

**CONSTRUCTION COST SHARING AGREEMENT**

THIS CONSTRUCTION COST SHARING AGREEMENT (the "Agreement"), dated as of February 7, 2022, is by and between City of Minnetrista, whose address is 7701 Co Rd 110 W Minnetrista, MN 55364 ("City"), and Midcontinent Communications, a South Dakota partnership, whose address is 3901 North Louise Avenue, Sioux Falls, SD 57107 ("Midco").

RECITALS

WHEREAS, as provided in Minn. Stat. § 237.012, Minnesota has established a goal to close gaps in broadband availability around the state, and;

WHEREAS, there is a gap in the availability of reliable high speed internet service in the City, and;

WHEREAS, the City Council finds that, despite the City's best efforts, reliable high speed internet service will not be made available by existing providers in the reasonably foreseeable future to fill the existing gap, and;

WHEREAS, new facilities are necessary to fill the existing coverage gap and make high speed internet service available throughout the City, and;

WHEREAS, Midco has proposed to construct facilities and provide reliable high speed internet service and telephone service within the area depicted on Exhibit 1 (the "Project Area")

WHEREAS, Midco's proposal would fill the broadband availability gap in the City, and;

WHEREAS, the City controls certain Right-of-Way ("ROW") within the Project Area, Exhibit 1 which specifically includes ROW along the named streets in Exhibit 2and;

WHEREAS, Midco seeks to install in ROW in the Project Area cable and certain other equipment necessary to deliver high speed internet and telephone service drops to the residences named in Exhibit 3, and;

WHEREAS, the City and Midco desire to enter this Agreement to establish the necessary infrastructure to provide high speed internet and telephone service availability to the residences named in Exhibit 3, and;

WHEREAS, the City has authority to enter this Agreement pursuant to applicable law including, but not limited to, Minn. Stat. § 412.221, Subd. 2 and Subd. 32 and Minn. Stat. § 429.221, Subd. 19 ("Applicable Law").

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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Midco enter the following:

### AGREEMENT

1. Construction of Cable Plant. Subject to the terms and conditions of this Agreement, Midco will install fiber optic cable and other equipment necessary to make high speed internet and telephone service available to the residences in the Project Area named in Exhibit 2. Construction (except for individual drops between the network and customer's home) must be completed by July 1, 2023. Individual drops to the customer's home will be installed when service is ordered, and installation is agreed upon by the customer and Midco.

2. Service Speed. Midco shall provide access to high speed internet service for the residences named in Exhibit 2 at a speed of up to 5 gigabit per second downloads and 2 gigabit per second uploads and at least 2 gigabit per second downloads and 2 gigabit per second uploads.

3. Right of Way Permit Required. Prior to engaging in any excavation, installation, or other work which may disturb the ROW in the Project Area, Midco shall apply to the City for a ROW permit. The City-issued ROW permit shall set forth the terms and conditions for Midco's work within the ROW.

4. Cost Sharing. In consideration of Midco's construction of the necessary facilities to provide high speed internet and telephone services in the Project Area and agreement to provide such services in the City, the City shall reimburse 15.5% of Midco's total construction costs, capped at a maximum of \$400,000 (the "Cost Share Amount"), which represents the City's share of the costs to be incurred by Midco to finish its design, installation and construction activities to provide service to the Property. The City shall pay the Cost Share Amount to Midco within sixty (60) days of Midco's completion of construction and submission of a detailed report of its actual construction costs, and the City's inspection of the infrastructure.

5. Commitment to Deliver Access to Service. Midco must make telephone and high speed internet service available as provided in paragraph 2 above to each of the residences named in Exhibit 3. Midco bears responsibility for all costs necessary to provide access to each of the residences named in Exhibit 3 in excess of the Cost Share Amount, and the City will incur no costs in excess of the Cost Share Amount under this Agreement. Within sixty (60) days of execution of this Agreement, Midco shall provide the City with engineering design plans and diagrams for the project that demonstrate how high-speed internet and telephone service will reach each of the residences named in Exhibit 3, and demonstrate the timeline for the project's completion.

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6. Verification. The City may contract with a third party to verify the project is completed in accordance with the project plans. Specifically, the City will confirm that the number of service drops and service speed has met the terms of this Agreement. This inspection must be completed within forty-five (45) days of completion.

7. Easement Rights. City acknowledges that Midco shall be entitled to install and construct its cable and other equipment over and under the ROW areas controlled by the City within the Project Area. The City agrees to promptly process ROW permit. Midco requests for excavation and infrastructure installation within the ROW included in the project, and the City shall not deny any such requests except based on a reasonable concern regarding public safety.

8. Indemnification. Midco shall indemnify, save, and hold the City, other governmental agencies, and their agents, and employees harmless from any claims or causes of action, including attorney's fees, incurred by the City arising from the performance of this Agreement by Midco or Midco's agents or employees, including specifically any claims or causes of action alleging that the City lacks legal authority to enter or perform this Agreement under Applicable Law. This clause will not be construed to bar any legal remedies Midco may have for the City's failure to fulfill its obligations under this Agreement. By entering into this Agreement, the parties agree the City is not and will not be acting as an internet and telephone service provider. Midco is solely responsible for the provision of service to the residences depicted in Exhibit 3. Any contracts for service between Midco and City residents are solely between Midco and the residents, and Midco shall indemnify, save, and hold the City harmless from any claims arising out of internet and telephone service contracts.

9. Financial Assistance Reporting. Midco shall cooperate with the City in drafting and submitting any Financial Assistance Reports to the Minnesota Department of Employment Economic Development that are necessary due to this Agreement.

10. Assignment. Midco shall neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of the City. In the event Midco proposes to assign or transfer the facilities constructed pursuant to this Agreement, the City shall have the right of first refusal concerning any offer to purchase which Midco intends to accept provided, however, that the City's purchase price shall be reduced by the Cost Share Amount, with interest calculated based on the annual reported consumer price index to the date of purchase. Any written purchase offer received by Midco shall be provided promptly to the City. In the event Midco terminates delivery of services over the facilities provided pursuant to this Agreement, the City may purchase such facilities for Midco's actual construction cost, less reasonable depreciation and less the Cost Share Amount.

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11. Severability. If any provision of this Agreement, or the application of such provision to any party or circumstance, is found to be illegal or unenforceable for any reason, such provision will be modified or severed from this Agreement to the extent necessary to make such provision enforceable against such party or in such circumstance. Neither the unenforceability of such provision nor the modification or severance of such provision will affect the enforceability of any other provision of this Agreement.

12. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of Minnesota, without regard to its conflict of laws principles.

13. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements except as herein provided. This Agreement may be amended only by a written instrument signed by the parties.


IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the date first written above.

**CITY OF MINNETRISTA**

By: 

Print Name: Lisa Whalen

Title: Mayor

By: 

Print Name: Allison Pulstuss

Title: Director of Administration

**MIDCO**

MIDCONTINENT COMMUNICATIONS  
By: MIDCONTINENT COMMUNICATIONS  
INVESTOR, LLC, Its Managing Partner

By: 

Name: Andrew Curley

Title: Director of Government Relations