



AGREEMENT FOR DATA SERVICES

ACCOUNT

DATE: 12.14.10

CUSTOMER INFORMATION

COMPANY NAME: CITY OF RAPID CITY		
SERVICE ADDRESS: 300 SIXTH STREET		MULTIPLE LOCATIONS: X YES NO
CITY: RAPID CITY	STATE: SD	ZIP: 57701
COMPANY PHONE #: 605.394.6018	COMPANY FAX #	
COMPANY CONTACT: RUSS TIENSVOLD	CONTACT E-MAIL ADDRESS: RUSS.TIENSVOLD@RCGOV.ORG	

CUSTOMER BILLING INFORMATION

BILLING CONTACT: SAME		
BILLING ADDRESS:		
CITY:		ZIP:
BILLING PHONE #	BILLING FAX #	
BILLING E-MAIL ADDRESS		
TAX EXEMPT <input type="checkbox"/> YES <input type="checkbox"/> NO (IF YES, ATTACH TAX-EXEMPT FORM)		

TECHNICAL CONTACT INFORMATION

TECHNICAL CONTACT NAME: RUSS TIENSVOLD	PHONE # 605.394.6018
VENDOR'S NAME:	PHONE #
VENDOR'S CONTACT NAME:	

SERVICE ORDERING SUMMARY

<input checked="" type="checkbox"/> NEW INSTALL <input type="checkbox"/> CONVERSION <input checked="" type="checkbox"/> CONTRACT EXTENSION	<input type="checkbox"/> 18 MONTH <input type="checkbox"/> 36 MONTH <input checked="" type="checkbox"/> 60 MONTH <input type="checkbox"/> OTHER MONTH
<input type="checkbox"/> INTERNET ONLY <input checked="" type="checkbox"/> PRIVATE NETWORK WITH INTERNET	
PRIVATE NETWORK BANDWIDTH: 30 MBPS	INTERNET BANDWIDTH

Notes: This is for an aerial build and is dependent on pole permits. The capital contribution is \$12K up front and a MRC of \$1500.

ACCEPTANCE

SUBJECT TO THE TERMS AND CONDITIONS ON THE REVERSE SIDES HEREOF.

CITY OF RAPID CITY

CUSTOMER AUTHORIZED SIGNATURE

ALAN HANKS, MAYOR
NAME (PLEASE PRINT)

ATTEST:
FINANCE OFFICER

(SEAL)

DATE

MIDCONTINENT COMMUNICATIONS AUTHORIZED SIGNATURE

TRACIE AMBUR
NAME (PLEASE PRINT)

ENTERPRISE ACCOUNT EXECUTIVE
TITLE

DATE



TELECOMMUNICATIONS SERVICES AGREEMENT

General Terms and Conditions

The following General Terms and Conditions apply to all services provided Customer by Midcontinent Communications:

- Use.** Midcontinent Communications and Customer agree to be bound by all the terms and conditions of this agreement and any references incorporated into this agreement. Except as required by law, services are for end-use only and may not be resold by Customer. Customer is responsible for security and all usage of service on his/her account.
- Term.** Service shall be for period indicated on face page of Telecommunications Services Agreement and can be contractually reviewed for successive like terms by a member of Midcontinent Communications' staff. Should Midcontinent Communications continue to provide Service after the term without a further agreement, the monthly recurring charges could convert to the applicable month-to-month rate under the terms and conditions of the applicable tariff.
- Fees.** Customer is responsible for payment within 45 days of the invoice date. Customer shall be subject to a late fee of \$5.00 for any bill not paid within 45 days of the invoice date and interest at the rate of 1.5% per month (\$5.00 minimum charge per month, unless prescribed by law, in which event at the highest rate allowed by law) will accrue upon any unpaid amount commencing 45 days after billing. Customer's first invoice will include the regular monthly charge plus any prorated charges for use since first day of service. Rates and fees will not increase without 45 days' prior written notice to Customer, except in those cases where a third party vendor of resold services raises rates to Midcontinent Communications, in which case Midcontinent Communications may raise such cost immediately. It is Customer's responsibility to inform Midcontinent Communications within 180 days of any billing discrepancies. Any applicable surcharge, federal, state, local use, excise, franchise fee, or sales tax or similar levy, chargeable to or against Midcontinent Communications because of the Service provided to Customer, shall be charged to and paid by Customer in addition to the service charge and other charges under this Agreement. Customer agrees to pay all costs, including reasonable attorneys' fees, expended by Midcontinent Communications in collecting delinquent charges.
- Termination Fees.** (A) If a service commencement date does not occur within 90 days after the requested service date, Customer may cancel this Agreement with respect to such service without liability for any cancellation charge, by 30 days' written notice to Midcontinent Communications. (B) Except as permitted in subsection (A), if Customer cancels any Service or if Midcontinent Communications terminates any Service pursuant to Section 5 below, then the Customer shall pay Midcontinent Communications a cancellation charge in the amount of (1) \$300.00 per telephone line and 100% of the remaining service charge payable during the remainder of the term for any voice T1, fiber connection or internet service plus (2) actual expenses incurred by Midcontinent to initiate service, any installation charges waived, and discounts or credits issued under this agreement. (C) Either party may cancel this agreement without liability if Midcontinent Communications is prohibited from furnishing service, or if a business ceases to exist, or if a service issue persists that cannot be resolved, or if any material rate or term contained herein is substantially changed by final order of a court, administrative agency, or other tribunal of competent jurisdiction. Customer is responsible for all fees that Midcontinent Communications incurs from third party vendors as a part of the termination of services contemplated by this agreement.
- Suspension or Termination.** Midcontinent Communications may suspend or terminate service (i) if Customer fails to pay all delinquent charges within 7 days after written notice of termination or (ii) if Customer fails, within 30 days after written notice, to comply with this Agreement or any applicable tariff. Midcontinent Communications may, without notice, immediately discontinue or cancel service for non-payment of any sum due to Midcontinent Communications for more than 30 days or for violation of any regulation, rule or law of any governmental authority. Midcontinent Communications reserves the right to disconnect services at any time if fraudulent usage is suspected.
- Limit of Liability.** Midcontinent Communications shall not be liable for and credit shall not be given for any failure or interruption of service caused by acts of God, strikes, emergencies, mechanical failure, regulatory or other governmental action, action or inactions by Customer, its employees, agents, invitees, a breach of this Agreement by Customer or any other cause beyond Midcontinent Communications' control. **IN NO EVENT SHALL MIDCONTINENT COMMUNICATIONS BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES. MIDCONTINENT COMMUNICATIONS HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPLICIT OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LIABILITY OF MIDCONTINENT COMMUNICATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT ACTUALLY PAID TO MIDCONTINENT COMMUNICATIONS BY CUSTOMER FOR SERVICES HEREUNDER.** The above limitation may not apply to some claims. Customer may have other rights or remedies available under state or federal law.
- Directory Listings.** Midcontinent will provide a customer's correct name and telephone number to a calling party either upon request to or interception by Midcontinent in the event there is an error or omission in the customer's directory listing. Midcontinent's liability for any errors or omission in any directory listings is limited to the charges made for the listing itself. Midcontinent shall not be liable to members or others for any incidental, indirect, special or consequential damages of any kind, including loss of use, loss of business, or loss of profit, arising from errors or omissions in directory listings.
- Indemnification.** The Customer warrants that its use of the services will not violate any law, or violate or infringe upon the rights of any other party, including, without limitation, contractual rights, intellectual property rights, publicity and privacy rights, and the rights against libel, defamation, and slander.

Customer Initials _____ Date _____



TELECOMMUNICATIONS SERVICES AGREEMENT

General Terms and Conditions (continued)

9. **Legal Application.** This Agreement shall be interpreted and bound by state law. This Addendum and related agreements represent our entire Agreement and supersedes all prior conversations, representations, promises, and warranties (expressed or implied) made prior to or at the time of the signing of this document. This Agreement may be amended at any time only in writing signed by an authorized representative of each party hereto. This Agreement is binding upon the heirs, devisees, successors, and assigns of each party. To the extent that this Agreement is inconsistent with the terms of Midcontinent’s tariffs, the terms of the tariffs shall prevail.
10. **Equipment.** Customer assumes responsibility for loss of or damage to any equipment not covered by Manufacturer or Supplier maintenance agreements during term of service agreement, excluding normal maintenance. “Normal maintenance” is a problem with equipment not caused by physical damage or abuse. The provision by Midcontinent Communications and the purchase or lease by Customer of non-tariffed services and/or equipment in connection with this Agreement shall be subject to the terms and conditions of this Agreement except as superseded by the terms and conditions of any pertinent addenda attached hereto.
11. **Services Warranty (High-Speed Internet Access and Internet Hosting Only).** The Customer understands that the general reliability of the Internet and of connections to and from the Internet and connections to and from the Midcontinent Internet server (“Host”) may be controlled by factors beyond the control of Midcontinent Communications. Because of this, it is impossible for Midcontinent Communications to guarantee that Midcontinent Communications’ provision of the Services will be uninterrupted, that the Customer will be able to properly access and use the services or that the Services will be provided without error. Once Midcontinent Communications has been informed that the services have been interrupted, that the Customer has not been able to access or use the service, that there is an error in the services, or that visitors have been unable to visit Customer’s web site, then Midcontinent Communications warrants that it will make every reasonable effort to correct such problem or error as soon as possible. **THE ABOVE SERVICES WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** The above disclaimer may not apply to certain claims. Customer may have additional rights or remedies under state or federal laws.
12. **Equipment Network Addresses (High-Speed Internet Access Only).** In order to use the services, Midcontinent Communications will provide to the Customer a non-portable TCP/IP network address (es). The customer must provide documented justification for addresses exceeding eight (8). Any pre-existing Customer network address (es), because of Midcontinent Communications network configuration, may not be routable on the Midcontinent Communications network.
13. **Equipment (High-Speed Internet Access Only).** Customer has agreed to purchase from Midcontinent Communications those items of equipment (“Equipment”) listed in the Proposal. The equipment is not manufactured by Midcontinent Communications Risk of loss or damage and title to the Equipment shall pass to the Customer upon Midcontinent Communications’ installation of the Equipment. To the extent possible, Midcontinent Communications will assign or pass through to the Customer all warranties related to the Equipment. The only obligation of Midcontinent Communications as it relates to the equipment is to install the Equipment and reasonably assist the Customer with its efforts to pursue warranty issues or claims with the equipment’s manufacturer (s). **THE ABOVE WARRANTY OF MIDCONTINENT COMMUNICATIONS TO ASSIST CUSTOMER WITH WARRANTY ISSUES RELATED TO THE USE OF THE EQUIPMENT IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** The above disclaimer may not apply to certain claims. Customer may have other rights or remedies available under state or federal law.
14. **User Responsibility (High-Speed Internet Access Only).** In order to use the Services provided by Midcontinent Communications, the Customer will need certain computer network equipment as more fully described in the proposal. It will be the responsibility of the Customer to provide, operate, and maintain, all at his/her own expense, all such necessary computer network equipment. The Customer also shall be responsible for security related to the Customer’s use of and access to the services. No user access security will be provided by Midcontinent Communications with respect to the Customer’s facilities or the facilities of others. Midcontinent Communications shall not be liable in any manner to the Customer for Midcontinent Communications’ failure or inability to detect or identify security breaches. Customer agrees to comply with Midcontinent Communications’ Acceptable Use Policy, as such policy may be modified from time to time. The Midcontinent Communications Acceptable Use Policy can be accessed through the Midcontinent Communications web site at <http://www.midco.net>. Customer shall not use the services to provide access to a bulletin board service that Customer hosts on his/her own computer system or to provide electronic services of any nature to any third party.
15. **Internet Domain Names (Internet Hosting Only).** The Services described in the proposal may include certain Internet domain name registration and maintenance services. Customer acknowledges that such services do not include any research or determination of any sort regarding whether Customer’s selection of a domain name will infringe, dilute, or otherwise violate the scope of any third party’s rights in a trade name, any other type of mark, trade name, or personal or legal entity name. Customer agrees to assume any and all risks associated with Customer’s selection of an Internet domain name. Customer may wish to consult an attorney familiar with copyright law, trademark law and the Internet domain name registration process prior to selecting an Internet domain name.

Customer Initials _____ Date _____



TELECOMMUNICATIONS SERVICES AGREEMENT

General Terms and Conditions (continued)

16. **Web Site Hosting Services (Internet Hosting Only).** Midcontinent Communications shall host Customer's web site on the Host. For the purposes of this Agreement, to host the web site shall mean that Midcontinent Communications will (i) provide data space on Host for up to 100 mb of storage space and access through the Internet for loading, changing, and modifying the data files that comprise the Customer's web site; and (ii) provide those telecommunications links to the Internet which will permit users of the Internet to retrieve or download Customer's web site files. All hosting fees shall be billed in advance.
17. **Maintenance of Customer Web Site (Internet Hosting Only).** It is the responsibility of Midcontinent Communications to maintain the Internet server hardware and software and all communications links to and from the Internet server. Customer shall be solely responsible for the preparation, maintenance, and update of the Customer's web site. The Customer will receive from Midcontinent Communications one shell account and password for such preparation, maintenance, and updating. The Customer shall keep the password secure and private. The Customer will comply with the Midcontinent Communications' Acceptable Use Policy as published at www.midco.net. At the end of each calendar month, Midcontinent Communications shall publish an HTML report in the Customer's dataspace which will describe activity for Customer's web site for the month then ended. The report will list the number of web pages requested or viewed by visitors to Customer's web site.
18. **Other Terms and Conditions (High-Speed Internet Access and Internet Hosting Only).** This Agreement, along with the proposal and Midcontinent Communications' Acceptable Use Policy, represents the entire agreement between Midcontinent Communications and the Customer related to Midcontinent Communications' provision of the services and equipment described in this Agreement. High Speed Internet Access does not include News Services, but they can be purchased separately. This Agreement supersedes all prior understandings, agreements and contracts related to the services. Modifications or amendments to this Agreement shall be enforceable only if they are in writing and are signed by authorized representatives of both parties, except that Midcontinent Communications reserves the right to unilaterally modify the particulars of the proposal upon 30 days' written notice. If any action at law or equity is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and expenses, in addition to any other relief to which it may be entitled. This Agreement will be governed by the laws of the state of South Dakota, except in regard to that state's choice of law provisions. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.
19. **Other Terms and Conditions (Midcontinent Digital Phone Service Only).** (a) Midcontinent Digital Phone Service provides access to police, fire and rescue services through E911, a service that automatically provides the address Customer registers with Midcontinent to the local E911 dispatcher when calls are made 911 and that permits the local dispatcher to call back if necessary. Midcontinent has engineered its service to comply with the telephone industry standards for reliability and access to E911. This includes backup power for Midcontinent's telephone network and monitoring to provide additional backup for longer outages. As with any other phone service provider, Midcontinent Digital Phone Service, including 911 calls and E911 service, will be unavailable if the lines between your home and the network switch are disabled due to a catastrophic condition, such as a storm, and E911 service may be unavailable due to problems at the government's call center that are outside Midcontinent's control. Customer's telephone modem includes a battery backup that is designed to ensure that the unit will continue to work during a power outage, in accordance with telephone industry standards. As long as this battery backup unit is charged and functioning, Midcontinent Digital Phone service will continue to work, but customers may not be able to make calls, including 911 calls, if there is a power outage for an extended period of time. (b) The telephone modem for Midcontinent Digital Phone Service is set up to provide service to the address Customer provided at the time of service initiation, and will not work if it is moved outside the local Midcontinent Digital Phone network. The equipment may not be moved to another location unless Customer first contacts Midcontinent Customer Service at 800-888-1300, or via email to mccomm@midco.net, so that Midcontinent can change the address to reflect the new location and ensure that the right information is provided for any call to 911. Changes in location information will not be available to E911 operators immediately because of limitations in the process for updating that information. If the telephone modem is moved prior to informing Midcontinent, it may be possible to call 911 but E911 service will not work properly.

Customer Initials _____ Date _____

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