

**MASTER CONSTRUCTION AND INSTALLATION SERVICES
AGREEMENT
V S.20.2**

THIS AGREEMENT is made and entered into by and between IdeaTek Telcom, LLC, a Kansas limited liability company hereinafter referred to as "IdeaTek," with offices located at 111 Old Mill Lane, Buhler KS 67522, and _____ hereinafter called the "Customer", a _____.

WHEREAS, Customer has determined that it is necessary, expedient and in the best interest of Customer to retain, obtain or employ IdeaTek to render and perform professional services in the manner set forth in this Agreement; and

WHEREAS, this Agreement is the result of competitive negotiation procedures.

WITNESSETH

Now therefore in consideration of the mutual agreements herein contained, it is agreed by and between the parties hereto as follows:

1. WORK ORDER(S)

Each job or group of jobs issued to IdeaTek by Customer shall be described in an **Attachment A – Work Order (a “Work Order”)**. Each Work Order shall have a signature line for acceptance by both IdeaTek and Customer. Upon full execution of any Work Order IdeaTek covenants and represents to Customer that IdeaTek shall provide services as described in each Work Order.

Each Work Order shall include:

- A. A **Scope of Service** including but not limited to details of services and materials to be provided, installation and materials specifications including quantity and price and other pertinent information. An attached quote with the pertinent details may suffice.
- B. **Contingencies and Assumptions.** IdeaTek must list any critical items related to the Work Order, especially any details which may affect price or timelines.
- C. **Delivery Timeline / Project Schedule.**
- D. **Payment Schedule.** Any lack of a payment schedule shall automatically make the Work Order NET 30 upon Work Order completion acceptance by Customer.

E. **Execution line** for each party so that each party may signify their acceptance of the Work Order.

In the event of a conflict between the terms and conditions provided in any Work Order or any attachment or exhibit thereto, the provisions of this Agreement shall prevail unless the term or provision in the attachment or exhibit specifically states that it shall prevail.

2. CONSTRUCTION SPECIFICATIONS

IdeaTek shall comply with any installation or material specifications included in any Work Order and all standardized specifications which may be attached to this Agreement as attachment(s) which are attached or may otherwise be made a part of this Agreement from time to time by addendum or amendment mutually accepted by the Parties.

3. INENTIONALLY OMITTED

4. CONTRACT TERM

Unless terminated pursuant to Section 5 of this Agreement, the terms and provisions of this Agreement shall remain in effect until such time as any and all Work Order(s) authorized by this Agreement are completed.

5. RIGHT TO CURE AND TERMINATION

This Agreement may only be terminated by a) written mutual agreement by the Parties; or b) upon either Party's failure to comply any material term of this Agreement and subsequent failure to cure.

Should either Party fail to comply with any material term of this Agreement, the non-breaching Party shall provide the breaching Party with a written "Notice to Cure" which shall state the manner in which the Party has failed to comply with the Agreement. The Party receiving the notice shall then have 10 days following receipt to cure any defects or non-compliance. In the event said breach is not cured within that time period, the non-breaching may terminate this Agreement immediately by delivery of written notice to the other.

6. NOTICES

All notices or written communications required or permitted hereunder shall be deemed to be given when delivered, if hand delivered, emailed, or when deposited in the U.S. mail, postage prepaid and addressed as follows:

If mailed to IdeaTek:

Daniel P. Friesen
Attn: Legal Notice
111 Old Mill Lane
Buhler, KS 67522
Daniel@ideatek.com

If mailed to Customer:

Notice of termination or a disputed claim shall be served by certified or registered mail, return receipt requested or by hand delivery.

7. GENERAL CONDITIONS

A. MAINTENANCE OF RECORDS.

- a. IdeaTek shall maintain records, accounts, property records, and personnel records in accordance with generally accepted accounting principles, as required by Customer to assure proper accounting of funds and compliance with the provisions of this Agreement.
- b. IdeaTek shall provide Customer all necessary information, records and contracts required by this Agreement as requested by Customer for monitoring and evaluating services. IdeaTek shall retain all of its records and supporting documents related to this Agreement in accordance with all applicable laws, rules and regulations. In the absence of any other requirement, such records and supporting documents will be retained by IdeaTek for at least three (3) years after the termination of this Agreement.

B. COMPLIANCE WITH LAWS; NON-DISCRIMINATION. IdeaTek shall comply with all applicable laws, orders, permits, and regulations of Federal, State, and local governments including, but not limited to, the Americans with Disabilities Act. Additionally IdeaTek covenants and agrees that no person shall be discriminated against on the grounds of race, creed, color, handicap, national origin, sex, age, or beliefs or be excluded from participation in, be denied the benefits of employment by IdeaTek, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available by Customer.

C. CONTRACTUAL LIABILITY. The relationship of IdeaTek to Customer shall be that as independent contractors and not as employer and employee or principal and agent. Nothing herein contained shall be construed as vesting or delegating to IdeaTek or any of the officers,

employees, personnel, contractors, or sub-contractors of IdeaTek any rights, interest or status as an employee of Customer. Customer shall not be liable to any person, firm or corporation that is employed by, contracts with or provides goods or services to IdeaTek in connection with any Work Order or for debts or claims accruing to such parties.

8. INDEMNIFICATION

IdeaTek shall indemnify, keep and save harmless Customer, its officials and employees, whole and harmless from and against all injuries, deaths, losses, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may accrue against Customer arising out of the performance or failure to perform any obligations pursuant to a Work Order authorized by this Agreement. IdeaTek shall pay all charges of attorneys and all costs and other expenses incurred in connection therewith, and if any judgment shall be rendered against Customer in any such action, IdeaTek shall, at its own expense, satisfy and discharge the same up to and including an amount equal to the total fees earned or to be earned under the terms of this Agreement. IdeaTek expressly understands and agrees that any performance bond or insurance protection required by this Agreement, or otherwise provided by IdeaTek, shall in no way limit the responsibility to indemnify Customer as herein provided.

Customer shall indemnify, keep and save harmless IdeaTek, its officials and employees, whole and harmless from and against all injuries, deaths, losses, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may accrue against IdeaTek arising out of the performance or failure to perform any of Customer's obligations as set forth by this Agreement. Customer shall pay all charges of attorneys and all costs and other expenses incurred in connection therewith, and if any judgment shall be rendered against IdeaTek in any such action, Customer shall, at its own expense, satisfy and discharge the same up to and including an amount equal to the total fees earned or to be earned under the terms of this Agreement.

The indemnity hereunder shall continue until such time as any and all claims arising out of the alleged negligent performance or intentional failure to perform under this Agreement have been finally settled, regardless of when such claims are made.

In the event that any action, suit or proceeding is brought against either Party arising out of this Agreement, the Parties shall give the other notice thereof in writing to the above listed addresses. Upon receipt of notice, the Party, at its own expense, shall defend against such action and take all such steps as may be necessary or proper to prevent a judgment against the other Party. Nothing in this Agreement shall be deemed to affect either Party's right to provide its own defense and to recover from the other its attorneys' fees and expenses associated with such representation or the rights, privileges and immunities as set forth in KSA 58-2312, as amended.

9. INSURANCE

Without limiting any of the other obligations or liabilities of IdeaTek, IdeaTek shall, at IdeaTek's

sole expense, procure, maintain and keep in force during the period of this Agreement, amounts and types of insurance conforming to the nature and type represented by the Certificates of Insurance required below:

- A. \$2,000,000.00 of Commercial General Liability Insurance
- B. \$1,000,000.00 Business Automobile Liability Insurance
- C. Worker's Compensation Insurance in accordance with applicable law

In addition to the insurance specified above, IdeaTek shall procure such other or additional insurance for a term as may be specified in any Work Order.

Until such time as the specified insurance is no longer required under this Agreement IdeaTek shall provide Customer with renewal or replacement certificates of insurance not less than 15 days prior to the expiration or replacement of the insurance for which a previous certificate has been provided. In the event a renewal or replacement certificate is not available IdeaTek shall, not less than 15 days prior to expiration of any existing policy, provide Customer with evidence of a binder proving continuation of coverage and a new certificate as reasonably soon as possible.

Customer, shall be named as an additional insured on the certificate of insurance evidencing commercial general liability coverage.

10. COVENANTS OF CUSTOMER

Customer hereby covenants and agrees:

- A. Customer shall make available at no cost to IdeaTek all data relative to the project that is required by IdeaTek for the performance of the any Work Order.
- B. Customer shall give prompt notice to IdeaTek whenever Customer observes or otherwise becomes aware of any defect in the performance of work under this Agreement.
- C. Customer shall give careful and reasonable consideration to the findings and recommendations of IdeaTek and shall respond and issue notices to proceed in a timely manner so as not to unduly delay IdeaTek's work called for by this Agreement.
- D. Customer shall perform activities in this Section at no cost to IdeaTek.

11. COVENANTS OF IDEATEK

IdeaTek hereby covenants and agrees:

- A. That each Work Order shall be performed in a good and workmanlike manner in accordance with the terms and conditions of this Agreement and said Work Order.

- B. IdeaTek shall always perform underground construction work in accordance with the rules and guidelines of the Kansas Underground Utility Damage Prevention Act (Kansas One Call) and all applicable local and state regulations related to underground utility protection.
- C. IdeaTek, at its sole expense, shall fully comply with all applicable utility installation permits of the project, including and especially any required notices for construction start and / or completion.
- D. IdeaTek shall regularly communicate as required in reasonable formats with any permitting authorities on the progress, compliance of installations, and other requested or required notices or communications.
- E. That all employees assigned to render services under this Agreement shall be duly qualified, registered, licensed or certified to provide the services required. All services shall comply with such reasonable supplemental written memoranda and directives provided by Customer, which is not in conflict with this Agreement.
- F. That any workmanship discovered within one (1) year after completion of construction shall be remedied by IdeaTek within thirty (30) days after notice in writing of the existence thereof. In the event of failure by IdeaTek to do so, Customer may remedy such defective workmanship or replace such defective materials or equipment, as the case may be, and in such event IdeaTek shall reimburse Customer for the full costs thereof and all expenses incurred by Customer as a result of such defect.

12. DISPUTE RESOLUTION

The services shall be performed by IdeaTek to the reasonable satisfaction of Customer, and all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof, shall be resolved as follows:

- A. First, through good faith negotiations by the designated representatives of the parties and if not resolved by such designated agents after twenty one (21) days, IdeaTek shall submit its claim, with the basis for the dispute, in writing to Customer for a determination and handling. If such dispute involves the percentage of task completed by IdeaTek, Customer shall, as promptly as reasonably possible after resolution of such dispute, forward payment to IdeaTek of any amount determined to be due and owing;
- B. If any dispute is not resolved in accordance with subparagraph A, the Parties shall, before resorting to litigation or other proceeding for resolution of the dispute, endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association or such other rules and procedures upon which the Parties may mutually agree. The location of the mediation shall be at Customer offices at

111 Old Mill Lane in the City of Buhler, Kansas unless another location is mutually agreed to, in writing. Once one party files a request for mediation with the other party, the parties agree to conclude such mediation within ninety (90) days of filing the request.

C. In the event any dispute is not resolved as provided above, each party may pursue such legal remedies as may be available under the laws of the State of Kansas.

13. INTENTIONALLY OMITTED

14. PROTECTION TO PERSONS AND PROPERTY

IdeaTek shall at all times take all reasonable precautions for the safety of employees on the worksite and of the public, and shall comply with all applicable provisions of Federal, State and Municipal safety laws, OSHA regulations, environmental regulations, permits, and building and construction codes.

The following provisions shall not limit the generality of the above requirements:

- A. IdeaTek shall so conduct the work required by each Work Order as to cause the least possible obstruction of public highways or streets.
- B. IdeaTek shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.
- C. IdeaTek shall comply with all applicable utility, building, or installation permits required for any Work Order at its sole cost.
- D. IdeaTek shall do all things necessary or expedient to protect properly any and all parallel, converging and intersecting utilities and any and all property of others from damage, and in the event that any such parallel, converging and highways, other utilities or other property are damaged in the course of the construction of the Project, IdeaTek shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.
- E. **IF ANY DAMAGE OCCURS TO AN UNDERGROUND FACILITY OR ITS PROTECTIVE COVERING, THE EXCAVATOR SHALL NOTIFY THE OPERATOR PROMPTLY. IF THE DAMAGE RESULTS IN THE ESCAPE OF ANY FLAMMABLE, TOXIC, OR CORROSIVE GAS OR LIQUID OR ENDANGERS LIFE, HEALTH, OR PROPERTY, THE EXCAVATOR RESPONSIBLE SHALL IMMEDIATELY NOTIFY THE OPERATOR AND THE 911 PUBLIC SAFETY ANSWERING POINT AND TAKE IMMEDIATE ACTION TO PROTECT THE PUBLIC AND PROPERTY.**

- F. Any and all excess earth, rock, debris, underbrush and other useless material shall be removed by IdeaTek from the area described in any Work Order or relocated to the satisfaction of Customer in a timely manner and as rapidly as practicable as the work progresses.
- G. Upon violation by IdeaTek of any of the provisions of this Section, after written/email notice of such violation given to IdeaTek by Customer, IdeaTek shall immediately correct such violation. Upon failure of IdeaTek to do so, Customer may correct such violation at IdeaTek's expense.
- H. IdeaTek shall immediately notify Customer of any accidents, giving such data as may be prescribed by Customer.

15. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Kansas. Any action filed regarding this Agreement will be filed only in the Kansas District Court in Reno County, Kansas.

16. FORCE MAJEURE

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, accident, fire, flood, wind, earthquake, explosion, lack of or failure of transportation facilities, any law, proclamation, regulation, ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause, whether or not enumerated in this Section, is beyond the control and without the fault or negligence of the party seeking relief under this Section.

17. MISCELLANEOUS

- A. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- B. All pricing excludes all applicable sales and use tax and performance/construction bond fees unless otherwise specified.
- C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

D. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement, is, by the courts held to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

E. No failure on the part of Customer to enforce or to demand compliance with any provision of this Agreement shall constitute a waiver of any such right or compliance.

18. AMENDMENTS

This Agreement may be amended only by written agreement executed by an authorized representative of each party.

19. SEVERABILITY

In the event that any provision of this Agreement is finally determined by a court of competent Jurisdiction to be invalid, such adjudication shall not affect or nullify the remaining paragraphs hereof, but shall be confined solely to the paragraphs involved in such decision

20. HEADINGS

All sections and descriptive headings of paragraphs in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

21. AUTHORITY TO EXECUTE

Each of the parties hereto covenants to the other party that it has lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

[signature page to follow]

IN WITNESS WHEREOF, the parties have executed this Construction Agreement effective for all purposes as of this date: _____

IDEATEK TELCOM, LLC

("Customer")

("IdeaTek")

By: _____

By: _____

Print Name: Daniel P. Friesen

Print Name: _____

Its: CIO

Its: _____

Dated: _____

Dated: _____

1

are incorporated herein by reference.

Date: 9/14/20

1. **Scope of Service.** IdeaTek shall perform the scope of work defined in its August 28th, 2020 RFP response to the 2020 Finney County Fiber Project RFP attached hereto (the “RFP Response”).

In Summary:

- A. An approximately 4-mile mainline fiber route
- B. 144 Count Fiber in 2" Duct
- C. 48 Count and pedestals at the County Fairgrounds
- D. Multiple service locations with fiber entrances and rack and panel
- E. all associated engineering, designs, splicing, materials, and documentation.
- F. IdeaTek allowed to use joint trench for its own physically separate facilities

- 2. Contingencies and Assumptions.** See page 22 of the RFP Response.

- ### 3. Delivery Timeline / Project Schedule.

Finney County Fiber Project Ideatek Proposed Project Schedule

[illegible]

4. Pricing.

<u>Primary Routes</u>	
\$1,400,000	Primary route 144 ct Route from from Finney County Extension to Northeast Handhole
\$57,000	Special extension 48 ct Finney County Extension to Fairgrounds with multiple drop points per RFP
\$1,457,000	<i>subtotal</i>
<u>Other extensions / laterals</u>	
\$25,000	Health Dept
\$27,000	EMS
\$25,000	Future EMS
\$23,000	Administration Building
\$36,500	Senior Center and Finney County Transit
\$136,500	<i>subtotal</i>
\$1,593,500	<i>Grand Total</i>
<u>Options</u>	
\$30 / ft	Extend route beyond design (per foot) w/ HH every 1000ft
-\$200,000	Joint trench discount
included*	Fiber locate and repair services (10 years)
*if joint trench proposal is accepted	

Pricing Includes

1. Engineering (sealed by licensed Kansas P.E.)
 - i. Design
 - ii. Survey
 - iii. Permitting
 - iv. Inspection
 - v. As-builts
 - vi. Post bid package with OTDR, splice log, as-builts, material specs
- b. Install into building with entrance, in-building duct, fiber patch panel, terminated to UPC LC female connections
2. Fiber count as specified / non-gel, single armor, single jacket
3. 2" HDPE Conduit
4. Concrete remove / repair / replace
5. 24" x 36" Handhole / traffic rated standard lid
6. Handhole installation with slack placement
7. Fiber markers at handholes and critical crossings
8. Locate marker and test points at select handholes

9. Splice cases, fusion splices and materials
10. Locate wire or cable armor locate
11. Other materials as required by RFP
12. Expedited RR permit (qty 1)
13. Completion by year end 2020

5. Payment Schedule.

- A. Total Job \$1,393,500.00
- B. 20% upon work order signing
- C. Increment progression invoices corresponding with work order percentage completion, no more than weekly, up to 80% total.
- D. 20% upon Customer approval of job completion*

* Customer will work diligently to ensure that a completion payment is paid by December 30th, 2020 in compliance with SPARK and CARES Act funding requirements even if job completion is near the end of the year and requires expedited payment outside any normal payment processes.

compliance

6. Completion Date. 12/30/20

7. Warranty. 10 years parts and labor.

As part of the extended warranty services available to the Customer as offered in the RFP response, the Customer has the option for utilize IdeaTek for repair and locate services of the Work Order #1 facilities for 10 years from of the completion of Work Order #1 at no additional charge. IdeaTek and Customer agree to negotiate a 10-year services agreement for such purpose as soon as practicable.

IDEATEK TELCOM, LLC
 ("IdeaTek")

By: _____

Print Name: _____

Its: _____

Dated: _____

 ("Customer")

By: _____

Print Name: _____

Its: _____

Dated: _____