

VIDEO SERVICE PROVIDER AGREEMENT

THIS VIDEO SERVICE PROVIDER AGREEMENT is made this ____ day of October, 2017, by and between the City of Lawrence, Kansas, a municipal corporation, and Midcontinent Communications, a South Dakota general partnership.

TERMS

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. **Definitions.** For the purposes of this Video Service Provider Agreement, the definitions of words and phrases in the Kansas Video Competition Act of 2006, codified as amended at K.S.A. 12-2021 *et seq.* ("the Act"), shall be applicable. Additionally, the following words and phrases shall have the meaning given herein:
 - (a) **"Agreement"** shall mean the Video Service Provider Agreement.
 - (b) **"City"** shall mean the City of Lawrence, Kansas. References to the City shall also include, as appropriate, any and all successors and assigns.
 - (c) **"Facilities"** shall mean fiber optic lines, conduits, wires, cables, pipes, poles, and all equipment, appurtenances, and improvements thereto, used to provide video service.
 - (d) **"Local Exchange Service"** means local switched telecommunications service within any local exchange service area approved by the Kansas Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term does not include wireless communication services.
 - (e) **"Public Improvement"** shall mean any existing or contemplated public facility, building, or capital improvement project, including, without limitations, streets, alleys, sidewalks, sewers, water mains, drainage conduits, right of way improvements, and other Public Projects.
 - (f) **"Public Project"** shall mean any project planned or undertaken by the City or any other governmental entity for the construction, reconstruction, maintenance, or repair of public facilities or Public Improvements, or for any public purpose.

- (g) **"Public Rights of Way"** shall mean those areas of real property in which the City has a right of way interest, whether through acquisition or dedication. It shall include the area on, below, or above any present and future street, alley, avenue, road, highway, parkway, boulevard, or bridge, dedicated or acquired as a right of way. The term does not include the airwaves above a right of way with regard to wireless telecommunications, other non-wire telecommunications, or broadcast service, an easement obtained by utilities, or a private easement in a platted subdivision or tract.
- (h) **"Video Service Provider"** shall mean Midcontinent Communications, a South Dakota general partnership. References to Video Service Provider shall also include, as appropriate, any and all successors and assigns.

2. **Statutory Requirements.**

- (a) Video Service Provider was granted authorization by the state of Kansas to provide Video Service in the City on December 22, 2016. (A copy of the December 22, 2016, Order of the Kansas Corporation Commission, granting authorization to Video Service Provider to provide Video Service in the City, is affixed hereto as Exhibit A and is incorporated herein by reference).
- (b) Video Service Provider has, in accordance with the approved assignment of an agreement between the City and Video Service Provider's predecessor, already commenced providing video services in the City.
- (c) Video Service Provider may be contacted by the City at the following telephone number: 785-423-0911.
- (d) Video Service Provider may be contacted by customers at the following telephone number: 1-800-888-1300.
- (e) Video Service Provider agrees to update this contact information with the City within 15 calendar days in the event that such contact information changes.
- (f) Video Service Provider acknowledges and agrees to comply with the use of Right of Way terms provided at Chapter 16, Articles 8 and 9 of the City Code, as may be amended, and the terms set forth in Section 7 of this Agreement, to the extent said terms are applicable to Video Service Provider and not contrary to state and federal laws and regulations. Video Service Provider hereby reserves the right to challenge the lawfulness and applicability of such terms to Video Service Provider.

- (g) By entering into this Agreement, neither the City's nor Video Service Provider'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.
- (h) By entering into this Agreement, neither the City nor Video Service Provider waives any rights, but instead expressly reserves any and all rights, remedies, and arguments the City or Video Service Provider may have, at law or in equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, ordinances, and/or rulings.

3. Grant of Limited License.

- (a) For and in recognition of the mutual consideration set forth in this Agreement, the satisfaction of which is hereby acknowledged by both parties, in light of the authorization to provide Video Service in the City granted it by the state of Kansas, Video Service Provider is hereby granted, in accordance with Chapter 16, Article 9 of the City Code, as amended and as may be amended, a limited nonexclusive license to construct, place, replace, repair, maintain, extend, and operate its Facilities along, across, upon, under, or in the Public Rights of Way, for the purpose of providing Video Services in the City.
- (b) This Agreement does not grant Video Service Provider the authority or right to provide Local Exchange Service.
- (c) This Agreement is not a franchise agreement under K.S.A. 12-2001 *et seq.*, as amended. Video Service Provider hereby acknowledges, however, its obligation to enter into a separate Franchise Contract with the City if it uses or intends to use the Public Rights of Way for the provision of Local Exchange Service or other Telecommunications Services to the City or its inhabitants.
- (d) This Agreement does not convey title, equitable or legal, to Video Service Provider in the Public Rights of Way and shall only accede to Video Service Provider the right to occupy the Public Rights of Way of the City for the purposes and for the time stated in this Agreement. The Agreement does not:
 - (1) Grant Video Service Provider the right to use Facilities or any other property, owned or controlled by the City or a third party, without the valid written consent of the City or the third party.

- (2) Grant Video Service Provider the authority to construct, to operate, or to maintain any Facilities and any related appurtenances and improvements thereto on any property owned by the City outside a Public Right of Way, including but not limited to public parks, City Hall, public works facilities, or other property. The parties agree that the City and Video Service Provider shall -- if it becomes necessary - - enter into separate lease agreements for the placement of Facilities and any related appurtenances and improvements thereto on any City-owned property not located in a Public Right of Way.
 - (3) Excuse Video Service Provider from obtaining appropriate access or attachment agreements before locating its Facilities and any related appurtenances and improvements thereto on any property or facilities owned or controlled by the City or by any third party.
 - (e) As noted in subsection 3(c), *supra*, Video Service Provider shall not use the Public Rights of Way to provide any additional services for which a Franchise Contract is required by the City without first obtaining from the City a separate Franchise Contract.
 - (f) Video Service Provider shall not knowingly allow the use of its Facilities by any third party in violation hereof or of any federal, state, or local laws.
 - (g) This Agreement shall be deemed an "Agreement" for the purposes of Chapter 16, Article 9 of the City Code, as amended.
 - (h) Nothing in this Agreement shall be construed as giving Video Service Provider any exclusive rights or privileges.
4. **Compensation to City.** In consideration for the rights and privileges granted it herein, Video Service Provider agrees to pay to the City the following:
- (a) All Right of Way Permit Fees or other fees that may be applicable as required by the City under Chapter 16, Article 8 of the City Code, as amended and as may be amended, for the use and occupancy of the Public Rights of Way in accordance with the City Code, as amended.
 - (b) A Video Service Provider Fee, which shall be 5% of Video Service Provider's Gross Revenues, as that term is defined in the Act, derived from the provision of Video Services to customers in the City. *See* K.S.A. 12-2024.
 - (i) In accordance with the Act, the Video Service Provider Fee shall only become due after the City requests payment of the same in a writing delivered to Video Service Provider. *See* Section 5(b), *infra*.

5. Payment.

- (a) Video Service Provider shall pay to the City all Right of Way Permit Fees or other fees that may be applicable as required by the City under Article 16, Chapter 8 of the City Code, as amended and as may be amended, for the use and occupancy of the Public Rights of Way at the time that any application for a Temporary Right of Way Work Permit or other Temporary Right of Way Use Permit is submitted to the Department of Public Works for approval. *See* Section 7(e)-(f), *infra*.
- (b) Upon written request of the City, the Video Service Provider shall pay to the City, on a quarterly basis, the Video Service Provider Fee by electronic transfer or by any other method approved by the parties. Said Video Service Provider Fee shall be due not later than 45 days after written notice of the levy is sent to Video Service Provider. Payments received after the due date shall be subject to a late payment charge of one percent per month.

6. Term.

- (a) Unless otherwise terminated earlier under Section 12, *infra*, this Agreement shall be effective, as of the date written above, until it expires at 11:59 p.m. on December 31, 2022. Thereafter, this Agreement will automatically renew for three additional five-year terms, unless either party notifies the other in writing of its intent to terminate or renegotiate this Agreement, which notification must be delivered to the other party not less than 180 days before the termination of the then-current term. Any additional term shall be deemed a continuation of this Agreement and not a new Agreement or an amendment hereto.
- (b) Notwithstanding the foregoing, upon written request of either the City or Video Service Provider, the Agreement shall be reopened and renegotiated upon the occurrence of any of the following events:

 - (i) Any change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of either Video Service Provider or the City hereunder;
 - (ii) Any change in the structure or operation of the cable or video service industry which materially affects any rights or obligations of either Video Service Provider or the City hereunder; or
 - (iii) Any other material and unintended change or shift in the economic balance unforeseen by Video Service Provider or the City at the time

of the effective date of this Agreement or any additional term thereof.

7. **Use of Public Rights of Way.** In using the Public Rights of Way, Video Service Provider shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police powers and shall be subject to all applicable laws, statutes, ordinances, regulations, orders, and rules adopted or promulgated by any governing body now or hereafter having jurisdiction. In addition, Video Service Provider shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City relating to the use of the Public Rights of Way, including but not limited to permits, sidewalk and pavement cuts, utility location, construction coordination, "Complete Streets" policies, beautification, tree care, fees, and other requirements affecting the use of the Public Rights of Way. Further, Video Service Provider shall also comply with the following:
- (a) Video Service Provider's use of the Public Rights of Way shall, in all matters, be subject and subordinate to the City's use of the Public Rights of Way for any public purpose or for any purpose relating to the health, safety, and welfare of the City. Video Service Provider shall coordinate the placement of its Facilities in a manner that minimizes adverse impact on Public Improvements, as reasonably determined by the City. Where placement is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public Improvements so as not to affect or be affected by such Public Improvements.
 - (b) To the extent that Video Service Provider uses above-ground markers, antennas, or support structures related to its use of the Public Rights of Way for the placement of its Facilities, Video Service Provider agrees that it will seek City approval and comply with all City requirements before placing any such markers, antennas, or support structures and that said markers, antennas, and support structures shall, if so placed, be unobtrusive. The City's approval shall not be unreasonably withheld, conditioned or delayed. The foregoing shall not apply to any temporary staking that Video Service Provider may do in the ordinary course of its use of the Public Rights of Way to provide Video Services.
 - (c) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind that are injured, damaged, or removed by Video Service Provider while engaging in any activity under this Agreement shall be fully repaired or replaced to their original condition within a reasonable time by Video Service Provider at its sole cost and expense and to the reasonable satisfaction of the City.

- (d) Video Service Provider shall keep and maintain accurate records and as-built drawings depicting the accurate location of all Facilities constructed, reconstructed, located, or relocated in the Public Rights of Way and shall provide that information to the City upon its written request. Where such information is available electronically, upon written request of the City, Video Service Provider agrees to provide such information in an electronic format. Such location and identification shall be at the sole cost and expense of Video Service Provider, without any such cost or expense to the City.

The City agrees to use any information obtained under this subsection only to locate Facilities in connection with Public Projects and further agrees not to disclose such information to anyone other than City employees and its authorized agents requiring such information to locate Facilities in connection with Public Projects, except as may otherwise be required by law. The City and Video Service Provider agree that such information is confidential and proprietary. The City and Video Service Provider also agree that such information shall remain the sole property of Video Service Provider. The City and Video Service Provider further agree that such information shall not constitute an open public record as that term is defined by the Kansas Open Records Act of 1984, codified as amended at K.S.A. 45-215 *et seq.* In the event that the City shall be required to disclose such information, the City shall provide Video Service Provider advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with Video Service Provider in safeguarding such information.

Video Service Provider agrees to indemnify and to hold the City harmless from any and all penalties or costs, including attorneys' fees, arising out of the actions of Video Service Provider or of the City at the written request of Video Service Provider, in seeking to safeguard the confidentiality of information provided to the City by Video Service Provider under this section. In the event that such information is required by law to be publicly disclosed, then Video Service Provider shall have no further obligation under this section to provide the City with such information.

- (e) Except in cases of emergency and routine maintenance, a minimum of 48 hours prior to construction, reconstruction, location, or relocation of any Facilities in a Public Right of Way, Video Service Provider shall submit to the Department of Public Works an application for a Temporary Right of Way Work Permit, which shall include plans and specifications for the project. The City shall not unreasonably withhold, delay, or condition approval of said application. The City's review of the plans and specifications shall be confined to matters affecting the interests of the City.

- (f) Except in cases of emergency, a minimum of 28 days prior to construction, reconstruction, repair, location, or relocation of Facilities that would require any street closure or that would reduce the traffic flow to less than two lanes of moving traffic, Video Service Provider shall submit to the City Engineer, or his or her designee, an application for a Temporary Right of Way Work Permit. The City shall follow its policies in the approval or denial of such application, neither of which shall be unreasonably withheld, conditioned, or delayed. Except in cases of emergency, no such closure shall take place without the prior authorization of the City.

In addition, all work performed in the traveled Public Rights of Way that, in any way, affects vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work performed in the traveled Public Rights of Way, Video Service Provider shall comply with the Manual for Uniform Traffic Control Devices (MUTCD) and the City's regulations, rules, and orders regarding the placement of signs, barricades, and other safeguards, copies of which shall, upon written request, be made available to Video Service Provider, its employees, agents, or contractors.

- (g) As reasonably necessary, Video Service Provider shall relocate or adjust any of its Facilities located in a Public Right of Way for a Public Project with no less than 90 days prior written notice from the City. Such relocation or adjustment shall be performed by Video Service Provider, at its sole cost and expense, without any cost or expense to the City and shall be subject specifically to the rules and regulations of the City. However, in those cases where it would take more than 90 days for Video Service Provider to relocate or adjust its facilities, the parties may mutually agree to a period of time that exceeds 90 days.
- (h) It shall be the sole responsibility of Video Service Provider to take adequate measures to protect and defend its Facilities in the Public Rights of Way from harm and damage. If Video Service Provider fails to accurately or timely locate its Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act of 1993, codified as amended at K.S.A. 66-1801 *et seq.*, then Video Service Provider has no claim for costs or damages against the City or its authorized agents and contractors or any other party authorized to be in the Public Rights of Way, except to the extent that such harm or damage is caused by any such party's reckless or intentional conduct. The City agrees to take reasonable precautionary measures, including but not limited to calling for utility locations and observing markers, when working near Video Service Provider's Facilities.

- (i) All technical standards governing construction, reconstruction, installation, operation, testing use, maintenance, and dismantling of the facilities in the Public Rights of Way shall be in accordance with all applicable federal, state, and local laws and regulations in effect at the time any such work is performed.
 - (j) The City shall have the authority to prohibit or regulate Video Service Provider's use or occupation of a specific portion of any Public Right of Way that is environmentally sensitive, as defined by federal, state, or local law or regulation, or that lies within a previously designated historic district, as defined by federal, state, or local law.
- 8. **Street Tree Ordinance.** To the extent required in connection with the construction, placement, replacement, repair, maintenance, extension or operation of its Facilities in the Public Rights of Way, Video Service Provider shall comply with the provisions of the City's Street Tree Ordinance (Chapter 18, Article 1, of the City Code, and amendments thereto) regarding the care, pruning, trimming, and removing of trees located in or on the Public Rights of Way.
- 9. **Location of Underground Facilities and Equipment.** Video Service Provider's Facilities shall be placed underground as required by City ordinances, including Chapter 5, Article 19 of the City Code, and amendments thereto. Consistent with Section 5-1904(B)(iii) of the City Code, as may be amended, however, any markers, antennas, and support structures necessary for Video Service Provider's purposes hereunder and that are specifically approved by the City in writing shall be exempt from that requirement. Where underground construction is made, the Facilities, appurtenances and improvements thereto, and any necessary trenching shall be installed, maintained, or provided by Video Service Provider in accordance with City ordinances and at Video Service Provider's sole cost and expense.
- 10. **Sharing Space.** The City encourages the conservation of Public Rights of Way by the sharing of space among all utilities. To the extent permitted by federal or state law, Video Service Provider is encouraged to allow any franchised entity or other video service provider, by appropriate contract or agreement negotiated by the parties, to use any and all Facilities constructed by Video Service Provider. All said agreements and installations shall be subject to all future ordinances, resolutions, rules, regulations, and policies of the City. Video Service Provider agrees that it will not grant any entity the right to occupy the Public Right of Way without first giving written notice to the City and receiving written approval of the City, unless such third party has an existing Franchise Contract or other Agreement with the City granting the third party the right to locate its Facilities in the Public Rights of Way.

11. Access to Information.

- (a) Video Service Provider, in determining the amount of Gross Receipts subject to the Video Service Provider Fee, agrees to use commercially reasonable efforts to ensure the accuracy of its records and submissions. In the event and to the extent that the accounting submitted to the City is found to be incorrect, due to Video Service Provider's failure to use commercially reasonable efforts, then payment shall be made on the corrected amount, it being agreed that the City may accept any amount offered by the Video Service Provider, but the acceptance thereof shall not be deemed a settlement, compromise, or accord and satisfaction, if the amount in dispute is later determined to be incorrect.
- (b) Video Service Provider further agrees that all of its books, records, documents, contracts, and agreements, as may reasonably be necessary for an effective audit under this Agreement, shall, upon reasonable notice being given by the City, be opened to the City, including its duly authorized agents, auditors, and employees, for inspection and examination for the purposes of verifying Video Service Provider's accounting. The City shall bear the costs of any such audit, unless, however, the audit discloses that Video Service Provider owes the City money and has failed to use commercially reasonable efforts in rendering its accounting. In that case, Video Service Provider shall be responsible to the City for the reasonable costs of the audit. Notwithstanding the foregoing, Video Service Provider shall continue to have the right to require from the City reasonable protection of proprietary information.

12. Insurance; Performance Bond.

- (a) During the initial term, any subsequent additional term, or any other extension of this Agreement, Video Service Provider shall obtain and maintain insurance coverage, at its sole cost and expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should Video Service Provider elect to use the services of an affiliated captive insurance company for this purpose, Video Service Provider shall obtain and possess a certificate of authority from the Kansas Insurance Commissioner. Video Service shall provide not less than the following insurance:

 - (i) Worker's 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, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Video Service Provider's operations under this Agreement.
- (b) As an alternative to the requirements of Section 12(a), *supra*, Video Service Provider may demonstrate to the satisfaction of the City that it is self-insured and that it has the wherewithal to provide coverage in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in aggregate to protect the City from and against all claims by an person for loss or damage from death, personal injury, bodily injury, or property damage occasioned by Video Service Provider or so alleged to have been caused or to have occurred.
- (c) Video Service Provider shall, as a material condition of this Agreement, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance 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 thirty (30) days prior written notice. Video Service Provider 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) The Company shall, as a material condition of this Agreement, prior to the commencement of any work hereunder, deliver to the City satisfactory evidence of a performance bond in the amount of Fifty Thousand Dollars (\$50,000.00) payable to the City. The bond shall be used to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public Rights of Way, without the attachment of any liens, and must be issued by a surety company authorized to transact business in the State of Kansas and shall be satisfactory to the City Attorney in form and substance. The performance bond shall remain in effect the entire term of the Agreement to ensure the ongoing performance of the terms and obligations of the License as well as any future phases of construction or maintenance and repair work. Notwithstanding the foregoing sentence, the City reserves the right to require Video Service Provider to provide additional financial assurance for future phases of construction or maintenance and repair work, as reasonably determined by the City.

13. Termination or Forfeiture of Agreement.

- (a) In case of failure on the part of Video Service Provider to comply with any of the terms of this Agreement, or if Video Service Provider should do or cause to be done any act or thing prohibited by or in violation of the law or this Agreement, then the City shall have the right to institute an action in the District Court of Douglas County, Kansas, to terminate this Agreement and to revoke the Video Service Provider Authorization Order:

 - (i) Before the City may proceed to terminate this Agreement, it shall first serve a written notice as provided by the Notice provisions of this Agreement, setting forth, in detail, the conditions of neglect, default, or failure complained of, and Video Service Provider shall have 90 days after the receipt of such notice in which to comply with the conditions of this Agreement. If, at the end of such 90-day period, the City deems that the conditions of the Agreement have not been met and that such Agreement is subject to termination, then the City, in order to terminate the Agreement, shall have the right to institute an action in the District Court of Douglas County, Kansas, seeking a declaration as to whether or not Video Service Provider has violated this Agreement and whether or not the Video Service Provider Authorization Order should be revoked.
 - (ii) Nothing in this Section shall prevent the City from invoking any other remedy that may exist at law.
- (b) In the event of a final adjudication of bankruptcy of Video Service Provider under Title 11 of the United States Code, the City shall have the right, by giving written notice seek termination of this Agreement.

- 14. Indemnification.** Video Service Provider shall indemnify and save and hold harmless the City, its officers, employees, agents, and authorized contractors, from and against any and all claims, damages, expense, liabilities, and costs, including reasonable attorneys' fees, to the extent occasioned in any manner by Video Service Provider's occupancy or use of the Public Rights of Way. In the event a claim shall be made or an action shall be instituted against the City, arising out of Video Service Provider's occupancy or use of the Public Rights of Way, then upon notice by the City to Video Service Provider, Video Service Provider shall assume responsibility for the defense of such claim or action at the cost of Video Service Provider, subject to the City's unilateral option to appear and defend itself. Video Service Provider's indemnification obligation shall not apply to the extent that any injury or damage is caused by the City's own negligence, recklessness, or willful misconduct. This indemnifying provision shall survive the termination or expiration of this Agreement.

15. Transfer and Assignment.

- (a) Pursuant to the written permission of the City, which shall not unreasonably be withheld, conditioned, or delayed, Video Service Provider shall have the right to assign this Agreement and the rights and privileges hereby granted to any person, firm, or corporation. If Video Service Provider should seek approval to assign this Agreement, Video Service Provider shall notify the City in writing. Any such assignee shall, by accepting such assignment, be bound by the terms and provisions of this Agreement. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk and the City Attorney. This Agreement shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time of assignment.
- (b) Notwithstanding the foregoing subsection, Video Service Provider shall, after giving the City thirty (30) days' written Notice of said assignment, have the right to assign this Agreement without the consent of the City to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with Video Service Provider. Any such assignee shall, by accepting such assignment, be bound by the terms and provisions of this Agreement. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk and the City Attorney. This Agreement shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time of assignment.
- (c) If this Agreement is transferred or assigned, Video Service Provider's obligations regarding indemnity, insurance, and bonding shall continue until the transferee or assignee has taken the necessary measures to assume and replace the same, the intent being that there be no lapse in coverage as a result of the transfer or assignment.

16. Reservation of Rights. The City specifically reserves its right and authority, as a governmental entity responsible for its residents, to participate, to the full extent allowed by law, in proceedings concerning Video Service Provider's rates and services to ensure the efficient provision of Video Service at reasonable rates and the maintenance of Video Service Provider's Facilities in good repair. Video Service Provider specifically reserves its right to oppose any such position the City may take.

In granting its consent hereunder, the City does not in any manner waive its regulatory rights, any other rights and powers under the laws of the State of Kansas, as may be amended, nor any of its rights and powers under the ordinances, present or future, of the City.

- 17. Notices.** All notices, requests, demands, or other communications hereunder shall be in writing and shall be deemed given if personally delivered, if sent by certified mail, return receipt requested, or if sent by a recognized overnight delivery service, to the following addresses:

If to City, to:

City of Lawrence, Kansas
Attn: City Clerk
6 East 6th Street
P.O. Box 708
Lawrence, Kansas 66044

With a copy to:

City of Lawrence, Kansas
Attn: City Attorney
6 East 6th Street
P.O. Box 708
Lawrence, Kansas 66044

If to Video Service Provider, to:

Midco
Attn: Nancy Vogel
3901 N. Louis Ave.
Sioux Falls, South Dakota 57101
Nancy.vogel@midco.com

With a copy to:

Midco
Attn: General Counsel
3901 N. Louis Ave.
Sioux Falls, South Dakota 57101
notices@midco.com

Any such Notice shall be deemed effective upon actual receipt or refusal of receipt as shown on any return receipt obtained under this Section.

- 18. Non-waiver.** The failure of either the City or Video Service Provider to insist in any one or more instances upon the strict performance of one or more of the terms or provisions of this Agreement shall not be construed as a waiver or relinquishment of any right in the future to enforce such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment of any term or provision of this Agreement shall be deemed to have been made by the City or Video Service Provider unless said waiver or relinquishment is in writing and signed by both the City and Video Service Provider.

19. **Force Majeure.** No party shall be liable for any failure to perform its obligations where such failure is a result of acts of God, fire, strikes, riots, floods, war, and other disasters or events beyond Video Service Provider's or the City's reasonable control.
20. **Binding Effect.** This Agreement shall, at all times, be binding upon the City and Video Service Provider and all parties claiming by, through, or under them; provided, however, that the rights, duties, and obligations of each owner of the Facilities, as set forth herein, shall cease with the termination of ownership of those Facilities, except for those duties and obligations arising during the period of said ownership.
21. **Authorization.** Each of the persons executing this Agreement, in behalf of their respective parties, represents and warrants that they have the authority to bind the party in behalf of whom they have executed this Agreement, and that all acts requisite to that authorization have been taken and completed.
22. **Severability.** If any section, sentence, clause, or phrase of this Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Agreement.
23. **Governing Law.** This Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the state of Kansas.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Video Service Provider Agreement to be executed as of the date noted above.

CITY:
CITY OF LAWRENCE, KANSAS, a
municipal corporation

THOMAS M. MARKUS
City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)
) ss:
THE COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of _____, 2017, before me the undersigned, a notary public in and for the County and State aforesaid, came Thomas M. Markus, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My Appointment Expires:

VIDEO SERVICE PROVIDER:

{NAME}
{Title}

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**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commission

Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the Matter of the Application of Midcontinent)	
Communications, d/b/a Midco for Kansas Video)	Docket No. 17-MCCT-238-VSA
Service Authorization.)	

ORDER GRANTING VIDEO SERVICE AUTHORIZATION

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and record, and being duly advised in the premises, the Commission finds and concludes as follows:

1. On December 6, 2016, Midcontinent Communications, a South Dakota General Partnership d/b/a Midco (Midco) filed an Initial Application (Application) for state-issued Video Service Authorization (VSA), as authorized by K.S.A. 2015 Supp. 12-2023 and K.A.R. 82-15-1.

2. K.S.A. 2015 Supp. 12-2023 authorizes the Commission to review applications for those entities desiring to provide cable or video services within the State of Kansas. At pages 1 and 2 of its Report and Recommendation attached to this Order, the Commission Staff (Staff) sets forth in detail the showings applicants must make with regard to applications for video service authorization, and the same are adopted herein by reference. Upon an applicant meeting all application requirements, the Commission will issue the requested VSA.

3. On December 19, 2016, Staff filed its Report and Recommendation dated December 19, 2016, recommending the Commission grant Midco the requested VSA. Midco states in its Application that it is acquiring the assets of Knology of Kansas, Inc. (Knology) and intends to serve the entirety of the service area currently served by Knology. Knology filed for a VSA in Docket No. 11-KKIC-181-VSA, on September 2, 2010, when the company acquired the

video assets of The World Company d/b/a Sunflower Broadband (Docket No. 08-SUCC-064-VSA). Staff indicates that Applicant has identified its principal place of business as 3600 Minnesota Dr. Ste. 700, Minneapolis, Minnesota, and provided the company's key personnel contacts for Regulatory and Application matters. Applicant is properly registered with the Kansas Secretary of State's office as a South Dakota General Partnership. The Company's current status with the Secretary's office is General Partnership Registered.¹ Staff states that the Applicant is required to register with the Federal Communications Commission (FCC) as a Cable System Operator, as follows as these locations currently reflect Knology:

<u>Community Served</u>	<u>CUID#</u>
The City of Lansing, Kansas	KS0773
The City of Lawrence, Kansas	KS0062
The City of Eudora, Kansas	KS0284
The City of Tonganoxie, Kansas	KS0352
The City of Basehor, Kansas	KS0376
The City of Linwood, Kansas	KS0655
Leavenworth County, Kansas	KS0400
Kansas City in Wyandotte County, Kansas	KS0560
Unincorporated Areas of Douglas County, Kansas	KS0765

4. Midco has agreed to comply with all applicable federal and state statutes and regulations and agrees to comply with all lawful and applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of video services, including the police powers of the municipalities in which the service is delivered.² According to Staff, Midco provided a high level sketch and a general description of the architecture and components used in providing its video service. The technologies include fiber and coax to the home in both the Transport and Distribution portions of the network, with a small portion being fiber to the home instead of coax. These elements and resources are being acquired by Midco from Knology. Midco included a statement indicating that it is acquiring the video services assets of Knology

¹ Report and Recommendation, pages 1 and 2.

² Id., page 2

and proposes to continue the provision of video services without modification or amendment of the Knology of Kansas service area previously approved. Knology previously committed that the existing plant is capable of serving 100% of the service area footprint. Staff indicates that Midco intends to continue providing video services utilizing the equipment and resources acquired from Knology, including the entire outside plant network. The existing Knology network or service area footprint encompasses the cities of Lawrence, Lansing, Eudora, Tonganoxie, Basehor, Linwood, a portion of Kansas City in Wyandotte County, and portions of the unincorporated areas of Leavenworth and Douglas Counties. The footprint was authorized by Commission Orders dated July 31, 2007, and September 11, 2009, in Docket No. 08-SUCC-064-VSA, and various Amendments in 11-KKIC-181-VSA, September 2010 through August 2016. Midco indicated by initialing the last statement on the Application that they agree they may not deny access to service to any group or potential residential subscribers because of the income of the residents in the local area in which such group resides.³

5. For ease of future reference, Staff identifies the proposed service area footprints, as follows; Lansing, LNSG-01-MCCT-01; Lawrence, LWRN-02-MCCT-01; Eudora, EUDR-03-MCCT-01; Tonganoxie, TONG-04-MCCT-01; Basehor, BSHR-05-MCCT-01; Linwood, LNWD-06-MCCT-01; Leavenworth County, LWCT-07-MCCT-01; a portion of Kansas City in Wyandotte County, KCWC-08-MCCT-01; and Unincorporated Areas of Douglas County, UDCT-09-MCCT-01. Staff having determined that Applicant has met all application requirements recommends the Commission grant Midco's Application and approve the footprints as identified above.

³ Ibid., page 3.

6. The Commission adopts Staff's analysis and recommendation of December 19, 2016, in its Report and Recommendation, which is attached hereto and made a part of this Order by reference, and finds that Midco's Application should be granted and the requested service area footprints approved.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Application of Midcontinent Communications, a South Dakota General Partnership d/b/a Midco, filed in the above-captioned docket on December 6, 2016, requesting state-issued Video Service Authorization is hereby granted and the requested service area footprints to be identified and known as: Lansing, LNSG-01-MCCT-01; Lawrence, LWRN-02-MCCT-01; Eudora, EUDR-03-MCCT-01; Tonganoxie, TONG-04-MCCT-01; Basehor, BSHR-05-MCCT-01; Linwood, LNWD-06-MCCT-01; a portion of the Unincorporated areas of Leavenworth County, LWCT-07-MCCT-01; a portion of Kansas City in Wyandotte County, KCWC-08-MCCT-01; and portions of the Unincorporated Areas of Douglas County, UDCT-09-MCCT-01, are hereby approved effective as of the date of this Order.

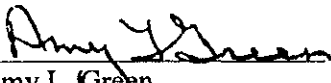
B. The parties have fifteen (15) days, plus three (3) days if service of this Order is by mail, from the date this Order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2015 Supp. 77-529.

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: DEC 22 2016


Amy L. Green
Secretary to the Commission

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Order Mailed Date

DEC 23 2016

CERTIFICATE OF SERVICE

17-MCCT-238-VSA

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on DEC 22 2016.

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/s/ DeeAnn Shupe
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Order Mailed Date
DEC 23 2016