

10/9/15



SERVICE AGREEMENT

THIS SERVICE AGREEMENT is entered into by and between Roadside R City Corporation ("Client"), and Spectra, LLC., a Utah Limited Liability Company ("Spectra"), for the purpose of establishing the terms and conditions under which Spectra will provide Information Technology and Network Support Services ("IT Support") to Client.

SERVICE TO BE PROVIDED: Spectra, under the terms of this agreement will provide to Client the following IT Support to Client:

- Starter Package: \$99/Month—includes up to 1 hour of remote support per month and up to 10 GB offsite data backup.
- Pro Package: \$299/Month—includes up to 3 hours of support either onsite or remote per month and up to 5 devices backing up 20 GB of data backup each offsite.
- Enterprise Package: \$499/Month—includes up to 5 hours of support either onsite or remote per month and up to 10 devices backing up 50 GB each offsite.
- Overage Charges: \$90/Hour for IT Support services provided in excess of Client's selected service package.
- Domain/Email Management: \$5/Month per User Account. Includes Name Services, Registrations, Email, Cloud Storage, Instant and Messaging up to 20GB of data storage per User Account.
- One Time IT Support Rate: \$120/Hour plus expenses for IT Support services provided for a one-time project.
- Special Trip Charge: This charge is incurred by Client when immediate deliveries for IT Support equipment are requested and Spectra must incur significant time and travel expense to obtain the requested IT Support equipment. Client acknowledges that this charge can vary greatly due to the distance involved and/or the time required to service this request.
- Custom Package:

1 Year of services. Starting 10/1/2015 ending 9/30/2016. Up to 150 hours at an hourly rate of \$65/hour.
Total contract amount of \$ 9,750.00

The IT Support service will be provided at the following locations:

TERM OF THE AGREEMENT:

- Client acknowledges that the above IT Support packages are a month to month term with reoccurring monthly payments at the rates selected above. This agreement may be terminated at any time without any termination fee.

CHANGES TO SERVICE: During the term of this agreement, the Client may choose to change their IT Support package at any time.

PAYMENT: Monthly service charges are billed one full month in advance. Client will be billed monthly for the applicable monthly recurring service charges for the selected IT Support package. Monthly service charges are due and payable upon receipt of the invoice. Any payments not received by Spectra within 30 days of the invoice date will accrue interest at the rate of 12% per annum. Failure to pay monthly service charges or any other fee shall give Spectra the right, without liability, to discontinue service.

CONDITIONS OF AGREEMENT: The following conditions are required for Spectra to provide IT Support service: access to premise and all IT equipment.

CLIENT PREMISES EQUIPMENT: Spectra has available equipment that Client may purchase to obtain the IT Support service. Client may purchase its premises equipment from other providers. Spectra is not responsible for setup, or support of any equipment purchased and/or installed through a third party provider.

Title to equipment purchased from Spectra shall pass to Client upon payment in full of the sales price, including all applicable taxes. Client assumes the risk of loss or damage to the equipment upon delivery to Client's location. Any equipment provided by Spectra may be warranted by the manufacturer. That is the only warranty provided by Spectra for the equipment and no other warranties, express or implied, apply to the equipment. During the term of the manufacturer's warranty period, Spectra will support, to the extent reasonably possible, the equipment for problems covered by the manufacturer's warranty. Once the warranty term period has expired, Spectra will no longer support problems with the equipment.

Client acknowledges that it must own the equipment that Spectra services. Client must own and demonstrate ownership of any software that is to be installed or re-installed on Client's equipment by having and showing Spectra the original software CDs and the appropriate keys and/or serial numbers whether Spectra performs services at our office or at Client's location.

Client is responsible for implementing sufficient procedures and checkpoints to satisfy their particular requirements for accuracy of data input and output, and for maintaining a means external to Spectra for reconstruction and/or retrieval of any lost data. Client agrees to assess its own need for protective measures, and implement where necessary, whether under professional advice or not, including, but not limited to, voltage spike protection, sufficient and adequate grounding as per the National Electric Code, computer equipment insurance, virus detection and elimination software, security and system administration policies, and to obtain such protection as it sees fit and not to make any claims against Spectra, its users or faculty, for the loss or damage to their equipment or data.

EQUIPMENT ABANDONMENT: Any equipment repaired at Spectra offices and not picked up within thirty (30) days after we notify Client by phone or via your answering service machine will be treated as abandoned equipment. Client agrees to hold Spectra harmless for any damage or claim for the abandoned equipment. Client agrees that any and all unpaid charges are still Client's responsibility.

PATENT AND COPYRIGHT INDEMNITY: Client will defend, at its own expense, any action brought against Spectra to the extent it is based on a claim that the software and equipment used by Client infringes on United States patent, copyright or other proprietary right of a third party. Client will pay any costs, damages or attorney fees finally awarded against Spectra in such action which are attributable to such claim, provided Client is notified in writing of such claim, may control the defense and/or settlement of such claim, and is provided with all requested assistance, information and authority. Spectra shall have no liability for any claim of patent, copyright or trade secret infringement based on Client's use of software and equipment in any form.

DISCLAIMER OF WARRANTIES AND LIMITATIONS ON LIABILITY: CLIENT AGREES THAT ACCESS TO, AND USE OF, SERVICES IS ON AN "AS-IS", "AS AVAILABLE" BASIS AND SPECTRA SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SPECTRA AND ITS SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND LICENSORS (THE "SPECTRA PARTIES") WILL NOT BE LIABLE (JOINTLY OR SEVERALLY) TO CLIENT OR ANY OTHER PERSON AS A RESULT OF CLIENT'S ACCESS OR USE OF THE SPECTRA SERVICES FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS AND LOST REVENUES (COLLECTIVELY, THE "EXCLUDED DAMAGES"), WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT, OR OTHER THEORY OF LIABILITY, EVEN IF ANY OF THE SPECTRA PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY OF THE EXCLUDED DAMAGES, AND IRRESPECTIVE OF ANY FAILURE OF AN ESSENTIAL PURPOSE OF A LIMITED REMEDY. IF ANY APPLICABLE AUTHORITY HOLDS ANY PORTION OF THIS SECTION TO BE UNENFORCEABLE, THEN THE SPECTRA PARTIES' LIABILITY WILL BE LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY APPLICABLE LAW.

EXCLUSIVE REMEDY: Spectra's total liability under this agreement for any reason shall be limited to the actual fees you have paid Spectra, if any, for the IT Support service within the three month period preceding the event forming the basis of the claim, as agreed-upon liquidated damages and not as a penalty. It is intended and expressly agreed that the purpose of the three month preceding period is to set an upper limit to the amount Client may recover and to fix liability of Spectra at a specific sum not to exceed the fees paid to Spectra for the prior three months of IT Support service.

LIMITATION ON TIME TO SUE: Unless otherwise required by law, an action or proceeding by Client to enforce an obligation, duty, or right arising under this agreement or by law with respect to Spectra's IT Support services must be commenced within one year after the cause of action accrues.

CONFIDENTIALITY: Client acknowledges that Spectra will have access to confidential and proprietary information related to its business, forecasts, plans, operations, financial information, customer lists, customer calling records, customer subscribed services lists, marketing information, computer information, facilities, and infrastructure. Spectra agrees to hold Client's confidential and proprietary information in confidence. Spectra agrees not to disclose any Client confidential or proprietary information to third parties, including clients, affiliates, consultants, government entities, and marketing agencies, and without prior written consent from Client.

Spectra shall not reproduce or copy any of the Client's confidential information except as permitted by Client and any reproductions or copies allowed to be made by Client shall not be removed from Client's premises except as permitted by Client.

Should this agreement be terminated for any reason or Client notify or be deemed to notify Spectra that it wishes to have the confidential information returned to it, Spectra agrees, within thirty (30) days of such termination to return all confidential information that it has received from Client under this agreement.

ATTORNEY'S FEES: If either party commences an action against the other party to enforce the provisions of this agreement or to collect any amounts owing pursuant to this agreement, the prevailing party shall be entitled to recover from the losing party, all attorney's fees and costs incurred. In the event of legal action arising out of or related to this agreement, including claims for non-payment of amounts owed hereunder, Duchesne County, Utah shall be the exclusive jurisdiction and legal venue for said action and this agreement shall be construed according to the laws of the State of Utah.

CHANGES: SPECTRA RESERVES THE RIGHT TO CHANGE ITS FEES, RATES, AND CHARGES, AT ANY TIME WITH OR WITHOUT NOTICE. If Spectra does give notice, it may be provided on Client's monthly bill, as a bill insert, email, or other communication. If client determines that a change in IT Support services is unacceptable, it may terminate service. However, if Client continues to receive IT Support services after the change, this will constitute its acceptance of the change.

INVALIDITY: If any provisions of this agreement are held to be illegal, invalid, or unenforceable, such shall not invalidate the remaining provisions hereof.

ENTIRE AGREEMENT: This agreement supersedes any previous agreements or discussions, verbal or written. This is the entire agreement and can only be modified by a written agreement signed by both parties.

EXECUTED this 9th day of October 2015

Client Signature [Signature], City Manager

Address _____

Telephone Number (435) 725-7201