

**MASTER SERVICES AGREEMENT**

PrairieWave Telecommunications, Inc., ("PrairieWave") shall provide, and City of Rapid City ("Customer") desires to purchase from PrairieWave, the services selected in this Agreement and all applicable Addenda and Exhibits (collectively "Services") on the following terms and conditions. This Agreement is not effective unless signed by a PrairieWave representative actually authorized to sign.

**1. DEFINITIONS/SCOPE.** PrairieWave provides certain services in accordance with the applicable tariffs, catalogues, or price lists (collectively, "Tariffs") and an Internet published ([www.prairiewave.com](http://www.prairiewave.com)) Acceptable Use Policy ("AUP") for the jurisdictions in which the Services are provided, and those Tariffs and AUP are incorporated into this Agreement by this reference. In addition to these terms and conditions, additional terms and conditions may be associated with specific Services. Both sets of terms and conditions are binding on the parties. Any conflict between the two will be governed by the Services-specific terms and conditions. PrairieWave reserves the right to unilaterally amend all terms and conditions in response to regulatory changes beyond the control of PrairieWave that materially alter the feasibility or economics of providing the Services. Any costs associated with modifying or reprogramming Customer's equipment to make it compatible with PrairieWave-provided Services will be the responsibility of Customer. All offers of Services are subject to credit approval.

**2. TERM.** The term of this Agreement shall commence on install for a term of 36 months. This Agreement automatically renews for successive terms at non-promotional term pricing existing at the time of renewal, equal in length to the prior term, unless PrairieWave or Customer provides written notice of termination at least 30 days prior to the end of the current. PrairieWave reserves the right to cancel Service in accordance with its cancellation rights in any applicable Tariff or its AUP. Customers who decline term plan renewal but retain PrairieWave Services under this Agreement will be converted automatically to a month-to-month term at the end of the current term.

**3. CHARGES.** PrairieWave records shall document Customer's Service location(s), quantities, and monthly recurring local rates under this Agreement, as well as the applicable one-time charges for initial installation, discounts or credits, which are incorporated into this Agreement by reference. In addition to the monthly charge(s), the Customer will pay federal and state end user common line charges that would be applicable to comparable service obtained from the incumbent local exchange carrier; federal, state and local use, excise, sales and privilege taxes; applicable surcharges related to universal service programs, emergency telephone service (911/E911) and telecommunications relay service for the hearing impaired; payphone surcharges; and other similar surcharges. Such charges may be stated or referenced in the applicable Tariffs for the jurisdiction in which Service is provided. Unless different treatment is required by applicable regulations, adjustments for billing errors will be limited to 90 days from the date the billing error is discovered. PrairieWave shall not be responsible for wrong number calls made to Customer's toll-free number. All reasonable costs and expenses, including but not limited to attorneys' fees, expenses, court costs and service charges, incurred by PrairieWave in collecting payment will be an expense of and charge to Customer. Customer agrees to pay each bill in full at location specified on invoice by the payment due date. Late payment charges will be billed at 1.5% per month or the maximum lawful rate allowable under applicable state law, whichever is lower.

**4. DIRECTORY LISTING.** For Local Exchange Services, Customer's name, address, telephone number and any other information listed on this Agreement are certified as correct by the Customer, and it is understood and agreed that Customer's white page directory listing will appear using that information. It is Customer's sole responsibility to inform PrairieWave in writing of any change in the information, including telephone number or address, at least 90 days prior to the local telephone directory issue date, which will be provided to Customer upon request. PrairieWave assumes no liability whatsoever for (i) any telephone numbers published or distributed by Customer prior to confirmation that the number is installed and terminating properly or that the Services are connected to the proper facilities or (ii) errors in the listing. Customer releases PrairieWave from any damages for any error, including listing omissions, related to a directory listing.

**5. TERMINATION.** Either Customer or PrairieWave may terminate this Agreement for cause if written notice specifying the cause for termination and requesting correction within 30 days is given the other party and the cause is not corrected within the 30-day period. Cause is any material breach of the terms of this Agreement, to include a violation of the AUP. The Agreement may also be terminated for cause without notice in accordance with the Tariffs on file with regulatory authorities and the terms of the AUP. If PrairieWave terminates this Agreement for cause or Customer terminates this Agreement WITHOUT cause, Customer shall pay early termination charges. For termination prior to installation of Service and after execution of this Agreement, early termination charges shall be those reasonable expenses incurred by PrairieWave through the date of termination. If after activation of Service, Customer requests termination of Service without cause, or if PrairieWave terminates this Agreement for cause, Customer agrees: to pay an early termination charge consisting of payment for Services actually received; repayment of any credits, or waived installation costs received; reimbursement of the reasonable costs PrairieWave incurred in setting up Customer's Service (including the costs of any equipment

installed and not returned in "as new" condition); and any discounts received to include an amount equal to the difference between what the Customer would have paid PrairieWave on a month-to-month basis for the Services and the Agreement rate for the same Services times the number of months Services were provided under the Agreement. Customer agrees that PrairieWave damages for early termination would be difficult to determine, and the termination charge(s) constitutes liquidated damages and is not intended as a penalty. Month-to-month Service Agreements may be terminated on thirty (30) days' written notice to PrairieWave. If Customer requires fewer lines during the term of this Agreement, the number of lines may be reduced without liability, unless local exchange service for such lines is re-established with another provider, or the line reduction is made for the purpose of reducing termination liability.

**6. SERVICE SUSPENSION/MAINTENANCE.** PrairieWave may from time to time suspend Service for routine maintenance or rearrangement for a short period of time. Whenever possible, PrairieWave will give Customer advance notification. Any PrairieWave liability resulting from a Service suspension shall be determined in accordance with the governing Tariffs and Section 7 of this Agreement.

**7. LIMITATION OF LIABILITY.** PRAIRIEWAVE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT. In no event shall PrairieWave be liable for the acts, omissions, or delays imposed by third-party vendors to PrairieWave as long as PrairieWave has made reasonable efforts to obtain the necessary services on a timely basis. Any PrairieWave liability to Customer for any damages of any kind under this Agreement shall not exceed, in amount, a sum equivalent to the applicable out-of-service credit under the governing Tariff or AUP. Remedies under this Agreement are exclusive and limited to those expressly described herein. **NO WARRANTIES. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CALLING CARDS.** Customer shall remain responsible for payment of calling card usage, irrespective of any actual or alleged unauthorized or fraudulent use. PrairieWave shall use reasonable efforts to obtain a credit from its carrier for all fraudulent or unauthorized usage. PrairieWave reserves the right to terminate Services for a user who uses the card for unauthorized purposes or otherwise misuses the Services, or where in the carrier's judgment there is sufficient risk of fraudulent use.

**8. FORCE MAJEURE.** If performance by PrairieWave of any obligation under this Agreement is prevented, restricted or interfered with by causes including without limitation failure or malfunction of Customer-supplied equipment, acts of God, explosions, vandalism, cable cut, storms, fires, floods or other catastrophes, power failure, national emergencies, insurrections, riots, wars, strike, lockouts, boycotts, work stoppages or other labor difficulties, or any law, order, regulation or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority, then PrairieWave shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. PrairieWave shall use reasonable efforts under the circumstances to avoid or remove such causes of nonperformance with reasonable dispatch.

**9. ADDITIONAL PROVISIONS.** This Agreement will not be assignable by Customer without the express written consent of PrairieWave. This Agreement, including any Addenda or Exhibits, the applicable Tariffs and AUP; and any product-specific terms and conditions, constitutes the entire understanding between Customer and PrairieWave with respect to Services provided herein and supersedes any prior agreements or understandings. If any part of a provision of this Agreement is invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provisions of this Agreement, and the parties hereby agree to negotiate with respect to any such invalid or unenforceable part to the extent necessary to render such part valid and enforceable. The parties agree that a digitized (electronic) copy of the executed Agreement shall be the same as an original copy. In addition to any provisions that by their nature would survive, Sections 4 and 7 shall survive termination, cancellation or expiration of this Agreement.

**PrairieWave Telecommunications, Inc.**

**Customer: City of Rapid City**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name  
Address:

\_\_\_\_\_  
Name  
Address:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date  
ATTEST:

\_\_\_\_\_  
Finance Officer



**ADDENDUM No 1  
for Telecommunication Services**

This Addendum is attached to and is specifically made a part of the Agreement between the Parties indicated by the signatures below. The defined terms in the Agreement remain the same for the Addendum. This Addendum is effective on install ("Effective Date"). The Addendum describes the Services, the term of the Addendum, the prices for the Services, service level commitments, and any other Customer or Services specific terms and conditions.

- 1. **Services Description: Fractional T1 for Internet Service (368K)**
- 2. **Services Term.** 36 months
- 3. **Services Pricing:** \$240/month install waived
- 4. **Service Level Commitments.**
- 5. **Other Services/Customer Specific Terms and Conditions.**

IN WITNESS WHEREOF, the Parties have signed this Addendum in duplicate on the Effective Date.

**PrairieWave Telecommunications, Inc.**

**Customer: City of Rapid City**

By \_\_\_\_\_  
 Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_

By \_\_\_\_\_  
 Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)