



EL DORADO CITY COMMISSION – REGULAR MEETING AGENDA
CITY HALL – 220 E. FIRST AVENUE
July 19, 2021 – 6:30 PM

Note: The El Dorado City Commission will conduct a work session prior to the regular meeting beginning at 5:30 pm in the Commission Chambers at City Hall. The City Commission will begin the regular meeting at 6:30 pm.

- 1. Call to Order**
- 2. Roll Call**
- 3. Invocation** – Pastor Debbie McCluer of the First Church Of The Nazarene
- 4. Pledge of Allegiance**

Proclamations and Recognition

5. None

Personal Appearances. Personal appearances are opportunities for organizations or citizens to make special presentations before the City Commission. Such appearances are scheduled in advance of the meeting by calling City Clerk Tabitha Sharp at (316) 321-9100 by 5:00 pm the Tuesday preceding the meeting. Presentations are limited to ten minutes. Any presentation is for information purposes only; no action will be taken.

6. **Public Comments.** Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of the City Commission may do so when called upon the Mayor. Comments on personnel matters and matters pending in court are not permitted. Speakers are limited to three minutes. Any presentation is for information purposes only; no action will be taken.

Consent Agenda (*Consent agenda items will be acted on by one motion unless a majority of the City Commission votes to remove an item for discussion and separate action.*)

7. Approval of [Special City Commission Minutes from June 30, 2021](#) and [City Commission Minutes from July 6, 2021](#)

Old Business

8. [Consideration of the City's participation in a project to underground the overhead utilities within the 100 block of North Main Street.](#)

New Business

9. [Consideration of an Ordinance granting to IdeaTek Telcom, LLC a Franchise Agreement to construct, operate, and maintain a telecommunications system in the City of El Dorado, Kansas.](#)

Discussion Items

10. [Beyond Baseball Proposal](#)

Reports

11. City Commission and Advisory Board Updates

12. City Manager

Executive Session

13. None

Adjournment

14. Consideration of a motion to adjourn the July 19, 2021 regular meeting.

PUBLIC COMMENT POLICY:

Citizens are encouraged to address the City Commission during regularly scheduled meetings. This policy is intended to provide some guidelines to ensure that all El Dorado citizens have a chance to address the Commission.

1. Each citizen will state their name and address before making comments.
2. There are no residency requirements.
3. Each citizen will have three minutes to present his or her comments.
4. An extension of time, if necessary, may be approved but must be by a majority of the City Commission.
5. Comments or questions will be directed only to the City Commission.
6. Citizens will follow the decorum policy.
7. Debate or argument between parties in the audience will not be allowed.
8. Certain legal issues may not be discussed. (Examples include but are not limited to personnel issues, lawsuits, etc.)
9. Violation of this public comment policy will result in the citizen being directed to cease or resume sitting.

Approved by the Commission this 2nd day of May 2005.

EL DORADO CITY SPECIAL COMMISSION MEETING

June 30, 2021

The El Dorado City Commission met in special session on June 30, 2021 at 5:00 pm at 220 E 1st Avenue with the following present: Mayor Bill Young, Commissioner Matt Guthrie, Commissioner Gregg Lewis, Commissioner Kendra Wilkinson, City Manager David Dillner, City Attorney Ashlyn Lindskog, City Engineer Scott Rickard and City Clerk Tabitha Sharp. Absent: Commissioner Nick Badwey

VISITORS

Kevin Wishart	220 E 1 st Ave	El Dorado, KS
Curt Zieman	128 N Vine	El Dorado, KS

CALL TO ORDER

Mayor Bill Young called the June 30, 2021 Special City Commission meeting to order at 5:00 p.m.

2022 BUDGET – MILL LEVY FUNDS AND REVENUE NEUTRAL RATE

City Manager David Dillner reviewed the revenue neutral rate process and the 2022 proposed budget.

The City Commission agreed to vote at the next regular meeting.

Mayor Bill Young and Commissioner Matt Guthrie requested the mill levies and sales tax rates for peer communities.

REGULAR AGENDA REVIEW

Mayor Bill Young reviewed the items on the upcoming agenda.

REPORTS

Commissioner Gregg Lewis stated that a tree was hit by lightning at RIO park and needed to be cleaned up.

Commissioner Matt Guthrie stated that there is someone driving a moped on the bike path from the lake and asked staff to check it out.

City Manager David Dillner stated that staff are meeting with Evergy on Friday and will return with more information on the underground utility project for downtown.

ADJOURNMENT

Commissioner Matt Guthrie moved to adjourn the meeting at 6:53 p.m.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 4 – 0.

City Clerk Tabitha D. Sharp

Mayor Bill Young

EL DORADO CITY COMMISSION MEETING

July 6, 2021

The El Dorado City Commission met in a regular session on July 6, 2021 at 6:30 p.m. in the Commission Room with the following present: Mayor Bill Young, Commissioner Matt Guthrie, Commissioner Gregg Lewis, Commissioner Nick Badwey, Commissioner Kendra Wilkinson (present via zoom, left the meeting at 7:26 p.m.), City Manager David Dillner, and City Clerk Tabitha Sharp. Absent: City Engineer Scott Rickard and City Attorney Ashlyn Lindskog.

VISITORS

Jeff Christensen	El Dorado Main Street	El Dorado, KS
Emily Connell	El Dorado Main Street	El Dorado, KS
Nathan Ensminger	142 N Main	El Dorado, KS

CALL TO ORDER

Mayor Bill Young called the July 6, 2021 meeting to order.

INVOCATION

Mark Somerville, Family Worship Center, opened the meeting with an invocation.

PLEDGE OF ALLEGIANCE

The City Commission led the Pledge of Allegiance.

PROCLAMATION

Mayor Bill Young read a proclamation declaring July Parks and Recreation month.

PUBLIC COMMENT

Mayor Bill Young opened the floor for public comments.

There were no public comments.

CONSENT AGENDA

Approval of City Commission Minutes from June 7, 2021.

Approval of Appropriation Ordinance 06-21 in the amount of \$1,349,221.54.

Approval of a Change Order with APAC-Kansas, Inc. in the amount of \$58,620.00 for the addition of the Sunset Cemetery to 2021 Mill and Overlay Program.

EL DORADO CITY COMMISSION MEETING

July 6, 2021

Approval of a Cereal Malt Beverage License for McDonald Stadium on behalf of the City of El Dorado.

Authorization for the City Manager to request American Rescue Plan funds from the U.S. Treasury Department on behalf of the City of El Dorado and execute all necessary documents related thereto.

Commissioner Nick Badwey moved to approve the consent agenda as presented.

Commissioner Gregg Lewis seconded the motion.

Motion carried 4 – 0.

DISCUSSION ITEMS

EVERGY DOWNTOWN PROPOSAL

City Manager David Dillner stated that staff met with Evergy, AT&T and Cox last Friday after the previous discussion in Commission. He stated that after this discussion, the four entities have reached an agreement to move forward if the City is willing to do some in-kind work for preparation and clean-up. He stated that this would include some trenching and boring and pulling conduit. He stated that the City's portion of the cost could be covered by the General Fund balance.

Commissioner Gregg Lewis asked if there would be trenching or boring.

City Manager Dillner stated that they would bore the holes, not trench, he used the word trench by mistake.

Commissioner Lewis asked how they would handle gas pockets.

City Manager Dillner stated that he was not sure, that would be something that would be answered if we move forward with the project and receive more information.

Commissioner Matt Guthrie confirmed the cost of the project.

City Manager Dillner stated that the total cost to the City was \$380,000 and the City would be providing up to \$200,000 of that in the form of in-kind work.

Commissioner Lewis asked about the payment plan.

City Manager Dillner stated that Evergy is willing to allow the City to pay the project off over the course of several years if we do not want to pay it in full.

Commissioner Kendra Wilkinson stated that she was in support of the project and was appreciative of Evergy's efforts to help with the project.

Commissioner Nick Badwey asked if the City has the equipment and the manpower to participate in the project. He stated that the equipment is very specialized and staff would be taken off task to complete this project. He also asked who benefits from this project.

City Manager Dillner stated that we do have a boring machine, but we do not know the specifications at this time to be able to understand if it will be able to perform the work. He stated that there are some reservations on the part of staff because this isn't work we have done before in such a small space. He stated that we typically use someone else to do this work. He stated that the Engineering department will be doing significant survey work in order to ensure that we can avoid the other utilities.

City Manager Dillner stated that staff will be off of their normal tasks, but if the Commission decides to move forward, it becomes part of what we need to do. He stated that the scheduling does raise some concerns because Everygy would like to do the work in February and it is difficult to pour concrete during that time.

City Manager Dillner stated that the downtown businesses will benefit primarily from the upgrade in utilities. He stated that people who use those parking lots will also benefit. He stated that the three utilities have all stated that they do not have a need to go underground.

Commissioner Badwey asked if anyone has discussed creating a benefit district. He stated that when we offer upgrades to infrastructure in other areas of the city, they have to pay for it through a benefit district.

Mayor Bill Young stated that they had briefly discussed it on Wednesday at the work session. He stated that the previously quoted costs were more prohibitive than the new proposal.

Commissioner Lewis confirmed that the poles will be removed and if the parking lot would be able to be better utilized and safer for the downtown businesses.

City Manager Dillner stated that poles will be removed and that there have not been any conversations about upgrades to parking and traffic patterns downtown. He stated that we do not yet know where the equipment that is above ground will be located.

Commissioner Badwey asked who would be paying for the connection to the buildings.

City Manager Dillner stated that it was included in their costs. He stated that our costs are strictly related to the placement of the lines underground.

Commissioner Guthrie stated that he likes the idea of placing the infrastructure underground. He stated that the people he has talked to have all been supportive of the project as it is proposed. He stated that looking back at previous projects, we have paid a percentage of various infrastructure projects. He stated that he would like to see what a benefit district would look like and what it would look like for another company to perform the work so that we can really understand the cost of the in-kind contribution.

EL DORADO CITY COMMISSION MEETING

July 6, 2021

Commissioner Guthrie stated that his questions have not yet been answered. He asked what would happen when future neighborhoods want to place their infrastructure underground. He felt that it was happening very quickly and he needed more information.

Commissioner Wilkinson asked if it was something they needed to postpone a vote on until there could be further discussion about Commissioner Guthrie's questions.

Mayor Young stated that it was the will of the Commission. He felt that staff had answered the questions previously asked by the City Commission. He stated that he received phone calls from the property owners who had paid for the underground work in their buildings and they were supportive of the project.

Commissioner Badwey asked who would be paying for the work in Sunshine Alley.

City Manager Dillner stated that it was the alley that was providing some difficulty to staff because of the narrow space and the need to cross Main Street. He stated that the motion does say "not-to-exceed cost of \$200,000", but once the project has started, we will be responsible for any unforeseen costs above what we were quoted.

Commissioner Badwey confirmed that there was currently no way to guarantee the cost of the project.

City Manager Dillner stated that he was correct.

Commissioner Guthrie stated that he would like to understand the boring cost better. He stated that the in-kind cost was still a cost to the city. He stated that if we pay for this whole project, we will have to pay for others. He stated that he was fine with paying our fair share, but not the entire project.

Commissioner Matt Guthrie moved to table the conversation until further information could be provided.

Commissioner Nick Badwey seconded the motion.

Commissioner Lewis stated that he did not want it to go away because he felt it was important.

Commissioner Wilkinson stated that she was okay with tabling it as long as the discussion continued.

Motion carried 5 – 0.

City Manager Dillner clarified that they would like to see numbers for a benefit district.

The City Commission agreed.

NEW BUSINESS

CONSIDERATION OF A LEASE AGREEMENT WITH THE PECOS BASEBALL LEAGUE CONCERNING THE USE OF MCDONALD STADIUM

City Manager David Dillner stated that staff were approached by the Salina Stockade baseball team about utilizing McDonald Stadium for their home games during the remainder of the season. He stated that staff have reached an agreement with the team to allow free entry for citizens if we give them use of the stadium for free.

Commissioner Gregg Lewis moves to approve a Lease Agreement with the Pecos Baseball League concerning the use of McDonald Stadium.

Commissioner Matt Guthrie seconded the motion.

Motion carried 4 – 0.

CONSIDERATION OF A RESOLUTION AUTHORIZING THE CITY CLERK PROVIDE NOTICE OF THE CITY'S INTENT TO EXCEED THE REVENUE NEUTRAL RATE TO THE BUTLER COUNTY CLERK

City Manager David Dillner stated that as discussed at the last work session, the State of Kansas has passed a new law requiring cities to notify the County who will in turn notify the public of our intent to exceed the revenue neutral rate. He stated that we must notify the County by July 20th of our intent to exceed the rate.

City Manager Dillner stated that the proposal is to accept the increased valuation as well as increasing the mill levy by 2.096 mills for the purpose of adding staff to the Parks and Recreation division.

Commissioner Nick Badwey moves to set the public hearing for the Revenue Neutral Rate and the proposed 2022 Budget on August 23, 2021 at 6:30 pm at City Hall, and further authorize the City Clerk provide Notice of the City's Intent to Exceed the Revenue Neutral Rate by 2.096 mills to the Butler County Clerk.

Commissioner Matt Guthrie seconded the motion.

Motion carried 4 – 0.

LAND BANK CONSENT AGENDA

Approval of a memorandum of understanding with the Captain Edgar Dale American Legion Post #81, and accepting as a donation to the land bank a warranty deed for real property as provided therein.

EL DORADO CITY COMMISSION MEETING

July 6, 2021

Commissioner Nick Badwey moved to approve the Land Bank consent agenda as presented.

Commissioner Matt Guthrie seconded the motion.

Motion carried 4 – 0.

REPORTS

CITY COMMISSION AND ADVISORY BOARD UPDATES

Commissioner Matt Guthrie stated that he has heard a lot of great compliments on the activities for the Independence Day Celebration.

Mayor Bill Young stated that the activities that day were really great, the game was packed and there were a lot of people downtown watching the show. He thanked staff for their work on the event.

CITY MANAGER REPORT

City Manager David Dillner stated that this week is HollyFrontier Kids week, which is part of the 150Fest. He stated that there are various events planned and the schedule is available on social media.

City Manager Dillner stated that staff at City Hall would like to consider moving to a 4 day, 10 hour per day work schedule. He stated that because that involves closing City Hall, he wanted to talk to the Commission about it.

The City Commission asked for an official proposal.

ADJOURNMENT

Commissioner Nick Badwey moved to adjourn the meeting at 7:41 p.m.

Commissioner Matt Guthrie seconded the motion.

Motion carried 4 – 0.

City Clerk Tabitha D. Sharp

Mayor Bill Young

EL DORADO

K A N S A S

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: Downtown Underground Infrastructure Proposal
DATE: July 14, 2021

Background: Staff met with representatives from Evergy, Cox Communications, and AT&T to discuss a proposed project to place overhead utilities located in the alleys of the 100 block of N. Main Street underground. All parties expressed interest in participating in the underground project if the City elects to proceed with undergrounding the overhead utilities. All parties stated that design will commence as soon as the City affirms its commitment to the project with the goal of having the work completed in early 2022.

Participating in the project now presents the best opportunity to underground the infrastructure if there is a desire to move the infrastructure underground. None of the companies will likely participate in the cost of an undergrounding project in the future because they have no need to go underground and the infrastructure will already be upgraded.

Strategic Priority: Infrastructure - Continuously *evaluate public facilities*, provide necessary resources for ongoing maintenance, and plan for future facility needs to maintain service delivery; Evaluate funding options for *continued investment in critical public infrastructure*.

Fiscal Impact: The City's total contribution (in-kind and direct out-of-pocket expenses) for participation in the project should not exceed \$340,000 depending on which option the City Commission chooses should it authorize the project. Staff prepared two primary options to include scenarios for an improvement district to allocate a portion of the project's expenses to benefiting property owners rather than attribute the project cost entirely to the City at-large.

The "turnkey" option requires the City to pay Evergy \$340,000 for the project. Evergy coordinates all the work for the project in this option. As previously stated, Evergy has stated it would be open to negotiating a finance plan for this option should the City elect to proceed with this option.

The second option requires municipal workforce labor and the direct expense of equipment rental and concrete and asphalt material. The estimated value of the in-kind contribution is \$200,000. The City also pays \$140,000 to Evergy for a portion of the undergrounding of the electric service.

In either case, the City's share the project costs will be paid from the fund balance of the General Fund should the City Commission elect to participate.

The two options also include an estimate for a benefit district payment that could be assessed against benefiting properties. The first option reimburses the City for direct expenses of \$160,000, and would cost about \$903 per property for five years. The second option recovers the City's cost for the entire project (\$340,000), and would cost about \$1,919 per property for five years. No interest is included in the assessment.

The aforementioned amounts are subject to change based on actual project costs and the final agreed upon participation percentage for the City. The scenarios assume the City at-large contribution at 21% of the project based on linear footage of the benefiting properties. Staff used the linear footage of the City-owned parking lots

to determine this percentage. Increasing this number would decrease the private contribution and the attributed assessments.

Legal Review: The City Attorney has not reviewed this item as it is a policy decision and does not require legal review.

Trade-offs: Evergy plans to upgrade its infrastructure regardless of whether the City participates in the underground project. AT&T and Cox will only participate in the undergrounding project if the City elects to participate because they do not have any need to go underground. By participating in the project, however, the City may leverage the opportunity to clean up the alleys and provide an opportunity to address downtown aesthetics at a cost that will not be matched in future years.

Other public infrastructure projects, such as street improvements, require participation by adjacent property owners and often include an at-large contribution from the City. The governing body should proceed with an equitable approach that seeks to balance general taxpayer support of the project with property interests that directly benefit from the improvements. Such an approach reduces the possibility of a perceived precedent whereby similar projects may request 100% participation by the City at-large instead of including a contribution from benefiting properties.

The City Commission should weigh the opportunity cost of allocating public funds to all projects. The governing body is deciding to spend \$340,000 on this project instead of allocating it to another public purposes or projects. The project, while positive for the aesthetics of downtown El Dorado, will likely not increase property valuations or create a significant catalyst for new sales tax generation. In other words, taxpayers of the City will not see a tangible return on the public funds invested in the project.

In making this decision, the City Commission needs to weigh the need for the proposed project with other community priorities to determine if the project justifies an at-large contribution or if public funds would serve a better purpose allocated to other projects.

Staff Recommendation: The City Manager recommends participating in the underground project, provided an improvement district is established to allocate a portion of the project costs to benefiting properties.

Commission Action:

The actual motion for this item will be developed pending discussion on this subject by the City Commission in the work session preceding the regular meeting.

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Downtown Underground Relocation of Overhead Utilities

100 and 200 E. Blk of N. Main Rear Alley

Pedestrian Alley 100 E. Blk. Of N. Main

100 & 200 W. Blk. Of N. Main Rear Alley

Proposal	DESCRIPTION	TOTAL COST Not to Exceed
1	<u>TurnKey Everyg U.G. Proposal</u>	\$ 340,000.00
2	<u>Everyg U.G. with City of El Dorado In-Kind Labor Equipment/Material</u>	
	Boring under 1st, Main, and Gordy	\$ 45,000.00
	Pavement Cut/Replacement Trenching	\$ 125,000.00
	Utility Locates/ Restoration	\$ 10,000.00
Direct Expense	Equipment Rental Demo	\$ 5,000.00
Direct Expense	Concrete and Asphalt Material	\$ 15,000.00
	Total of In-Kind and Material	\$ 200,000.00
Direct Expense	Total Payment to Everyg	\$ 140,000.00
	Total Expense to the City	\$ 340,000.00
3	<u>Benefit District Option</u>	
	<u>Direct Expenses Only</u>	\$ 160,000.00
	City at Large Expense 21% Base on LF of Ownership	\$ 33,600.00
	Benefit District Cost	\$ 126,400.00
	Estimated Properties within an Improvement District	28
	Interest Free Payment Annually over 5 years per property	\$ 902.86
4	<u>Benefit District Option Turn Key / Cover all Expenses</u>	
	<u>Turn Key or Cover all Expenses</u>	\$ 340,000.00
	City at Large Expense 21% Base on LF of Ownership	\$ 71,400.00
	Benefit District Cost	\$ 268,600.00
	Estimated Properties within an Improvement District	28
	Interest Free Payment Annually over 5 years per property	\$ 1,918.57

CITY OF EL DORADO

DOWNTOWN BURIED UTILITIES



Conceptual Elec/Comm UG Lines



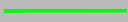
Conceptual Elec/Comm Devices



Water Main



Sanitary Sewer Main



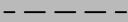
Storm Sewer Main



Approximate Flow Line Depth

5ft

Right-of-Way Line



Conceptual Electric Easment



Washington St

Gordy St

Main St

Vine St

1st Ave

2nd Ave

Central Ave

48" STORM PIPE
BELOW ROAD BED

48" STORM PIPE
BELOW ROAD BED

Shallow

Shallow

10" SAN SEWER PIPE

15" SAN SEWER PIPE

8" WATER MAIN
PIPE

4" WATER MAIN
PIPE

EXISTING AG TRANSFORMER

24" STORM PIPE
DEPTH UNKNOWN

8ft

4ft

8ft

6ft

8ft

4ft

4ft

12ft

8ft



City of El Dorado

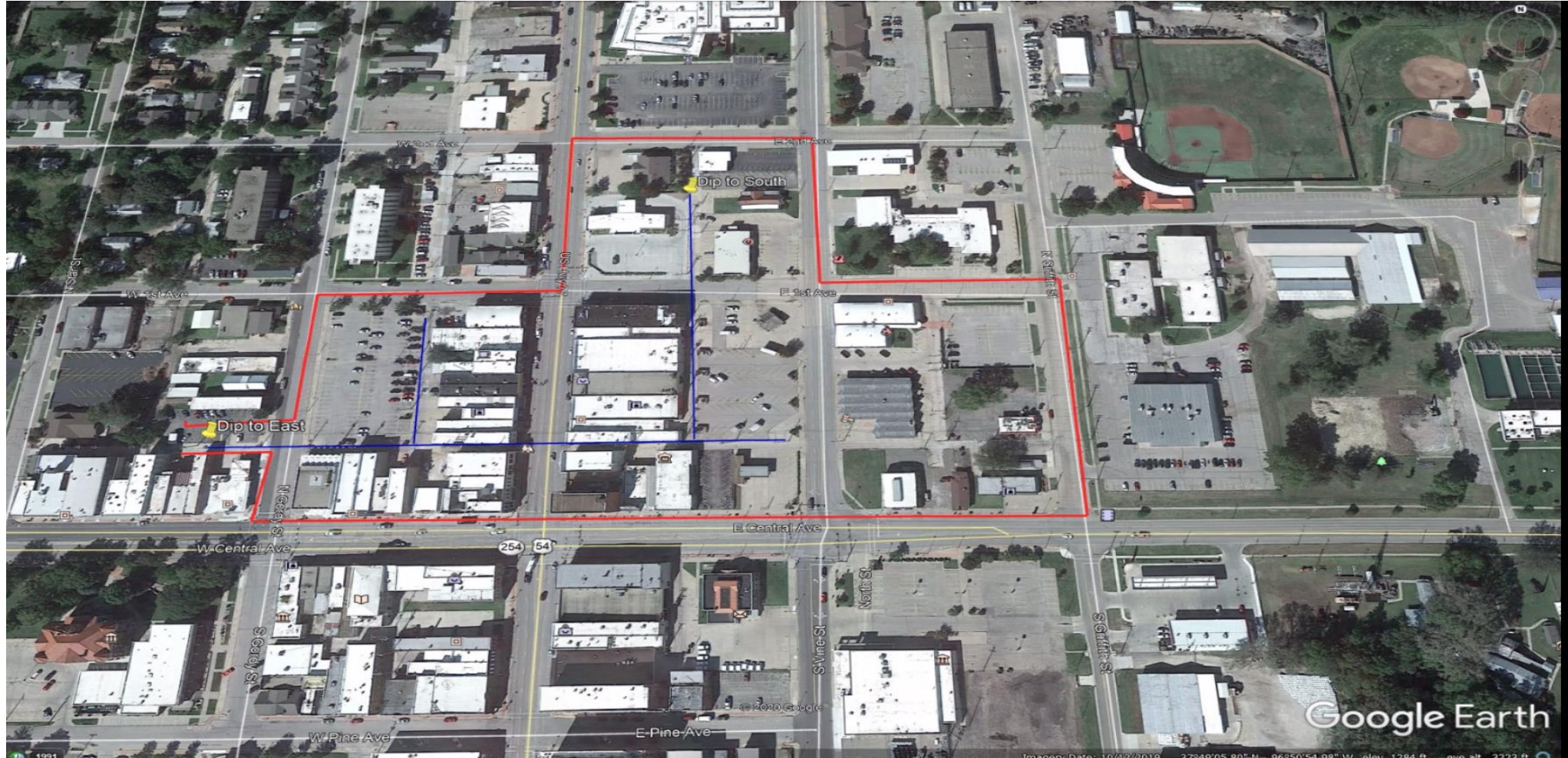
Downtown Corridor Improvements





Project Area

Central Ave north to 2nd st / Gordy St. east to Vine St.





4kV to 12kV Conversion Proposal

- **Overhead** upgrade option from 4KV to 12kV includes: r/p of poles, transformers, restoration costs, traffic control and misc. fees.
 - Every to cover all costs associated with this OH option.
- **Underground** upgrade option from 4kV to 12kV includes: removal of poles and transformers, restoration costs, addition of pad mounted transformers, boring trenching, traffic control and misc fees including any necessary easements.
 - Every to work with the City for any necessary easements in and around the adjacent parking lots.

CONT.



4kV to 12kV Conversion Proposal – cont.

Underground Option - Additional requirements:

- Businesses needing service upgrade conversions from 6 wire to 4 wire 3 phase:
 - 214 W. Central
 - 124 N. Main
 - 114 N. Main
 - 120 N. Main
 - 130 N. Main

(This customer work Includes up to 200amp panelboard and reconnect to the existing branch circuits)



4kV to 12kV Conversion Costs

Overhead Distribution cost - \$550k

This total cost will be picked up by Evergy if you opt out of the Underground option.

Underground Distribution cost - \$890k

Costs to the City - \$340k – This is the differential costs between the new overhead & underground systems.

Customer upgrade costs : \$54k - Cost to be covered by Evergy.

(6wire to 4 wire 3 phase)



Questions / Discussion







EL DORADO

K A N S A S

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: IdeaTek Telcom, LLC Franchise Agreement
DATE: July 14, 2021

Background: IdeaTek Telcom, LLC desires to construct a fiber optic network within the City's public right-of-way. The City requires utilities locating infrastructure within the public right-of-way to obtain a franchise agreement prior to commencing construction. The agreement outlines the terms and conditions for use of the public right-of-way.

KDOT presently has a contract with IdeaTek to install a fiber optic network along the K-254 corridor to its area headquarters in El Dorado. The company wants to extend its infrastructure from this point to other connections within El Dorado.

Strategic Priority: Infrastructure - Continuously *evaluate public facilities*, provide necessary resources for ongoing maintenance, and plan for future facility needs to maintain service delivery; and Evaluate funding options for *continued investment in critical public infrastructure*.

Alternatives: *(not listed in any specific order)*

- **Accept and approve the recommendation as presented by staff.**
- **Deny approval of the franchise agreement ordinance.**
- **Request additional information from the City Manager.** The City Manager will collect such other information as may be necessary to assist the City Commission in making an informed decision on this matter. The City Commission will need to specify the information desired if this option is selected.

Fiscal Impact: The franchise agreement provides that IdeaTek will pay franchise fees to the City for applicable infrastructure investments as follows: an annual payment of \$150 per distributed antennae system or small wireless facility and a one-time \$1,000 permit and license fee for each distributed antennae system or small wireless facility located within the public right-of-way. In addition, IdeaTek will pay 5% of gross receipts attributed to customers directly connected to any fiber network located within the corporate limits of the City. At this time, the City does not anticipate a significant amount of revenue arising from the franchise agreement.

Legal Review: The City Attorney assisted in the development and negotiation of the franchise agreement. Legal counsel believes the agreement conforms to existing state law and that it protects the interests of the City.

Trade-offs: IdeaTek will not have permission to use the City's right-of-way should the City Commission not approve the franchise agreement. IdeaTek, as a communications provider, would likely not invest in constructing infrastructure to serve El Dorado in such a scenario. Competition for such services would then be limited to existing providers and their willingness to invest in upgrades and extensions to serve the community.

Staff Recommendation: The City Manager recommends approval of the franchise agreement with IdeaTek because it creates a possible revenue stream for the City and increases competition in a critical sector.

Commission Actions:

Commissioner _____ moves to approve Ordinance Number 1355 granting to IdeaTek Telcom, LLC, a franchise construct, operate, and maintain a telecommunications system in the City of El Dorado, Kansas.

Commissioner _____ seconded the motion

Roll Call Vote

Position No. 3	Commissioner Nick Badwey	_____
Position No. 4	Commissioner Kendra Wilkinson	_____
	Mayor Bill Young	_____
Position No. 1	Commissioner Matt Guthrie	_____
Position No. 2	Commissioner Gregg Lewis	_____

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ORDINANCE NO. – 1355

AN ORDINANCE GRANTING TO IDEATEK TELCOM, LLC, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF EL DORADO, KANSAS.

This Contract Franchise (hereinafter, the “Ordinance”) is entered into as of _____, 2021 (the “Effective Date”) by and between the City of El Dorado, a municipal corporation (the “City”), and IdeaTek Telcom, LLC, a Kansas limited liability company (“IdeaTek”).

RECITALS

- I. IdeaTek is a Telecommunications carrier as defined in K.S.A. 66-1,187(m) with authority under K.S.A. 17-1902 to occupy the public right-of-way subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City.
- II. IdeaTek seeks to enter the City of El Dorado’s Right of Way, and other real property of the City, to install, maintain and operate fiber network Facilities (the “Network”), so that IdeaTek and/or its underlying customers (the “Customers”) may provide data, telecommunications, broadband Internet, and related services to the residents and visitors of the City (the “Services”).

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EL DORADO, 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. *"Contract Franchise"* means this Ordinance granting the right, privilege, and franchise to IdeaTek to provide services within the City.
- b. *"Distributed Antenna Systems"* (“DAS Facility”) means certain components of the Network consisting of distributed antenna systems which may be located on existing or new streetlights, stand-alone poles, third party utility poles, and other structures located on or within the right-of-way as permitted under this Ordinance, and which will be connected to IdeaTek’s Facilities.
- c. *"Facilities"* means any portion of a system located in, along, over, upon, under, or through the right-of-way and may include, without limitation, antenna nodes, poles, streetlight poles, equipment cabinets, underground and above ground fiber optic cable, fiber handholes and enclosures, fiber repeaters and related equipment, DAS

Facility, and will include other equipment as technology evolves, in a configuration and at locations to be filed and identified through the City permit process.

- d. *"Gross receipts"* shall be defined as set forth in K.S.A. 12-2001(c)(6). Uncollectible and late charges, taxes, surcharges, and other pass-through charges shall not be included within gross receipts.
- e. *"Laws"* or *"Law"* as used in this Ordinance means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the City or other governmental entity or agency having joint or several jurisdiction over the Parties' activities under this Ordinance or having jurisdiction that is applicable to any aspect of this Ordinance that are in force on the Effective Date and as they may be enacted, issued, or amended during the term of this Ordinance.
- f. *"Network"* means the franchisee's fiber network and DAS Facilities or small wireless facilities, including the antenna nodes, poles, equipment cabinets, underground and aboveground fiber optic cable, wires, lines, fiber handholes and enclosures, fiber repeaters and related equipment and appurtenance, and similar facilities and appurtenances, designed, constructed or occupied for the purpose of producing, receiving, amplifying or distributing telecommunications service to or from locations within the City.
- g. *"Right-of-way"* or *"ROW"* means the surface and space on, above and below every municipal street, alley, road, highway, lane, 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 facilities. 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.
- h. *"Small Wireless Facilities"* or *"Wireless Facilities"* means a wireless facility that meets both of the following qualifications:
 - i. All antennas are located inside an enclosure of not more than (6) six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of not more than (6) six cubic feet, and
 - ii. All other wireless equipment associated with the facility is cumulatively not more than (28) twenty-eight cubic feet on volume, or (50) fifty cubic feet in volume if the equipment was ground mounted before the effective date of

this section. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:

1. An electric meter.
 2. Concealment elements.
 3. A telecommunications demarcation box.
 4. Grounding equipment.
 5. A power transfer switch.
 6. A cutoff switch.
 7. Vertical cable runs for the connection of power and other services.
- i. “*Telecommunications Service(s)*” 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 ORDINANCE.

- a. This Ordinance hereby grants to IdeaTek, the nonexclusive contract, right, privilege, and franchise to locate, construct, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain, facilities along, across, upon and under the ROW for the purpose of IdeaTek providing competitive infrastructure to third-party carriers to provide telecommunications services, internet services, or other intrastate or interstate traffic, subject to the terms and conditions of this Ordinance.
- b. Nothing in this Ordinance is intended to preclude the City from seeking or authorize the City to seek, a franchise from an affiliate or third-party providing telecommunications services.
- c. This Ordinance does not grant IdeaTek the authority or right to provide end user “Cable Service.” For the purposes of this Ordinance, “Cable Service” is defined as the one-way transmission to subscribers of video programming or other programming services, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- d. This Ordinance shall not convey title, equitable or legal, in the ROW, and gives only the right to occupy the ROW, for the purposes and for the period stated herein and subject to the terms stated in this Ordinance. This Ordinance does not:
- i. 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;
 - ii. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City whether inside

or outside of the ROW, specifically including, but not limited to, poles, streetlights, buildings, towers, park property, City Hall property, or other facilities;

- iii. Excuse IdeaTek from obtaining appropriate access or attachment agreements or permits before locating its Facilities on Facilities or property owned or controlled by the City or a third-party;
 - iv. Grant to any licensee or lessee of IdeaTek or other third party a right of access or authority to the City's ROW without said licensee, lessee, or third party obtaining all necessary permits and authorizations from the City in accordance with Ordinance No. 2293 of the City or any then current ordinance or regulation of the City dealing with management of the ROW and, if determined necessary by the City, a contract franchise for said licensee, lessee, or third party.
 - v. 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 Ordinance, and IdeaTek shall not knowingly allow the use of its Facilities or Network by any third party in violation of any federal, state, or local law.
- e. This Ordinance is subject to and conditioned upon the terms and conditions of all applicable federal, state, and local laws, existing now or in the future, and the parties shall comply with any such laws in the exercise of their rights and performance of their obligations under this Ordinance.
- f. As noted in subsection (c), IdeaTek shall not provide any additional services for which a separate franchise ordinance is required by the City without first obtaining a separate franchise ordinance or amending this Ordinance. In particular, this Ordinance does not grant IdeaTek the right to provide cable services as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City. IdeaTek also agrees that this Ordinance does not permit it to operate an open video system without the payment of fees contemplated by 47 U.S.C. § 573(c)(2)(B) and without complying with all Federal Communications Commission ("FCC") regulations promulgated pursuant to 47 U.S.C. § 573. IdeaTek shall not knowingly allow the use of its Facilities by any third party in violation of this subsection or of any federal, state, or local laws.
- g. The authority of IdeaTek to use and occupy the ROW 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 ROW provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. IdeaTek shall comply with all laws, rules, and lawful City regulations, in effect now or as may be adopted in the future, governing the use of ROW,

specifically including City of El Dorado Ordinance No. 2293 as amended or replaced, the City's zoning, land use, and subdivision regulations and amendments thereto.

SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.

- a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Ordinance, IdeaTek shall have the right to construct, maintain and operate its Facilities along, across, upon and under the public ROW. IdeaTek shall construct and maintain the Facilities in a skillful and workmanlike manner that does not obstruct or hinder the usual travel or public safety on such ROW, and that does not obstruct or interfere with the legal use of the ROW by other utilities.
- b. IdeaTek shall participate in the Kansas One Call utility location program. IdeaTek shall be solely responsible for communicating with Kansas One-Call, or for taking other necessary measures to determine the location of public improvements or other facilities located in the ROW.
- c. IdeaTek may attach its Facilities to an existing City-owned utility pole pursuant to the current National Electric Safety Code. IdeaTek shall coordinate the placement of its Facilities in the ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City engineer.
- d. It is understood that IdeaTek may build new Facilities in the City which would comply with all applicable Laws. If the City has no formal third-party utility installation policy or permit process, IdeaTek will not be obligated to make application for new facility installations unless and until such time a formal process is implemented by the City in a reasonable and non-discriminatory form and enforced among all third-party utility installations.
- e. IdeaTek shall install Facilities in accordance with traffic control plans for temporary construction work that are approved by the City, which approval shall not unreasonably be withheld, conditioned or delayed.
- f. Except in cases of emergency, a minimum of fourteen (14) days prior to construction, reconstruction, location, or relocation of any Facilities in a ROW, IdeaTek shall submit to the City Engineer, or his or her designee, for approval, plans and specifications related to the proposed construction, reconstruction, location, or relocation. The City shall not reasonably withhold, delay, or condition approval of said plans and specification. The City's review of the plans and specifications shall be confined to matters impacting the interests of the City in managing the ROWs of the City.
- g. No notice is necessary to the City for Facility maintenance unless such maintenance will require street closure, and in such event, IdeaTek will use reasonable efforts to coordinate such closure with the City.

- h. Zoning regulations shall not apply to installations within the public ROW.
- i. IdeaTek shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by IdeaTek's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of the Network in the City's ROW. IdeaTek shall promptly repair such damage and return the City's ROW and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards or to the property owner if not the City. IdeaTek's obligations under this section 3.h shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the City's ROW by IdeaTek to the City.
- j. IdeaTek shall pay for the electricity and other utilities services it consumes in its operations at the rates charged by the servicing utility companies.
- k. IdeaTek shall, at IdeaTek's sole cost and expense, perform all maintenance and repairs reasonably needed to maintain its facilities in good condition and neat and orderly appearance, and in compliance with all applicable laws including Ordinance No. 2293 of the City, or any then current ordinance or regulation of the City dealing with management of the ROW. In the event any facility requires replacement because such part cannot be repaired, IdeaTek shall, at IdeaTek's sole cost and expense, replace the irreparable facility. IdeaTek shall not cause rubbish, garbage, or debris on or around the facilities and shall not permit any rubbish, garbage, or debris to accumulate on or around any enclosed areas around the facilities. If the City gives IdeaTek written notice of a failure by IdeaTek to maintain the facilities, IdeaTek shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.
- l. In granting this contract franchise ordinance, the City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Facilities on any particular segment of the ROW. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon IdeaTek.
- m. IdeaTek shall take all reasonable measures necessary to maintain accurate and complete records in electronic format, of all Facilities constructed, reconstructed, or relocated in the ROW. IdeaTek shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the nature and horizontal and vertical location of its Facilities located within the ROW when requested by the City or its authorized agents for a public project. Such location and identification shall be at the sole expense of IdeaTek without expense to the City, its employees, agents, or authorized contractors.

SECTION 4. COMPENSATION TO THE CITY.

- a. In consideration of this Ordinance, IdeaTek agrees to pay the City one hundred and fifty dollars (\$150.00) per year per attachment for the attachment of wireless equipment to support any DAS Facility or Small Wireless Facility within the City on City owned infrastructure or newly placed IdeaTek poles within the City (such amount being the “DAS Franchise Fee”). IdeaTek shall pay the DAS Franchise Fee on the 15th day of the second month following the month in which the gross revenue is received.
- b. IdeaTek agrees to remit to the City five percent (5%) of Gross Receipts as defined in K.S.A. 12-2001(c)(6) for all fiber connections made in the Network (the “Fiber Franchise Fee,” and collectively with the DAS Franchise Fee, the “Franchise Fee”). IdeaTek shall pay its Fiber Franchise Fee on the 15th day of the second month following the month in which the gross revenue is received.
- c. A one-time permit and license fee of \$1,000.00 for each DAS Facility or Small Wireless Facility installed within the public ROW of the City shall be paid by IdeaTek. This fee shall be in addition to other City permit and review fees that exist as of the date the DAS Facility or Small Wireless Facility is installed that relate to the installation of the DAS Facility or Small Wireless Facility. IdeaTek shall pay the one-time application fee upon submission of a complete application for the installation of a DAS Facility or Small Wireless Facility per this article and after the date of IdeaTek’s submission of a complete application, the City shall not retroactively apply any new permit or licensing fees to the DAS Facility or Small Wireless Facility.
- d. IdeaTek shall reimburse the City for the publication costs related to the adoption or amendment of this Ordinance.
- e. If any Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest shall accrue from the due date until received, at an annual rate of ten percent (10%), or if lower, the highest percentage allowed by law.
- f. IdeaTek shall keep accurate books of account at its principal office in Buhler, Kansas, or such other location of its choosing, for the purpose of determining the amounts due to the City pursuant to this subsection. The City shall have access to, and the right to examine, at all reasonable times, all books, receipts, files, records, and documents of IdeaTek necessary to verify the correctness of compensation paid to the City, and to correct the same, if found to be erroneous. The City may only exercise its right to examine the books, receipts, files, records, and documents one time per year at a mutually agreeable time. If the statement of fees paid by IdeaTek is incorrect, IdeaTek shall promptly make payment upon such corrected statement. The City agrees to hold in confidence any non-public information it learns from IdeaTek to the fullest extent permitted by law.

- g. IdeaTek 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 5. TERM.

- a. This Ordinance shall be effective for a term of five (5) years from the effective date of this Ordinance. Thereafter, this Ordinance shall automatically renew for three (3) additional five-year terms, unless a party notifies the other party of its intent to terminate the franchise prior to 180 days before the termination of the current term. The additional terms are a continuation of this franchise and not a new franchise or amendment.
- b. Upon written request of either the City or IdeaTek, this Ordinance shall be renegotiated at any time in accordance with the requirements of K.S.A. 12-2001 and K.S.A. 17-1902, as amended, 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 IdeaTek, including but not limited to the scope of the Ordinance granted to the IdeaTek or the compensation to be received by the City.
- c. Amendments under this section, if any, shall be made by contract franchise ordinance as prescribed by statute. The Ordinance shall remain in effect according to its terms pending completion of any review or renegotiation provided by this section.

SECTION 6. ACCESS TO THE FACILITIES.

Subject to the requirements of El Dorado Ordinance No. 2293, or any then current ordinance or regulation of the City dealing with management of the ROW, _____ will be given reasonable access to each of the facilities in the ROW for the purposes of routine installation, repair, maintenance, or removal of facilities.

SECTION 7. NON-INTERFERENCE.

- a. IdeaTek shall operate its network in a manner that will not cause interference with City non-public safety communications systems and to the services and facilities of other licensees or lessees of City property located at or near the Facilities that were in operation prior to the installation of the network or that are in operation prior to any modifications IdeaTek may make to the network.
- b. IdeaTek's network and facilities shall not cause interference with public safety communications systems operated by City or any other public agency, regardless of the date such systems or any components thereof have been placed in service. Nor shall V's network and facilities cause interference with the City's use of the IdeaTek poles for the City's intended City purpose.

- c. If such interference with the facilities described in subsections (a) or (b) occurs, IdeaTek shall, upon receipt of written notice from the City, immediately commence commercially reasonable, diligent, efforts to correct or eliminate such interference. If such interference cannot be corrected by IdeaTek to the reasonable satisfaction of the City within the cure period set forth in the City's notice, which notice shall not be less than thirty (30) days, absent an emergency or danger to public health and safety requiring shorter notice, such interference shall be deemed a material breach under this Ordinance and City may terminate the Ordinance. Interference caused by actions of IdeaTek's customer(s) remains the responsibility of IdeaTek.

SECTION 8. INDEMNITY AND HOLD HARMLESS.

- a. It shall be the responsibility of IdeaTek to take adequate measures to protect and defend its facilities in the public ROW from harm or damage. If IdeaTek 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 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 IdeaTek's facilities.
- b. IdeaTek 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 IdeaTek, any agent, officer, director, representative, employee, affiliate or subcontractor of IdeaTek, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the public ROW.
- c. IdeaTek or City shall promptly advise the other in writing of any known claim or demand against IdeaTek or the City related to or arising out of IdeaTek's activities in the public ROW.

SECTION 9. INSURANCE REQUIREMENT.

- a. During the term of this franchise, IdeaTek shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers with an A.M. Best rating of no less than A-:VII. IdeaTek shall provide not less than the following insurance:

- i. Workers' compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
 - ii. Commercial general liability with limits of insurance not less than \$2,000,00 each occurrence, \$2,000,000 annual aggregate, \$2,000,000 completed Operations/Product Aggregate covering claims for bodily injury, property damage, personal and advertising injury, completed operation/product liability and contractual liability arising from the activities and operations of the franchisee and independent contractors operating on their behalf. The City shall be included as an additional insured. The insurance for the additional insured shall be as broad as the insurance for the named insured and apply on a primary/noncontributor basis and include protection for completed operations/products claim. Coverage for the additional insured shall include defense expense. If in order to accomplish the required limits of insurance, the franchisee must purchase an excess liability/umbrella policy, such policy shall be written on a follow form basis and be as broad as the underlying insurance. The City shall be included as additional insured to the policy.
 - iii. Business Auto Liability Insurance with limits of insurance not less than \$1,000,00 Combined Single Limit for bodily injury and property damage covering ownership or use of all owned, hired, and non-owned autos used in connection with the Franchisee operations and activities. The City shall be included as additional insured to the auto liability policy.
- b. As an alternative to the requirements of subsection (a), IdeaTek may demonstrate to the satisfaction of the City that it is self-insured and as such IdeaTek has the ability to provide coverage in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 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 IdeaTek, or alleged to so have been caused or occurred.
- c. IdeaTek shall, as a material condition of this Ordinance, 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, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City 30 days prior written notice. IdeaTek shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.
- d. IdeaTek shall, as a material condition of this Ordinance, prior to the commencement of any work and prior to any renewal of this franchise, deliver to

the City a performance bond in the amount of \$100,000.00, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of facilities located in the ROW as set forth in this article; to ensure IdeaTek's repair and restoration of its damage to its facilities or the ROW; and to ensure IdeaTek's removal of its facilities, as set forth herein. The required performance and maintenance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City attorney in form and substance.

SECTION 10. TAXES.

IdeaTek agrees that it will be solely responsible for the payment of any and all applicable taxes, fees and assessments levied on its ownership, use and maintenance of the network and this Ordinance. Pursuant to Section 79-5(a)(26) of the Kansas Revenue and Taxation Code, as amended, the City hereby advises, and IdeaTek recognizes and understands, that IdeaTek 's use of the ROW and/or IdeaTek facilities may create a possessory interest subject to real property taxation and that IdeaTek may be subject to, and responsible for, the payment of real property taxes levied on such interest. IdeaTek will cooperate with the county appraiser in providing any information necessary for the appraiser to make a property tax determination. IdeaTek reserves the right to challenge any such assessment, and the City agrees to reasonably cooperate with IdeaTek in connection with any such challenge.

SECTION 11. REVOCATION AND TERMINATION.

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

SECTION 12. RESERVATION OF RIGHTS.

- a. In granting its consent hereunder, IdeaTek 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.
- b. In entering into this Ordinance, neither the City's nor IdeaTek'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 Ordinance, neither the City nor IdeaTek waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or IdeaTek 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 13. FAILURE TO ENFORCE.

The failure of either the City or the IdeaTek to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Ordinance 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 IdeaTek unless said waiver or relinquishment is in writing and signed by both the City and the IdeaTek.

SECTION 14. DEFAULT ABANDONMENT.

- a. A "default" shall be deemed to have occurred if a party fails to cure a breach, within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.
- b. Upon a party's failure to timely cure a breach after notice, and upon expiration of the above cure periods, then the other party may terminate this Ordinance and pursue all remedies provided for in this Ordinance and/or any remedies it may have under applicable law or principles of equity relating to such breach.
- c. In addition to the remedies set forth herein, the City shall have the right to terminate this Ordinance if (i) the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the ROW; or (ii) if IdeaTek's licenses are terminated, revoked, expired, or otherwise abandoned. Such termination rights under subsection (iii) shall be subject to IdeaTek's rights to just compensation, if any, from the federal, state, or local government requiring such removal for any taking of a protected property right.
- d. In the event IdeaTek ceases to operate and abandons the network, any facility, or parts thereof, for a period of ninety (90) days or more, IdeaTek shall, at its sole cost and expense and within ninety (90) days from the date of abandonment, vacate and remove the network or the abandoned part thereof. If such removal disturbs the facility or adjacent property (including ROW or City real property), IdeaTek shall also, at its sole cost and expense, restore or repair the ROW, each facility, and any adjacent property to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment or other aesthetic improvements made by IdeaTek to the facility or adjacent property. Alternatively, the City may allow IdeaTek, in the City's sole and absolute discretion, to abandon the network, or any part thereof, in place and convey it to the City.

- e. Upon expiration or termination of this Ordinance for any reason, IdeaTek shall have the right to remove any and all of its Facilities within sixty (60) days after such termination or expiration, or, subject to the approval of the City Engineer said approval not to be unreasonably withheld, to transfer any and all of its Facilities to another entity authorized to place facilities in the ROW. IdeaTek has the duty, immediately upon any such removal, to restore the ROW from which the facilities are removed to as good a condition as the same were before removal was performed. If IdeaTek fails to remove or transfer its Facilities within sixty (60) days, the City may, at its option, remove any or all of the Facilities at IdeaTek's expense, or take ownership of any or all of Facilities for the City's use and/or disposal.

SECTION 15. TRANSFER AND ASSIGNMENT.

This franchise shall be assignable in accordance with the laws of the State of Kansas. IdeaTek shall provide the City written notice of any transfer or assignment within thirty (30) days, including notice of the name and address of the assignee and contact information. IdeaTek's obligations under this Ordinance with regard to indemnity, bonding 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 any transfer or assignment.

SECTION 16. POINT OF CONTACT AND NOTICES.

IdeaTek 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 IdeaTek in the event of an emergency.

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 or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar 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 IdeaTek observed holidays excepted.

The City: City of El Dorado Attn: City Clerk 220 E. First Avenue El Dorado, Kansas 67042	IdeaTek: IdeaTek Telcom Attn: Contract Notifications PO Box 407 Buhler, KS 67522 Daniel@IdeaTek.com
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Replacement addresses may be later designated in writing.

SECTION 17. ACCEPTANCE.

Prior to the effective date of this franchise, IdeaTek shall file with the City clerk its acceptance in writing of the provisions, terms and conditions of this Ordinance, which acceptance shall be duly acknowledged before an officer authorized by law to administer oaths. When so accepted, the ordinance and acceptance shall constitute a contract between the City and IdeaTek subject to the provisions of the laws of the state of Kansas.

SECTION 18. 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. IdeaTek agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of IdeaTek, or of the City at the written request of IdeaTek, in seeking to safeguard the confidentiality of information provided by IdeaTek to the City under this Ordinance.

SECTION 19. NON-DISCRIMINATION.

- a. IdeaTek will not, on the grounds of race, religion, color, sex, disability, national origin, or ancestry, discriminate or permit discrimination against any person in the use of the ROW or in activities under this franchise.
- b. The City agrees that under K.S.A. 12-2001 and K.S.A 17-1902, and other state and federal laws, this Ordinance must be competitively neutral and may not be unreasonable or discriminatory to any telecommunications provider operating in the City.

SECTION 20. MOST-FAVORED MUNICIPALITY.

Should IdeaTek after the Parties' execution and delivery of this Ordinance enter into a franchise agreement with another municipality of the same size or smaller than the City in this State, which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such agreement, are in the City's opinion substantially superior to those in this Ordinance, the City shall have the right to require that IdeaTek modify this Ordinance to incorporate the same or substantially similar superior benefits.

SECTION 21. MOST FAVORED PROVIDER.

All of the benefits and terms granted by the City herein are at least as favorable as the benefits and terms granted by the City to any future franchisee of the public ROW engaged in the same or similar business described in this Ordinance. Should the City enter into any subsequent agreement of any kind no matter what nomenclature is attached thereto with any other franchisee during the term of this Ordinance, which agreement provides for benefits or terms more favorable than those contained in this Ordinance, then this

Ordinance shall be deemed to be modified effective as of the date of such more favorable agreement to provide IdeaTek with those more favorable benefits and terms. The City shall notify IdeaTek promptly of the existence of such more favorable benefits and terms and IdeaTek shall have the right to receive the more favorable benefits and terms immediately. If requested in writing by IdeaTek, the City shall amend this Ordinance to contain the more favorable terms and conditions.

SECTION 22. SEVERABILITY.

If any clause, sentence, or section of this Ordinance, 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 IdeaTek may elect to declare the entire Ordinance invalidated if the portion declared invalid is, in the judgment of the City or IdeaTek, an essential part of the Ordinance.

SECTION 23. ENTIRE ORDINANCE; MODIFICATION.

- a. This Ordinance constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this Ordinance. The parties agree that this Ordinance is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party.
- b. Any modification or amendment to this Ordinance shall be of no force and effect unless it is in writing, signed by the parties, and adopted pursuant to the requirements of state law.

SECTION 24. SURVIVAL OF TERMS.

All of the terms and conditions in this Ordinance related to payment, removal due to termination or abandonment, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this Ordinance.

SECTION 25. GOVERNING LAW AND VENUE.

- a. As a condition of this Ordinance, IdeaTek 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 FCC, or the Kansas Corporation Commission ("KCC"), subject to IdeaTek's right to challenge in good faith such requirements as established by the FCC, KCC, or other City regulations. IdeaTek shall also comply

with all applicable laws, statutes and/or City regulations, subject to IdeaTek's right to challenge in good faith such laws, statutes, and/or City regulations.

- b. The obligations and undertakings of both parties hereto shall be performed at El Dorado, Butler County, Kansas. In the event that any legal proceeding is brought to enforce the terms of this franchise, the same shall be brought in state or federal courts, as appropriate, having jurisdiction for Butler County, Kansas.

SECTION 26. FORCE MAJEURE.

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

SECTION 27. SUMMARY PUBLICATION.

Pursuant to K.S.A. 12-2007(b), summary of the ordinance shall be published one time in the following format:

Ordinance No. 1355 Summary
On _____, the City of _____, passed Ordinance No. 1355.
The ordinance grants a franchise to IDEATEK TELCOM, LLC to construct, operate and maintain a telecommunications system in the City of _____, Kansas.
A complete copy of the ordinance is available at www. _____ or in the office of the city clerk located at _____, _____, Kansas, free of charge. This summary is certified by the city attorney.

[Signatures Begin on Following Page]

PASSED BY THE GOVERNING BODY, this ____ day of _____, 2021 for the City of El Dorado, Kansas.

THE CITY OF EL DORADO, KANSAS

BILL YOUNG, MAYOR

ATTEST:

TABITHA SHARP, CITY CLERK

APPROVED AS TO FORM:

_____, City Attorney

IDEATEK, TELCOM LLC

BY: _____
Daniel P. Friesen, CIO



BEYOND BASEBALL

July 1, 2021

Kevin Wishart
Director
El Dorado Parks and Recreation
kwishart@eldoks.com
316-321-9100

Mr. Wishart,

Beyond Baseball is pleased to present El Dorado Parks & Recreation with a formal proposal for use of McDonald Stadium. We are very excited we have been invited by your office to submit additional information regarding our informal presentation earlier this week.

We are confident that our proposal will create an environment that is beneficial to the city, Beyond Baseball and most importantly, the El Dorado community.

Beyond Baseball's proposal is as follows:

- Beyond Baseball enters a 5-year lease with the City of El Dorado for McDonald Stadium.
- Beyond Baseball will become the operator of the stadium property and will be responsible for the following: stadium cosmetic maintenance, trash disposal, internet service and cleaning.
- City of El Dorado will be responsible for structural maintenance of the stadium and parking lot including stadium lighting, parking area lighting, stadium HVAC, stadium electricity, stadium plumbing. The city will also be responsible for turf maintenance, lawn mowing, landscaping and utilities.
- A collegiate wood bat league team will play 25+ home games at McDonald Stadium from Memorial Day weekend through the second week of August.
- Beyond Baseball will hire a qualified, full-time General Manager to manage the team and facility with an open line of communication with El Dorado Parks & Recreation.
- Beyond Baseball will advertise and solicit non baseball events to take place at the stadium. Beyond Baseball will manage these events. Beyond Baseball will not interfere with scheduled dates from Butler Community College spring and fall baseball season, nor will Beyond Baseball interfere with El Dorado High School baseball season. Beyond Baseball will not take possession of McDonald Stadium until Memorial Day of each year.
- Beyond Baseball will have the option to manage concessions for all events at the stadium except for Butler County Community College and El Dorado High School events.

PARKVILLE, MO
www.BeyondBaseball.pro



BEYOND BASEBALL

- Beyond Baseball has all rights related to signage and sponsorships at stadium grounds.
- El Dorado will provide Beyond Baseball with \$7,500 in tenant finish money to expand stadium grounds fencing to include area behind first base dugout.
- Beyond Baseball will secure applicable insurance.
- Beyond Baseball will be allowed to sell alcohol during events and agrees to contract with El Dorado Police Department for security during events.
- As stadium operator, Beyond Baseball retains all scheduling rights during June, July and August. Beyond Baseball acknowledges that the collegiate wood bat league team will not play every day and will make McDonald Stadium available to youth and other amateur baseball events throughout the summer. A price that Beyond Baseball charges for events will be agreed upon by Beyond Baseball and the City of El Dorado.
- Beyond Baseball will pay the City of El Dorado an annual lease amount of \$10,000 per year (paid monthly at a rate of \$833.33) for a period of five years. Beyond Baseball will pay a \$5,000 security deposit of good faith upon lease execution. Lease will begin September 1, 2021 and expire August 31, 2026. The lease will include an option to extend at five-year increments at a 10% increase per annual lease period.

I am available to answer any additional follow-up questions you have. Please contact us if you have any questions regarding this proposal.

Regards,

J.R. Bond
President
Beyond Baseball



BEYOND BASEBALL

Proposal to El Dorado



- Guiding Philosophy of Organization
- Guests as Royalty
- Community
- Staffing
- League Markets
- Stadium Sharing
- Attendance Goals
- Lease Proposal

Guiding Philosophy



Beyond Baseball is a forward-thinking baseball organization. We truly believe that a baseball game can be enjoyed by all. Beyond Baseball understands that the presentation of the game needs to evolve. We are not restricted by conventional thought. We are never typical.

Each of our games is a spectacle. We set the tone with our team names and branding and carry that tone with promotions, contests, food menu and a steady stream of entertainment both on and off the field. It will become clear that guest experience is our top priority. When we welcome guests into our ballparks, we treat them like royalty.

Guests as Royalty



When it comes to guest services, we are guided in principle and action by the example of Walt Disney. Mr. Disney revolutionized the world of entertainment by ensuring every guest had a top-notch experience.

Guest experience and guest service is the one area an operator can maintain full control of the operation. Whether a team wins or loses, the operator can ensure that every guest was greeted with a smile, was served fresh food, and was entertained with good family friendly promotions.

Community



Our philosophy towards business is centered directly on guest experience. The foundation of this philosophy is the local community.

Beyond Baseball will become embedded within the El Dorado community. Team staff will be local. This staff will be full-time, year-round staff that will constantly engage the community. Beyond Baseball is not just a summer organization.

Our staff will be active in community activities and Beyond Baseball will be an active sponsor in all things civic.

Our first step towards community will begin with a conversation with the El Dorado Baseball Hall of Fame.

Staffing



Beyond Baseball will hire full-time staff in El Dorado. This staff will be sourced from area residents. A year-round full-time general manager will be responsible for sales, coordinating with the community and hiring seasonal and gameday staff.

Seasonal staff will include a concessions coordinator, promotions coordinator, mascot, broadcaster and concessions and stadium staff. Security will be hired from El Dorado Police Department.

League Markets



El Dorado will join a collegiate wood bat baseball league with teams located in top markets. These markets will have travelling fans that will bring new business dollars into El Dorado.

- St Joseph, MO
- Jefferson City, MO
- Joplin, MO
- Des Moines, IA
- Clarinda, IA
- Sedalia, MO
- EL DORADO, KS!!!!

Stadium Sharing



There will be 25 home games played each summer. The season starts Memorial Day weekend and ends the second week in August.

Our lease agreement would allow for use of the stadium for the full schedule of games and practices by Butler County Community College and El Dorado High School. The lease would also allow for other baseball events during the summer on our road/off days. It is our opinion that the more baseball that is played, the better it is for everyone. We want to be viewed as baseball leadership in the community and we intend to set that tone. We want to be inclusive and hospitable. It goes towards our “guests as royalty” philosophy.

The schedule will be set by early December. Of the 75+ days during our schedule, 45+ will be available for scheduling by other organizations. These open dates would include multiple weekend dates as our organization will play on the road.

Attendance Goals



For the first season we have set a goal in the El Dorado market for an average of 500 tickets sold per home game. This equals 12,500 sold tickets for the season. We strongly believe this is an attainable goal. For this goal to be met we would need to hit the ground running by August of 2021 with staff in place. Staff will begin reaching out to the community and selling sponsorships and season ticket packages.

We believe we can create a buzz of activity around both the stadium and the city. It will be a triumph for the community to have a professionally managed and quality ballclub back in McDonald Stadium once again.

LEASE PROPOSAL OUTLINE



- See attached for more thorough lease proposal outline.

CONTACT INFORMATION

913-636-1532

