



Utility Committee Meeting

AGENDA

March 1, 2011

I. **CALL TO ORDER**

II. **MATTERS BEFORE COMMITTEE**

1. [Approval - Communications Agreements & Contracts](#)
2. [Discussion - Hospital Electric Services](#)

III. **ADJOURN**



Utility Committee Meeting

AGENDA

March 1, 2011

Item:

Approval - Communications Agreements & Contracts

Department:

Additional Information:

Financial Impact:

Budgeted Item:

Recommendation / Request:

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Attachments / click to download

- [Master Service Agreement](#)
- [Service Schedule](#)
- [Service Schedule Attachment](#)
- [Sales Order](#)

CITY OF MONROE NETWORK SERVICES MASTER SERVICE AGREEMENT

This Master Service Agreement (this “Agreement”) is entered into this ____ day of _____
20 ____ (“Effective Date”) by and between The City of Monroe, Georgia (“Monroe”) and
_____ (“Customer”).

ARTICLE 1. DEFINITIONS

1.1. “Amendment(s)” shall mean any written amendment to the Agreement, executed by both Parties, including any supplemental terms and conditions.

1.3. “Customer Commit Date” shall mean the date that Service will be available to Customer, as set forth in the Sales Order once signed and accepted by Monroe or such other written notice from Monroe to Customer. Notwithstanding anything in this Agreement or any Sales Order to the contrary, no Customer requested date for delivery of Service will be effective unless and until confirmed in writing by Monroe through the delivery to Customer of a signed copy of the Sales Order. See Section 2.3(A) for Maximum CCD.

1.4. “Customer Premises” shall mean the location or locations occupied by Customer or its end users to which Service is delivered.

1.5. “Excused Outage” shall mean any outage, unavailability, delay or other degradation of Service related to, associated with or caused by scheduled maintenance (as described in Section 2.8 hereof), actions or inactions of Customer or its end users, Customer provided power or equipment or an event of force majeure as defined in Section 7.1.

1.6. “Facilities” shall mean any property owned, licensed or leased by Monroe or any of its Affiliates and used to deliver Service, including terminal and other equipment, conduit, fiber optic cable, optronics, wires, lines, ports, routers, switches, channel service units, data service units, cabinets, racks, private rooms and the like.

1.7. **(INTENTIONALLY LEFT BLANK)**

1.8. “Megabit per second” or “Mbps” shall mean a unit of data rate equal to 1 million bits per second.

1.9. “Network” shall mean, (i) the physical infrastructure used to deliver the Service to the Customer, including fiber optic and/or coaxial cables (ii) layers 2 and 3 of the OSI model used to deliver Monroe services or customer data to the Customer premises through Monroe’s physical infrastructure.

1.10. “Off-Net” shall mean Service that originates from or terminates to any location that is not on the Monroe Network.

1.11. “On-Net” shall mean Service that originates from and terminates to a location that is on the Monroe Network.

1.12. “Party” shall mean a reference to Monroe or the Customer; and in the plural, a reference to both companies.

1.13. “Sales Order” shall mean a request for Service submitted by Customer in the form designated by Monroe.

1.14. “Service” shall mean any Monroe service described in a Service Schedule and identified on a particular line item of a Sales Order.

1.15. “Service Commencement Date” shall mean the date service is delivered by Monroe and accepted by Customer.

1.16. “Service Levels” shall mean the specific remedies Monroe provides regarding installation and performance of Service as set forth in the particular Service Schedule respecting the applicable Service.

1.17. “Service Schedule” shall mean a schedule attached hereto, or signed between the parties from time to time and expressly incorporated into this Agreement, setting forth conditions specific to a particular Service, Facilities or other tools made available by Monroe.

1.18. “Service Term” shall mean the duration of time (measured starting on the Service Commencement Date) for which Service is active. The Service Term shall continue on a month-to-month basis after expiration of the stated Service Term, until terminated by either party upon thirty (30) days’ written notice to the other.

ARTICLE 2. DELIVERY OF SERVICE

2.1. **Provider.** Service shall be provided by the City of Monroe.

2.2. **Submission of Sales Order(s).** To order any Service, Customer may submit to Monroe a Sales Order requesting Service. The Sales Order must include a description of the Service, the non-recurring charges and monthly recurring charges for Service and the applicable Service Term.

2.3. **Maximum Customer Commit Date.**

(A) In the event that the Customer Commit Date for any On-Net Service ordered by Customer is thirty (30) days or more beyond the installation date requested by Customer as set forth in the Sales Order, Customer may rescind the Sales Order for such On-Net Service without termination liability upon written notice to Monroe; provided such notice of rescission is delivered to Monroe (by email or other form of written notice as permitted by Section 7.4 hereof to transportservices@monroega.gov) within three (3) business days following Customer’s receipt of the Customer Commit Date from Monroe.

(B) **The terms of this Section 2.3 shall in no event be deemed to waive any right Customer may have under applicable laws.**

2.4. **Credit Approval and Deposits.** Customer will provide Monroe with credit information as requested, and delivery of Service is subject to credit approval. Monroe **may** require Customer to make a deposit or deliver another form of security as a condition to (a) Monroe’s acceptance of any Sales Order; (b) Monroe’s continuation of any usage-based Service; and/or (c) Monroe’s continuation of any non usage-based Service only in the event that Customer fails to make payment to Monroe of any undisputed amount when due. Any deposit will be limited to two (2) months’ estimated charges for Service and will be due within ten (10) business days of Monroe’s written request. Any deposit will be held by Monroe as security for payment of Customer’s charges. When Service to Customer is terminated, the amount of the deposit will be credited to Customer’s account and any remaining credit balance will be refunded in accordance with normal account billing cycles. Any deposit paid by Customer pursuant to this Section 2.4 will be held by Monroe in accordance with the applicable law governing such deposit.

2.5. **Customer Premises.** Customer shall allow Monroe access to the Customer Premises to the reasonable extent necessary for the installation, inspection and scheduled or emergency maintenance of Facilities relating to the Service. Monroe shall notify Customer at least two (2) business days in advance of any regularly scheduled maintenance that will require access to the Customer Premises. Customer will be responsible for providing and maintaining, at its own expense, the level of power, heating and air conditioning necessary to maintain the proper environment for the Facilities on the Customer Premises. In the event Customer fails to do so, Customer shall reimburse Monroe for the actual and reasonable cost of repairing or replacing any Facilities damaged or destroyed as a result of Customer’s failure. Customer will

provide a safe place to work and comply with all laws and regulations regarding the working conditions on the Customer Premises. Monroe personnel having access to Customer Premises shall abide by all Customer's posted rules for such access applicable generally to third party personnel, including without limitation safety and security rules.

2.6. **Monroe Facilities.** Except as otherwise agreed, title to all Facilities shall remain with Monroe. Monroe will provide and maintain the Facilities in good working order. Customer shall not, and shall not permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Facilities, without the prior written consent of Monroe. The Facilities shall not be used for any purpose other than in connection with Customer's purchase of Services and functions ancillary thereto (as generally accepted in the telecommunications industry). Customer shall not take any action that causes the imposition of any lien or encumbrance on the Facilities. In no event will Monroe be liable to Customer or any other person for interruption of Service or for any other loss, cost or damage caused by or related to improper use or maintenance of the Facilities by Customer or any third party gaining access to the Facilities through Customer in violation of this Agreement, and Customer shall reimburse Monroe for any damages incurred as a result thereof. Customer agrees (which agreement shall survive the expiration, termination or cancellation of any Sales Order) to allow Monroe to remove the Facilities from the Customer Premises:

(A) after termination, expiration or cancellation of the Service Term of all the applicable Service(s) in connection with which the Facilities were used; or

(B) for repair, replacement or otherwise as Monroe may determine is necessary or desirable, but Monroe will use reasonable efforts to minimize disruptions to the Service caused thereby.

(C) Upon removal of the Facilities, except where the Facilities are promptly replaced, Monroe will promptly restore the Customer Premises to their original condition, reasonable wear and tear excepted.

2.7. **Customer-Provided Equipment.** Customer may install Customer-provided equipment upon commencement of Service, but Monroe shall not be responsible for the operation or maintenance of any Customer-provided equipment. Monroe undertakes no obligations and accepts no liability for the configuration, management, performance or any other issue relating to any Customer-provided equipment used for access to or the exchange of traffic in connection with the Service.

2.8. **Scheduled Maintenance.** Scheduled maintenance of the Monroe Network will not normally result in peak hours Service interruption or outage. However, in the event scheduled maintenance should require a peak hours Service interruption or outage, Monroe will exercise commercially reasonable efforts to (i) provide Customer with seven (7) days' prior written notice of such daytime scheduled maintenance, (ii) work with Customer in good faith to attempt to minimize any disruption in Customer's services that may be caused by such peak hours scheduled maintenance. Otherwise, Monroe will perform all such schedule maintenance during the non-peak hours of 9:00 p.m. until 7:00 a.m. local time.

2.9. **Upgrade of Services.** Customer may upgrade the speed or capacity of an existing service, provided that;

(A) the upgraded Service must assume the remaining Service Term of the existing Service;

(B) the upgraded Service must have the same points of termination on Monroe's Network as the existing Service;

(C) Customer submits a Sales Order to Monroe for the upgraded Service and the order is accepted by Monroe;

(D) Customer pays Monroe any applicable non-recurring charges for the upgrade; and

(E) Customer agrees to pay the applicable monthly recurring charges for the upgraded Service.

ARTICLE 3. BILLING AND PAYMENT

3.1. **Charges.** The Sales Order will set forth the applicable non-recurring charges and recurring charges for the Service. Unless otherwise expressly specified in the Sales Order, any non-recurring charges shall be invoiced by Monroe to Customer upon the Service Commencement Date. However, in the event such Service requires Monroe to install or construct additional Facilities in the provision of the Service, such Sales Order may specify non-recurring charges that are payable by Customer in advance of the Service Commencement Date, as mutually agreed between the parties and specified in the Sales Order. If Customer requests and Monroe approves (in its sole discretion) any changes to the Sales Order or Service after acceptance by Monroe, including, without limitation, the Customer requested date for delivery of Service or Service Commencement Date, additional non-recurring charges and/or monthly recurring charges not otherwise set forth in the Sales Order may apply; provided, that Monroe will notify Customer of such additional charges at the time the change request is made.

3.2. **Payment of Invoices.** Invoices are delivered monthly. Monroe bills in advance for Service to be provided during the upcoming month, except for charges that are dependent upon usage of Service, which are billed in arrears. Billing for partial months is prorated based on a calendar month. All invoices are due within forty five (45) days of receipt of invoice by Customer. Unless otherwise specified on the particular invoice, all payments shall be due and payable in U.S. Dollars. Past due amounts will be charged at ten dollar (\$10) late penalty and if service is disconnected a thirty-five dollar (\$35) reconnection fee will apply.

3.3. **Taxes and Fees.** All charges for Service are exclusive of Applicable Taxes (as defined below). Except for taxes based on Monroe's net income, property (other than any allowance for personal property tax expressly set forth in Monroe's tariff or service guide and applicable to all Monroe customers) or employment. Customer will be responsible for all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, imposed on, incident to, or based upon the provision, sale or use of the Service (collectively "Applicable Taxes"). If Customer is entitled to an exemption from any Applicable Taxes for a particular Service, Customer is responsible for presenting Monroe with a valid exemption certificate (in a form reasonably acceptable to Monroe). Monroe will give effect to any such exemption certificate on a prospective basis from and after Monroe's receipt of such exemption certificate.

3.4. **Regulatory and Legal Changes.** In the event of any change in applicable law, regulation, decision, rule or order that materially increases the costs or other terms of delivery of Service, Monroe and Customer will negotiate regarding the rates to be charged to Customer to reflect such increase in cost and, in the event that the parties are unable to reach agreement respecting new rates within thirty (30) days after Monroe's delivery of written notice requesting renegotiation, then (a) Monroe may pass such increased costs through to Customer without mark-up, and (b) if Monroe elects to pass such increased costs through to Customer, Customer may terminate the affected Service without termination liability by delivering written notice of termination no later than thirty (30) days after the effective date of such rate increase.

3.5. **Disputed Invoices/Failure to Invoice.** All disputes must be made within 60 days of due date. Customer waives the right to dispute any charges not disputed within such time period. In the event that the dispute is resolved against Customer, Customer shall pay such amounts plus any fees referenced in Section 3.2.

3.6. Termination Charges.

(A) Customer may terminate Service prior to the end of the Service Term upon thirty (30) days' prior written notice to Monroe (with sufficient detail necessary to identify the affected Service). If, (1) Customer terminates Service other than pursuant to Section 4.3 or under other circumstance giving Customer an express right to terminate or cancel the Service without liability, or (2) the delivery of Service is terminated by Monroe as the result of an uncured default by Customer pursuant to Section 4.2 of this Agreement,

Customer shall pay Monroe a termination charge (as Monroe's sole and exclusive remedy for such termination) equal to the sum of:

- (i) all unpaid amounts for Service provided through the date of termination;
- (ii) any actual and documented (by either an invoice showing the amount owed by Monroe or other evidence reasonably satisfactory to Customer) third party cancellation/termination charges related to the installation and/or termination of any Off-Net Service;
- (iii) 100% of the non-recurring charges for any cancelled Service, if not already paid;
- (iv) 100% of the monthly recurring charges with respect to months 1-12 of the Service Term; plus 75% of the monthly recurring charges with respect to months 13-24 of the Service Term; plus 50% of the monthly recurring charges with respect to months 25-36 of the Service Term.
- (vi) The parties acknowledge and agree that the terms of Section 3.7(iv) above may be renegotiated upon any negotiation or execution of a new Service Schedule to this Agreement.

(B) The parties acknowledge that the cancellation or termination charges set forth in this Section 3.6(A) are a genuine estimate of the actual damages that Monroe will suffer and are not a penalty.

3.7. **Fraudulent Use of Services.** Customer is responsible for all charges attributable to Customer incurred respecting the Service. In the case of usage-based Services, Customer is responsible for all usage charges even if incurred as the result of fraudulent or unauthorized use of Service; except that Customer shall not be responsible for fraudulent or unauthorized use by Monroe or its employees or contractors.

ARTICLE 4. TERM AND TERMINATION

4.1. **Term.**

(A) This Agreement shall become effective on the Effective Date and shall continue for a period of three (3) years thereafter ("Agreement Term"), unless earlier terminated as provided herein. At the end of the initial Agreement Term, the Agreement Term shall automatically renew on a month-to-month basis until terminated by either party upon thirty (30) days' prior written notice to the other party.

(B) Except as otherwise set forth herein, Monroe shall deliver the Service for the entire duration of the Service Term, and Customer shall pay all charges for delivery thereof through the end of the Service Term. To the extent that the Service Term for any Service extends beyond the Agreement Term, then this Agreement shall remain in full force and effect for such Service until the expiration or termination of such Service Term.

4.2. **Default By Customer.** If (i) Customer fails to make any payment required hereunder when due, and such failure continues for a period of five (5) business days after written notice from Monroe, or (ii) Customer fails to observe and perform any material term of this Agreement (other than payment terms) and such failure continues for a period of thirty (30) days after written notice from Monroe; then Monroe may: (A) terminate this Agreement and any Sales Order, in whole or in part, in which event Monroe shall have no further duties or obligations thereunder, and/or (B) subject to Section 5.1, pursue any remedies Monroe may have under this Agreement, by law.

4.3. **Right of Termination for Installation Delay.** In lieu of any Service Level credits for installation delays, if Monroe's installation of Service is delayed for more than thirty (30) calendar days for reasons other than an Excused Outage, Customer may terminate and discontinue the affected Service upon written notice to Monroe and without payment of any applicable termination charge. This Section 4.3 shall not apply to any Service where Monroe (or a third party contractor engaged by Monroe) is constructing Facilities in or to the Customer Premises necessary for delivery of such Service. The parties hereto each acknowledge and agree that no construction of Facilities in or to Customer Premises for the delivery of

Service may be ordered via a Sales Order, but instead the parties will agree to the terms of such construction by a written addendum to this Agreement. In developing such addendum, the parties agree to discuss in good faith pertinent deadlines for completion of such construction and termination and/or other remedies for failure to meet such deadlines, provided that such deadlines and remedies will apply only to the extent incorporated in such addendum.

4.4. **Termination and Bundled Services.** In the event that (i) Customer terminates Service under any circumstance giving Customer an express right to terminate or cancel the Service without liability or (ii) Monroe terminates a service (other than for Customer default pursuant to Section 4.2) (such Service, in either case, the “Terminated Service”) and such Terminated Service is designated as “bundled” or as having a “sibling” or “dependent” relationship to another Service in any Sales Order (the “Sibling Service”), then Customer shall have the same right of termination with regard to the Sibling Service that it, or Monroe(as applicable) has for the Terminated Service (including, without limitation, any time limitations or notice requirements with regard to Customer’s right to terminate the Terminated Service); provided that Customer terminates both the Terminated Service and Sibling Service at the same time and either under the same notice of termination to Monroe as the Terminated Service or by subsequent notice of termination within five (5) business days after the notice of termination of the Terminated Service.

ARTICLE 5. LIABILITIES AND INDEMNIFICATION

5.1. **No Special Damages.** Notwithstanding any other provision hereof other than Section 5.2 and 5.4, neither party shall be liable for any damages for loss of profits, loss of revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement or any Sales Order.

CUSTOMER ACKNOWLEDGES AND AGREES THAT ITS SOLE REMEDY IN THE EVENT OF A BREACH OF ANY OF THE OBLIGATIONS OF MONROE HEREUNDER SHALL BE AS PROVIDED UNDER ARTICLES 4 AND 6 HEREIN, AND CUSTOMER SHALL NOT BE ENTITLED TO ANY ADDITIONAL REFUNDS, CREDITS OR PAYMENTS FROM MONROE.

5.2. **Personal Injury and Death.** Nothing in this Agreement shall be construed as limiting the liability of either party for personal injury or death resulting from the negligence of a party or its employees.

5.3. **Disclaimer of Warranties.** (i) MONROE MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY APPLICABLE SERVICE SCHEDULE. (ii) NEITHER CUSTOMER NOR ITS AGENTS OR INDEPENDENT CONTRACTORS SHALL OFFER THIRD PARTIES WARRANTIES OR REPRESENTATIONS FOR THE SERVICE WHICH WOULD OBLIGATE OR OTHERWISE BIND MONROE BEYOND ANY WARRANTY OR REPRESENTATION EXPRESSLY SET FORTH IN THIS AGREEMENT. ANY SUCH WARRANTIES OR SERVICE LEVEL COMMITMENTS MADE OR OFFERED BY CUSTOMER SHALL BE NULL AND VOID.

5.4. **Indemnification.** Customer shall indemnify the City of Monroe from any claims by third parties and expenses (including legal fees and court costs) respecting damage to tangible property, personal injury or death caused by such party’s negligence or willful misconduct arising in connection with this Agreement.

ARTICLE 6. SERVICE LEVELS

6.1. **Service Interruptions and Delivery.** To report issues related to Service performance, Customer may contact Monroe Network Engineering by calling 1-770-266-5333. In order for Monroe to investigate

any reported issues, Customer agrees to provide Monroe with supporting information as reasonably requested by Monroe, which may include (as applicable), without limitation, circuit ID, circuit end-point(s) and IP address(es). In the event of any damages arising out of Monroe's furnishing or failure to furnish Services under this Agreement, Customer's sole remedies are contained in (a) the Service Levels applicable (if any) to the affected Service, (b) the chronic outage provision (if any) set forth in the Service Schedule applicable to the affected Service, and (c) Section 4.3 above.

6.2. **Service Level Credits.** In the event Monroe does not achieve a particular Service Level in a particular month, Monroe will issue a credit to Customer as set forth in the applicable Service Schedule upon Customer's request. Monroe's maintenance log and trouble ticketing systems will be used for calculating any Service Level events. To request a credit, Customer must contact Monroe Customer Service (with sufficient detail necessary to identify the affected Service) pursuant to Section 6.1. In no event shall the total amount of credits issued to Customer per month exceed 50% of the monthly recurring charges invoiced to Customer for the affected Service for that month.

ARTICLE 7. GENERAL TERMS

7.1. **Force Majeure.** Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such party's reasonable control including but not limited to adverse weather, strikes, terrorism, governmental decisions or rules impacting this Agreement ("force majeure event"). In the event Monroe is unable to deliver Service as a result of a force majeure event, Customer shall not be obligated to pay Monroe for the affected Service for so long as Monroe is unable to deliver the affected Service and in the event such inability persists for more than thirty (30) consecutive days, Customer may terminate the affected Service without liability upon prior written notice to Monroe; provided Monroe has not resumed delivery of the affected Service prior to Customer's delivery to Monroe of such written notice of termination.

7.2. **Assignment and Resale.** Neither party may assign its rights and obligations under this Agreement or any Sales Order without the express prior written consent of the other party, which will not be unreasonably withheld except that either party may, without such consent, assign this Agreement or any Sales Order to any of its Affiliates. This Agreement shall apply to any permitted transferees or assignees. Notwithstanding any assignment, Customer shall remain liable for the payment of all charges due and Monroe shall remain liable for the performance of all its obligations under each Sales Order; except Customer shall be released from all future payment obligations accruing under any Sales Order assigned to an Affiliate of Customer, provided such Affiliate receives credit approval by Monroe and/or pays to Monroe a creditworthiness deposit as reasonably requested by Monroe.

7.3 **Limitations.** (i) Customer is prohibited from reselling any service provided by Monroe in any way. Customer, its employees, agents and independent contractors shall not use the Network to provide any product or service that directly or indirectly competes with any product or service provided by Monroe (Non-Compete) along Monroe's fiber optic Network, for the duration of this agreement. (ii) Under special circumstances, Monroe may allow customer to resell a service provided by Monroe. If Monroe agrees to allow Customer to resell any service, it must be stated in writing and included in the executed Service Schedule for such service. Absent such written authorization, it is expressly agreed that only Customer, as identified in this Agreement, shall use the Ordered Service, specified in the Service Schedule, as the end-user.

7.4 **Attorneys Fees and Costs.** In the event that Customer defaults upon any of its obligations arising hereunder, Customer agrees that the City of Monroe shall be entitled to attorneys fees and costs in the sum of fifteen percent (15%) of the outstanding balance owed should Customers account be turned over to an attorney for collection.

7.5. **Notices.** Notices hereunder shall be in writing and sufficient and received if delivered in person, or when sent via facsimile, pre-paid overnight courier, electronic mail (if an e-mail address is provided below) or sent by U.S. Postal Service (or First Class International Post (as applicable)), addressed as follows:

IF TO MONROE:

For billing inquiries/disputes, requests for Service Level credits and/or requests for disconnection of Service (for other than default):

The City of Monroe
P.O. Box 725
Monroe, GA 30655
Attn: Director, Telecommunications
Facsimile: (678) 635-8888
E-mail: transportservices@monroega.gov

IF TO CUSTOMER:

Name:
Address:
Address:
Attn:
Phone/Fax:
Email:

or at such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. All such notices shall be deemed to have been given on (i) the date delivered if delivered personally, (ii) the business day after dispatch if sent by overnight courier, (iii) the third business day after posting if sent by U.S. Postal Service (or other applicable postal delivery service), or (iv) the date of transmission if delivered by facsimile or electronic mail (or the business day after transmission if transmitted on a weekend or legal holiday). Notwithstanding the foregoing, any notices delivered by Monroe to Customer or vice versa in the normal course of provisioning of Service hereunder shall be deemed properly given if delivered via any of the methods described above or via electronic mail to the address listed on any Sales Order.

7.6. **Acceptable Use Policy.** Customer's use of Service shall comply with Monroe's Acceptable Use Policy and Privacy Policy, as communicated in writing to Customer from time to time. Monroe will notify Customer of complaints received by Monroe regarding each incident of alleged violation of Monroe's Acceptable Use Policy by Customer or third parties that have gained access to the Service through Customer. Customer agrees that it will promptly investigate all such complaints and take all necessary actions to remedy any actual violations of Monroe's Acceptable Use Policy. Monroe may identify to the complainant that Customer, or a third party that gained access to the Service through Customer, is investigating the complaint and may provide the complainant with the necessary information to contact Customer directly to resolve the complaint. Customer shall identify a representative for the purposes of receiving such communications.

7.7. **Data Protection.** During the performance of this Agreement, it may be necessary for Monroe to transfer, process and store billing and utilization data and other data necessary for Monroe's operation of its Network and for the performance of its obligations under this Agreement. The transfer, processing and storing of such data may be to or from the United States. Customer hereby consents that Monroe may (i) transfer, store and process such data in the United States; and (ii) use such data for its own internal purposes as allowed by law. This data will not be disclosed to third parties.

7.8. **Contents of Communications.** Monroe shall have no liability or responsibility for the content of any communications transmitted via the Service (except for content solely created by Monroe), and Customer shall defend, indemnify and hold Monroe harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to such content or for claims by third

parties relating to Customer's use of Service. Monroe provides (i) only access to the Internet and (ii) point-to-point / point-to-multi-point connections; Monroe does not operate or control the information, services, opinions or other content of (i) the Internet or (ii) point-to-point / point to multi-point connections. Customer agrees that it shall make no claim whatsoever against Monroe relating to the content of (i) the Internet or (ii) point-to-point / point to multi-point connections or respecting any information, product, service or software ordered through or provided by virtue of (i) the Internet or (ii) point-to-point / point to multi-point connections other than the Services expressly provided by Monroe under this Agreement.

7.9. **Marks and Publicity**. (i) Neither party shall have the right to use the other party's or its Affiliates' trademarks, logos, service marks or trade names without the prior written consent of the other party. (ii) Neither party shall issue any press release relating to any contractual relationship between Monroe and Customer, except as may be required by law or agreed between the parties in writing.

7.10. **Confidentiality**. Any information or documentation disclosed between the parties during the performance of this Agreement marked as CONFIDENTIAL, shall be proprietary to the disclosing party and shall be received and maintained in confidence. Each Party shall preserve the other Party's confidential information provided to it hereunder with at least the same degree of care in protecting its own confidential or proprietary information as long as it is marked confidential.

7.11. **(INTENTIONALLY LEFT BLANK)**.

7.12. **Governing Law**. This Agreement shall be governed and construed in accordance with the laws of the State of Georgia, U.S.A., without regard to its choice of law rules.

7.13. **Entire Agreement**. This Agreement, including any Service Schedule(s) and Sales Order(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the service and supersedes any and all prior agreements relating to the Service.

7.14. **Amendment**. This Agreement, and any Service Schedule or Sales Order, may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party. Without limiting the generality of the foregoing, any handwritten changes to a Sales Order or any terms and conditions included in any Customer-provided purchase order shall be void unless acknowledged and approved in writing by a duly authorized representative of each party.

7.15. **Order of Precedence**. In the event of any conflict between this Agreement and the terms and conditions of any Service Schedule and/or Sales Order, the order of precedence is as follows: (1) Amendments, (2) this Agreement, (3) Service Schedule, and (4) Sales Order.

7.16. **Survival**. The provisions of this Article 7 and Articles 3, 5 and 6 and any other provisions of this Agreement that by their nature are meant to survive the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

7.17. **Relationship of the Parties**. The relationship between Customer and Monroe shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, without limitation, for federal income tax purposes.

7.18. **No Waiver**. No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s).

7.19. **Severability**. If any provision of this Agreement shall be declared invalid or unenforceable under applicable law, said provision shall be ineffective only to the extent of such declaration and such declaration shall not affect the remaining provisions of this Agreement. In the event that a material and fundamental provision of this Agreement is declared invalid or unenforceable under applicable law, the parties shall negotiate in good faith respecting an amendment hereto that would preserve, to the fullest

extent possible, the respective rights and obligations imposed on each party under this Agreement as originally executed.

7.20. **Joint Product**. The parties acknowledge that this Agreement is the joint work product of the parties. Accordingly, in the event of ambiguities in this Agreement, no inferences shall be drawn against either party on the basis of authorship of this Agreement.

7.21. **Third Party Beneficiaries**. This Agreement shall be binding upon, inure solely to the benefit of and be enforceable by each party hereto and their respective successors and assigns hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

7.22. **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile signatures shall be sufficient to bind the parties to this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date written above.

THE CITY OF MONROE (“Monroe”)

_____ (“Customer”)

By: _____

By: _____

Name:

Name:

Title:

Title:

The City of Monroe Service Schedule

This schedule for network services (“Service Schedule”) is entered into this ____ day of _____, 20____ (“Effective Date”) by and between the City of Monroe, Georgia (“Monroe”) and _____ (“Customer”).

This Service Schedule is governed by and subject to the terms of the Master Service Agreement between Monroe and Customer dated ____ day of _____, 20____ (“Agreement”), and is hereby incorporated into and made a part of the Agreement. To The extent that the terms of this Service Schedule conflict with the terms of the Agreement, the terms of the Master Service Agreement shall govern.

WHEREAS the City of Monroe owns, operates and maintains a fiber optic network with dedicated high-speed services to and from residential and commercial customers; and

WHEREAS Customer seeks connection to Monroe’s dedicated high-speed network so that, in connection with services offered by Customer, Customer’s End User may establish transparent local area network (LAN) service between two geographically different facilities; and

WHEREAS the Parties wish to enter into an agreement whereby Monroe and Customer will establish, as described herein, the necessary functionality, connectivity, selective routing, and other features designed to enable End User to connect via transparent LAN service between facilities.

ARTICLE 1. SERVICE DETAILS

1.1. **Ordered Service.**

| | |
|-------------------------------------|---|
| Term of Agreement (months): | Agreement Number: _____ |
| Non-Recurring Charges (“NRC”): \$ | Monthly Recurring Charges (“MRC”): \$ |
| Number of Sites: One (X) | Estimated Service Date: Thirty (30) to Sixty (60) days after mutual execution of Agreement. |
| Notes / Comments: | |
| Engineering Contact: David Little | Telephone Number: (770) 266-5333 |
| Director of Telecom: Brian Thompson | Telephone Number: (770) 266-5345 |
| Customer Contact: | Telephone Number: |

1.2. **Service Description.**

Ethernet Private Line (EPL). EPL is a reliable, flexible, higher bandwidth alternative to traditional TDM private lines. EPL service enables customers to connect their Customer Premises Equipment (CPE) using a lower cost Ethernet interface. EPL service enables customers to use any VLANs or Ethernet control protocol across the service without coordination with Monroe. EPL service provides one Ethernet Virtual Connection (EVC) between two customer locations. EPL service is offered with 10/100Mbps or 1Gbps Ethernet User-to-Network Interfaces (UNI) and is available in speed increments from 1Mbps to 1Gbps.

User-to-Network Interface. The Services provides the bidirectional, full duplex transmission of Ethernet frames using a standard IEEE 802.3 Ethernet interface. Figure 1 provides a list of available UNI physical interfaces and their available Committed Information Rate (CIR) bandwidth increments and Committed Burst Sizes (CBS).

| UNI Speed | UNI Physical Interface | CIR Increments | CBS (bytes) |
|-----------|--------------------------------|----------------|-------------|
| 10Mbps | 10BaseT | 1 Mbps | 25,000 |
| 100Mbps | 100BaseT | 10 Mbps | 250,000 |
| 1 Gbps | 1000BaseT or 1000BASE SX/LX/ZX | 100 Mbps | 2,500,000 |

Figure 1: Available UNI interface types and CBS values for different CIR Increments

1.3. **Traffic Management.** Monroe’s network traffic-policing policies restrict traffic flows to the subscribed CIR. If the customer-transmitted bandwidth rate for any flow exceeds the subscription rate (CIR) and burst size (CBS), Monroe will discard the non-conformant packets.

1.4. **Maximum Frame Size.** The service supports a Maximum Transmission Unit (MTU) packet size of 1600 bytes to support untagged or 802.1Q tagged packet sizes. Jumbo Frame sizes can be supported on an Individual Case Basis.

ARTICLE 2. SERVICE LEVEL AGREEMENT

Service Level Agreement (“SLA”) for Monroe Network Services shall follow the specifications set forth in Schedule A-1 attached hereto.

This Service Schedule along with the Master Service Agreement sets forth the terms and conditions under which the City of Monroe ("Monroe") will provide the Services identified above to Customer. This City of Monroe Service Schedule consists of this document ("Cover Page"), the standard City of Monroe Master Service Agreement ("MSA"), and Sales Order ("Sales Order"), and any jointly executed amendments ("Amendments"), collectively referred to as the "Agreement". In the event of any inconsistency among these documents, precedence will be as follows: (1) Amendments, (2) the MSA, (3) Service Schedule and (4) Sales Order. This Agreement shall commence and become a legally binding agreement upon Customer’s execution of this Service Schedule. The Agreement shall terminate as set forth in the Master Service Agreement.

ARTICLE 3. RESALE

Customer shall be allowed to resale the Service set forth in Article 1.1 to _____.

All capitalized terms not defined on this Cover Page shall have the definitions given to them in Article 1 of the Master Service Agreement.

All modifications to the Agreement, if any, must be captured in a written Amendment, executed by an authorized City of Monroe representative and the Customer. All other attempts to modify the Agreement shall be void and non-binding on Monroe.

Customer, by signing below, agrees and accepts the terms and conditions of this Agreement.

Customer

Signature:
Printed Name:
Title:
Date:

The City of Monroe

Signature:
Printed Name:
Title:
Date:

**MONROE NETWORK SERVICES
SERVICE SCHEDULE ATTACHMENT**

**SCHEDULE A-1
SERVICE LEVEL AGREEMENT**

Monroe's Ethernet Transport Services is backed by the following Service Level Agreement ("SLA"):

Definitions:

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the City of Monroe MSA or the General Terms and Conditions.

"Planned Service Interruption" means any Service Interruption caused by planned work such as scheduled maintenance or planned enhancements or upgrades to the network.

"Service Interruption" means a complete loss of signal that renders the Service unusable.

Service Level Agreement (SLA)

Company's liability for any Service Interruption (individually or collectively, "Liability"), shall be limited to the amounts set forth in Table below. For the purposes of calculating credit for any such Liability, the Liability period begins when the Customer reports an interruption in the portion of the Service to Company, provided that the Liability is reported by Customer during the duration of the Liability, and, a trouble ticket is opened; the Liability shall be deemed resolved upon closing of the same trouble ticket or the termination of the interruption, if sooner, less any time Monroe is awaiting additional information or premises testing from the Customer. In no event shall the total amount of credit issued to Customer's account on a per-month basis exceed 50% of the total monthly recurring charge ("MRC") set forth in the Sales Order. Service Interruptions will not be aggregated for purposes of determining credit allowances. To qualify, Customer must request the credit from Monroe within thirty (30) days of the interruption. Customer will not be entitled to any additional credits for Service Interruptions. Monroe shall not be liable for any Liability caused by force majeure events, Planned Service Interruptions or Customer actions, omission or equipment.

| Length of Service Interruption: | Amount of Credit: |
|---|--------------------------|
| Less than 15 minutes | None |
| At least 15 minutes but less than 6 hours | 5% of Total MRC |
| At least 6 hours but less than 12 hours | 10% of Total MRC |
| At least 12 hours but less than 18 hours | 20% of Total MRC |
| At least 18 hours but less than 24 hours | 30% of Total MRC |
| At least 24 hours but less than 30 hours | 40% of Total MRC |
| At least 30 hours or greater | 50% of Total MRC |

THE TOTAL CREDIT ALLOWANCES PER MONTH IS CAPPED AT 50% of THAT MONTH'S MRC FOR THE INTERRUPTED SERVICE. SERVICE INTERRUPTIONS ARE NOT AGGREGATED FOR THE PURPOSES OF DETERMINING CREDIT ALLOWANCES.

Monitoring, Technical Support and Maintenance

1. **Network Monitoring.** Monroe monitors Service on a 24x7x365 basis.
2. **Technical Support.** Monroe provides a local trouble telephone number to the Network Operations Center ("NOC") that operates on a 24x7x365 basis. Monroe also provides an online trouble ticket submission and issue tracking for each business customer at <http://monroe.issuetrak.com>. Monroe provides technical support for service-related inquiries. Technical support will not offer consulting or advice on issues relating to CPE or other equipment not provided by Monroe.
 - a. Escalation. Reported troubles are escalated within the Monroe NOC to meet the response/restoration interval described below (Response and Restoration Standards). Service issues are escalated within the Monroe NOC as follows: to a Supervisor at the end of the applicable time interval plus one (1) hour; to a Manager at the end of the applicable time

interval plus two (2) hours, and to a Director at the end of the applicable time interval plus four (4) hours.

b. Maintenance. Monroe's standard maintenance window is non-peak hours from 9:00pm to 7:00am local time. Scheduled maintenance is performed during the maintenance window and will be coordinated between Monroe and the Customer. Monroe provides a minimum of seven (7) days notice for service impacting planned maintenance. Emergency maintenance is performed as needed without advance notice to Customer.

3. Monroe provides certain Monroe Equipment for provisioning its services and the delivery of the UNI, which will reside on the Customer-side of the Demarcation Point. Monroe will retain ownership and management responsibility for this Monroe Equipment. This Monroe Equipment must only be used for delivering Services. Customers are required to shape their egress traffic to the Committed Information Rate ("CIR") identified in the Sales Order. Monroe will be excused from paying SLA credits if the Service Interruption is the result of Customer's failure to shape their traffic to the contracted CIR or utilizing Monroe Equipment for non-Monroe provided services.

Response and Restoration Standards

Monroe has the following response and restoration objectives:

CATEGORY TIME INTERVAL

Mean Time to Respond Telephonically to Call

15 minutes

Mean Time to Restore Equipment

4 hours

Mean Time to Restore Fiber

6 hours

Customer shall bear any expense incurred, e.g., dispatch/labor costs, where a Service Interruption is found to be the fault of Customer, its end users, agents, representatives or third-party suppliers.



SALES ORDER # _____

Sales Order Dates

Quote Date _____
Due Date _____
Active Date _____

Customer Information

Company Name _____
Address _____
Bldg / Floor / Ste _____
City / State / Zip _____
Main Contact _____
Phone Number _____
Fax Number _____
E-Mail _____

Customer Billing Information

Company Name _____
Address _____
Bldg / Floor / Ste _____
City / State / Zip _____
Main Contact _____
Phone Number _____
Fax Number _____
E-Mail _____

Customer Technical Contact Information

Contact Name _____
Phone Number _____
E-Mail _____
Emergency/After Hours Number _____

City of Monroe - Contact Information

Contact Name _____
Phone Number _____
E-Mail _____

| Unit | Qty | Service Description | Non-Recurring Charges | | Monthly Recurring Charges | |
|----------------------|-----|----------------------|---|--------------|---------------------------|--------------|
| | | | Unit Charge | Total Charge | Unit Charge | Total Charge |
| | | | | | | |
| Total | | | | | | |
| Payment Terms | | Contract Term | City of Monroe Internal Use Only | | | |
| | | | | | | |
| Notes | | | | | | |
| | | | | | | |

THE PARTIES AGREE THAT THIS SALES ORDER AND ANY ATTACHMENT HEREWITH, ALONG WITH THE MASTER SERVICE AGREEMENT BETWEEN THE PARTIES DATED _____, SHALL CONSTITUTE THE ENTIRE AGREEMENT ("AGREEMENT") BETWEEN THE PARTIES.

Authorized Customer Representative

Signature

Date

Authorized Monroe Representative

Signature

Date



Utility Committee Meeting

AGENDA

March 1, 2011

Item:

Discussion - Hospital Electric Services

Department:

Additional Information:

Financial Impact:

Budgeted Item:

Recommendation / Request:

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download
