

BILL NO. 2942

ORDINANCE NO. _____

AN ORDINANCE ACCEPTING THE PROPOSAL OF BID AWARD TO CENTURYTEL FOR A TELEPHONE SYSTEM FOR THE CITY OF BRANSON'S NEW RECREATION CENTER COMPLEX, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT.

WHEREAS, the City of Branson is permitted a contract with a sole source provider and CenturyTel is the only local telephone provider in this area.

WHEREAS, the proposal from CenturyTel was received and has been recommended for approval by staff; and

WHEREAS, the Board of Aldermen desire to award the contract for a phone system to CenturyTel for the new Recreation Center Complex.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:

Section 1: That the Board of Aldermen hereby accepts the proposal of CenturyTel in the amount of \$21,109.95 to the City of Branson, pursuant to Agreement, as attached hereto and incorporated herein by reference, and authorizes the Mayor to sign the agreement on behalf of the City of Branson.

Section 2: This ordinance shall be in full force and effect from and after its passage and approval.

Read this first time on _____ day of _____, 2004.


Read this second time, passed, and truly agreed to by the Board of Aldermen of the City of Branson, Missouri, on this _____ day of _____, 2004.

Louis E. Schaefer, Mayor

ATTEST:

APPROVED AS TO FORM:

Sandra L. Williams, C.M.C.
City Clerk



Daniel R. Wichmer
City Attorney

**TELECOMMUNICATIONS EQUIPMENT
SALES AND INSTALLATION AGREEMENT**

CenturyTel of Missouri, LLC, a corporation ("CenturyTel"), agrees to sell and install, and City of Branson, MO. ("Customer"), agrees to purchase, the telecommunications equipment specified below ("Equipment"), in accordance with and subject to the terms and conditions of this Telecommunications Equipment Sales and Installation Agreement ("Agreement"), which is entered into by CenturyTel and Customer on October 19, 2004. **THIS AGREEMENT INCLUDES THE ADDITIONAL TERMS AND CONDITIONS ON PAGES 2 AND 3.**

EQUIPMENT: See Schedule A

INSTALLATION LOCATION: City of Branson Parks and Recreation Center
1500 Branson Hills Parkway
Branson, MO. 65616

INSTALLATION DATE: To be completed by May 1, 1005

EQUIPMENT PRICE AND PAYMENT SCHEDULE: Payment upon invoice after completion and acceptance of installation.

ADDRESSES FOR NOTICES:

CenturyTel: 211 S. Third Street
Branson, Mo. 65616

Customer: City of Branson Missouri
110 W. Maddux, Suite 200
Branson, Mo. 65616

telephone: 417-334-9252 _____

telephone: 417-337-8510 _____

Warranties and Disclaimers. CenturyTel does not warrant that the operation of the Equipment will be uninterrupted or error free. **CENTURYTEL MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING THOSE OF MERCHANTABILITY, DURABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO THE EQUIPMENT, AND CENTURYTEL EXPRESSLY DISCLAIMS, AND CUSTOMER EXPRESSLY WAIVES, ANY SUCH WARRANTIES.** Customer will be entitled to the benefit of any applicable manufacturer's warranties and, to the extent assignable, such warranties are hereby assigned by CenturyTel for the benefit of Customer and Customer shall take all reasonable action to enforce such warranties where available to Customer. Price includes installation of BCM Telephone System equipment as outlined on Attachment A (excluding new wiring), one (1) year warranty on parts and labor and end user training on telephones sets.

Limitation of Liability.

IN NO EVENT SHALL CENTURYTEL HAVE ANY LIABILITY FOR (I) ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHETHER ARISING UNDER NEGLIGENCE (WHETHER ACTIVE OR PASSIVE), CONTRACT, STRICT LIABILITY OR ANY OTHER THEORY, AND REGARDLESS OF WHETHER CENTURYTEL SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (II) ANY AMOUNT THAT EXCEEDS THE AMOUNT OF THE PURCHASE PRICE OF THE EQUIPMENT SPECIFIED ABOVE.

By: CENTURYTEL OF MO, LLC

CITY OF BRANSON MISSOURI.

Signature: _____

Signature _____

Printed Name _____

Printed Name _____

Title: _____ Date: _____

Title: _____ Date: _____

**ADDITIONAL TERMS AND CONDITIONS
TELECOMMUNICATIONS EQUIPMENT SALES AND INSTALLATION AGREEMENT**

1. **Sales Price and Payment Terms.** CenturyTel's prices for the Equipment and installation are specified on Page 1. All charges shall be paid within thirty (30) days after the date of the invoice and in accordance with the payment schedule described on Page 1. Prices quoted in this Agreement shall be valid for ninety (90) days from the date this Agreement is signed by CenturyTel representatives and delivered to Customer, after which time prices for the Equipment may change. CenturyTel shall apply a service charge of 1.5% per month (or, if less, the highest percentage allowed by law) on any unpaid balance not received by CenturyTel within thirty (30) days of the invoice date.
2. **Taxes and Fees.** Prices do not include taxes or fees, of any kind, established by governmental authorities. Customer shall pay all such applicable taxes and fees when billed by CenturyTel. Alternatively, Customer may supply CenturyTel a tax exemption certificate in a form satisfactory to CenturyTel.
3. **Customer Responsibilities.** As a condition to CenturyTel's performance of its obligations hereunder, Customer agrees, at no charge to CenturyTel, to:
 - (a) furnish and allow CenturyTel unrestricted use of Customer's site and the Equipment in order for CenturyTel to fulfill its obligations hereunder during the term of this Agreement;
 - (b) provide reasonable working space and facilities, including heat, light, ventilation, telephone service, electrical current, trash removal and other necessary utilities for use by CenturyTel designated personnel, and adequate secure storage space, if required, for equipment and materials;
 - (c) Prepare the installation site in accordance with CenturyTel's standard physical and environmental requirements as otherwise set forth in writing to Customer;
 - (d) Be solely responsible for ordering and coordinating with the local telephone company or applicable service provider for the installation of all central office trunks and test trunks and/or the provision of any carrier services required;
 - (e) Additionally, Customer shall be solely responsible for payment to the appropriate utility or service provider for all utility and/or service charges, including, but not limited to, charges for central office trunks, tie lines or carrier services;
 - (f) Provide any information and/or documentation that CenturyTel reasonably requests from Customer and that is necessary for CenturyTel to properly perform any of its obligations hereunder; such information shall be provided by Customer in the form and by the dates reasonably specified by CenturyTel;
 - (g) Cooperate with and assist CenturyTel in coordinating its work hereunder with work being performed by the Customer or other contractors of the Customer, such that CenturyTel's performance of its obligations hereunder can progress without interruption to the maximum extent practicable;
 - (h) Complete such other requirements for raceways, borings and cuttings, trenchings, conduit, variances and rights-of-way if required by CenturyTel for CenturyTel's performance of its obligations hereunder;
 - (i) Be solely responsible for the protection and operation of the Equipment and related systems, including all software and other parts thereof;
 - (k) Be solely responsible for data backups and data storage; and
 - (l) Ensure that its personnel are available to receive delivery of the Equipment at the installation site, at a date and time to be determined between CenturyTel and Customer. Risk of loss and damage to Equipment passes to Customer upon delivery of the Equipment to Customer. CenturyTel shall be responsible for any damage to the Equipment caused by CenturyTel during installation of the Equipment.

Customer shall also provide adequate security for its site and provide CenturyTel designated personnel access to its site during the times specified by CenturyTel as may be reasonably necessary for CenturyTel to perform its obligations under this Agreement. CenturyTel personnel shall comply with Customer's reasonable site and security regulations.

4. **Customer Acceptance.** Acceptance by Customer of the Equipment shall be made by Customer properly executing a Certificate of Acceptance in the form attached hereto.
5. **Subcontract.** Customer acknowledges and agrees that CenturyTel is merely a distributor of Equipment manufactured by third parties, and Customer agrees that CenturyTel shall have the right to engage the assistance of such manufacturers or others and/or subcontract portions of its installation obligations hereunder to such manufacturers or other third parties, in the performance of its obligations hereunder.

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6. **Exclusions.** The services provided by CenturyTel under this Agreement do not include any of the following: furnishing supplies which are not part of the Equipment or furnishing material therefor; electrical work external to the Equipment; work or supply of material relating to maintaining a proper environment at Customer's site; and/or providing any goods or services not expressly described in this Agreement as being provided by CenturyTel.

7. **Software License.**

The Equipment may be or may contain software. In some cases the Equipment manufacturer (CenturyTel's vendor) has embedded such software into the hardware as an integral part of the Equipment. All software provided hereunder remains the property of, and full ownership shall remain vested in, the creator, developer, manufacturer, author or licensor, whichever the case may be. If required by the creator, developer, manufacturer, author or licensor, Customer must obtain a license to use such software, which license may contain specific terms and conditions for such use. These specific terms and conditions for use are governed entirely by said creator, developer, manufacturer, author or licensor and shall be adhered to by Customer. Upon the requirement of such creator, developer, manufacturer author or licensor, such license shall be executed by Customer as required and shall become a part of this Agreement by reference.

8. **Miscellaneous.**

(a) The laws of the state of CenturyTel's incorporation shall govern the interpretation of this Agreement. If any of the provisions of the terms and conditions contained herein shall be held to be invalid or unenforceable in any jurisdiction in which these terms and conditions apply, such invalidity or unenforceability shall not invalidate or render unenforceable any other term or condition, but rather these terms and conditions shall be construed and enforced accordingly. However, in the event such provision is considered an essential element of these terms and conditions, the parties shall promptly negotiate a replacement thereof.

(b) Neither Customer nor CenturyTel shall be held responsible for performance if its performance is prevented by acts or events beyond the party's reasonable control, including but not limited to power failures, electrical power surges or current fluctuations, nuclear or other civil or military emergencies, or acts of legislative, judicial, executive, or administrative authorities.

(c) Any failure of a party to assert any right under this Agreement shall not constitute a waiver or termination of that right, this Agreement, or any of this Agreement's provisions.

(d) Neither party shall assign, sublet, or transfer any interest in this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that CenturyTel may assign and transfer this Agreement to any parent, subsidiary, or successor, and CenturyTel shall have the right to subcontract all or any portion of its installation obligations hereunder to a third party.

(e) The respective obligations of the Customer and CenturyTel under these terms and conditions which by their nature would continue beyond the termination, cancellation, or expiration hereof, shall survive termination, cancellation, or expiration hereof.

(f) Except as otherwise provided in this Agreement, any notice or demand to be given under this Agreement shall be delivered in person or by United States certified mail, return receipt requested, and addressed as specified on Page 1 or to such other address as a party may specify in accordance herewith. Notice shall be effective upon receipt.

(g) No provision of this Agreement shall in any way inure to the benefit of any third person (including without limitation the public at large) so as to constitute any such person a third party beneficiary of the Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

(h) If any suit or action is instituted or prosecuted to interpret or enforce any provision of this Agreement, the prevailing party in such suit or action shall be entitled to recover from the other party costs, expenses and reasonable attorney fees incurred by such prevailing party in connection with such suit or action, in addition to all other sums allowed by law, both at trial and on appeal.

(i) This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. Each party to this Agreement agrees to accept a facsimile signature on behalf of the other party in lieu of an original signature; provided however, that either party may request an original signature following acceptance by such party of a facsimile signature.

(j) This Agreement represents the entire Agreement between the parties, is the final, complete exclusive statement of the terms thereof, and supersedes and terminates any prior Agreement, understanding, or representation between the parties with respect thereto, whether written or oral.