

**RESOLUTION NO. 2010-52**

**RESOLUTION BY THE FINANCE AND HUMAN RESOURCES COMMITTEE AUTHORIZING A FIVE YEAR CONTRACT WITH TDS METROCOM FOR RESIDENT PHONE SERVICE AT RIDGEWOOD HEALTH CARE CENTER**

To the Honorable Members of the Racine County Board of Supervisors:

**BE IT RESOLVED** by the Racine County Board of Supervisors that a five year agreement with TDS Metrocom as set forth in Exhibit "A" which is attached hereto and incorporated herein is authorized and approved for the period of January 1, 2011 through December 31, 2015.

**BE IT FURTHER RESOLVED** by the Racine County Board of Supervisors that the transfers set forth in Exhibit "B" which is attached hereto and incorporated herein are authorized and approved within the Ridgewood Health Care Center's 2005 budget.

Respectfully submitted,

1st Reading \_\_\_\_\_

**FINANCE AND HUMAN RESOURCES COMMITTEE**

2nd Reading \_\_\_\_\_

**BOARD ACTION**

\_\_\_\_\_  
Robert N. Miller, Chairman

Adopted \_\_\_\_\_

For \_\_\_\_\_

Against \_\_\_\_\_

\_\_\_\_\_  
Mark M. Gleason, Vice-Chairman

Absent \_\_\_\_\_

VOTE REQUIRED: 2/3's M.E.

\_\_\_\_\_  
Thomas Pringle, Secretary

Prepared by:  
Corporation Counsel

\_\_\_\_\_  
Joseph F. Bellante, Jr.

\_\_\_\_\_  
Q. A. Shakoor, II

\_\_\_\_\_  
Van H. Wanggaard

\_\_\_\_\_  
John A. Wisch

The foregoing legislation adopted by the County Board of Supervisors of Racine County, Wisconsin, is hereby:

Approved: \_\_\_\_\_

Vetoed: \_\_\_\_\_

Date: \_\_\_\_\_,

\_\_\_\_\_  
William L. McReynolds, County Executive

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**INFORMATION ONLY**

**WHEREAS**, there is a need to approve a five year contract with TDS Metrocom for phone services for residents at Ridgewood Health Care Center.



## TELECOMMUNICATION SERVICES AGREEMENT

1. **AGREEMENT.** During the term of this Agreement, TDS METROCOM, LLC. agrees to provide the Service to Customer and Customer agrees to purchase the Service subject to the terms and conditions of this Agreement and in TDS METROCOM's general and special tariffs filed with the applicable state public service commission as modified from time to time as well as any general and special tariffs of other carriers in which TDS METROCOM concurs.

2. **DESCRIPTION OF THE SERVICE:** The services provided will consist of those listed below. No other products or services are available under this Agreement.

- Centrex Line with 4 Digit dialing
- Caller ID with Name and Number
- Call Waiting
- Centrex Plus Voice Mail
- Other calling features may be added to lines at standard rates.
- Unlimited Local Calling
- Long Distance Calling is blocked on all lines. As an option, unlimited domestic Long Distance would be allowed on a per line basis for a charge of \$10.00 per line.
- International calling will be blocked on all lines.
- Where available, DSL service may be ordered on a per line basis. DSL is only available in three speeds, 384K; 768K; 1 meg.
- Temporary Intercom Service, is a feature on a phone line which allows internal dialing only (no external calls can be placed) at a reduced rate. This function is only available on lines that have been in service for a minimum of six months. In addition, Intercom service can only be active on a line for three months in any consecutive twelve month period. Intercom allows the property owner some flexibility for units that are temporarily not rented.

3. **COMMENCEMENT AND TERM OF SERVICE.** This Agreement shall become effective upon execution by authorized representatives of TDS METROCOM and Customer. TDS METROCOM reserves the right to terminate this Agreement with or without cause at any time prior to the commencement of Service. In the event that any installation or other non-recurring charge incurred in connection with the Service requested by Customer is higher than the estimated charge quoted Customer on the front page hereof, Customer shall have the right to terminate this Agreement within 10 days of notice by TDS METROCOM of the amount of such charge. The term of this Agreement shall begin on the latter of the requested service date or the day following the date in which TDS METROCOM notifies Customer that the Service is ready for use (the "Service Commencement Date") and shall continue until the expiration of the applicable term for the Service ordered. At the expiration of the term, this Agreement shall continue in effect with respect to the Service on a month-to-month base until canceled by either party on 30 days written notice; provided, however, that the charge for Service during such renewal period shall be at the then current monthly rate charged by TDS METROCOM for such Service. In the event that any action taken by any legislative, judicial or regulatory body directly or indirectly causes a reduction in revenue or an increase in expenses with respect to the provision of the Service, TDS METROCOM shall have the right to increase the amount of Recurring Service Charges set forth on the front page of this Agreement upon 30 days notice. Customer shall have the right to terminate this Agreement within 30 days of notice of the change in such Recurring Service Charges

<sup>Initial</sup> 4. **INSTALLATION AND CUSTOMER RESPONSIBILITIES.** TDS METROCOM shall only be responsible for bringing the lines ordered by Customer to the Customer designated demarcation point at Customer's premises where TDS METROCOM's equipment terminates. In no event shall TDS METROCOM be responsible for connecting, installing or wiring past the demarcation point. Customer agrees and acknowledges that it shall be Customer's sole responsibility to provide and arrange for all necessary wiring and equipment required to extend dial tone including phone system programming and any other related wiring or work required to implement the Service. Customer agrees to (i) provide full and unrestricted access to the premises of Customer by personnel of TDS METROCOM for all installation, maintenance and repair services, if any, to be provided under this Agreement; and (ii) to provide TDS METROCOM electrical power to operate the Service and adequate space in Customer's premises to house any equipment used in connection with provision of the Service.

5. **PAYMENT.** Customer agrees to timely pay TDS METROCOM throughout the term of this Agreement the Service Charge together with installation and fees set forth on the front page hereof. Customer also agrees to pay any applicable tariffed rates for Services. The first monthly Service Charge shall be prorated from the Service Commencement Date through the end of the calendar month in which the Service Commencement Date occurs. Nonrecurring charges are payable with the first Service Charge. TDS METROCOM shall submit monthly invoices to Customer and payment of all charges thereon shall be due at the address shown on the invoice no later than 20 days after the invoice date. Any amounts not paid within 22 days of the invoice date will be subject to a late charge of 1.5% per month or at the maximum lawful rate, whichever is lower. Any applicable surcharge, federal, state, local, use, excise or sales tax or similar levy chargeable to or against TDS METROCOM because of the service provided to Customer shall be charged to and paid by Customer in addition to the Service Charge and other charges in this Agreement. If payment of a check is returned due to insufficient funds, Customer will be in immediate default and subject to a return check charge of \$25.00. In no event will TDS METROCOM have any responsibility with respect to payment by any tenant of Customer, and all charges due under this agreement will be due and payable from Customer without regard to Customer's relationship, if any, with any tenant.

6. **INTERRUPTION OF SERVICE.** For any interruption of Service that is not due to negligence or non-compliance with any term or condition of this Agreement by Customer or the failure of operation or malfunction of facilities, power or equipment provided by the Customer, Customer will be entitled to a credit against the monthly Service Charge. Service will be deemed to be interrupted from the time TDS METROCOM receives notice from Customer that the Service is not working until the time the Service is working. Unless provided otherwise by law or tariff, credits shall be calculated on the basis of a 30-day month and shall be credited upon Customer request against the monthly Service Charge as follows:

First 30 minutes: none      30 minutes to 3 hours: 1/10 day      Each additional 3 hour period (or fraction thereof): 1/5 day  
If the duration of the outage is more than 24 hours the credit shall be the pro rated amount of the Customer's monthly Service Charge. Allowance of these credits will be customer's sole remedy and TDS METROCOM's sole liability for any service outage, no matter how caused.

7. **DISCLAIMER OF WARRANTIES.** TDS METROCOM MAKES NO WARRANTY AS TO THE CONTINUOUS OPERATION OF THE SERVICE OR ANY SPECIFIC FEATURE OF THE SERVICE. ALL WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED.

8. **LIMITATION ON DAMAGES/CLAIM PERIOD.** TDS METROCOM SHALL NOT BE LIABLE IN CONTRACT, IN TORT, INCLUDING NEGLIGENCE, OR OTHERWISE, FOR ANY DIRECT, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF THE USE OF THE SERVICE, LOSS OF DATA, CUSTOMER'S INABILITY TO USE THE SERVICE, INTERRUPTIONS OR CLAIMS BY THIRD PARTIES. THE PARTIES AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, TDS METROCOM LIMITS LIABILITY RELATED TO THE PROVISION OF SERVICES AS FOLLOWS: FOR DIRECT DAMAGE TDS METROCOM'S LIABILITY IS LIMITED TO THE AMOUNT PAID BY CUSTOMER FOR SERVICES GIVING RISE TO, OR WHICH ARE THE SUBJECT OF, THE CLAIM WHETHER SUCH CLAIM ALLEGES BREACH OF CONTRACT, OR TORTUOUS CONDUCT INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR ANY OTHER THEORY. NO ACTION REGARDLESS OF FORM ARISING OUT OF THE SERVICE OR PERFORMANCE BY TDS METROCOM UNDER THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED. TDS METROCOM SHALL HAVE NO LIABILITY OR RESPONSIBILITY TO CUSTOMER FOR ANY OMISSION OR ERROR WITH RESPECT TO CUSTOMER'S TELEPHONE DIRECTORY LISTINGS.

9. **SUBSEQUENT LINE ADDITIONS/DELETIONS TO THIS AGREEMENT WILL BE AS FOLLOWS:**

- a.) Subsequent additions will be rated under a new Agreement or added to the existing Agreement, based upon the remaining period of the initial Agreement. For each new line added to this Agreement after a 60 day grace period, an installation charge will be applicable. The charge includes an account service order charge of \$15.00 per account, plus a line charge of \$20.00 per line.
- b) Subsequent feature additions or changes, after a 60 day grace period, will be assessed a service fee, including an account service order charge of \$15.00 per account, plus a Change fee of \$5.00 per order request.
- c) If Customer does not maintain at least 85% of the minimum quantity of lines under the initial Agreement over the life of this agreement, Customer shall be liable for a termination charge under paragraph 10 on all lines cancelled.

~~Article 10~~ **CANCELLATION:** If Customer cancels this Agreement or cancels lines to the point where the number of lines is below minimum commitment levels stated above, prior to expiration of the respective term for such service, Customer shall pay TDS METROCOM a cancellation charge. The cancellation charge will be calculated as; (a) 20% of the monthly recurring charges for all lines cancelled multiplied by the number of months remaining on the initial term; plus (b) any installation and service fees that have been previously waived. If there is a partial cancellation, any volume discounts going forward will be applied based only on the remaining volume. Either party may cancel this Agreement without liability in the event TDS METROCOM is prohibited from providing service or if any material rate or term contained herein is substantially changed by final order of a court, administrative agency or other body of competent jurisdiction. Termination charges will not apply if the Customer replaces the Service with a new contract with a term equal to or greater than the original term with a minimum commitment equal to at least 75% of the original commitment level under this Agreement. MxU voice and MxU DSL are each deemed a separate service and cancellation of one service shall not affect the other services ordered by Customer in this Agreement.

**11. DEFAULT.** An event of default ("Event of Default") shall occur upon the occurrence of all or any one of the following events: (a) the Customer does not pay when due any invoice; (b) the Customer files, or has filed against it, a petition in bankruptcy or for its reorganization, arrangement, composition or readjustment under the federal bankruptcy code or any state insolvency law or the Customer liquidates all or a substantial part of its assets not in the ordinary course of its business, dissolves or takes other similar action; or (c) the Customer shall default in the performance of any of its obligations to TDS METROCOM or any assignee arising under this Agreement or any applicable tariff or any other agreement between the Customer and TDS METROCOM.

**12. REMEDIES/TERMINATION OF SERVICE.** Upon the occurrence of an Event of Default, TDS METROCOM may, at its option and without notice or demand, exercise all or any one or more of the following remedies: (a) declare immediately due and payable all invoices and all other sums due or to become due hereunder or under any other agreement between the Customer and TDS METROCOM; (b) terminate or suspend all of its obligations arising under this Agreement including Service, and any other agreement between the Customer and TDS METROCOM; (c) enter the premises where any of TDS METROCOM equipment is located and repossess all or any part of the equipment; or (d) exercise all other legal and equitable remedies which TDS METROCOM may have. The foregoing remedies shall be deemed cumulative and may be exercised successively or concurrently as permitted by law. The Customer will reimburse TDS METROCOM for all fees, costs and expenses, including all attorney's fees, costs and expenses, incurred by TDS METROCOM to enforce all or any of its rights arising hereunder.

**13. REPRESENTATIONS AND WARRANTIES OF CUSTOMER.** Customer warrants and represents to TDS METROCOM that (i) Customer is to use the Service solely for business purposes, including provision of telephone service or DSL service to tenants of Customer; (ii) Customer has the right, power and authority to enter into and perform its obligations under this Agreement; (iii) Customer has taken all the requisite legal action to approve the execution, delivery and performance of this Agreement; (iv) this Agreement constitutes a binding obligation enforceable against Customer in accordance with its terms; and (v) the individual executing this Agreement is either the Customer individually or is a duly appointed officer or agent of Customer with the authority to execute this Agreement on behalf of Customer.

**14. INDEMNIFICATION.** Customer will defend, indemnify and hold TDS METROCOM harmless from any claim arising out of or connected in any way to the Services, by any tenant of Customer or anyone else making use of the Service provided by TDS METROCOM hereunder, regardless of whether such claim arises in tort contract or otherwise.

**MISCELLANEOUS.** The obligations of TDS METROCOM are subject to force majeure and TDS METROCOM shall not be in default this Agreement if any failure or delay in performance is caused by strike, power failure, accidents, acts of God, fire, flood, adverse weather, lack of transportation, condemnation or exercise of rights of eminent domain, war or civil disorder, or any other cause beyond the reasonable control of TDS METROCOM. Any assignment, in whole or in part, by Customer of any right or obligation or of any interest hereunder without the written consent of TDS METROCOM shall be void. Customer acknowledges certain duties and obligations of TDS METROCOM under this Agreement may be performed by certain affiliates of TDS METROCOM. Notwithstanding expiration or termination of this Agreement, the provisions of the Agreement which by their nature or context are required or intended to survive shall survive and remain in full force and effect. All notices or requests which may be given by any party to the other party shall be in writing and shall be deemed to have been duly given on the date delivered in person or via express service or on the date deposited, postage prepaid in the United States mail via Certified Mail, return receipt requested, to the Customer at the address set forth on the front page hereof and to TDS METROCOM at 525 Junction Road, Suite 6000, Madison, WI 53717, Attention: Contract Administrator. This Agreement together with any applicable tariff sets forth the entire agreement, and supersedes any and all prior agreements between the parties with respect to the transactions set forth herein. No change, amendment or modification of any provisions of this Agreement shall be valid unless set forth in a written instrument signed by both parties to this Agreement.

Exhibit "B"

The cost of the TDS Metrocom contract for Resident Phone Service at Ridgewood Care Center is fully funded by the Residents using the service. A revenue transfer exists with Revenue Account 50050.5705.6900 and Expense Account 50330.6900.5705.

The contract with TDS Metrocom has no increase from the previous contract and will not increase for the 5 year term.

After reviewing the Resolution/Ordinance and fiscal information supplied, your Finance Committee recommends FOR--AGAINST adoption.  
REASONS

FOR	AGAINST
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