”). The cable lines laid 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 powers. Wildflower shall exercise its right to place, remove, construct, and reconstruct, extend and maintain its said lines and appurtenances as the business and purposes for which it is or may be incorporated may from time to time require along, across, on, over, through, above and under all the public streets avenues, alleys, bridges and the public grounds and places within the limits of said City as the same from time to time may be established, subject to the provisions herein.

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 wires shall be paid by the party or parties requesting the same, and Wildflower may require such payment in advance, except that if the City requests that Wildflower remove, relocate, raise or lower its wires or other facilities temporarily or permanently, then such facilities shall be removed, relocated, raised or lowered by Wildflower at Wildflower’s expense. Wildflower shall be given not less than forty-eight (48) hours advance notice to arrange for such wire changes.

SECTION 3. With the prior written consent of the City, Wildflower may 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 will be done under the supervision and direction of any city official to whom said duties have been or may be delegated.

SECTION 4. Wildflower is hereby authorized to make 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, but no excavation may be made without the prior written approval of the City’s Mayor or other designated official... Prior to making any excavations, Wildflower shall submit its request therefor accompanied by written plans showing the nature and extent of said proposed excavations. Such request shall be acted upon promptly and within not more than thirty days after the City receives a

valid and administratively complete request. The time within which to act upon a particular request may be extended if the Mayor or other designated official reasonably determines that the request is so extraordinary in scope or complexity that it requires review and consideration by the City Council. In the event the City denies any such request, the reasons for such denial pursuant to K.S.A. 17-1902, as amended, or otherwise shall be provided in the City's written notice and Wildflower shall be afforded an opportunity to cure or otherwise address the basis for the City's objection.

SECTION 5. Permission is hereby granted to permit any telephone, electric light, or power wire attachments by the City or Wildflower, on the poles of the other which must follow guidelines set forth in the National Electric Safety Code (NESC) and all Andale ordinances pertaining to said installations. Nothing in this ordinance shall be deemed to grant Wildflower any authority to use any poles or other property not owned by the City or to use the any building, water tower or other structure owned by the City.

SECTION 6. Andale Ordinance No. 07-1 is an ordinance regulating the use of the public right of way within the City of Andale, Kansas. Said ordinance is incorporated herein by reference. Wildflower shall at all times comply with all provisions and requirements of said ordinance; and any amendments thereto, including, but not limited to Section 8 regarding repair of the right of way and Section 11 regarding indemnity to the City.

SECTION 7. Poles and towers shall be erected so as to interfere as little as practicable with traffic over streets and alleys. The location of all poles, towers and conduits shall be fixed under the supervision of the governing body of the City or its authorized representative. Any pavements, sidewalks or curbing taken up and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of the City and to the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Wildflower, leaving such properties in the same or better condition as existed immediately prior to excavation.

SECTION 8. Wildflower shall at all times comply with all local, state and federal laws and shall obtain all required permits and approvals from all applicable regulatory bodies.

SECTION 9. 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 10. It is intended by the parties that this franchise be competitively neutral and not be unreasonable or discriminatory. If it is determined by a court of competent jurisdiction that the franchise is not competitively neutral or is unreasonable or is discriminatory, then the franchise may be amended to ensure that it is competitively neutral, not unreasonable and not discriminatory.

SECTION 11. In the event Wildflower fails to comply with the provisions of this franchise, the City may revoke this franchise ordinance. The City shall give Wildflower notice of its intent to revoke this franchise ordinance specifying the reasons for such proposed revocation and Wildflower shall have at least sixty (60) days from the date of such notice to cure or otherwise address the

asserted non-compliance with the provisions of this Ordinance. The time for curing any such non-compliance may be extended by the City. This franchise ordinance shall not be revoked without at least sixty days written notice to Wildflower and an opportunity for a public hearing before the governing body. The governing body's revocation of this franchise ordinance may be appealed to district court.

SECTION 12. (a). The terms "access line," "access line count," "access line fee," "access line remittance," "gross receipts," "local exchange service," "telecommunications local exchange service provider," and "telecommunications services" shall be defined as provided in K.S.A. 12-201 and amendments thereto.

SECTION 12. (b). Compensation made pursuant to this contract franchise ordinance shall be paid on a quarterly basis without invoice or reminder from the City and paid not later than forty-five (45) days after the end of the remittal period. For the first year of this contract franchise ordinance, said compensation shall be a sum equal to \$0.10 per access line. Thereafter, compensation for each calendar year of the remaining term of the contract franchise ordinance shall continue to be based on a sum equal to \$0.10 per access line; unless the City notifies Wildflower prior to ninety (90) days before the end of the calendar year that it intends to increase or decrease the percentage of gross receipts for the following calendar year or that it intends to switch to an access line fee for the following calendar year. In the event the City elects compensation based on an access line fee, nothing herein precludes the City from switching back to a gross receipts fee provided the City notifies Wildflower prior to ninety (90) days before the end of the calendar year that it intends to elect a gross receipts fee for the following calendar year. Any increased access line fee or gross receipt fee shall be in compliance with the public notification procedures set forth in subsections (l) and (m) K.S.A. 2002 Supp. 12-2001.

SECTION 13. The term of this ordinance shall be for five (5) years from the date on which it takes effect. Thereafter, this franchise will renew for one (1) additional five (5) year-term, unless either party notifies the other party of its intent to terminate or renegotiate the franchise at least one hundred and eighty (180) days before the termination of the then current term. After ten (10) years, this franchise shall renew for additional one (1) year terms until either party notifies the other party of its intent to terminate or renegotiate the franchise at least one hundred and eighty (180) days before the termination of the then current term. An additional term shall be deemed a continuation of this franchise and not as a new franchise or amendment.

APPROVED this __22nd__ day of __July__, 2013.

/s/Gary Sigg, Mayor

OFFICIAL CITY SEAL

Attest:

/s/Virginia Swanson, City Clerk