

Stricken language to be deleted from and underlined language to be added to the resolution.

RESOLUTION NO. RS-2016-35

A RESOLUTION AUTHORIZING AND APPROVING THE EXECUTION OF A MASTER RETAIL SERVICE AGREEMENT WITH COMMUNITY COMMUNICATIONS COMPANY.


WHEREAS, the City Council of Monticello, Arkansas deems it necessary and proper to enter into a Master Retail Service Agreement with Community Communications Company of Monticello, as presented to the legal counsel for review; and

WHEREAS, the City Council of Monticello, Arkansas recognizes the total financial commitment under said agreement is under the \$10,000.00 minimum for competitive bidding, hence competitive bidding for this purchase is not required by Municipal Code § 2-106.

NOW THEREFOR BE IT RESOLVED, by the City Council of the Monticello, Arkansas, that the mayor, as a Signatory Agent of the City of Monticello, Arkansas, is hereby authorized to execute the attached Master Retail Service Agreement with Community Communications Company on behalf the City of Monticello, Arkansas.

(End of Resolution)

ADOPTED on this 06 day of September, 2016.



Mayor

ATTEST:



City Clerk

**MASTER RETAIL SERVICE AGREEMENT
BETWEEN
COMMUNITY COMMUNICATIONS COMPANY AND CITY OF MONTICELLO**

This Master Retail Service Agreement ("Master Agreement") is made and entered into effective as of _____, 2016 ("Effective Date"), by and between COMMUNITY COMMUNICATIONS COMPANY ("Provider"), a Arkansas corporation with offices located at 1920 HWY 425 N, MONTICELLO, AR 71655 and CITY OF MONTICELLO ("Customer"), with main office located at 204 W GAINES ST, MONTICELLO, AR 71655

WHEREAS, Provider supplies services on certain transmission facilities owned or controlled by Provider;

WHEREAS, Provider provides services relating to the design, configuration and installation of telecommunications and data networks (the "Network Services"; together with the Network Services, collectively the "Services");

WHEREAS, Provider sells telecommunications and data network equipment and manufacturer maintenance service contracts in connection therewith (collectively, the "Equipment"); and

WHEREAS, Customer desires to purchase the Network Services, the Network Services and the Equipment from Provider as set forth herein.

NOW, THEREFORE, IT IS AGREED:

1. Master Agreement; Schedules. All Services and Equipment shall be ordered and paid for by Customer, and provided by Provider, pursuant to the terms and conditions specifically set forth in one or more Schedules attached to this Master Agreement and hereby incorporated by reference (collectively, the "Schedules"). Each Schedule will identify the scope of the Services and/or Equipment that is the subject of the particular sale and shall be governed by this Master Agreement. Customer shall remain primarily liable for any Schedule executed by any of its subsidiaries or affiliated entities. In the event Customer uses Customer's form of purchase order in lieu of a Schedule, such purchase order shall be used only to identify the Services and/or Equipment requested by Customer, and no other terms and conditions in such purchase order shall be binding on the parties.

1.1 Schedules for Services ("Network Schedules") shall be in the form attached hereto as Exhibit A and shall be submitted by Customer as provided in Section 3 below.

1.2 Schedules for Network Services and Equipment ("Network Schedules") shall be mutually negotiated and completed by Provider and Customer and shall become a part of this Master Agreement if and when such Schedules are executed by both Provider and Customer. Unless (and only to the extent) specified in a Network Schedule, Provider will not be responsible for any installation, maintenance or repair of any equipment or hardware.

2. Term. The term of this Master Agreement shall be for Four (4) months commencing on the Effective Date (the "Initial Term"). Upon expiration of the Initial Term this Master Agreement will automatically extend thereafter on a six month contract with 30 days notification of termination of services.

3. Service and Equipment Order Procedures.

3.1 Services. From time to time during the Term or any Renewal Term of this Master Agreement, Customer may submit to Provider a completed Network Schedule, substantially in the form of Exhibit A attached hereto, requesting the provision to Customer of the specified Network Service(s) by a requested start date (the "Requested Service Start Date"). Within ten (10) business days of Provider's receipt of a proposed Network Schedule, Provider shall (i) accept and sign the Network Schedule as submitted; (ii) notify Customer of Provider's rejection of the proposed Network Schedule; or (iii) notify

Customer of the earliest date following Customer's Requested Service Start Date that the order in the proposed Network Schedule can be accepted and fulfilled by Provider. Customer may submit a revised Network Schedule for any Network Schedule that is not accepted by Provider, and such revised Network Schedule will replace the prior rejected Network Schedule. Customer's obligation for payment of Network Services and the term of each Network Schedule shall commence (the "Network Service Commencement Date") one (1) business day after Provider has notified Customer, via e-mail, facsimile or other means, that the ordered circuits are available for testing (or retesting, if applicable), unless within that one-business-day period, Customer notifies Provider that the Network Service provided does not meet the performance specifications for Network Services set forth in Exhibit B attached hereto.

3.2 Network Services. From time to time during the Term or any Renewal Term of this Master Agreement, Customer may request that Provider prepare a Schedule for additional Network Services or orders for Equipment. If Provider elects to accept Customer's request, Provider and Customer shall complete such Network Schedule(s) at the time of each sale. During the course of performance of Network Services, Customer may request and Provider may agree to perform additional services; provided, however, that prior to performing such additional services, Provider will provide Customer with either a change or a new Network Schedule, as Provider deems appropriate under the circumstances, which shall become a new Schedule to this Master Agreement. Each Change Order or new Network Schedule, as applicable, will detail the additional Network Services and the costs associated therewith. Each party will sign each Change Order or new Network Schedule, as applicable prior to Provider performing the additional Services.

4. Use of the Service. Subject to the terms and conditions of this Master Agreement, Customer shall have the right to use the Service and the Equipment for any lawful purpose in furtherance of Customer's internal business operations, provided Customer shall not, without the prior written consent of Provider, directly or indirectly resell or transfer all or any part of the Service or Equipment to any other party, including, without limitation, providers of telecommunication services. Customer agrees that it will not: use Service(s) for any purpose other than that for which it is intended or in violation of any law or regulation or in aid of any unlawful act; violate the then current Acceptable Use Policy as from EXHIBIT D; interfere with the use of Provider's Service by other customers or authorized users, or the operation of Provider's network or Equipment; open or otherwise tamper with any of the Equipment installed or provided by Provider. In any instance in which Provider believes in good faith that there is abuse of Service as set forth above, Provider may immediately restrict, suspend or discontinue providing Service or prevent the display or transmission of Content, without liability on the part of Provider, and then notify Customer of the action that Provider has taken and the reason for such action.

5. Compensation. Customer shall pay to Provider as compensation for the Service the amounts set forth in each Schedule. Payment of all undisputed charges must be received by the date such payments are due. Disputes of unpaid charges must be in writing and must be received at Provider's address within sixty (60) days after the date such payments are due or Customer will waive any objection. Provider will make good-faith efforts to promptly resolve disputed charges. In the event any payment due under this Master Agreement is not received by Provider when due, in addition to all other remedies available to Provider, Customer agrees to pay a late fee on the unpaid amount of one and one-half percent (1.5%) per month payable from the due date until paid in full, plus all costs of collection incurred by Provider, including reasonable attorney's fees. Unless otherwise specified in a Schedule, payment terms for Services and Equipment shall be as follows:

5.1 Network Service Payments. One-time, non-recurring fees for Network Services shall be due and owing in full on the Service Commencement Date for such Network Services. Recurring monthly charges for Network Services shall be billed one month in advance and all invoices shall be due and owing thirty (30) days after the date of the invoice.

5.2 Network Service and Equipment Payments. Fifty percent (50%) of all fixed-rate fees for Network Services will be due prior to Provider's commencement of the Network Services, and Provider will not commence provision of the Network Services until such payment is received. The balance of all fixed-rate fees for Services will be due upon acceptance of the Network Services as provided on the applicable Network Schedule, or if such Network Schedule does not provide acceptance terms, then as

provided below in Section 6. Charges for Network Services provided on a non-fixed fee basis (e.g., at an hourly rate) will be invoiced by Provider periodically and will be due and payable in full thirty (30) days from the date of the invoice. Full payments for Equipment shall be due at the time such Equipment is shipped to Customer.

6. Acceptance of Network Services.

6.1 Acceptance Procedure for Network Services. Upon completion of the network services, or a portion thereof, the Provider will notify the Customer in person, by email or by phone of what was completed. If the Customer finds the services are not performing to what was promised, or that there are tasks reported as completed that were not completed, they may notify the Provider in person, by email or by phone. The Provider will investigate and correct the issue within reasonable time agreed upon by both parties to remedy. Upon completion of such corrections, the Provider will once again begin the process described previously.

6.2 Deemed Acceptance of Network Services. If at any point in the acceptance procedure process described above Customer fails to give Provider written notice of objections within a five business-day time period, the Network Services (or portion of the Network Services) will be deemed accepted for all purposes under this Master Agreement. If Customer chooses to forego acceptance testing and the service is deemed accepted (as described above), any testing that is required by the Customer at a later date shall be coordinated with Provider during regular business hours.

7. Taxes. Customer shall pay all federal, state, and locally mandated or allowed taxes, surcharges, fees, user's fees and universal service contributions (collectively, "Taxes") incurred by Provider (except for taxes based on Provider's net income) in connection with: (i) the sale of the Services or Equipment and/or the use of the Services and/or Equipment provided to Customer pursuant to this Master Agreement; or (ii) Customer's delivery of the Services hereunder or any Equipment to third parties. Customer shall provide Provider with a reseller's certificate or other appropriate tax exemption document for each state in which Customer intends to resell the Services, if applicable. Customer shall indemnify, defend, and hold harmless Provider from all taxes, surcharges, fees, user's fees, and universal service contributions that may be assessed to Provider for disallowed exempt sales.

8. Ownership and Control of Facilities and Work Product.

8.1 The equipment and facilities used by Provider to provide the Service shall at all times remain the sole and exclusive property of Provider and/or the third parties from whom such equipment and facilities are or may be leased by Provider and, except for the rights of Customer set forth herein to receive and use the Service, Provider and such third parties shall retain all right, title, and interest in and to such facilities. Provider shall have the right to substitute, change or rearrange any equipment, facility or system used by Provider in providing the Service from time to time, provided that such does not thereby alter or impair the Service or the technical parameters of the Service. Customer is prohibited from, and shall refrain from, taking any action that would result in any third party claims, charges, levies, liens, or encumbrances on or against the facilities, Provider or any applicable third party. Customer is further prohibited from causing interference to or with Provider's or third parties' equipment and facilities, and Provider shall have the right to immediately suspend Service if Customer causes such interference. Wherever Provider's equipment or facilities used to provide the Services are housed on Customer's property, Customer agrees to provide the appropriate environmental conditions for such equipment or facilities as reasonably requested by Provider, including, without adequate power supply with back-up generation (in the event of a power failure), heating and cooling, and security controls. Provider shall have the right on a 24-hour-per-day seven-day-per-week basis, but upon

reasonable advance notice to Customer where practicable, to inspect such of Customer's facilities as attach to Provider's facilities or equipment to ensure proper functioning of the Service and Customer's proper usage of the Service; provided Provider shall adhere to Customer's reasonable security policies, procedures and protocols.

8.2 In addition, Provider retains all right, title, and interest in and to any and all designs, configurations, functions, processes, codes and software developed by Provider pursuant to this Master Agreement and any Schedule (collectively the "Work Product"), including the exclusive right to copyright or otherwise reproduce, publish, sell and distribute the Work Product. Contingent on receipt of payment in full, Provider grants to Customer a perpetual, royalty-free, non-exclusive, and non-assignable license to use, for its internal business purposes, the Work Product. Customer agrees that the licensed Work Product does not include software or associated code objects, run time engines, or similar items licensed or sublicensed to Provider by third parties. Nothing in this Section 8.2 is intended to modify or lessen the obligation of Provider to protect Customer's confidential information as provided in Section 21 below.

9. Additional Equipment for Network Services; Interface. Unless otherwise specified in a Network Schedule that has been accepted and executed by Provider, Customer shall provide, at its sole cost and expense, any and all additional electronic equipment and other facilities necessary for its use of the Network Service (the "Additional Equipment"). Unless otherwise agreed in writing, Provider shall have no obligations with respect to the provision, installation or maintenance of the Additional Equipment. Customer shall pay the cost of interfacing to Provider's demarcation point.

10. Customer Responsibilities for Services and Equipment.

10.1 Customer will at all times cooperate with Provider and promptly respond to requests for access to facilities for the performance of Services. Customer will designate a dedicated, knowledgeable contact person with authority to act on Customer's behalf to work with Provider in the performance of Services.

10.2 Customer will at Customer's own expense be responsible for all site preparation activities necessary for or prerequisite to the provision of Network Services at any Customer premises. Customer will ensure the environmental conditions (as specified by the manufacturer) are maintained for the Provider-supplied equipment and Customer-supplied equipment used in connection with delivery of Network Services (collectively, the "Network").

10.3 Customer will give Provider, its suppliers, and subcontractors reasonable access to Customer's premises and Network at all reasonable times for purposes of performing Network Services. Customer will provide Provider with such badges or other proper security access rights as are necessary for access to Customer's premises.

10.4 Customer will promptly notify Provider of events that may affect the performance of Equipment or Services, such as power outages, water damage, extreme heat or cold, or any other manmade occurrences or acts of God. Following Customer's notice to Provider of the occurrence of such an event, Provider will determine the need for replacement parts or repairs based on the event and results of testing. In certain instances partial damage or damage that is not initially apparent may void Equipment warranties, require future replacement, and Customer may be responsible for payment of additional support, labor and Equipment charges to Provider at Provider's then-prevailing rates.

10.5 Customer will notify Provider in advance of: (i) any changes at or to the Service point of demarcation or Customer Network termination point that may affect the Services; and (ii) any software or hardware configuration changes proposed to be made to equipment or to Customer Network or third-party supplied equipment used to deliver the Network Services, and (iii) any moves, additions, changes

or modifications to equipment or Network deemed necessary by Customer. Customer will pay Provider at Provider's then-prevailing rates for labor and materials supplied by Provider as a result of (i) changes to the Service demarcation point or Customer Network termination point, or (ii) software or hardware changes made by Customer which cause degradation or outages to the Services and necessitates Provider actions, or (iii) moves, additions, changes or modifications to Equipment or Network deemed necessary by Customer.

10.6 The following provisions apply specifically to telephony implementation Network Services: (a) Customer is responsible to verify the effectiveness of all 911 or E-911 service and connections to the 911 network and to maintain those and maintaining 911 or E-911 services and connections. (b) Unless otherwise stated in a Schedule, Provider will not restrict toll or 900 calling. In all events, it is the responsibility of the Customer to monitor and maintain policies regarding toll or 900 calls and to ensure the effectiveness of any restrictions put in place as part of the Services. (c) Customer will not tamper with or reconfigure any equipment or software to falsify Customer's Caller ID by data or voice. Falsifications may violate state and federal laws.

10.7 Except as specifically provided in a Schedule, Customer is solely responsible for the security of its Network at all times. Provider does not supply features or capabilities to detect, deny, or hinder in any way others from trying to gain access to Customer's Network. Customer will ensure reasonable security practices are implemented whenever Customer's Network will interface with Provider's network.

10.8 Customer is responsible for canceling any prior service that will be replaced by the Provider's Services, on or after the Service Commencement date.

10.9 Customer is responsible at all times for verification of the proper functioning of its metered circuit operations (e.g., dial back-up or dial-on-demand).

10.10 Unless otherwise agreed between Customer and Provider and stated in the applicable Schedule, Customer will be responsible for communicating with Customer's own users of the Services, and for responding to all service issues and trouble reports made by such users. Customer will designate a dedicated, knowledgeable representative authorized to act on Customer's behalf and to communicate with Provider regarding the Services, trouble reports, service issues, this Master Agreement and any Schedule. This person should have working knowledge of standard IT infrastructure, equipment, and software for data and voice services.

11. Performance Specifications for Network Services; Credit for Service Interruptions.

11.1 Provider represents and warrants that (a) it will use commercially reasonable efforts to provide and maintain Provider's on-net Network Service during the term of each Network Schedule in compliance with the applicable technical specifications set forth in Exhibit B attached hereto; (b) it owns the equipment and facilities used to provide the Network Service under the terms of this Master Agreement or has all rights necessary to provide the Network Service to Customer under this Master Agreement; and (c) its personnel will provide services in a good and workmanlike manner and in accordance with industry standards. In the event Provider is notified of a non-conformance against any of the foregoing warranties, Provider shall use commercially reasonable efforts and have a reasonable period of time, of at least thirty (30) days from the date of said notification, to cure said failure at no additional cost to Customer. If Provider does not cure said non-conformance within the foregoing period of time, Customer shall have the right to terminate the applicable Network Schedule and upon such termination, Provider shall promptly refund to Customer a pro rata portion of all fees paid by Customer under the affected Network Schedule based on the then-remaining term for which such fees apply calculated from the date of the event giving rise to Customer's termination. Within thirty (30) days of the occurrence of any event giving rise to such claim, Customer must notify Provider in writing of any claim of non-conformance with the warranties above and must request a refund. Refunds will be applied to the Customer's next monthly invoice.

11.2 Customer's operations and use of the Network Services shall comply with the terms of Exhibit C, Operations Procedures, as such Exhibit may be modified, in writing, by Provider and Customer from

time to time as provided in Exhibit C. Customer shall promptly report to Provider any interruption or other failure of the Network Service ("Trouble Report"), utilizing the Provider Trouble Report Escalation List stated in Exhibit C as necessary and appropriate. Customer shall give the information identified in Exhibit C when making a Trouble Report.

11.3 A "Service Interruption" means a period in which a Service failure causes a complete loss of traffic or when the Service is inoperative as defined in the Performance Specifications. In the event of a Service Interruption, allowance for the period of Service Interruption with respect to each circuit (under one or more Network Schedules) affected by such Service Interruption shall be as follows:

11.3.1 Provider will grant a credit allowance for a Service Interruption calculated and credited in 30-minute increments. Customer shall be credited for a Service Interruption in excess of 2 hours, at the rate of 1/1440 of the monthly recurring charge (as set forth under "Service Charge" in each Network Schedule) applicable to the Network Service which is subject to the Service Interruption for each half hour or major fraction thereof that an interruption continues, such Interruption to be measured from (i) the time of notice by Customer to Provider that a Service Interruption has occurred or upon Provider's detection of a Service Interruption, whichever is earlier, to (ii) the time of restoration. A credit will be granted only if Customer does not continue to use the service on an impaired basis during the Service Interruption and only if Customer specifically requests such credit in writing within sixty (60) days of the Service Interruption.

11.3.2 A Service Interruption will be deemed to have occurred only if Network Service becomes unusable to Customer as a result of failure of Provider's facilities, equipment or personnel used to provide the Network Service in question, and only where the Service Interruption:

- a) is not the result of:
 - (i) the negligence of Customer or its agents, or
 - (ii) the failure or malfunction of Customer's equipment, or
 - (iii) the failure of any interconnecting Local Exchange Carrier (LEC) facilities or other equipment that is not part of Provider's facilities or reasonably within Provider's control; and
- b) is not caused by scheduled maintenance.

11.4 When Network Service provided over a circuit (under one or Network Schedules) includes more than one communications path, the interruption allowance shall apply only to the path(s) interrupted.

12. Warranty on Network Services. Provider warrants and represents that it will perform the Network Services in a professional and business-like manner, and in accordance with accepted industry standards. In providing the Network Services, Provider will use diligent efforts to meet the service objectives as specified in a Network Schedule.

13. Limitation of Warranties and Liability. THE WARRANTIES AND REMEDIES STATED IN THIS MASTER AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES. PROVIDER DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES WITH RESPECT TO THE FACILITIES, SERVICES, EQUIPMENT AND SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF TITLE, NONINFRINGEMENT, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OTHER THAN THOSE PURPOSES SET FORTH IN THE SERVICES PROVIDED IN THIS AGREEMENT. ALL INFORMATION, SERVICES AND EQUIPMENT ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND. NO ADVICE OR INFORMATION GIVEN BY PROVIDER'S EMPLOYEES, AGENTS OR CONTRACTORS SHALL CREATE A WARRANTY. UNDER NO CIRCUMSTANCES SHALL PROVIDER OR CUSTOMER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS MASTER AGREEMENT, OR FOR FAILURE TO FULFILL ITS OBLIGATIONS DUE TO CAUSES BEYOND ITS CONTROL. In addition to the foregoing, Provider, its contractors, subcontractors, agents and employees, will have no liability to Customer or to any other person or entity under this Master Agreement for any of the following: (a) any claim based upon or arising out of the combination, operation, or use of Services, Equipment

or software in a manner for which it was neither designed nor contemplated; (b) any modification of Services, Equipment or software by Customer or by any third party; or (c) infringement of any patent, trademark or copyright by any Equipment or third party software sold to Customer. Without limiting the foregoing provisions, Provider's total liability to Customer for damages, from any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including negligence, is limited to actual damages, but not to exceed the fees paid by Customer to Provider for the Services that caused the damages.

14. Default; Remedies.

14.1 Provider Default and Customer Remedies. In the event Provider is in default of a material term of this Master Agreement, in the event of the failure of Provider to substantially cure such failure in 24 hours, this Master Agreement and/or the applicable Schedule, at Customer's option and upon written notice to Provider, will terminate and all obligations of Customer to make payments to Provider for Services not yet performed and for Equipment not yet shipped from the manufacturer will cease upon delivery of written notice to Provider by Customer. In the event software developed by Provider for Customer under this Master Agreement relating to Network Services infringes on the intellectual property rights of any third party, Provider will, at its expense and sole discretion, either (a) secure the right for Customer to continue to use the software; (b) modify the software so as to make it non-infringing with no material loss of functionality; (c) provide Customer with a functionally equivalent, non-infringing replacement software; or (d) if none of the foregoing options is reasonably available, Provider will refund to Customer, on a straight line depreciation basis, the amount Customer paid for the particular software developed by Provider.

14.2 Customer Default and Provider Remedies. Customer will be in default under this Master Agreement in the event Customer fails (a) to pay any amounts when due, and does not cure such breach within thirty (30) business days of notice; or (b) to correct any failure in the performance and observance of any other material term, covenant or obligation of Customer as set forth in this Master Agreement or any Schedule, and does not cure such breach within thirty (30) days of notice. While such default is uncured, Provider will have no further obligation to provide Services to Customer and, at the option of Provider, this Master Agreement may terminate. In addition, Provider may retain as liquidated damages all payments previously received, and Customer will remain obligated to pay to Provider: 1) as liquidated damages for loss of bargain and not as a penalty, all amounts then in default together with all unpaid fees, costs, and other compensation to become due or owing during the remaining term of this Master Agreement or any Schedule; plus 2) all costs and expenses, including attorneys fees, incurred by Provider in enforcing its rights and remedies hereunder. The remedies provided in favor of Provider in this Master Agreement or in any Schedule will not be deemed exclusive or alternative, but will be cumulative and will be in addition to any and all other remedies existing at law or in equity and/or as set forth in this Master Agreement or a Schedule. The failure or delay of Provider to exercise any rights or remedies under this Master Agreement or any Schedule will not constitute a waiver of such rights or remedies.

15. Force Majeure.

15.1 Force Majeure Defined. Neither party shall be responsible or liable for or deemed in breach of this Master Agreement because of any delay or failure in the performance of its obligations under this Master Agreement (other than the obligation to pay money) due solely to circumstances beyond the reasonable control of the party experiencing such delay, including, acts of God; unusually severe weather conditions; war; riots; failures to act on the part of governmental authorities preventing performance; accident; fire; (such causes hereinafter called "Force Majeure"); provided that: (a) the nonperforming party gives the other party reasonably prompt written notice describing the particulars of the occurrence; (b) the suspension of performance is of no greater scope and of no longer duration that is required by the Force Majeure; (c) the non-performing party uses commercially reasonable efforts to remedy its inability to perform, (d) when the non-performing party is able to resume performance of its obligations under this Master Agreement, that party shall give the other party written notice to that effect; and (e) the Force Majeure was not caused by or connected with any negligent or intentional

acts, errors, or omissions of the non-performing party, or the non-performing party's failure to comply with any law, rule, regulation, order or ordinance, or any breach or default of this Master Agreement by the nonperforming party.

15.2 Termination Due to Force Majeure. If any condition of Force Majeure delays Provider's performance for a time period greater than thirty (30) business days, the party not delayed by such Force Majeure may terminate the affected Schedule, without further obligation; provided that the party not delayed may at its sole discretion extend such period if the party delayed by such Force Majeure is exercising due diligence in its efforts to cure the condition of Force Majeure. However, except as specifically provided herein to the contrary, no event of Force Majeure will extend the Term or any Renewal Term of this Master Agreement.

15.3 Removal of Force Majeure. The affected party shall use all commercially reasonable efforts to remedy any inability to perform under this Master Agreement due to Force Majeure. If, within a reasonable time after a Force Majeure occurrence that has caused the affected party to suspend or delay performance, that party has failed to take such action as that party could lawfully and reasonably initiate to remove or relieve either the Force Majeure occurrence or its direct or indirect effects, the other party may, in its sole discretion and after written notice to the affected party, but at the affected party's expense, initiate such reasonable measures as will be designed to remove or relieve such Force Majeure occurrence or its direct or indirect effects and thereafter require the affected party to resume full or partial performance.

16. Indemnity.

16.1 Customer's Indemnification. Customer will indemnify, defend and hold Provider harmless from any and all claims, costs, expenses, liabilities, losses and any damages, including actual attorneys' fees, alleged or suffered or incurred as a result of or relating to (a) bodily injury or death of any person or loss of or damage to real or personal property or to the environment to the extent that such claim, suit, damage or expense was caused by any negligent act or omission or willful misconduct of Customer, and (b) Customer's use of Services, Equipment or software, or Customer's breach of this Master Agreement. Customer will make no representations, warranties or indemnities inconsistent with the terms of this Master Agreement.

16.2 Provider's Indemnification. Provider will indemnify, defend and hold harmless Customer from and against any and all claims, costs, expenses, liabilities, losses and direct damages, including actual attorneys' fees, arising from (a) bodily injury or death of any person or loss of or damage to real or personal property or to the environment to the extent that such claim, suit, damage or expense was caused by any negligent act or omission or willful misconduct of Provider, and (b) any claim by a third party that any software developed by Provider for Customer infringes on the intellectual property rights of any third party.

16.3. Indemnification Procedures. The party incurring such damages (the "Indemnitee") must give the party from whom the indemnity is sought (the "Indemnifying Party") prompt written notice of any claim or other matter which could give rise to a claim for indemnification under this Section 18. Notwithstanding any other provision of this Master Agreement, the Indemnifying Party will pay all damages, settlements, expenses and costs (including reasonable attorney's fees) incurred in enforcing this indemnification obligation. The Indemnitee agrees to cooperate with the Indemnifying Party in the defense of any claim or proceeding, and each party agrees not to settle any such claim without the prior written consent of the other party, which shall not be unreasonably withheld or delayed. The terms of this Section 18 shall survive termination, expiration and cancellation of this Master Agreement.

17. Non-Waiver. A waiver by either party of any default or breach by the other party of the covenants, terms or conditions of this Master Agreement or failure of a party to require strict performance by the other party of the terms of this Master Agreement shall not bar such party from its right to enforce such covenants, terms or conditions or to pursue its rights arising out of any subsequent default or breach thereafter by the other party.

18. Relationship Between Parties. Each party hereto is an independent contractor under this Master Agreement, and no license, joint venture or partnership, express or implied, is granted pursuant to this Master Agreement. If this Master Agreement is entered into by more than one Customer, each is jointly and severally liable for all agreements, covenants and obligations hereunder. Neither party has the authority to bind the other party, or act for the other party, in any manner or capacity.

19. Confidentiality. Each party agrees to keep this Master Agreement the other party's Confidential Information, as defined below, strictly confidential, and not to appropriate the other party's Confidential Information for its own use or disclose the other party's Confidential Information to anyone other than its employees on a need-to-know basis, and only then if such persons agree to maintain its confidentiality. Upon termination of this Master Agreement, each party will return to the other party all of the other party's Confidential Information which it has in its possession, including all copies, reproductions and excerpts. "Confidential Information" means information not generally known to outside persons, which is proprietary to the party, including trade secret information about processes, methods, products, systems, pricing, technology, prototypes, plans, drawings, designs, configurations, models, samples, blueprints, know-how, business plans, financing, agents, suppliers and customers. All such information about a party will be presumed to be Confidential Information, regardless of whether it is so marked or identified. This Section 21 shall survive the termination of this Master Agreement. Notwithstanding the foregoing, the following will not be considered Confidential Information for purposes of this Master Agreement:

- (a) Any information that a party can demonstrate was in its legitimate possession prior to the time of disclosure by the other party;
- (b) Any information that was in the public domain prior to disclosure by a party to the other party, or that comes into the public domain through no fault of the other party;
- (c) Any information which is disclosed to a party by a third party who has legitimate possession thereof and the right to make such disclosure; and
- (d) Any information that a party is required to disclose by a court or government body.

20. Non-Solicitation. Customer agrees not to solicit for employment, hire or contract for the services of any Provider employees, directly or indirectly, from the effective date of this Master Agreement until one (1) year after the completion of all of the Schedules relating to Services. This Section 22 shall survive the termination of this Master Agreement.

21. Notices. Except as otherwise provided herein to the contrary, all notices, demands, requests, or other communications which are required to be given, served, or sent by one party to the other pursuant to this Master Agreement shall be in writing, and shall be personally delivered; mailed, postage pre-paid, by registered or certified mail; or by a reliable overnight courier service with delivery verification, addressed as follows:

If to Provider:

Community Communications Co
Attn: Bill Copeland
1920 Highway 425 North
Monticello, AR 71655

If to Customer

CITY OF MONTICELLO
ATTN: MAYOR
PO BOX 505
Monticello, AR 71655

Each notice, demand, request, or communication which is mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent or received for all purposes at such time as it is delivered to the addressee first named above for each party (with the return receipt of verification of delivery being deemed conclusive evidence of such notice), or at such time as delivery is refused by addressee upon presentation.

22. Assignment. Customer may not assign its rights, duties and obligations under this Master Agreement to any third party, in whole or in part, without Provider's prior written consent, which consent shall not be unreasonably withheld.

23. Dispute Resolution. If any claim, controversy or dispute between the parties ("Dispute") cannot be settled through good faith negotiation, it shall be resolved by arbitration conducted by a single arbitrator engaged in

the practice of law, under the then-current rules of the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. Any arbitration shall occur in Drew County, Arkansas, and the parties waive any objections based on jurisdiction, venue or inconvenient forum.

24. Choice of Law. This Master Agreement shall be subject to and construed in accordance with the laws of the State of Arkansas, without regard to its choice of law provisions, and shall be subject to state and federal laws and regulations as such laws and regulations may be in effect from time to time.

25. Severability. The provisions of the Master Agreement are severable, and if any provision hereof is declared to be void by a court of competent jurisdiction, that provision shall be severed from this Master Agreement and the remaining provisions shall be effective as if the void term were not included herein.

26. Entire Agreement. This Master Agreement and the Exhibits and Schedules attached hereto constitute the entire agreement between the parties and it supersedes all prior agreements and understanding between the parties with respect to the subject matter hereof. Each Schedule executed by Provider and Customer will be deemed incorporated into this Master Agreement by this reference and deemed a part of this Master Agreement. This Master Agreement, the Addenda (if any), the Schedules and the Exhibits attached hereto may be modified only by a written agreement signed by duly authorized persons for each party.

27. Binding Effect. This Master Agreement is binding upon, and will inure to the benefit of, each of the parties and their respective successors and permitted assigns. Except for a successor or permitted assign, no third party will have the right, as a third party beneficiary or otherwise, to enforce any provision of this Master Agreement or any Schedule.

IN WITNESS WHEREOF, each of the parties hereto has caused this Master Agreement to be duly executed for and on its behalf as of the day, month and year first above written.

PROVIDER

CUSTOMER

COMMUNITY COMMUNICATIONS COMPANY
A Arkansas corporation

CITY OF MONTICELLO
A Arkansas Corporation

By: _____

By: _____

Its: _____

Its: Mayor

Date: _____

Date: _____

ATTEST:

By: _____

Its: City Clerk

Date: _____

EXHIBIT A

FORM OF NETWORK SCHEDULE UNDER MASTER RETAIL SERVICE AGREEMENT BETWEEN COMMUNITY COMMUNICATIONS COMPANY AND CITY OF MONTICELLO

Request Date: _____ Start Date: _____
Company: CITY OF MONTICELLO
Address: 204 W GAINES ST City: MONTICELLO, AR 71655
Phone: 8703673411 Fax:
Email:

Description of Service: DEDICATED FIBER INTERNET AT CITY HALL TO SERVE INTERNET TO ENTIRE CITY HALL COMPLEX. 26 DIGITAL BUSINESS LINES AT THE SAME LOCATION LATER TO BE CONVERTED TO APPROPRIATE SIP TRUNK PRODUCT SCALED TO THE CITY'S NEEDS WHEN PHONE SYSTEM IS UPGRADED BY A THIRD PARTY; AND VOICE LINES AT THE PARKS(2), POOL(1), AND FIRE STATIONS(2). ALL VOICE LINES INCLUDE UNLIMITED LONG DISTANCE SERVICE AND HUNTING AS REQUESTED BY CUSTOMER.

CUSTOMER CHARGES Network Services

QTY	TYPE	TERM	MRC	NRC
31	BUSINESS VOICE LINES	3 YEARS*	928.45	\$2590.00
1	25mbps FIBER INTERNET	3 YEARS*	595.00	\$500.00

Terms and Conditions: The parties hereby expressly agree that this Schedule will be governed by the terms and conditions stated in the Master Retail Service Agreement between the parties. Each Party's signature below represents that it has read and understood, and accepts, such terms and conditions. Price(s) do not include applicable local, state and federal taxes.

COMMUNITY COMMUNICATIONS COMPANY
(Provider)

CITY OF MONTICELLO
(Customer)

(authorized signature)

(authorized signature)

Name (print)

Name (print)

Title

Title

Date

Date

*See language on next page.

***The parties recognize that this is a four (4) month initial agreement and will automatically renew for six (6) months at a time unless canceled by either party within thirty (30) days' written notice. The MRC and NRC will remain in effect for the first three (3) years, unless the Agreement is canceled prior to that time.**

COMMUNITY COMMUNICATIONS COMPANY

CITY OF MONTICELLO

EXHIBIT B
Performance Specifications for Ethernet Services

1.0 Interconnection Specifications

Ethernet service will be delivered at standard 10/100/1000 Mbps interfaces. The signal characteristics and supported MAC Layers at the Network Interface (NI) will be as specified in the IEEE 802.3-2002 standard. Unless mutually agreed upon by Provider and Customer, the Physical NI for Gigabit Ethernet Services delivered on the core ring will be a duplex FC-PC connector on Provider's Fiber Distribution Panel (FDP). For 10/100 Ethernet Service at remote sites, the Physical NI will be at an RJ-45 jack on the Rate Interface Converter (Media Converter).

2.0 Performance Standards

2.1 General

Ethernet service standards apply on a one-way basis between the Ethernet Service points of demarcation (DEMARC), which are designated Category 5 Patch Panel for electrical, and FDP for optical interfaces in the Provider equipment bay. Ethernet service standards exclude nonperformance due to force majeure or planned interruptions for necessary maintenance purposes. The actual end-to-end availability and performance of Ethernet service may be affected by the Customer provided equipment, dependent upon the type and quality of Customer equipment used.

2.2 Bit Error Rate

The bit error rate (BER) is the percentage of bits that have errors relative to the total number of bits received in a transmission. The end-to-end Bit Error Rate standards for Ethernet service are:

Specification	Ethernet Service
Bit Error Rate	Less Than 1×10^{-3}

2.3 Packet Loss

Performance is noted in terms of packet loss. Packet Loss Ratio is defined as percentage of in-profile Ethernet frames not reliably delivered between Provider DEMARCs over a given measurement interval. The Packet Loss Ratio standards for end-to-end portions of Network service are:

Specification	Monthly Average
Packet Loss Ratio	No more than 0.1%

3.0 Availability Objective

Availability is a percentage of total time that service is operative when measured over a 30 consecutive day (720 hour) period. The end-to-end availability standards for Ethernet service are:

Specification	Availability
With Single Cable Entrance	99.90%
With Dual Cable Entrance	99.95%

4.0 Inoperability

Ethernet service is considered inoperative when there has been a loss of signal, or a Bit Error Rate greater than or equal to the rate specified in Section 2.2 for ten or more consecutive seconds.

5.0 Repair and Scheduled Maintenance

Repair efforts will be undertaken upon notification of trouble by internal network surveillance and performance systems or by notification of trouble and release of Ethernet service by the customer for testing. Customer will be notified a minimum of three (3) business days in advance of any scheduled maintenance. Scheduled maintenance will be performed in a manner that minimizes any system interruption. Performance and availability standards shall not apply during scheduled maintenance periods.

EXHIBIT C

OPERATIONS PROCEDURES

SECTION A: System Operations

The Customer shall operate all equipment and systems interconnected to Provider's network in a manner consistent and compliant with the Technical Standards presented in Exhibit B1 through B5.

SECTION B: Trouble Reporting

In the event of a Customer-initiated trouble report or service interruption, the Customer shall contact Provider via the Provider Escalation List.

The following information will be exchanged at the time of notification by Provider or in the event of a Customer initiated trouble report.

- The name and telephone number of the person who is reporting the trouble event.
- The date and time of the trouble report.
- Provider circuit identification numbers.
- Customer circuit identification number.
- The specifics relating to the trouble report.

Provider will maintain communication with the Customer throughout the status of the trouble resolution.

In the event higher level communication is desired by the Customer, the following Provider personnel escalation should be followed:

Trouble Report Escalation List for Provider

(To be updated from time to time by Provider effective upon receipt of notice by Customer.)

LEVEL	TITLE	NAME	Contact 24/7
Level 1	Community Communications Customer Care	Customer Care Representative	870-367-7300 support@ccc-cable.net
Level 2	Network Engineer	Kent Thompson	870-820-6564 kthompson@ccc-cable.net
Level 3	Technical Operations Supervisor	Terry Erwin	870-460-5573 terry@ccc-cable.net
Level 3	Director of Operations	TJ Scott	870-460-5585 tscott@ccc-cable.net
Level 4	President/CEO	Bill Copeland	870-460-5586 bcopeland@ccc-cable.net

Trouble Report Escalation List for Customer

(To be updated from time to time by Customer effective upon receipt of notice by Provider.)

LEVEL	TITLE	NAME	BUSINESS HOURS	AFTER HOURS
Level 1				
Level 2				
Level 3				
Level 3				

EXHIBIT D COMMERCIAL SERVICES ACCEPTABLE USE POLICY

Community Communications Company (CCC) provides a variety of Internet Services, access to our website, and email domains (Services) to residences and businesses (Subscriber). CCC may modify this Acceptable Use Policy (AUP) at any time without notifying its users. For this reason, CCC users should consult the CCC website (www.ccc-cable.net/aup) regularly to ensure that their actions are in compliance with the most recent version of the AUP. In the event of any conflict between this AUP and the CCC Terms and Conditions of Use, this AUP will govern.

By using CCC Internet Services, you agree that, if any portion of this Policy is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect.

If you do not agree to abide by this AUP please notify CCC immediately.

1.0 Introduction

1.1 This AUP is designed to foster an online environment of mutual respect in which everyone is able to enjoy the benefits of CCC. We believe that the restrictions set out in this AUP represents a fair balance between the freedom of the individual and the need for some basic rules to ensure that CCC's Internet access is not used in an abusive or illegal way.

1.2 CCC users are responsible for ensuring that their accounts are used in accordance with this AUP. If CCC has reason to suspect that a user, or anyone using a user's account, is violating this Policy, then the account in question may be suspended pending an investigation. If, after an investigation, CCC determines that an account has been used in violation of this AUP, CCC may, in its discretion, terminate the user account.

1.3 CCC has the right, but not the obligation, to take any steps it deems necessary to prevent violations of this AUP from occurring.

1.4 The failure of CCC to enforce this Policy, for whatever reason, shall not be construed as a waiver of any right to do so at any time.

2.0 Illegal Activities

CCC users must not use CCC Internet to encourage, facilitate or engage in any illegal activities, including, without limitation:

- a. defamation: posting or transmitting any material which is defamatory under any applicable law;
- b. fraud: posting or transmitting any information that you know or ought to know is false, and that you intend others to rely on;
- c. unlawful material: posting or disseminating unlawful material
- d. false advertising: posting or transmitting any advertising or promotional materials that contain false, deceptive or misleading statements, claims or representations;
- e. copyright violation: posting or transmitting any information, software, photograph, video, graphic, music, sound and other material in violation of another person's copyright; and
- f. trade-mark violation: posting, transmitting, displaying or using any words or symbols that violate any other person's rights in its trade-mark or trade-name.

3.0 Electronic Mail

3.1 CCC users must not use CCC e-mail to:

- a. send unsolicited bulk e-mail (so-called "Spam");
- b. send, or cause to be sent, large volumes of unsolicited e-mail to a single or multiple people or entities (so-called "E-Mail Bombing");
- c. repeatedly send e-mail to any person or entity who does not wish to receive it. If a recipient asks to stop receiving e-mail from a CCC user, then that CCC user must not send that person further e-mail; and
- d. subscribe to any e-mail list or service on behalf of a third party without that third party's consent.

3.2 CCC users must not engage in any of the activities described in paragraph 3.1 from another provider's e-mail service and use a CCC account as an e-mail return address or "drop" for responses.

3.3 CCC users must not forge, alter or remove any e-mail header.

3.4 Any e-mail address on domains owned by CCC is property of CCC and may be terminated or re-assigned without notice.

4.0 Security, Privacy and "Hacking"

The Subscriber is responsible for any misuse of the Services that originate from their account, even activities committed by any friend, family, co-worker, employee, guest or anyone with access to the account. Subscribers must ensure that others not gain unauthorized access to the Services.

4.1 CCC users must not:

- a. directly or indirectly disrupt or interfere with the normal operation of CCC systems, networks, or activities in any way that adversely affects the ability of other people, or systems to use CCC services or the Internet, including, but not limited to:
 - i. denial of service attacks;
 - ii. flooding of networks;
 - iii. attempts to overload a service; and
 - iv. attempts to cause system crashes,

or attempt to do so; or

- b. gain access or attempt to gain access to the private systems or data of CCC, without the prior consent of CCC.

4.2 CCC users must not use their CCC accounts to:

- c. circumvent or attempt to circumvent security or authentication systems on any host, network hardware, or user accounts, including, but not limited to, logging into any server, account or network without authorization and electronically probing the security of any system or network; or
- d. disrupt or interfere with the normal operation of any system or network operated by any third party, or attempt to do so.
- e. gain access or attempt to gain access to the private systems or data of CCC, or any third party without the prior consent of CCC or the third party.

5.0 Usenet Newsgroups

5.1 CCC users must not:

- a. post a single article or substantially similar articles to an excessive number of newsgroups, or cross-post to an excessive number of newsgroups;
- b. post articles on a newsgroup which are off-topic according to the newsgroup charter;
- c. post binary or encoded binary files to newsgroups not specifically designated for that purpose;
- d. post commercial messages on a non-commercial CCC newsgroup without prior approval from CCC;
- e. engage in any of (a), (b), (c) or (d) from a provider other than CCC and use an account on CCC as an e-mail return address or "drop" for responses, or
- f. engage in any of (a), (b), (c) or (d) from a provider other than CCC for the purpose of drawing attention to a service hosted by or on CCC's network.

5.2 CCC reserves the right to discontinue access to any Usenet newsgroup at any time and for any reason.

6.0 Censorship and Adult Materials

CCC believes in freedom of expression and the right of individuals to decide for themselves what they want to see and listen to. We do not believe it is the place of an ISP to censor or regulate the Internet. However, users must not use CCC to transmit or post any information or image that is criminally obscene or otherwise prohibited under any applicable law.

CCC assumes NO responsibility for Internet content available through the Services. Subscribers are responsible for restricting access to material they deem inappropriate on the Internet, by purchasing the appropriate filtering software, or by monitoring Internet use. Content questions or complaints should be addressed to the content provider.

7.0 Miscellaneous

7.1 False Pretences. Users must not use CCC to impersonate any person or use a fictitious user name with any of CCC's services, including in any e-mail, Usenet posting, or Internet Relay Chat ("IRC") site. This restriction does not preclude the use of nicknames in IRC, the use of anonymous remailer services, or postings to any site that permits pseudonyms.

7.2 Unsolicited Advertising. Residential users must not use CCC to post or transmit any unsolicited advertising, promotional materials or other forms of solicitation to any person except in those areas and on those websites that are designated for such a purpose.

7.3 Harassment, Threats and Abuse. Users must not use CCC to harass, threaten, or abuse any person or group of people by any means.

7.4 Crude or Offensive Postings. Users must not use CCC to post offensive or crude messages or images on publicly accessible pages or sites, except where such messages or images are appropriate having regard to the nature of the site. CCC has the right, but not the obligation, to remove messages or images that CCC, in its sole discretion, determines are offensive.

7.5 Multiple access. Users must not maintain more than one simultaneous connection to CCC or any CCC service.

7.6 Disruptive Conduct. Users must not use CCC to disrupt the normal flow of online dialogue, or otherwise act in a manner that negatively affects other users, individuals or entities.

8.0 Bandwidth/Network Traffic and Other Limitations

CCC has the right to employ bandwidth management tools at their disposal to protect the user experience of other CCC Subscribers. Commercial fiber customers are exempt from this limitation.

9.0 Updates

9.1 This AUP is subject to change without notice. The current version of the AUP is always available at www.ccc-cable.net/aup

10.0 Questions and Complaints

Please direct any questions you may have regarding this AUP and complaints regarding violations of this AUP by other CCC users to our customer service department. Contact information is as follows:

Community Communications Company
1920 Highway 425 N
Monticello, AR 71655
Phone: 870-367-7300
email: cccaccounts@ccc-cable.net