

ORDINANCE NO. 2626

AN ORDINANCE GRANTING TO SOUTHWESTERN BELL TELEPHONE COMPANY, LLC D/B/A AT&T KANSAS, A CONTRACT FRANCHISE FOR THE PROVISION OF TELECOMMUNICATIONS SERVICE IN THE CITY OF DE SOTO, KANSAS, AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.

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

SECTION 1: GRANT OF CONTRACT FRANCHISE.

- A.** Subject to the provisions of K.S.A. 12-2001 and K.S.A. 17-1902 and amendments thereto respectively, a nonexclusive contract franchise ordinance is hereby granted to Southwestern Bell Telephone Company, LLC d/b/a AT&T Kansas (“AT&T Kansas”), a telecommunications local exchange service provider providing local exchange service within the City of De Soto, Kansas (“City”), for the purpose of providing any telecommunications services or system, including but not limited to, supplying local exchange telecommunications services to the consumers or recipients of such service located within the corporate boundaries of the City, subject to the provisions set forth hereafter.
- B.** The initial term of this contract franchise ordinance shall be for a period of three (3) years beginning January 1, 2025, and ending January 1, 2028. Thereafter, this contract franchise ordinance will automatically renew for additional one (1) year terms (hereinafter the “renewal term”), unless either party notifies the other party of its intent to terminate the contract franchise ordinance 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 ordinance and not as a new contract franchise ordinance or amendment. Pursuant to K.S.A. 12-2001(b)(2) under no circumstances shall this contract franchise ordinance exceed twenty (20) years from the effective date of the initial term of the contract franchise ordinance. Compensation for said contract franchise ordinance shall be established pursuant to Section 3 of this ordinance.
- C.** The grant of this contract franchise by the City shall not convey title, equitable or legal, in the public right-of-way. 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 public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or,

3. Excuse AT&T Kansas from obtaining appropriate access or attachment agreements before locating its facilities on the facilities owned or controlled by the City or a third-party.
- D. As a condition of this contract franchise ordinance, AT&T Kansas is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) and/or the Kansas Corporation Commission (KCC), subject to AT&T Kansas' right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. AT&T Kansas shall also comply with all applicable laws, statutes and/or ordinances, subject to AT&T Kansas' right to challenge in good faith such laws, statutes and/or ordinances.
 - E. AT&T Kansas shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this contract franchise, and AT&T Kansas shall not knowingly allow the use of its facilities by any third party in violation of any federal, state or local law. This contract franchise does not provide AT&T Kansas the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. AT&T Kansas agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
 - F. Access to the public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law. Nothing stated or contained herein shall be construed as giving AT&T Kansas any exclusive privileges, nor shall it affect any prior or existing rights of AT&T Kansas to maintain a telecommunications system within the City.

SECTION 2: DEFINITIONS.

For this contract franchise ordinance, the following words and phrases and their derivations shall have the meaning given herein regardless of capitalization. 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. The word "shall" is always mandatory, and not merely directory.

- 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 serviced 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 determined by a city, up to a maximum as set out in K.S.A. 12-2001 and amendments thereto, to be used by a telecommunications local exchange service provider in calculating the amount of access line remittance.
- D. **“Access line remittance”** means the amount to be paid by a telecommunications local exchange service provider to a city, the total of which is calculated by multiplying the access line fee, as determined in the city, by the number of access lines served by that telecommunications local exchange service provider within that city for each month in that calendar quarter.
- E. **“Gross receipts”** means only those receipts collected from within the corporate boundaries of the city enacting the franchise and which are derived from the following: (A) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; and (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. 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 a telecommunications local exchange service provider 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 in the city.

- F. **“Local exchange service”** means local switched telecommunications service within any local exchange service area approved by the state 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.
- G. **“Public right-of-way”** means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include that area on, below, or above the present and future streets, alleys, avenues, roads, highways, parkways, or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities outside of the public right-of-way or private easements in platted subdivisions or tracts.
- H. **“Telecommunications local exchange service provider”** means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service or any wireless telecommunications local exchange service provider.
- I. **“Telecommunications 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 3: COMPENSATION TO THE CITY.

- A. In consideration of this contract franchise, AT&T Kansas agrees to remit to the City a franchise fee of five percent (5%) of gross receipts. To determine the franchise fee, AT&T Kansas shall calculate the gross receipts and multiply such receipts by 5%. Compensation during renewal terms of the contract franchise ordinance shall continue to be calculated on the same basis as during the initial term and compensation shall be paid as provided for in this section.
- B. Compensation made pursuant to this contract franchise ordinance shall be paid on a quarterly basis without invoice or reminder from the City and paid not later than forty-five (45) days after the end of the remittal period. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, pursuant to K.S.A. 16-201, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

- C.** Upon thirty (30) days prior written request by the City, but no more than once per quarter, AT&T Kansas shall submit to the City a certified statement executed by an authorized officer of AT&T Kansas (or his or her designee) showing the amount of gross receipts for the period covered by the payment, and the manner in which the franchise fee was calculated.
- D.** The City may provide notice to AT&T Kansas prior to ninety (90) days before the end of the initial term or a subsequent renewal term that it intends to decrease the percentage of gross receipts or switch to an amount per month per access line for the following renewal term year. Any change to an access line fee or decreased gross receipt fee shall be fixed for a period of three (3) years, pursuant to K.S.A. 2015 12-2001(l) and amendments thereto, and shall be made in compliance with the public notification procedures set forth in K.S.A. 12-2001(m) and amendments thereto and shall be collected and remitted under the terms of this contract franchise ordinance. Following that three (3) year period, nothing herein, except the provisions of Sec. 1B., precludes the City from additional changes in franchise compensation methodology so long as the City notifies AT&T Kansas prior to ninety (90) days before the end of the renewal term and said change is made consistent with the provisions of K.S.A. 12-2001(m) and any amendments thereto.
- E.** Unless previously paid, within sixty (60) days of the effective date of this contract franchise, AT&T Kansas shall pay to the City a one-time application fee of One Thousand Dollars (\$1,000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.
- F.** The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and K.S.A. 17-1902, and amendments thereto. The franchise fee is compensation pursuant to K.S.A. 12-2001(j) and shall in no way be deemed a tax of any kind.
- G.** AT&T Kansas shall collect and remit an access line fee or a gross receipts fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance, unless said reseller also provides non-resold local exchange services. Such access line fee or gross receipts fee shall be in the same amount or percentage as the franchise fee set forth in subsection 3.A. hereinabove.
- H.** The City agrees that pursuant to K.S.A. 12-2001(j) (1), (2) and amendments thereto, that the franchise fee imposed under this contract franchise ordinance must be assessed in a competitively neutral manner, may not unduly impair competition, must be nondiscriminatory and must comply with state and federal law.

SECTION 4: AUDIT & INSPECTION.

- A.** To verify AT&T Kansas' compliance with this Agreement, the City shall have the right to examine, audit, inspect, review, and/or obtain copies of (collectively, "Audit") at its sole cost and expense (except as otherwise provided in this subsection), the papers, books, accounts, documents, maps, plans and other records (collectively, the "Records") of AT&T Kansas pertaining to all revenue derived by AT&T Kansas from the operation of the telecommunications service during the term of this contract. Written notice of Audit shall be provided by City, pursuant to Section 10 below, to AT&T Kansas upon no fewer than thirty (30) business days and shall be performed no more often than once per calendar year. AT&T Kansas shall fully cooperate in making reasonably available its Records and otherwise assisting in these activities as is necessary for City to reasonably verify the correctness of the franchise fees paid by AT&T Kansas. The City may extend the time for the provision of such Records upon a reasonable showing by AT&T Kansas that such extension is justified. In the event that such Audit results in a determination that additional franchise fees are due the City, AT&T Kansas shall be provided a copy of said Audit and provided thirty (30) days to pay any deficiency or contest the results of the Audit. In the event that such Audit results in a determination of overpayment of franchise fees, City shall, within 30-days of such Audit determination, work with AT&T Kansas to establish a credit or refund of the amount overpaid.
- B.** No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 2015 Supp. 12-2001, and amendments thereto.

SECTION 5: USE OF PUBLIC RIGHT-OF-WAY.

- A.** Pursuant to K.S.A. 17-1902, and amendments thereto, AT&T Kansas has the right to construct, maintain and operate its facilities along, across, upon and under the public 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 public ways or obstruct the legal use of such public ways by other utilities.
- B.** AT&T Kansas's use of the public right-of-way shall be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City, including, but not limited to, Article 4 of Chapter XII of the De Soto Municipal Code and any amendments thereto. The City may exercise its home rule powers in its administration and regulation related to the management of the public right-of-way; provided that any such exercise must be competitively neutral, may not be unreasonable or discriminatory, and may not violate any applicable state or federal law, rule or regulation. AT&T Kansas and all other right-of-way users 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 public right-of-way. City shall, pursuant to Section 10 below, provide notice of the consideration or adoption of any rule, regulation, policies, resolutions, or ordinances relating to, but not limited to, Article 4 of Chapter XII of the De Soto Municipal Code, or the construction and use of the public right-of-way, because such adoption affects AT&T Kansas' use of the public right-of-way.

- C. AT&T Kansas shall participate in the Kansas One Call utility location program.
- D. City may require AT&T Kansas to repair all damage to a public right-of-way caused by the activities of AT&T Kansas, or of any agent, employee, or subcontractor of AT&T Kansas, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way, to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the City. If AT&T Kansas fails to make the repairs required by the City within a reasonable time after written notice, the City may affect those repairs and charge AT&T Kansas the reasonable cost of those repairs, provided such costs are subject to substantiation by proof satisfactory to AT&T Kansas before any payment may become due. If the City incurs damages as a result of a violation of this subsection, then the City shall have a cause of action against AT&T Kansas for violation of this subsection and may recover its damages, including reasonable attorney fees, if AT&T Kansas is found liable by a court of competent jurisdiction.
- E. If requested by the City, to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, AT&T Kansas promptly shall remove its facilities from the public right-of-way or shall relocate or adjust its facilities within the public right-of-way at no cost to the City, providing such request similarly binds all users of such right-of-way. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any written request by the City for such relocation or adjustment, providing that the City shall use its best efforts to provide AT&T Kansas with a minimum of one hundred eighty (180) days advance notice to comply with any such relocation or adjustment. AT&T Kansas shall designate one (1) person within its organization by his/her employment position to whom relocation notices shall be sent and with whom rests the responsibility to facilitate all necessary communications within AT&T Kansas' various areas. Any damages suffered by the City or its contractors as a result of AT&T Kansas' failure to timely relocate or adjust its facilities shall be borne by AT&T Kansas. The City shall give AT&T Kansas contemporaneous, written notice of any damages alleged to have been suffered by the City or its contractors as a result of any alleged failure to timely relocate or adjust facilities.
- F. Where a project that may require the removal or relocation/adjustment of facilities as referenced in the preceding paragraph is triggered by or results from, in whole or in part, a plan for private benefit or development, the City shall require, as a condition of its approval of any request for alteration of the public right-of-way

from any private party or parties, that such private party or parties shall reimburse AT&T Kansas for the cost of relocation or adjustment to the extent of such private benefit or development, as reasonably agreed between AT&T Kansas and the private developer or party. AT&T Kansas shall not be obligated to commence the relocation or adjustment until receipt of funds from such private party or parties. AT&T Kansas understands that the City has no obligation to collect such reimbursement; however, AT&T Kansas shall have no liability for delays caused by a private party's failure to reimburse costs associated with said relocation or adjustment of facilities.

SECTION 6: INDEMNITY AND HOLD HARMLESS.

- A.** It shall be the responsibility of AT&T Kansas to take adequate measures to protect and defend its facilities in the public right-of-way from harm or damage. If AT&T Kansas 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., it 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 its (their) negligence or intentional conduct. The City and its authorized contractors shall take reasonable precautionary measures, including, but not limited to, calling for utility locations and observing marker posts when working near AT&T Kansas's facilities.

- B.** AT&T Kansas shall indemnify and hold the City and its officers 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 AT&T Kansas, any agent, officer, director, employee or subcontractor of AT&T Kansas while installing, repairing or maintaining facilities in the public right-of-way. The indemnity provided by this subsection does not apply to any liability (whether joint or severable) resulting from the negligence of the City, its officers, employees, agents, and/or authorized contractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the determination of said court. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity. Notwithstanding the foregoing, nothing herein shall in any way obligate AT&TKansas for the negligence of any other third party or any portion of any harm caused by the same.

- C.** AT&T Kansas and City shall promptly advise the other in writing of any known claim or demand against AT&T Kansas or the City related to or arising out of AT&T Kansas' or the City's activities in the Public right-of-way.

SECTION 7: INSURANCE REQUIREMENTS.

- A.** During the term of this Contract franchise, AT&T Kansas shall obtain and maintain insurance coverage at its sole expense, with insurers rated at least A-VII by AM Best and that are authorized or permitted to do business in the State of Kansas. AT&T Kansas shall provide not less than the following insurance:
1. Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed; and
 2. Employers' liability limit with a limit of One Million Dollars (\$1,000,000) each accident/by disease each employee and each employee policy limit; and,
 3. Commercial general liability, written on Insurance Services Office (ISO) policy form CG 00 01 or its equivalent, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of Two Million Dollars (\$2,000,000) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage. The City shall be included as an additional insured as its interest may appear with respect to liability arising from AT&T Kansas's operations under this contract franchise.
- B.** As an alternative to the requirements of subsection (A), AT&T Kansas may demonstrate to the satisfaction of the City that it is self-insured and as such AT&T Kansas 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 AT&T Kansas, or alleged to so have been caused or occurred as respects this contract franchise. In the event AT&T Kansas elects to self-insure its obligation to include City as an additional insured, the following provision shall apply [in addition to those set forth in subsection (A)]:
- (1) City shall promptly and no later than thirty (30) days after notice thereof provide AT&T Kansas with written notice of any claim, demand, lawsuit or the like, for which it seeks coverage pursuant to the Section and provide AT&T Kansas with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit or the like;
 - (2) City shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of AT&T Kansas; and,
 - (3) City shall fully cooperate with AT&T Kansas in the defense of the claim, demand, lawsuit or the like.

AT&T Kansas shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, via an ACORD 28 or equivalent, evidencing that the above insurance is in force. AT&T Kansas will provide at least 30 days written notice to Additional Insured, of cancellation or non-renewal of any required coverage that is not replaced with respect to areas and entities covered.

SECTION 8: NOTICE OF ANNEXATIONS.

The City agrees to provide AT&T Kansas with notification, pursuant to the provisions of Section 10 below, in the event that it annexes property into the corporate boundaries of the City that would require AT&T Kansas to collect and remit a franchise fee on access lines or gross receipts which prior to the annexation of the property AT&T Kansas was not required to collect and/or remit. The City agrees to provide AT&T Kansas with notification in the event the City renumbers or renames any streets that would require AT&T Kansas to collect and pay a franchise fee on access lines or gross receipts which prior to the renumbering or renaming of the streets AT&T Kansas would not have been required to collect and/or remit. The City agrees that in the event the City does not provide AT&T Kansas with notice of an annexation or renumbering and/or renaming of the streets, AT&T Kansas shall not be liable to the City for payment of franchise fees on the annexed property or renumbered and/or renamed streets for any time period prior to the City providing the required notice to AT&T Kansas. Notwithstanding the foregoing, as part of this contract franchise, AT&T Kansas specifically acknowledges the most recent Boundary Resolution provided by the City as part of this Franchise and agrees to collect the fee provided for hereinabove as to all properties included within the boundary described in said Boundary Resolution.

SECTION 9: AMENDMENTS.

- A.** Upon written request of either the City or AT&T Kansas, 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 AT&T Kansas, including but not limited to the scope of the Contract franchise granted to AT&T Kansas or the compensation to be received by the City hereunder.
- B.** Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect, or shall be extended by the parties, according to its terms, pending completion of any review or negotiation provided by this section. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.
- C.** In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to the Contract franchise upon the expiration or termination date of this Contract franchise, the parties by written

mutual agreement may extend the expiration or 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.

SECTION 10: NOTICES.

AT&T Kansas shall maintain with the city a point of contact who shall be available to act on behalf of AT&T Kansas in the event of an emergency. AT&T Kansas shall provide the City with said contact person's name, address, telephone number or numbers, fax number and e-mail address. Emergency notice by AT&T to the City may be made by telephone to the City Clerk or the City Engineer or designee. All other required or permitted notice under this contract franchise ordinance shall be made in writing. Notice upon the City shall be delivered to the City by certified, first class United States mail, return receipt requested or overnight delivery by a nationally recognized courier to:

City of De Soto, Kansas
Attn: City Clerk
P.O. Box C
De Soto, KS 66018

With a copy to:
City of De Soto, Kansas
Attn: City Attorney's Office
P.O. Box C
De Soto, KS 66018

Notice upon AT&T Kansas shall be delivered by certified, first class, United States mail, return receipt requested or by overnight delivery by a nationally recognized courier to:

Southwestern Bell Telephone Company, LLC
d/b/a AT&T Kansas
External & Legislative Affairs
5400 Foxridge Dr., Rm. 100
Mission, KS 66202

All written notices shall be deemed delivered upon actual receipt or refusal of delivery. Replacement addresses may be later designated in writing by either party.

SECTION 11: FAILURE TO ENFORCE.

The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this contract franchise ordinance shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

SECTION 12: FORCE MAJEURE.

Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond AT&T Kansas' or the City's control.

SECTION 13: SEVERABILITY.

AT&T Kansas has entered into this contract franchise ordinance as required by the City and K.S.A. 12-2001 and amendments thereto. If any clause, sentence, section, or provision of either this contract franchise or K.S.A. 12-2001 and amendments thereto, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this contract franchise ordinance, as a whole or any part thereof, other than the part declared invalid; provided, however, that either the City or AT&T Kansas may elect to terminate the entire contract franchise ordinance if the portion declared invalid is, in the judgment of the City or AT&T Kansas, an essential part of the contract franchise. In the event a court of competent jurisdiction invalidates K.S.A. 12-2001 and amendments thereto, if AT&T Kansas is required by law to enter into a contract franchise ordinance with the City, the parties agree to act in good faith in promptly negotiating a new contract franchise ordinance.

SECTION 14: RESERVATION OF RIGHTS.

- A.** The City and AT&T Kansas hereby acknowledge that the City, in accordance with 47 U.S.C. § 253, may not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. To the extent permitted by law, the City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, to participate in proceedings concerning AT&T Kansas' rates and services to ensure the rendering of efficient telecommunications service and any other services at reasonable rates, and the maintenance of the public right-of-way and AT&T Kansas' 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, AT&T Kansas 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 or applicable federal laws and regulations, 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 or any other State or federal laws.
- D.** In entering into this contract franchise ordinance, neither the City's nor AT&T Kansas' 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 ordinance, neither the City nor AT&T Kansas waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or AT&T Kansas may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or

appropriateness of this contract franchise ordinance or any present or future laws, ordinances, and/or rulings which may be the basis for the City and AT&T Kansas entering into this contract franchise ordinance.

SECTION 15: REVOCATION AND TERMINATION.

In case of failure on the part of AT&T Kansas to comply with any of the material provisions of this Contract franchise, or if AT&T Kansas should do or cause to be done any material act or thing expressly prohibited by or in violation of the terms of this Contract franchise, AT&T Kansas shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon AT&T Kansas, setting forth in detail the neglect or failure complained of, and AT&T Kansas shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the Governing Body present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford AT&T Kansas due process, it shall first be provided reasonable written notice of the date, time and location of the Governing Body's consideration, and shall have the right to address the Governing Body regarding such matter; and further provided, if the nature of the default is such that it cannot be reasonably cured within the above said sixty (60) day period, and the Governing Body believes AT&T Kansas has in good faith timely commenced its cure and is diligently pursuing the completion of the same, it shall be given a reasonable additional period of time to complete its cure. Nothing herein shall prevent either party from invoking any other remedy that may otherwise exist at law. Upon any determination by the Governing Body to revoke and terminate this Contract franchise, AT&T Kansas shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless AT&T Kansas has instituted such an appeal. If AT&T Kansas does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of AT&T Kansas to comply with any of the provisions of this Contract franchise or the doing or causing to be done by AT&T Kansas of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of AT&T Kansas is due to any cause or delay beyond the control of AT&T Kansas or to bona fide legal proceedings.

SECTION 16: TRANSFER AND ASSIGNMENT.

- A.** This contract franchise is granted solely to the AT&T Kansas and shall not be transferred or assigned without the prior written approval of the City; provided

that such transfer or assignment may occur without written consent of the City to any entity controlling, controlled by or under common control with AT&T Kansas. The parties acknowledge that said City consent shall only be regarding the transfer or assignment of this contract franchise, and that, in accordance with Kansas Statutes, the City does not have the authority to require City approval of transfers of ownership or control of the business or assets of AT&T Kansas.

- B.** In the event of any transfer or assignment of either this contract franchise or AT&T Kansas' business or assets, AT&T Kansas shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment. Additionally, AT&T Kansas' obligations under this contract franchise regarding indemnity and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment. In the event an entity acquires substantially all of the assets of AT&T Kansas, said successor entity shall be allowed to operate under this Contract franchise for up to one hundred and eighty (180) days from the date of transfer; provided, within thirty (30) days from the date of transfer said successor entity makes application with the City for either a new ordinance or the transfer of this contract franchise, and provides the City with written evidence satisfying the obligations under this contract franchise with regard to indemnity and insurance.

SECTION 17: CONFIDENTIALITY.

Information provided to the City pursuant to K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 et seq., and K.S.A. 66-1220a, et seq., and amendments thereto. AT&T Kansas agrees to indemnify and hold the City harmless from all penalties or costs, including reasonable attorney's fees, arising from the actions of AT&T Kansas, or of the City at the written request of AT&T Kansas, in seeking to safeguard the confidentiality of information provided by AT&T Kansas to the City under this contract franchise.

SECTION 18. MOST FAVORED NATION.

Pursuant to K.S.A. 17-1902, City represents and warrants that all benefits, terms and conditions in this Contract franchise and relative to AT&T Kansas' deployment of network facilities and services in the City are and, during the term of this Contract franchise, will continue to be no less favorable to AT&T Kansas, in the same or similar circumstance, than those currently being offered to or that may be offered and agreed to by City and any other local exchange carrier, telecommunications carrier, network based broadband or video services provider, competitive infrastructure provider or Internet Protocol services provider, regardless of the form or nature of the agreement with any such other carrier or provider, and that the City shall treat AT&T Kansas in a competitively neutral, non-discriminatory manner.

SECTION 19: ACCEPTANCE OF TERMS.

AT&T Kansas shall have sixty (60) days after the final passage and approval of this contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this contract franchise and acceptance shall constitute a contract between the City and AT&T Kansas subject to the provisions of the laws of the State of Kansas.

SECTION 20: PAYMENT OF COSTS.

To the extent required by Kansas law, AT&T Kansas shall be responsible for payment of the necessary costs and expense of publishing this contract franchise, and any amendments thereof.

SECTION 21: APPLICABLE LAW & EFFECTIVENESS.

This contract franchise is made under and in conformity with the laws of the State of Kansas. The contract franchise shall not be effective until the ordinance granting the same has been adopted as provided by law.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

PASSED by the Governing Body of the City of De Soto, Kansas this _____ day of _____, 2024.

SIGNED by the Mayor the _____ day of _____, 2024.

Mayor Rick Walker

ATTEST:

City Clerk Brandon Mills

(SEAL)

APPROVED AS TO FORM:

City Attorney Patrick G. Reavey

Publish two consecutive times and return two Proof of Publication to the City Clerk and two to the City Attorney.