

**CITY COMMISSION WORK SESSION**

City Hall Commission Chambers

Monday, May 5, 2014

6:30 p.m.

MEETING #4954

**WORK SESSION**

Water Conservation

# **CITY COMMISSION AGENDA**

City Hall Commission Chambers

Monday, May 5, 2014

7:00 p.m.

MEETING #4955

## **CALL TO ORDER**

## **ROLL CALL**

**INVOCATION** by Rev. Darrel Hendrickson of the First Church of God

## **PLEDGE OF ALLEGIANCE**

## **PUBLIC HEARING**

Consideration of an Application to be submitted to Commerce for Small Cities Community Development Block Grant Funds under the Downtown Commercial Rehabilitation Category.

## **PETITIONS & PROCLAMATIONS**

National Tourism Week Proclamation 2014

National Historic Preservation Month Proclamation

National Train Day Proclamation

Kids to Parks Day

**VISITORS** (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting unless an emergency situation does exist).

Jim Hanni of AAA – Presentation of Award to Dodge City Police Department

## **CONSENT CALENDAR**

1. Approval of City Commission Meeting Minutes, April 21, 2014;

2. Appropriation Ordinance No. 9, May 5, 2014;
3. Approval of Fireworks Contract

## **ORDINANCES & RESOLUTIONS**

**Resolution 2014-13:** A Resolution Declaring a Building Blighted With Respect to the Kansas Small Cities Community Development Block Grant (CDBG) Program. Report by Special Projects Asst. Leslie Lomas.

**Resolution 2014-14:** A Resolution Certifying Legal Authority to Apply for the 2014 Kansas Small Cities Community Development Block Grant Program from the Kansas Department of Commerce and Authorizing the Mayor to Sign and Submit Such an Application. Report by Special Projects Asst. Leslie Lomas.

**Resolution 2014-15:** A Resolution of the City of Dodge City, Kansas, Endorsing Efforts by the Dodge City Community College Board of Trustees and the Kansas Board of Regents to Create a Kansas Board of Regents Academic Center in Dodge City. Report by City Manager Cherise Tieben.

## **UNFINISHED BUSINESS**

## **NEW BUSINESS**

1. A Charter Ordinance Authorizing Certain City Employees who are responsible for enforcement of various City Code Provisions to sign and serve City Complaints for appearance in City Municipal Court. Report by City Attorney, Ken Strobel.
2. The Approval of the Franchise Contract between the City of Dodge City and Wildflower Telecommunications, LLC. Report by City Manager, Cherise Tieben.

## **OTHER BUSINESS**

## **ADJOURNMENT**

## PROCLAMATION

**WHEREAS,** Travel is at the heart of America's economic sustainability. It generates millions of jobs, and billions in taxes, it is a vital resource in improving America's image. In Dodge City, the travel industry contributes substantially to our city's cultural and social well being. Travel is one of our most fundamental freedoms. Every citizen benefits from travel and tourism. The travel industry significantly enhances our personal growth and education, while promoting intercultural understanding and appreciation of Dodge City's history, geography and culture; and,

**WHEREAS,** Travel is one of America's largest service exports, and is among the largest private-sector employers in the United States, supporting 14.4 million jobs in 2012. One of every eight U.S. non-farm jobs is connected to travel. In 2011, total travel spending generated \$1.9 trillion; and,

**WHEREAS,** Travelers' spending generated 14.4% of all Kansas state and local tax revenues; and,

**WHEREAS,** Tourism is responsible for creating 4.4% of the total Kansas Gross State Product and is the 3rd largest industry in the state based on employment; and

**WHEREAS,** Kansas Travel & Tourism reported a Global Insight study which shows Kansas tourism has an \$8 billion impact on the Kansas economy.

**WHEREAS,** Tourism has over a \$523 million impact in southwest Kansas, and visitor expenditures contributed \$104.7 million to the economic wealth of Ford County; and locally, based solely on overnight motel room stays, more than \$37 million is injected into the economy. It is responsible for creating jobs, increasing our tax revenues and providing an improved quality of life for Dodge City citizens; and

**WHEREAS,** Travel is a catalyst that moves the national economy forward; and so in recognition of the unique significance of the American travel industry, and in the lives of the citizens of Dodge City,

**NOW, THEREFORE,** I, Brian Delzeit, Mayor, do hereby proclaim May 3-11, 2014 as

### NATIONAL TOURISM WEEK

**BE IT FUTHER RESOLVED** that the City of Dodge City with the aid of the Convention and Visitors Bureau, will hold a week long reception in observance of Travel and Tourism Week in Dodge City at the Visitors Center, and urge the citizens to join me in this special observance with appropriate events and activities.

**IN WITNESS THEREOF,** I have hereunto set my hand this 5th day of May, 2014

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Brain Delzeit, Mayor

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Nannette Pogue, City Clerk

## Proclamation for National Historic Preservation Month 2014

WHEREAS, "New Age of Preservation: Embark, Inspire, Engage" is the theme for National Historic Preservation Month 2014, cosponsored by Main Street Dodge City and the National Trust for Historic Preservation; and

WHEREAS, the City of Dodge City is a treasure-trove of historic resources, including 20 local historic landmarks, 10 properties listed on the State Register of Historic places, a State and National Registered Historic Downtown District, 8 properties listed on the National Register of Historic Places; and

WHEREAS, historic preservation is inherently economically, environmentally, and socially sustainable, fostering a culture of reuse and maximizing the life cycle of all resources through conservation; and

WHEREAS, historic preservation is an effective tool for managing growth, sustaining development, revitalizing neighborhoods, fostering local pride, and maintaining community character while enhancing livability; and

WHEREAS, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped the City of Dodge City and us as a people; and

WHEREAS, historic preservation encourages community reinvestment, saving resources and promoting socially, culturally, and economically rich communities;

NOW, THEREFORE, I, Brian Delzeit, Mayor of the City of Dodge City, do recognize May 2014 as National Historic Preservation Month, and call upon the people of Dodge City to join their fellow citizens across the United States in recognizing and participating in this special observance.

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Mayor

SEAL

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Nannette Pogue, City Clerk

# National Train Day Proclamation

## CITY OF Dodge City

A proclamation of the City of Dodge City designating May 10, 2014 "Train Day in Dodge City".

**Whereas**, America is celebrating "National Train Day" on May 10, 2014 a commemoration of the completion of America's first transcontinental railroad; and

**Whereas**, Federal and State transportation departments have made expansion of high-speed and intercity passenger rail a top priority in building 21st-Century national infrastructure; and

**Whereas**, a healthy freight and passenger rail network is essential to keeping the American economy moving efficiently; and

**Whereas**, Dodge City has benefitted from train service on Amtrak's *Southwest Chief* route; and

**Whereas**, Amtrak continues to work with states on the development of the next generation of high-speed and intercity passenger rail trains which will create good jobs in the United States by resurrecting the domestic manufacturing base; and

**Whereas**, Amtrak ridership has grown more than 50% since 2000 and the railroad carried 31.6 million passengers in 2013, making it the best year in the company's history; and

**Whereas**, 5,149 passengers boarded or disembarked Amtrak trains in the City of Dodge City; **now therefore be it**

**Resolved** that the City of Dodge City

- Greatly benefits from its place on the intercity rail network
- Passenger rail brings travelers back to American downtowns
- Designates May 10, 2014 "Train Day in Dodge City"

**IN WITNESS THEREOF**, I have hereunto set my hand this 5<sup>th</sup> day of May, 2014

\_\_\_\_\_  
Nannette Pogue, City Clerk

\_\_\_\_\_  
Brian Delzeit, Mayor

## **Kids to Parks Day: Saturday, May 17, 2014**

### **A Proclamation**

**WHEREAS**, May 17<sup>th</sup>, 2014 is the fourth Kids to Parks Day organized and launched by the National Park Trust; and

**WHEREAS**, Kids to Parks Day empowers kids and encourages families to get outdoors and visit America's parks; and

**WHEREAS**, it is important to introduce a new generation to our nation's parks because of the decline in Park attendance over the last decades; and

**WHEREAS**, we should encourage children to lead a more active lifestyle to combat the issues of childhood obesity, diabetes mellitus, hypertension and hypercholesterolemia; and

**WHEREAS**, Kids to Parks Day is open to all children and adults across the country to encourage a large and diverse group of participants; and

**WHEREAS**, Kids to Parks Day will broaden children's appreciation for nature and the outdoors.

**NOW THEREFORE**, I, Brian Delzeit, Mayor of the City of Dodge City Kansas do hereby proclaim to participate in Kids to Parks Day. I urge residents of Dodge City to make time May 17<sup>th</sup>, 2014 to take the children in their lives to a neighborhood, state or national park.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Great Seal of the City of Dodge City to be affixed, this 5<sup>th</sup> day of May, 2014

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Brian Delzeit, Mayor

SEAL

# **CITY COMMISSION MINUTES**

City Hall Commission Chambers

Monday, April 21, 2014

7:00 p.m.

MEETING #4953

## **CALL TO ORDER**

**ROLL CALL:** Mayor Brian Delzeit, Commissioners Joyce Warshaw, Rick Sowers, Jan Scoggins, Kent Smoll.

**INVOCATION** by Lt. Enrique Coreano of the Salvation Army

## **PLEDGE OF ALLEGIANCE**

## **PETITIONS & PROCLAMATIONS**

Arbor Day Proclamation was read by Mayor Brian Delzeit. Director of Parks & Recreation, Paul Lewis spoke on upcoming Arbor Day activities to be held on Arbor Day. Dodge City has received the Tree City USA Award for the past 38 years. Shade Tree Commission will be honoring Jim Geis for his important role in planting of the trees & beautifying of the Community.

**VISITORS (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting unless an emergency situation does exist).**

## **CONSENT CALENDAR**

1. Approval of City Commission Meeting Minutes, April 7, 2014;
2. Appropriation Ordinance No. 8, April 21, 2014;

Commissioner Kent Smoll moved to approve the Consent Calendar as presented, seconded by Commissioner Joyce Warshaw. Motion carried unanimously.

## **ORDINANCES & RESOLUTIONS**

**Resolution No. 2014-12:** Commissioner Brain Delzeit moved to approve and authorize City Manager, Cherise Tieben to sign a Resolution Agreement with the Kansas Department of Health and Environment Regarding an Illegal Dumping Disposal Site. Motion was seconded by Commissioner Kent Smoll. Motion carried unanimously.

## **UNFINISHED BUSINESS**

**NEW BUSINESS**

1. Commissioner Kent Smoll moved to approve the 2014 Street Program as presented by the Director of Engineering Commissioner Joyce Warshaw seconded the motion. Motion carried unanimously.

**OTHER BUSINESS**

City Manager, Cherise Tieben

Commissioner, Kent Smoll

- Shop often and Shop local
- Fourth of July coming up soon, send in your donations.

Commissioner, Jan Scoggins

- Thank all that watch the City Commission Meetings from home and to see what's going on in the City, greatly appreciated, nice to see all that attended the meeting tonight;
- Thanked Paul for Arbor Day presentation, encourage everyone to attend one of the events.

Commissioner, Joyce Warshaw:

- Loving the Spring weather - Thanks to everyone for getting out and taking care of their properties;
- Parks are looking great.

Commissioner, Rick Sowers

Mayor, Brian Delzeit

**ADJOURNMENT**

Commissioner Rick Sowers moved to adjourn the meeting; Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

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Mayor

Attest:

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Nannette Pogue, City Clerk



# Parks and Recreation

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PO Box 880 • Dodge City KS 67801 • Phone: 620/225-8160 • Fax: 620/225-8144

## *Memorandum*

To: Cherise Tieben, City Manager  
City Commissioners  
From: Paul Lewis, Director   
Date: April 30, 2014  
Subject: Fireworks Contract  
Agenda Item: Consent Calendar

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**Recommendation:** Staff requests Commission approval to enter into contract with Wald's All American Display Fireworks in the amount of \$20,000 for the July 4th fireworks show. The contract for 2014 is a one year agreement for the July 4 display.

**Background:** Wald's has provided all of the fireworks shows for the Old Dodge City event since we first started in 1998 with this being the 17<sup>th</sup> year. They have provided well designed shows, choreographed with music that has developed Dodge City's reputation as a premier show in the state.

This year the July 4<sup>th</sup> committee is working to coordinate with other agencies and organizations to promote activities planned for the day and then culminate with the fireworks show at 10pm that night. The show will be shot from Morgan Blvd and USD 443 will allow us to use Memorial Stadium for spectator viewing.

**Justification:** The Dodge City show is the largest display in western Kansas and local response is overwhelmingly positive. This show draws people into the community from all around the area and several thousand people line the streets and parking areas around north Dodge to view the display.

Wald's has provided excellent service and quality displays for the event since its inception. The planning committee has met and recommends to continue contracting with Wald for the display.

**Financial Considerations:** The contract for this show is \$20,000. That total has been reduced by \$5,000 this year as a result of increasing difficulties in raising funds. Of the total expense, the City covers \$5,000 from the Non-Departmental budget. The remainder is raised by the local fireworks committee through corporate and individual sponsors. The committee is already working towards that goal and sent out initial solicitation letters.

**Purpose/Mission:** The City's support of this program is consistent with the mission of the City to improve quality of life as it enhances a community wide event celebrating our history and providing entertainment for our citizens.

**Legal Considerations:** Liability issues with this activity are covered by Wald & Co. through a certificate of insurance with a coverage limit of \$5,000,000 for public liability and property damage.

**Attachments:** Wald Contract

# Wald & CO., Inc. d/b/a ~~All A~~ American Display Fireworks

PO Box 319, Greenwood, Missouri 64034-0319

Phone: 816-537-7400 Fax: 816-537-7270

This agreement entered into this 24 day of April-14, \_\_\_\_\_ by and between Wald & Co., Inc. of Greenwood, Missouri, doing business as All American Display Fireworks, (hereinafter referred to as "**All American**") party of the first part, and City of Dodge City (hereinafter referred to as "**Customer**") party of the second part, City of Dodge City and State of Kansas.

WITNESSED: **All American**, for and in consideration of the sum of one dollar (\$1.00) in hand paid, receipt of which is hereby acknowledged and of terms and conditions hereinafter set forth, agrees to furnish Customer As Proposal Dated 4-23-14 fireworks display in accordance with the program agreed upon and approved by the parties hereto and made a part hereof, (hereinafter referred to as "**Display**") with said **Display** to be performed on 7/4/2014.

In the event of inclement weather, adverse conditions, life/safety issues, or some other cause beyond **All American's** control that would prevent the giving of **Display** on specified date, **All American**, at it's sole discretion, may cancel or postpone the **Display** for that date, due to said conditions. Unless a reschedule date is agreed upon prior, it is agreed and understood that **Customer** may reschedule **Display** within 180 days of the original display date and that **Customer** must notify **All American** at least 30 days in advance of proposed rescheduled date. Rescheduled **Display** date must be mutually agreed upon by **All American** and **Customer**. If the rescheduled date falls within the 30 days following original **Display** date, the 30-day notice can be suspended, but date must be mutually agreed upon by **All American** and **Customer**. If **Customer** does not reschedule to a mutually agreed upon date within the 180 day period following original display date, or completely cancels the **Display**, the **Customer** understands and agrees to pay **All American** See Proposal % of the \$ \$20,000.00 contract price of **Display**.

**All American** agrees to provide services, secure permits and deliver fireworks as proposed. **All American** reserves the right to make necessary substitutions with product equal to or greater in value.

**Customer** shall furnish:

1. Sufficient minimum secured safety distances in the judgement of **All American** for proper shooting of **Display**
2. Necessary police protection and/or adequate security and a method to maintain and assure that spectators not go past the minimum secured safety distances determined by **All American**. Cancellation or postponement of **Display** due to breach of said minimum secured safety distances would not constitute a breach of contract by **All American**
3. Other reasonable safeguards and precautions as **All American** directs or deems necessary
4. Provide unobtrusive and safe access to the display site/fall out zone, as **All American** deems necessary
5. Fire protection as **All American** deems necessary

It is further agreed and understood that the **Customer** will pay **All American** the total sum of \$ \$20,000.00, as follows: \$10,000 deposit due by 5-26-14. Balance of \$10,000 due in full by 7-10-14.

**All American** will provide the **Customer** with a \$ \$5,000,000.00 Certificate of Insurance covering Public Liability and Property Damage for **Display**. **Customer** will be included as additional insured and agrees to provide a complete list of all additional insureds to be named on the certificate.

**Customer** agrees to pay one and one half percent (1.5%) interest charged per month on unpaid accounts after fifteen days from agreed upon payment due date and **Customer** agrees to pay all fees necessary to collect balance due, in addition to any and all attorney fees.

It is further agreed that nothing in this Agreement between **Customer** and **All American**, shall be construed or interpreted to result in a partnership or joint venture, both parties hereto being responsible for their separate and individual acts, omissions, debts, and obligations and neither party shall be responsible for any agreements or addendum not set forth in the Agreement.

The parties hereto do mutually and severally guarantee terms, conditions, and payments of this agreement which is binding upon the parties, their heirs, executors, administrators, successors, assigns, and agents; as well as terms and conditions further set forth by **All American**.

IN WITNESS WHEREOF,

we hereto, set our hands and seals to duplicate copies hereof this the 24 day of April, 2014.  
WALD & CO., INC./ALL AMERICAN DISPLAY FIREWORKS CUSTOMER

**Charles Wald**

BY: \_\_\_\_\_  
Print Name of Authorized Agent

BY: \_\_\_\_\_  
Print Name of Authorized Agent

**Acknowledging and agreeing to the payment schedule**  
**As noted above**

SIGN: \_\_\_\_\_  
Signature of Authorized Agent

SIGN: \_\_\_\_\_  
Signature of Authorized Agent

This agreement subject to acceptance by All American (Wald & Co., Inc.) at its main office at Greenwood, Missouri. IMPORTANT: Place authorized signature on original (white) and return to All American Display Fireworks by return mail. Retain duplicate (yellow) copy for your files.

## Memorandum

*To: City Manager  
City Commissioners*

*From: Leslie Lomas  
Housing & Neighborhood  
Development Coordinator  
Grant Administrator*

*Date: 5/05/14*

*Subject: 2014 Community Development  
Block Grant Program*

*Agenda Item: Resolution No. 2014-13*

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**Recommendation:** Staff recommends adoption of Resolution No. 2014-13 which declares the building located at 400 West Spruce as blighted under the Kansas Urban Renewal Law.

**Background:** This building has been vacant for several years. An interested party is currently working with the City on a purchase agreement of said building. In order to qualify for the 2014 Community Development Block Grant Program, the building must be declared a blighted structure under the Kansas Urban Renewal Law and be detrimental to public health and safety.

**Justification:** Downtown commercial rehabilitation of blighted buildings continues to be a constant challenge in the Dodge City area. Applying for this program is key to prevent the spread of blighted conditions, and thus starting to reverse the cycle of blight, deferred maintenance and disinvestment.

**Financial Considerations:** None

**Purpose/Mission:** To provide commercial development in order for the City to accommodate present and future growth.

**Legal Considerations:** None

**Attachments:** Resolution No. 2014-13

**RESOLUTION NO. 2014-13**

**A RESOLUTION DECLARING A BUILDING BLIGHTED WITH RESPECT TO THE KANSAS SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM**

**WHEREAS**, Congress recognized the prevention and elimination of slum and blight as a national objective under the Housing and Community Development Act of 1974; and

**WHEREAS**, The State of Kansas in its Urban Renewal Law of 1955 declared that the prevention and elimination of slum and blight is a matter of state policy and concern; and

**WHEREAS**, The City of Dodge City wishes to stabilize and improve the economic viability of the downtown commercial district by encouraging private property owners to make improvements on existing blighted buildings; and

**WHEREAS**, The Kansas Department of Commerce has grant funds available through the CDBG Program to assist property owners in addressing deficiencies on blighted buildings in cooperation with the municipality; and

**WHEREAS**, The City of Dodge City currently owns the building, but will have entered into an Option to Purchase or Sale of Building with Boot Hill Distillery, LLC, prior to the submission of application for assistance from the CDBG Program located at 400 West Spruce in the City of Dodge City;

**NOW, THEREFORE, BE IT RESOLVED THAT:** The Governing Body of the City of Dodge City, Kansas hereby declares that the above mentioned building is a blighted structure under the Kansas Urban Renewal Law and that it has the following conditions of blight, decay or environmental contamination:

The exterior of the building including repair and re-point exterior masonry, repair of entire tile roof and abating asbestos throughout the entire building

And, **FURTHERMORE** these conditions are detrimental to public health and safety.

**ADOPTED** by the Governing Body of the City of Dodge City, Kansas, on May 5, 2014.

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Brian Delzeit, Mayor

ATTEST:

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Nannette Pogue, City Clerk

## Memorandum

*To: City Manager  
City Commissioners*

*From: Leslie Lomas  
Housing & Neighborhood  
Development Coordinator  
Grant Administrator*

*Date: 5/05/14*

*Subject: 2014 Community Development  
Block Grant Program*

*Agenda Item: Resolution No. 2014-14*

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**Recommendation:** Staff recommends approval of Resolution No. 2014-14 which certifies legal authority to apply for the 2014 Kansas Small Cities Community Development Block Grant Program and authorizes the Mayor to sign and submit such application.

**Background:** This City will be entering into either an Option to Purchase or Purchase Agreement with Boot Hill Distillery, LLC for the building located at 400 West Spruce. The City will then apply for the 2014 Community Development Block Commercial Rehabilitation Grant. If awarded the grant, the owners of the building will repair and re-point exterior masonry, repair of entire tile roof and abating asbestos throughout the entire building.

**Justification:** Downtown commercial rehabilitation of blighted buildings continues to be a constant challenge in the Dodge City area. Applying for this program is key to prevent the spread of blighted conditions, and thus starting to reverse the cycle of blight, deferred maintenance and disinvestment.

**Financial Considerations:** None

**Purpose/Mission:** To provide commercial development in order for the City to accommodate present and future growth.

**Legal Considerations:** None

**Attachments:** Resolution No. 2014-14

**RESOLUTION NO. 2014-14**

**A RESOLUTION CERTIFYING LEGAL AUTHORITY TO APPLY FOR THE 2014 KANSAS SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FROM THE KANSAS DEPARTMENT OF COMMERCE AND AUTHORIZING THE MAYOR TO SIGN AND SUBMIT SUCH AN APPLICATION**

**WHEREAS**, The City of Dodge City, Kansas, is a legal governmental entity as provided by the laws of the STATE OF KANSAS, and

**WHEREAS**, The City of Dodge City, Kansas, intends to submit an application for assistance from the 2014 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

**THE APPLICANT** hereby certifies that the City of Dodge City, Kansas, is a legal governmental entity under the status of the laws of the STATE OF KANSAS and thereby has the authority to apply for assistance from the 2014 KANSAS SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

**THE APPLICANT** hereby authorizes the MAYOR of Dodge City, Kansas, to act as the applicant's official representative in signing and submitting an application for the assistance to the 2014 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

**APPROVED** by the Governing Body of the City of Dodge City, Kansas, on May 5, 2014.

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Brian Delzeit, Mayor

ATTEST:

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Nannette Pogue, City Clerk

## *Memorandum*

*To: City Commissioners*  
*From: Cherise Tieben*  
*Date: 04-30-14*  
*Subject: Academic Regents Center*  
*Agenda Item: New Business*

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**Recommendation:** Staff recommends approving the Resolution 2014-15 which indicates our support for the Kansas Board of Regents Academic Center to be created through negotiated efforts between the Dodge City Community College Board of Trustees and the Kansas Board of Regents.

**Background:** The Dodge City Community College Board of Trustees and the Kansas Board of Regents have discussed the possibilities and the opportunities to create a regional baccalaureate center which would consist of a lower division college, upper division college and a technical institute. It is proposed that the Academic Center would be operated by Fort Hays State University. Many issues are yet to be resolved and should be resolved by and between the local Board of Trustees, the Regents and Fort Hays State University through negotiations of a comprehensive agreement.

**Justification:** Since the closing of St. Mary of the Plains College in 1992, southwest Kansas has had limited opportunities to achieve a baccalaureate degree. The 2 year community colleges have had success delivering the associates degree and providing technical training. However, the proposal being offered will expand the opportunities for a higher education in our area. In addition, this would provide a significant positive economic impact to our community through the addition of facilities, numerous incoming students, expanded student housing and the opportunities to once again have a continuous supply of educated individuals with baccalaureate degrees.

**Financial Considerations:** None

**Purpose/Mission:** The effort of the Dodge City Community College Board of Trustees exemplifies our core value of Ongoing Improvement – as together, we value progress, growth and new possibilities by providing and preparing for the community's future.

**Legal Considerations:** None

## **Resolution No. 2014-15**

### **A RESOLUTION OF THE CITY OF DODGE CITY, KANSAS, ENDORSING EFFORTS BY THE DODGE CITY COMMUNITY COLLEGE BOARD OF TRUSTEES AND THE KANSAS BOARD OF REGENTS TO CREATE A KANSAS BOARD OF REGENTS ACADEMIC CENTER IN DODGE CITY.**

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**WHEREAS**, the Dodge City Community College Board of Trustees is considering the opportunities and possibilities that would be created through the development of a Kansas Board of Regents Academic Center in Dodge City; and

**WHEREAS**, the Academic Center is anticipated to be a regional baccalaureate center for Southwest Kansas; and

**WHEREAS**, the Academic Center is anticipated to consist of three colleges – a lower division college, upper division college and technical institute; and

**WHEREAS**, the proposed the lower division college will offer the existing programs and services of Dodge City Community College; and

**WHEREAS**, the proposed upper divisional college will offer baccalaureate degrees in both face-to-face and virtual modalities; and

**WHEREAS**, the proposed technical institute will offer blended, traditional learning and cooperative internship style workplace learning; and

**WHEREAS**, it is anticipated that a new ten million dollar (\$10,000,000.00) technical institute building will be constructed on the Academic Center campus; and

**WHEREAS**, an annual commitment of five million dollars (\$5,000,000.00) is anticipated in state funding and will be added to other new and existing revenue streams to operate the Academic Center; and

**WHEREAS**, it is anticipated that the Kansas Board of Regents will govern the Academic Center through Fort Hays State University; and

**WHEREAS**, it is proposed that Fort Hays State University will provide oversight and fund all activities and functions except those specifically retained by the Dodge City Community College Trustees pursuant to an operating agreement yet to be negotiated between Fort Hays State University and Dodge City Community College; and

**WHEREAS**, the Academic Center will have a positive educational and economic impact on Dodge City, Ford County, and the entire state of Kansas.

**NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS:**

that we, the Governing body of the City of Dodge City, Kansas are supportive of the efforts of the Dodge City Community College Trustees and the Kansas Board of Regents in their pursuit of the establishment of a Kansas Board of Regents Academic Center in Dodge City.

**ADOPTED AND APPROVED THIS 5TH DAY OF MAY, 2014.**

(seal)

City of Dodge City, KS

Attest:

\_\_\_\_\_  
Brian Delzeit, Mayor

\_\_\_\_\_  
Nannette Pogue, City Clerk

# *Memorandum*

*To: City Manager*  
*From: Ken W. Strobel, City Attorney*  
*Date: April 30, 2014*  
*Subject: Charter Ordinance Modifying  
Municipal Court Procedures*

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**Recommendation:** Staff recommends adoption of Charter Ordinance No. 38 which would allow certain City employees who are responsible for enforcement of various City code provisions to sign and serve City complaints for appearances in Municipal Court.

**Background:** The statutes which make up the provisions of the Code for Municipal Courts provide that complaints and notices to appear for violations of the City Code can only be served by a “law enforcement officer”, which is defined by statute as a sworn police officer. This is not a problem in the vast majority of traffic violations since the “officer” is the one issuing the complaint and notice. However, where the violation is a non-traffic violation most generally code compliance personnel, not police officers, are involved in the enforcement process. Consequently, complaints and notices to appear for non-traffic code violations such as animals at large, weeds, building code, and other environmental violations become cumbersome and time consuming when a police officer’s services are required in order to satisfy the statutory requirements involved in processing and serving of the complaint.

**Justification:** Many cities have chosen to opt out of the statutory procedures which require the services of a police officer when code compliance issues are involved. Since the code for Municipal Courts does not apply to all cities uniformly, a city may choose to exempt itself from certain provisions of the statutory language and adopt alternate provisions for code compliance. The procedure used in such cases is adoption of a “Charter Ordinance” which serves to exempt the City from certain provisions of the statute and adopt alternative language in its place. The adoption of Charter Ordinances being recommended would serve to exempt Dodge City from various cumbersome provisions of the City Code enforcement procedures, but would also adopt new language which would assure proper and reasonable notice to those allegedly in violation of City code.

**Financial Considerations:** None, other than publication notice of the ordinance.

**Legal Considerations:** Since the adoption of the Charter Ordinance involves a deviation from state statute, the members of the public are allowed a period of 60 days before the Charter Ordinance becomes effective in order to protest the adoption of the ordinance. If a valid protest petition is filed, the Commission would be prevented from enacting the ordinance unless a city wide election is held and a majority of voters approve the ordinance. If there is no protest filed, the ordinance becomes effective on the 61<sup>st</sup> day following final publication.

**Attachment:** Charter Ordinance No. 38.

## CHARTER ORDINANCE NO. 38

A CHARTER ORDINANCE EXEMPTING THE CITY OF DODGE CITY, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-4113(g), K.S.A. 12-4203, K.S.A. 12-4204 AND K.S.A. 12-4207 AS AMENDED, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.

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

**Section 1: Exemption.** The City of Dodge City, a city of the first class, by virtue of the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to and does exempt itself from and make inapplicable to it the provisions of K.S.A. 12-4113(g), 12-4203, 12-4204, and 12-4207 which are not uniformly applicable to all cities, the legislature having made special provisions applying to certain classes of cities in said enactment.

**Section 2: Provisions.** In lieu of the provisions of K.S.A. 12-4113(g), the Governing Body of the City of Dodge City hereby adopts the following provisions:

“Complaint” means a sworn written statement, or a written statement by a law enforcement officer, probation officer, fire marshal, building official, code enforcement officer, animal control officer, or parking enforcement officer of the essential facts constituting a violation of an ordinance.

**Section 3: Provisions.** In lieu of the provisions of K.S.A. 12-4203, the Governing Body of the City of Dodge City hereby adopts the following provisions:

A copy of the Complaint shall be served together with a notice to appear, by a law enforcement officer, probation officer, fire marshal, building official, code enforcement officer, animal control officer, or parking enforcement officer, upon the accused person, and forthwith, the Complaint shall be filed with the municipal court, except that a Complaint may be filed initially with the municipal court, and if so filed, a copy of the Complaint shall forthwith be delivered to the city attorney.

If the city attorney fails either to cause a notice to appear or to request a warrant to be issued, on a Complaint initially filed with the municipal court, the municipal judge may, upon affidavits filed with him or her alleging the violation of an ordinance, order the

city attorney to institute proceedings against any person. Any such municipal judge shall be disqualified from sitting in any case wherein such order was entered and is further prohibited from communicating about such case with the municipal judge pro tem appointed by the municipal judge to preside therein.

**Section 4: Provisions.** In lieu of the provisions of K.S.A. 12-4204, the Governing Body of the City of Dodge City hereby adopts the following provisions:

A notice to appear shall describe the offense charged, shall summon the accused person to appear, shall contain a space in which the accused person may agree, in writing, to appear at a time not less than five (5) days after such notice to appear is given, unless the accused person shall demand an earlier hearing. A notice to appear may be signed by the city attorney, any law enforcement officer, probation officer, fire marshal, building official, code enforcement officer, animal control officer or parking enforcement officer.

A notice to appear shall be deemed sufficient if in substantially the following form:

IN THE MUNICIPAL COURT OF DODGE CITY, KANSAS

The City of Dodge City, Kansas

vs.

\_\_\_\_\_

(Accused person)

\_\_\_\_\_

(Address)

NOTICE TO APPEAR

The City of Dodge City, Kansas, To The Above Named Accused Person.

You are hereby summoned to appear before the Municipal Court of Dodge City, Kansas, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_ o'clock, \_\_.m., to answer a complaint charging you with

If you fail to appear a warrant will be issued for your arrest.

Dated \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Official

\_\_\_\_\_  
Title of Official

I agree to appear in said Court at said time and place.

\_\_\_\_\_  
Signature of Accused Person

RETURN

The undersigned hereby certifies that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the notice to appear was served, mailed or delivered.

\_\_\_\_\_  
Authorized Official

**Section 5: Provisions.** In lieu of the provisions of K.S.A. 12-4207, the Governing Body of the City of Dodge City hereby adopts the following provisions:

The notice to appear shall be served upon the accused persons by

delivering a copy to him or her personally, or by leaving it at the dwelling house of the accused person or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the last known address of said person. A Complaint and notice to appear may be served by a law enforcement officer, probation officer, fire marshal, building official, code enforcement officer, animal control officer, or parking enforcement officer and, if mailed, shall be mailed by a law enforcement officer or the Clerk of the Municipal Court. Upon service by mail, the law enforcement officer or Clerk of the Municipal Court shall execute a verification to be filed with a copy of the Notice to Appear. Said verification shall be deemed sufficient if in substantially the following form:

The undersigned here certifies that on the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, a copy of the Complaint and Notice to Appear was mailed to  
\_\_\_\_\_, at \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
(Signature of law enforcement officer or  
Clerk of the Court)

**Section 6:** This Charter Ordinance shall be published once each week for two (2) consecutive weeks in the official city newspaper.

**Section 7:** This Charter Ordinance shall take effect sixty-one (61) days after final publication, unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision(c)(3), of the Constitution of the State of Kansas, in which case the ordinance shall become effective, if approved by a majority of the electors voting thereon.

PASSED AND APPROVED by the Governing Body of the City of Dodge City, not less than two-thirds (2/3) of the members elect voting in favor of this ordinance, this \_\_\_ day of May, 2014.

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Brian Delzeit, Mayor

Attest:

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Nannette Pogue, City Clerk

## *Memorandum*

*To: City Commissioners*  
*From: Cherise Tieben*  
*Date: 04-30-14*  
*Subject: Wildflower Telecommunications*  
*Agenda Item: New Business*

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**Recommendation:** Staff recommends the approval of the Franchise contract between the City of Dodge City and Wildflower Telecommunications, LLC.

**Background:** Wildflower Telecommunications provides a local exchange service through a fiber optic network that they intend to place in the right-of-way in Dodge City, as authorized by staff. Wildflower will contract with a single service provider in the Dodge City area to allow their customers access to the exchange. The fiber optic local exchange service will provide an improved service to that single providers customers, through speed and reliability issues.

**Justification:** All cities are authorized by statute to permit certain qualified entities the opportunity to utilize city streets and public ways in order to provide a service to inhabitants of the city and permits the contracting with such users for payment to the city for such usage.

**Financial Considerations:** The contract will result in the City of Dodge City receiving a franchise fee equivalent to five percent (5%) of the gross revenue received by Wildflower to provide such access to the right of way.

**Purpose/Mission:** Working towards Excellence, together, we strive to achieve high performance standards set by us and expected by the community.

**Legal Considerations:** The attached franchise was approved by the City Attorney.

**Attachments:** Franchise Agreement

**ORDINANCE NO. 3581**

**AN ORDINANCE GRANTING TO WILDFLOWER TELECOMMUNICATIONS, LLC, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF DODGE CITY, KANSAS.**

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

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number.

a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.

b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.

c. "Access line fee" - means a fee in an amount determined by the City, up to a maximum as set out in K.S.A. 12-2001 and amendments thereto, to be used by Grantee in calculating the amount of access line remittance.

d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the access line fee, as determined by the City, by the number of access lines served by Grantee within the City for each month in that calendar quarter.

e. "City" - means the City of Dodge City, Kansas.

f. "Communications System" or "System" means the cables, wires, lines, optic fiber, and any associated converters, equipment, or other facilities designed, constructed or occupied by Grantee for the purpose of producing, receiving, amplifying or distributing communications service to or from locations within the City.

g. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.

h. "Facilities" means any portion of a System located in, along, over, upon, under, or through the right-of-way.

i. "Grantee" - means Wildflower Telecommunications, LLC, a competitive telecommunications local exchange service provider providing local exchange service within the City. References to Grantee shall also include as appropriate any and all successors and assigns.

j. "Gross receipts" - shall mean only those receipts collected from within the corporate boundaries of the City and which are derived from the following: (1) recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) local directory assistance revenue; (4) line status verification/ busy interrupt revenue; (5) local operator assistance revenue; (6) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) revenue received by Grantee from resellers or others which use Grantee's facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services within the City.

k. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the Kansas Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

l. "Right-of-way" means the surface and space on, above and below every present and future municipal street, alley, avenue, road, highway, lane, parkway and

boulevard or City right-of-way dedicated or commonly used now or hereafter for utility purposes, including but not limited to overhead lighting facilities, and including utility easements wherein the City now or hereafter acquires the right and authority to locate or permit the location of utilities consistent with communications systems. This term shall not include any county, state, or federal right-of-way or any property owned or controlled by any person or agency other than the City, except as provided by applicable laws or pursuant to an agreement between the City and any such person or agency. Right-of-way shall not include property owned or held by City and not typically considered right-of-way such as City parks and City buildings.

The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

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

## **SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a. There is hereby granted to Grantee this contract franchise to construct, maintain, extend and operate its facilities along, across, upon or under any Right-of-way for the purpose of supplying telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this contract franchise, subject to the terms and conditions of this contract franchise.

b. The grant of this contract franchise by the City shall not convey title, equitable or legal, in the Right-of-way, and shall give only the right to occupy the Right-of-way for the purposes and for the period stated in this contract franchise. This contract franchise does not:

(1) Grant the right to use facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;

(2) Grant the authority to construct, maintain or operate any facility or related appurtenance on property owned by the City outside of the Right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or

(3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

c. As a condition of this contract franchise, Grantee is required to obtain and

is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by an appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC). Grantee shall provide City with copies of required permits. Grantee shall also comply with all applicable laws, statutes and/or ordinances.

d. This authority to occupy the Right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

### **SECTION 3. USE OF RIGHT-OF-WAY.**

a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such Right-of-ways or obstruct the legal use by other utilities.

b. Grantee's use of the Right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Right-of-way, including, but not limited to the City's ordinance for communications services regulating the use and occupancy of the Right-of-way and amendments thereto, as may be amended from time to time.

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

### **SECTION 4. COMPENSATION TO THE CITY.**

Compensation made pursuant to this contract franchise 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, said compensation shall be a sum equal to five percent (5%) of gross receipts. Thereafter, compensation for each calendar year of the remaining term of the contract franchise shall continue to be based on a sum equal to five percent (5%) of gross receipts; unless the City notifies Grantee prior to ninety days (90) 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 City elects compensation based on an access line fee, nothing herein precludes City from reverting back to a gross receipts fee provided City notifies Grantee prior to ninety days (90) 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 K.S.A. 12-2001.

#### **SECTION 5. RECORD REVIEW.**

The City shall have the right to examine, upon written notice to the Grantee, no more than once per calendar year, those records necessary to verify the correctness of the compensation paid pursuant to this contract franchise.

#### **SECTION 6. RESOLD SERVICES.**

Grantee shall collect and remit compensation as described in Section 4 on those access lines that have been resold to another telecommunications local exchange service provider.

#### **SECTION 7. INDEMNITY AND HOLD HARMLESS.**

a. It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., Grantee has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their gross negligence. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

b. Grantee shall indemnify and hold the City and its commissioners and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Right-of-way.

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

## **SECTION 8. INSURANCE REQUIREMENT AND PERFORMANCE BOND.**

a. During the term of this contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

(1) Workers' compensation as provided for pursuant to the laws of the state of Kansas with an employers' liability limit equal to the amount required by law.

(2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with an aggregate limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. Upon request, the City shall be included as an additional insured with respect to liability arising from Grantee's operations under this contract franchise.

b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City with a non-revocable Letter of Credit that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

## **SECTION 9. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this contract franchise, the City shall abide by the requirements of K.S.A. 12-2001 by providing reasonable notice and an opportunity for a public hearing before the City governing body before the contract franchise may be revoked.

## **SECTION 10. RESERVATION OF RIGHTS.**

a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

#### **SECTION 11. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

#### **SECTION 12. TERM AND TERMINATION DATE.**

a. This contract franchise shall be effective for a term of five (5) years from the effective date of this contract franchise. Thereafter, this contract franchise will renew for additional one (1) year terms, unless either party notifies the other party of its intent to terminate or renegotiate the contract franchise at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new contract franchise.

d. Amendments under this section, if any, shall be made by contract franchise ordinance as prescribed by statute. This contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this contract franchise upon the termination date of this contract franchise, the parties by written mutual agreement may extend the termination date of this contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this contract franchise and not as a new contract franchise ordinance or amendment.

f. Pursuant to K.S.A.12-2001 under no circumstances shall the term of this contract franchise exceed twenty (20) years from the effective date of this contract franchise.

### **SECTION 13. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City will be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery or by depositing such notice in the U.S. Mail, certified mail, return receipt requested. Any notice served by U.S. Mail, certified mail, return receipt requested, shall be deemed delivered five (5) Business days after the date of such deposit in the U.S. Mail unless otherwise provided. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

**The City:**

Cherise Tieben  
City Manager  
P.O. Box 880  
Dodge City, KS 67801  
(620) 225-8100

**Grantee:**

Daniel P. Friesen, President  
102 N. Main  
PO Box 258  
Buhler, KS 67522  
(620) 543-2580  
[Daniel@ideatek.biz](mailto:Daniel@ideatek.biz)

or to replacement addresses that may be later designated in writing.

#### **SECTION 14. CONFIDENTIALITY.**

Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 *et seq* and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorneys' fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this contract franchise.

#### **SECTION 15. COMPETITIVE NEUTRALITY**

The City agrees that under K.S.A.12-2001, and other state and federal laws, this contract franchise must be competitively neutral and may not be unreasonable or discriminatory to any telecommunications local exchange operating in the City. In entering into this contract franchise, the City specifically recognizes it must ensure all other telecommunications local exchange services providers operating in the City are subject to a substantially similar contract franchise within a timely manner not to exceed one hundred eighty (180) days from either the time this contract franchise becomes effective, or from the date a telecommunications local change service provider begins to offer local exchange service in the City. It is the City's sole responsibility to identify the telecommunications local exchange service providers operating in City, and utilize all available legal means, if necessary, to ensure all such telecommunications local exchange service providers are subject to a substantially similar contract franchise.

#### **SECTION 16. SEVERABILITY.**

If any clause, sentence, or section of this contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire contract franchise invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the contract franchise.

#### **SECTION 17. FORCE MAJEURE.**

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

**SECTION 18. VENUE.**

This franchise contract is made under and in conformation with and is subject to the laws of the State of Kansas.

**SECTION 19.** This ordinance shall take effect and be in force from and after its passage and publication once in the official City newspaper, and payment to the City of the costs of publication of this ordinance pursuant to KSA (2013 Suppl.) 12-2001(b)(6) and a one-time application fee for reimbursement of the actual legal expenses incurred by the City for the review and approval of this contract franchise pursuant to KSA (2013 Suppl.)12-2001(g).

**PASSED BY THE GOVERNING BODY**, this 5<sup>th</sup> day of May, 2014, for the City of Dodge City, Kansas.

\_\_\_\_\_  
Brian Delzeit, Mayor

ATTEST:

\_\_\_\_\_  
Nannette Pogue, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ken W. Strobel, City Attorney

\_\_\_\_\_  
Wildflower Telecommunications, LLC  
Daniel P. Friesen