



AGREEMENT FOR DATA SERVICES

1-800-888-1300

ACCOUNT #:

DATE: 6.18.13

CUSTOMER INFORMATION

COMPANY NAME: City of Rapid City – Landfill		PROJECTED EFFECTIVE DATE:
SERVICE ADDRESS : 5555 S. Highway 79		MULTIPLE LOCATIONS: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
CITY: Rapid City	STATE: SD	ZIP: 57701
COMPANY PHONE # : 605.394.4162	COMPANY FAX # :	
COMPANY CONTACT: KARL MERBACH	CONTACT E-MAIL ADDRESS:	

CUSTOMER BILLING INFORMATION

BILLING CONTACT: CITY OF RAPID CITY		
BILLING ADDRESS: 300 Sixth Street		
CITY: Rapid City	STATE: SD	ZIP: 57701
BILLING PHONE # : 605.394.4154	BILLING FAX #:	
BILLING E-MAIL ADDRESS :		
TAX EXEMPT <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (IF YES, ATTACH TAX-EXEMPT FORM)		

TECHNICAL CONTACT INFORMATION

TECHNICAL CONTACT NAME: Gerri Johnston	PHONE #: 605.415.8295
VENDOR'S NAME:	PHONE #:
VENDOR'S CONTACT NAME:	

SERVICE ORDERING SUMMARY

<input checked="" type="checkbox"/> NEW INSTALL	<input type="checkbox"/> CONVERSION	<input type="checkbox"/> CONTRACT EXTENSION	<input type="checkbox"/> 18 MONTH	<input type="checkbox"/> 36 MONTH	<input type="checkbox"/> 60 MONTH
			<input type="checkbox"/> OTHER MONTH:		
<input type="checkbox"/> INTERNET ONLY	<input type="checkbox"/> ETHERNET TRANSPORT	<input type="checkbox"/> ETHERNET TRANSPORT WITH INTERNET			
<input checked="" type="checkbox"/> ETHERNET BANDWIDTH: 10 mbps \$500 MRC 36 months	<input type="checkbox"/> T1 DATA BANDWIDTH:	<input type="checkbox"/> T1 TRANSPORT:			
<input type="checkbox"/> INTERNET BANDWIDTH :					

Notes: **10 mbps Ethernet**

ACCEPTANCE

SUBJECT TO THE TERMS AND CONDITIONS ON THE FOLLOWING FOUR PAGES HEREOF.

CUSTOMER AUTHORIZED SIGNATURE

MIDCONTINENT COMMUNICATIONS AUTHORIZED SIGNATURE

NAME (PLEASE PRINT)

Tracie Ambur
NAME (PLEASE PRINT)

TITLE

Enterprise Account Executive
TITLE

DATE

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'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 30 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.
- 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, or (iii) if Customer is in default under any other agreement with or obligation to Midcontinent Communications and has not cured such default within any applicable cure period. 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.
- 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 South Dakota 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.

Customer Initials: _____ Date: _____



TELECOMMUNICATIONS SERVICES AGREEMENT

General Terms and Conditions (continued)

16. **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 supercedes 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.

Customer Initials: _____ Date : _____

Universal Service Fee Sign-off

Under federal law, if more than 10% of the traffic on a circuit is interstate, the circuit will be treated as interstate for regulatory purposes, including universal service contributions. Customer acknowledges that Midcontinent will rely on this certification in calculating universal service contributions. Customer has a continuing obligation to maintain the accuracy of the representations below and agrees to notify Midcontinent Communications within 20 calendar days of any change.

Please indicate below whether you anticipate that more than 10% of the traffic on the circuit(s) being purchased under this agreement will be interstate (if you are purchasing multiple circuits and some will have more than 10% interstate traffic and some will have no more than 10% interstate traffic, answer separately for each circuit):

- Not Exempt (More than 10% of the traffic will be interstate, note: all Internet traffic is considered interstate).
- Exempt (If exempt indicate reason below & request an exemption form).
- a. Customer (with a 499 File ID) is purchasing the services for resale and contributes directly to the FUSF pursuant to FCC rules.
- b. Customer (with a 499 Filer ID) provides the services only to resellers and each of those resellers is itself an FCC Form 499 filer and a direct contributor to the FUSF.
- c. Customer certifies that it is a U.S. reselling carrier and is using resold international switched service purchased from Midcontinent Communications to re-file the foreign-billed traffic of a foreign telephone operator and this traffic both originates and terminates in foreign points.
- d. No more than 10% of the traffic will be interstate (note: all Internet traffic is considered interstate).



TELECOMMUNICATIONS SERVICES AGREEMENT

Technical Narrative and Overview Drawings

Notes:

Midcontinent Business Solutions will provide a 10 Mbps EPL service to the City of Rapid City from the RC Landfill at 5555 S. Highway 79, Rapid City, SD into the CORC L3VPN. The service will be delivered by fiber terminating into Midcontinent owned and operated equipment which will serve as our demarcation point. All capabilities beyond Midcontinent equipment, including power, are the responsibility of the customer.