

**MCHEMRY COUNTY CONSERVATION DISTRICT  
RESOLUTION #20-53**

**AUTHORIZING THE EXECUTION OF A WHOLESALE MASTER SERVICES CONTRACT AND  
RIGHT OF ENTRY INTO CUSTOMER PREMISE AGREEMENT AND ASSOCIATED  
ADDENDUM WITH EVERTREAM SOLUTIONS, LLC OF OHIO FOR FIBER INTERNET  
CONNECTIVITY FOR THE BROOKDALE ADMINISTRATIVE OFFICES  
FOR A COST NOT TO EXCEED \$500 PER MONTH**

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**WHEREAS**, the McHenry County Conservation District (hereinafter referred to as the "District"), is a conservation district organized and existing under the laws of the State of Illinois (70 ILCS 410); and

**WHEREAS**, Everstream Solutions, LLC of Cleveland, Ohio (hereinafter referred to as the "Contractor") is a business only internet services company; and

**WHEREAS**, the Contractor has offered to provide internet connectivity and guaranteed faster speeds and lower costs than other competitors through a Wholesale Master Services Contract; and

**WHEREAS**, the District will execute a Right of Entry into Customer Premise Agreement and Addendum to same for access to the Contractor to install the necessary equipment and cable on District property; and

**WHEREAS**, the District is empowered to enter into contracts and take such other actions as may be necessary for the proper conduct of its affairs (70 ILCS 410/12); and

**WHEREAS**, the parties hereto have determined that it is in the best interest of the District and the public for the entities to cooperatively coordinate the implementation of the work as outlined in the documents as presented to the Board and which are attached and made a part of the related project files.

**NOW, THEREFORE BE IT RESOLVED**, by the Board of Trustees of the District that it is necessary, desirable, and in the best interest of the District to execute the documents, and the President and Secretary of the Board of Trustees are hereby authorized to execute this resolution and the President and Executive Director or her designee is authorized to execute said Contract and Agreements and other necessary documents to execute the intent of this resolution.

IN WITNESS WHEREOF, this Resolution #20-53 has been executed this 23<sup>rd</sup> day of June, 2020 by the President and attested by the Secretary of the Board of Trustees of the District.

Ayes:   7  

Nays:   0  

Absent:   0  

Abstain:   0  

*Vernon M Scacci*  
Vernon M Scacci (Jun 24, 2020 15:11 CDT)

**VERNON SCACCI, PRESIDENT  
BOARD OF TRUSTEES**

*Carolyn Campbell*  
Carolyn Campbell (Jun 24, 2020 15:42 CDT)

**CAROLYN CAMPBELL, SECRETARY  
BOARD OF TRUSTEES**

Vernon M Scacci

## ENTERPRISE MASTER SERVICES AGREEMENT

This Master Services Agreement (“Agreement”), effective the date of the last signature below (the “Effective Date”), is entered into by and between **EVERSTREAM SOLUTIONS LLC**, an Ohio limited liability company, with a principal place of business at 1228 Euclid Ave., Suite 250, Cleveland, Ohio 44115 together with its affiliate, Everstream GLC Holding Company LLC, (collectively “Everstream”), and **McHenry County Conservation District**, an Illinois unit of local government, with a place of business at 18410 US Highway 14, Woodstock, IL 60098 (“Subscriber”). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Everstream and Subscriber (collectively, the “Parties” or each individually a “Party”) agree as follows:

### 1.0 AGREEMENT

This Agreement, together with all incorporated terms and conditions (collectively the “Agreement”), and any associated Service Orders as defined herein, hereby constitute the Master Services Agreement (“MSA”) by and between Everstream and Subscriber for the Services specified on the associated Service Orders (“Services”). The attachments to this Agreement further describe Everstream’s Services and are hereby incorporated into and made a part of this Agreement.

### 2.0 SERVICES AND SERVICE ORDERS

- 2.1 Subject to the MSA, Everstream shall provide Subscriber with the Services as detailed in any relative Service Order entered into by the Parties. Everstream shall use commercially reasonable efforts to provide the Services seven (7) days a week, twenty-four (24) hours a day, excluding scheduled maintenance, required repair and events beyond Everstream’s reasonable control.
- 2.2 Subscriber shall request Services by issuing to Everstream one or more proposed Service Order(s) (in the Service Order form provided by Everstream). Upon Everstream’s acceptance of a proposed Service Order, the terms and Service included in the Service Order shall be deemed incorporated into, and made a part of, the MSA. A proposed Service Order shall not be deemed accepted until the earlier of (a) Everstream’s written acceptance of such proposed Service Order; or (b) Everstream’s commencement of delivery of the Service(s) set forth in such proposed Service Order.
- 2.3 Invoicing of Service(s) shall begin with Everstream’s issuance of a Certificate of Acceptance (“COFA”) following installation as contemplated by a Service Order. The delivered Service(s) will be considered accepted by Subscriber and certified to be error free and built to the specifications requested unless Subscriber provides written notice and a detailed description of any claimed shortcoming(s) within five (5) days of receiving the COFA.

### 3.0 SERVICE & EQUIPMENT INSTALLATION

- 3.1 Subscriber shall ensure that each Subscriber employee, customer, or user, which uses the Service (each, an “End User”), shall obtain and maintain throughout the Term, such consents (including without limitation landlord and land owner consents) as are necessary to timely permit, and shall timely permit, Everstream personnel to install, deliver, operate and maintain the Services and Everstream Equipment (as defined herein) at Subscriber’s and any Subscriber End User’s facilities. Subscriber shall permit Everstream reasonable access to the Subscriber and End User facilities as needed to install, configure, upgrade, maintain or remove the Everstream Equipment and other Service components collocated at Subscriber’s or an End User’s facilities. Subscriber shall make and maintain throughout the Term all reasonable preparations necessary to permit the installation, maintenance and operation of the Service and any Everstream Equipment as specified by Everstream and that is required to provide the Services. Subscriber shall not charge Everstream, and shall ensure that Everstream does not incur, any fees or expenses whatsoever in connection with Subscriber’s provision of space, power, or access in areas under the control of Subscriber (whether as owner or tenant) or otherwise in connection with Subscriber’s performance of its obligations pursuant to this MSA; and shall be solely responsible for any such fees or expenses charged by a Subscriber End User.
- 3.2 Provided that Subscriber properly performs all necessary Site preparation and provides Everstream with all required consents, Everstream shall use

commercially reasonable efforts to install the Service in accordance with the latter of the service start date requested on a Service Order or the Firm Order Commitment (“FOC”) date provided to Subscriber by Everstream. Everstream shall provide Subscriber with a Completion Notice (“Completion Notice”) upon completion of the installation of a Service.

### 4.0 SUPPORT & MAINTENANCE

Everstream shall use commercially reasonable efforts to maintain the all Everstream owned equipment, including as applicable, any cabling, conduit, risers, routers, or any related equipment (collectively, “Everstream Equipment”), on Everstream’s side of the demarcation points used by Everstream to provide the Service. Everstream Equipment and Services on Subscriber’s side of the demarcation points, as well as any other Subscriber-provided equipment, are the responsibility of Subscriber. Everstream shall provide a toll-free telephone number and email address to its Network Operations Center (“NOC”) for inquiries and remote problem support for the Service. All such Subscriber support shall be provided only to Subscriber’s designated personnel (“Named Callers”), as mutually agreed upon by Everstream and Subscriber. Subscriber is responsible for all communications and interfaces with its End Users. In no event shall Everstream be responsible for providing support for any network, equipment or software not provided and installed by Everstream or for issues or problems beyond its control. Notwithstanding anything to the contrary in the foregoing, Everstream shall use commercially reasonable efforts to restore any fiber cable cuts on the Everstream network and shall keep Subscriber reasonably advised of such restoration progress. Subscriber shall provide routine operational Service support for Everstream Equipment and Service components collocated at Subscriber’s or an End User’s facility, including without limitation by performing reboots, as requested by Everstream.

### 5.0 DESCRIPTION OF BASIC SERVICES

- 5.1 The Services provided by Everstream to Subscriber are:
  - (a) Design and Installation. Assistance in the design, selection and installation of the connection between the Subscriber network and the Everstream Network.
  - (b) Equipment Selection and Acquisition. Purchase, installation, maintenance and operation of Everstream Network Equipment at the Subscriber site(s), if required.
  - (c) Maximum Guaranteed Bandwidth. A 1.5 Mbps to 10 Gbps connection (as specified by each Service Order) between the Subscriber site and the Everstream Network and (if contracted) the Internet. The interface between this connection and the Subscriber’s router shall consist of a single-mode or multi-mode fiber or copper 100/1000/10000 Mbps Ethernet connection, as agreed between the Parties in the Service Order(s). The connection value contracted for in Service Order represents the Minimum Guaranteed Bandwidth to be provided by Everstream.
  - (d) IP Transport between each Subscriber site(s) and: (i) Other Everstream subscriber site(s) connected to the Everstream Network as identified by Subscriber and; (ii) Other Everstream Subscriber site(s) and Service as identified by Subscriber and; (iii) The Internet (if contracted).
    1. A bandwidth capped service by which Everstream may cap the bandwidth available at each Subscriber site to no less than the maximum of the selected Internet Usage Level from the associated Service Order. Subscriber may agree to lower bandwidth caps.
    2. Everstream calculates Internet Usage for each Subscriber by separately measuring input and output bandwidth usage at 5-minute

intervals. The Usage for a Subscriber is the value of the highest remaining sample after throwing out the top 5% of each category. The Subscriber's total Usage is the sum of the Usage for all of Subscriber's sites.

5.2 NETWORK OPERATIONS SUPPORT.

- (a) Network Operations Center. Everstream shall use commercially reasonable efforts to provide the NOC services seven (7) days a week, twenty-four (24) hours a day, excluding scheduled maintenance, required repair and events beyond Everstream's reasonable control. Subscriber will use best efforts to comply with reasonable procedures established from time to time by Everstream to best assure the ability of Everstream to diagnose, maintain and correct disruptions in network Services. A detailed description of Everstream's operations support, procedures and related matters is available upon request to the NOC.
- (b) Core NOC Functions. NOC Functions include the following: (i) Open Service Tickets on all events, alarms and report trouble items; (ii) Conduct fault investigation and identifications; (iii) Implement network repair and service restoration, including maintenance and upgrades; (iv) Provision of remote logical service reconfiguration; (v) Dispatch field technical service to Subscriber locations as requested; (vi) Monitor and report on network status and Subscriber connectivity status. (vii) Service Levels outlined in the tables below:

NETWORK PERFORMANCE SERVICE LEVELS		
NETWORK UPTIME	Basic Service Level Agreement ("SLA") Uptime is defined as the amount of time Subscriber has service as measured over the course of the year. Planned or Emergency Maintenance events are not factored into the Service Uptime Calculation. Everstream calculates network uptime during a calendar month as follows: Availability per month = (total minutes in month) - (total min of unavailability in month).	
	SLA Network uptime for managed Ethernet, MPLS, VPN and Internet Service Delivery.	99.99%
	Basic SLA for Fiber Services (Everstream Indefeasible Rights of Use ("IRU") and leased fiber optic Services).	99.90%
MEAN TIME TO REPAIR	Mean Time to Repair (MTTR) SLA are based upon the amount of time it takes to restore Services measured from the time a NOC service request ticket ("Ticket") is opened to the time the Ticket is closed. MTTR times vary based on whether the problem being addressed physically resides on the Everstream Network ("On-Net") or on a third-party provider/Subscriber network ("Off-Net").	
	Everstream On-Net Services.	Four (4) Hrs.
	Everstream Off-Net Services.	Six (6) Hrs.
	Fiber Services (Everstream On-Net Only IRU).	Eight (8) Hrs.
	Note: Force Majeure acts are not covered under Everstream's MTTR SLA. Force Majeure includes, without limitation: fire, flood, lightning, explosion, war, act of terrorism, strike, riots, embargo, labor dispute, government requirement, civil or military authority, act of God or nature, acts or failure to act of any governmental authority.	

SERVICE OUTAGE CLASSIFICATIONS	
Catastrophic	An entire network affecting outage that affects a large majority of Everstream subscribers.
Critical	An outage affecting a single Everstream subscriber where service is unavailable for use.
Major	An outage affecting a single Everstream subscriber where service is intermittent but still usable.
Minor	An outage affecting one Everstream subscriber where service is available but service is slow or minor packet loss; An outage affecting a single Subscriber; service is available but specific applications are slow or not operating properly with Subscriber configuration; Proactive troubleshooting to locate an issue before it becomes a minor, major, or critical issue.

5.3 SUBSCRIBER CONNECTIONS VIA THIRD-PARTY. At Subscriber's written request, Everstream will provide to Subscriber, pricing for the installation and maintenance of a connection from an agreed upon Subscriber site to the Everstream Network via a Third-Party Provider. Subscriber may elect in writing to have Everstream, on Subscriber's behalf, be responsible for procuring a connection between Subscriber's site and the Everstream Network. Should Subscriber elect in writing to have Everstream procure a

Third-Party connection, Everstream will oversee the installation and maintenance of that connection on Subscriber's behalf, and will provide connection engineering and maintenance support during and after the installation of the connection. Everstream will provide routine and reasonable Services related to network interface planning, engineering, and consulting support in installing and configuring the Subscriber's Third-Party connection to the Everstream Network. Based on the ASSOCIATED Service Order, Subscriber is directly responsible for the payment of all installation, recurring and non-recurring charges required to be paid to Everstream or third-parties with respect to each Subscriber connection to the Everstream Network. Payments for these Services will be due when Subscriber orders the connection.

5.4 SUBSCRIBER CONNECTION VIA FIBER BUILD TO THE EVERSTREAM NETWORK. At Subscriber's written request, Everstream will provide to Subscriber, pricing for the installation and maintenance of a dedicated fiber connection from an agreed upon Subscriber site to the Everstream Network. Subscriber may elect in writing to have Everstream, on Subscriber's behalf, responsible for procuring a dedicated fiber connection between Subscriber's site and the Everstream Network. Should Subscriber elect in writing to have Everstream procure a dedicated fiber connection, Everstream will oversee the installation and maintenance of that connection on Subscriber's behalf, and will provide connection engineering and maintenance support during and after the installation of the connection. Everstream will provide routine and reasonable Services related to network interface planning, engineering, and consulting support in installing and configuring the Subscriber's dedicated fiber connection to the Everstream Network. Based on the associated Service Order, Subscriber is directly responsible for the payment of all installation, recurring and non-recurring charges required to be paid to Everstream or third parties with respect to each Subscriber dedicated fiber connection to the Everstream Network. Payments for these Services will be due when Subscriber orders the connection.

5.5 OWNERSHIP OF CONNECTION. Any Connection from the Everstream Network up to the Demarcation Point becomes part of the Everstream Network upon installation. Subscriber has no ownership interest in the connection up to the Demarcation Point

5.6 SERVICE UPGRADES. At any time, Subscriber may elect in writing to increase the bandwidth of its connection to the Everstream Network without contract extension or the number of Subscriber sites connected to the Everstream Network. As part of any such Service Upgrade, Subscriber will use its best efforts to cooperate with Everstream in coordinating the engineering, installation, testing and production use of the new connection except as provided elsewhere in this Agreement. If the Service Upgrade imposes different requirements for environmental conditions, supplemental Equipment or similar items, Subscriber will have the option to comply with those requirements and acquire (either directly or through Everstream) the necessary Equipment and pay any and all fees due under the associated Service Order, continue the Agreement according to the original Terms, or terminate the associated Service Order.

5.7 EQUIPMENT RECOMMENDATION. Subscriber agrees to employ commercially reasonable efforts to house Everstream-provided Equipment in accordance to the "Environmental Recommendations" provided by Everstream. This includes the provisioning of power and space for Equipment needed to operate connection at Subscriber site(s) to Everstream Network.

6.0 SUBSCRIBER OBLIGATIONS

6.1 Subscriber's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations and the Terms of the Master Agreement. Subscriber shall not resell or redistribute (whether for a fee or otherwise) the Service(s), or any portion thereof, or make any use of the Service other than for Subscriber's internal business purposes, unless otherwise agreed in writing by Everstream. Subscriber shall ensure that its End Users' use of the Service, if any, shall comply with all applicable laws and regulations and Terms of the Master Agreement. Upon reasonable notice to Subscriber, Everstream may audit Subscriber's

use of the “Service Bandwidth” to ensure Subscriber's compliance with the terms of the MSA and any related Service Order.

- 6.2 Subscriber will designate one of Subscriber’s routers/switches from which Subscriber’s fiber will connect to the Everstream Network.
- 6.3 Subscriber will provide sufficient space for Everstream to install Equipment to support the Services. Space will include sufficient power and environmental conditioning to support Equipment. Subscriber may provide backup power or an uninterruptable power supply (“UPS”) or may contract with Everstream separately for UPS.
- 6.4 Subscriber is responsible for the installation, maintenance, and repair of Subscriber-premise fiber between the Demarcation Point and the Subscriber’s switch or router.
- 6.5 Subscriber will assign an operational and technical contact person to coordinate with Everstream regarding Services being provided under this Agreement.
- 6.6 Subscriber shall ensure that all Everstream Equipment at Subscriber’s and Subscriber’s End Users’ facilities remains free and clear of all liens and encumbrances, and Subscriber shall be responsible for loss or damage to the Everstream Equipment while at Subscriber's or an End User's facilities. Subscriber is responsible for ensuring that any Subscriber equipment used in connection with the Services is protected from fraudulent or unauthorized access. In addition, Subscriber is responsible for: (a) all content that is viewed, stored, or transmitted via the Service; and (b) all third-party charges incurred for merchandise and Services accessed via the Service, if any. Subscriber shall conform its equipment and software, and ensure that each End User conforms its equipment and software, to the technical specifications for the Service provided by Everstream.

**7.0 TERM**

The MSA shall commence upon the earlier of (a) the date of the last signature on the Service Order (“Effective Date”) or (b) Everstream’s commencement of delivery of the Service(s) set forth in a Service Order. The MSA shall remain in effect for the Term specified in each associated Service Order, or if no Term is specified, until the expiration or Termination of all Service Orders (the “Term”). The Term for the applicable Service shall be set forth in the Service Order (“Initial Order Term”) and shall remain in effect until expiration as set forth in the Service Order. Unless otherwise specified in the Service Order, if the Subscriber continues to receive Services after the expiration of the Initial Order Term, the Services shall renew for a period of twelve (12) months on the same Agreement (“Renewal Order Term”, collectively with Initial Order Term, “Order Term”). Subscriber also has the right to notify Everstream in writing, ninety (90) days prior to the expiration of the Initial Order Term their intent to exercise their right to a month to month agreement at then Current Everstream rates for their Service(s) without any discounts.

**8.0 PAYMENT**

- 8.1 For each Service, Subscriber shall pay Everstream all recurring and non-recurring charges, fees and taxes, (collectively the “Service Charges”) as set forth in the associated Service Order, in accordance with the following payment Terms: Service Charges shall be billed to Subscriber on a monthly basis commencing upon Service installation, and are payable within forty-five (45) days after the date appearing on the invoice. All payments hereunder will be in U.S. dollars by electronic wire transfer to the bank account designated by Everstream from time to time or by company check. Subscriber must bring any billing error to Everstream’s attention within ninety (90) days after the date appearing on the applicable invoice or Subscriber waives its right to a refund or credit associated with such billing error. Everstream shall not defer any charges while Subscriber awaits reimbursement, subsidy, discount or credit from any third-party or government entity, and Subscriber shall have the obligation to pay all charges regardless of the status of any such reimbursement, subsidy, discount or credit. Everstream shall have the right to increase Service Charges for each Service after the Initial Order Term for such Service upon thirty (30) days’ written notice to Subscriber. Everstream may charge a late

fee for any amounts which are not paid when due. The late fee shall be the greater of one and one-half percent (1.5%) per month or the highest rate chargeable by law. Subscriber shall also be responsible for all costs, including reasonable attorneys’ fees associated with collection of past due amounts. If, at any time, Everstream has concern about security or timeliness of payments, it may suspend the Services and/or the rights granted hereunder upon advance written notice to Subscriber until receipt of payment or establishment of a letter of credit or other arrangement securing payment. If Everstream fails to present a charge in a timely manner, such failure shall not constitute a waiver of the charges for the fees to which it relates, and Subscriber shall pay such invoice which is not subject to 1.5% late fee, in accordance with these payment terms.

- 8.2 Billing of a new or additionally added circuit begins upon the issuance of the respective COFA.
- 8.3 SERVICE CREDIT. In the event of a Network Outage or disruption that is caused in whole or in part by the negligence or willful misconduct of Subscriber, Subscriber shall not be entitled to receive a credit. In all other cases, excepting maintenance or upgrade Services scheduled with Subscriber and those pursuant to “Force Majeure,” Subscriber is entitled to receive a credit against the amount invoiced for Services provided during the month in which the Network Outage occurred. Credits are available on a per-outage basis (prorated on a monthly basis) in any given calendar month. These service credits are the sole remedy available to Subscriber for service disruption or suspension of any kind whatsoever is described in the table below:

Instance of Network Outage	Credit Against the Appropriate Month’s Service
< 1 Hour	0%
1 Hour to < 8 Hours	25%
>= 8 Hours	50%

Network Outage service credit requests shall be submitted electronically or in writing to Subscriber’s assigned Client Relationship Manager (“CRM”) or to the attention of the Everstream agent listed below.

**9.0 TAXES**

- 9.1 Subscriber shall pay all federal, state, and local taxes, government fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of the MSA, including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable.
- 9.2 Subscriber acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification and/or treatment of some of the Services and, consequently, uncertainty about what fees, taxes and surcharges are due from Everstream and/or its Subscribers. Subscriber agrees that Everstream has the right to determine, in its sole discretion, which fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to Subscriber. Subscriber hereby waives any claims it may have regarding Everstream’s collection or remittance of such fees, taxes and surcharges. Subscriber understands that it may obtain a list of the fees, taxes and surcharges that Everstream currently collects or passes through by writing to Everstream at the provided herein.

**10.0 PROPRIETARY RIGHTS AND CONFIDENTIALITY**

- 10.1 All materials including, but not limited to, any Everstream Equipment including related firmware, software, data and information provided by Everstream, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by Everstream to provide the Service (collectively “Everstream Materials”) shall remain the sole and exclusive property of Everstream. Nothing herein

is intended to convey any right or ownership interest to Subscriber or any other person or entity in or to such Everstream Materials. Subscriber shall acquire no interest in the Everstream Materials by virtue of the payments provided for under the Master Agreement. Subscriber may use the Everstream Materials solely for Subscriber's use of the Service during any applicable Order Term and the same may not be transferred by Subscriber to any other person, corporation or entity except as permitted herein. Subscriber may not disassemble, decompile, reverse engineer, reproduce, modify or distribute the Everstream Materials, in whole or in part, or use them for the benefit of any third Party. All rights in the Everstream Materials not expressly granted to Subscriber in the MSA are reserved to Everstream. Subscriber shall not open, alter, misuse, tamper with or remove the Everstream Equipment and shall not remove any markings or labels from the Everstream Equipment.

- 10.2 Subscriber shall maintain in confidence, and not to disclose to third-parties, or use, except for such use as is expressly permitted in the MSA, the Everstream Materials and together with any other information or materials provided by Everstream in connection with the MSA that is identified or marked as confidential or are otherwise reasonably understood to be confidential, including but not limited to the content of the MSA.
- 10.3 If software is provided to Subscriber under the Master Agreement, Everstream grants Subscriber a limited, non-exclusive and non-transferable license to use such software, in object code form only, solely for the purpose of using the Service for Subscriber's internal business purposes during the Term.

#### **11.0 EQUIPMENT UPGRADES AND MODIFICATIONS**

Everstream maintains the right to upgrade, modify, and enhance the Everstream Equipment, including related firmware, and the associated Service. Everstream also maintains the right to take any action that Everstream deems appropriate to protect the Service and the Everstream Equipment.

#### **12.0 TERMINATION**

- 12.1 Either Party may terminate a Service Order: (a) upon thirty (30) days written notice to the other Party of the other Party's material breach of the MSA or associated Service Order, provided that such material breach is not cured within such thirty (30) day period; (b) immediately, in the event that the other Party liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for general relief from its debtors, initiates any proceeding seeking general protection from its creditors, or is removed or delisted from a trading exchange (individually a "Bankruptcy Event"); (c) immediately, in the event that, after entering into a Service Order, Everstream conducts a site survey and learns that the construction costs shall require a material increase in the Service Charges; or (d) upon at least ninety (90) days written notice to the other Party before the end of an Initial Term or Renewal Term. In the event that Subscriber fails to comply with any applicable laws or regulations or the Terms of the MSA, upon thirty (30) days' written notice, Everstream may suspend or discontinue any applicable Service in whole or in part without further notice, provided that such failure is not cured within such thirty (30) day period. In addition, Everstream may immediately terminate or suspend Subscriber's use of the Service if such use is determined by Everstream, in its sole discretion, to be resulting in a material degradation of the Everstream network, until such time as such degradation has been remedied.
- 12.2 Upon the Termination or expiration of the MSA, including all associated Service Orders: (a) Everstream's obligations under the MSA shall immediately cease; (b) Subscriber shall promptly pay all amounts due and owing to Everstream for Service(s) delivered prior to the date of Termination or expiration, and any commercially reasonable deinstallation fees, if any; (c) Subscriber shall promptly cease all use of any software provided by Everstream under the MSA, and shall return such software to Everstream; and (d) Subscriber shall return to Everstream or permit Everstream to remove, in Everstream's discretion, the Everstream Equipment in the same condition as when received, ordinary wear and tear excepted. Subscriber shall reimburse Everstream for the reasonable and

documented costs of the repair or replacement, at Everstream's discretion, of any Everstream Equipment not returned in accordance with these terms.

- 12.3 Notwithstanding anything to the contrary, in the event this MSA or any associated Service Order terminates for any reason other than as permitted, Subscriber shall, at Everstream's discretion: (a) promptly pay Everstream the full amount of the Service Charges that Subscriber would have been charged for the remainder of the Initial Term or the then-current Renewal Term; or (b) reimburse Everstream for all volume, Term or other discounts and credits provided in anticipation of full performance of Subscriber's obligations and any unpaid portion of the installation fee set forth in the applicable Service Order(s).
- 12.4 The provisions of Sections 7 - 9, 11 - 15, 17 18, 19, 21 - 23 and 25 of the MSA and the Attachments shall survive the Termination or expiration of the MSA.

#### **13.0 INDEMNIFICATION**

The Parties agree to mutually defend, indemnify and hold harmless the other Party, its affiliates, service providers and suppliers as well as the other Party's respective officers, directors, employees and agents, from and against any third-party claims, losses, liabilities, damages, costs and expenses, including reasonable attorneys' and other professional fees, arising out of or relating to: (a) the use of the Service; (b) personal injury or property damage caused by the negligence or willful misconduct of either Party or its employees or agents.

#### **14.0 DISCLAIMER OF WARRANTY**

EXCEPT AS SET FORTH IN SECTION 13, SUBSCRIBER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND USES THE SAME AT ITS OWN RISK. EVERSTREAM EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE, AND EVERSTREAM EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT. EXCEPT AS SPECIFICALLY SET FORTH IN THE MSA, THE SERVICE, EVERSTREAM EQUIPMENT, AND EVERSTREAM MATERIALS ARE PROVIDED "AS IS," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, DATA ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS SET FORTH IN THE MSA, NO ADVICE OR INFORMATION GIVEN BY EVERSTREAM, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. EXCEPT AS SET FORTH IN THE MSA, EVERSTREAM DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET SUBSCRIBER'S REQUIREMENTS, PREVENT UNAUTHORIZED ACCESS BY THIRD-PARTIES, BE UNINTERRUPTED, SECURE, ERROR FREE, WITHOUT LOSS OF CONTENT, DATE OR INFORMATION OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. EXCEPT AS SET FORTH IN THE MSA AND SUBJECT TO ANY SLA, EVERSTREAM DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT PROVIDED BY EVERSTREAM SHALL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR THROUGHPUT RATE. IN ADDITION, SUBSCRIBER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE SERVICE MAY NOT BE SECURE. SUBSCRIBER FURTHER ACKNOWLEDGES AND AGREES THAT ANY DATA, MATERIAL OR TRAFFIC OF ANY KIND WHATSOEVER CARRIED, UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT SUBSCRIBER'S OWN DISCRETION AND RISK AND THAT SUBSCRIBER SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO SUBSCRIBER'S OR AN END USER'S COMPUTER SYSTEM OR EQUIPMENT (INCLUDING NETWORK EQUIPMENT) OR LOSS OF SUCH DATA, MATERIAL OR TRAFFIC DURING, OR THAT RESULTS FROM, SUBSCRIBER'S OR ITS END USER'S USE OF THE SERVICE INCLUDING, BUT NOT LIMITED TO, SUBSCRIBER'S OR END USER'S SENDING OR RECEIVING, OR UPLOADING OR DOWNLOADING, OR ATTEMPTS TO DO SAME, OF SUCH DATA, MATERIAL OR TRAFFIC.

#### **15.0 LIMITATION OF LIABILITY**

- 15.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, AN END USER OR ANY THIRD-PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE MASTER AGREEMENT, REGARDLESS OF WHETHER EITHER PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BOTH EVERSTREAM AND SUBSCRIBER'S AGGREGATE LIABILITY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO

THE MSA (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY) SHALL BE LIMITED TO THE AMOUNT OF AVAILABLE INSURANCE. IN NO EVENT SHALL EVERSTREAM'S AFFILIATES OR SUPPLIERS HAVE ANY LIABILITY TO SUBSCRIBER UNDER THE MASTER AGREEMENT. EVERSTREAM SHALL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES ARISING AS A RESULT OF THE UNAVAILABILITY OF THE SERVICE, INCLUDING THE INABILITY TO REACH EMERGENCY SERVICES, THE INABILITY TO CONTACT A SECURITY SYSTEM OR REMOTE MEDICAL OR OTHER MONITORING SERVICE PROVIDER OR ANY FAILURE OR FAULT RELATING TO SUBSCRIBER EQUIPMENT, FACILITIES OR SERVICES.

- 15.2 EXCEPT AS OTHERWISE PROVIDED IN THIS MSA, NEITHER EVERSTREAM, NOR ITS SERVICE SUPPLIERS SHALL BE LIABLE FOR UNAUTHORIZED ACCESS TO SUBSCRIBER'S TRANSMISSION FACILITIES OR PREMISE EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATIONS, THEFT OR DESTRUCTION OF SUBSCRIBER'S DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD. SUBSCRIBER UNDERSTANDS THAT NEITHER EVERSTREAM NOR ITS SERVICE SUPPLIERS ARE RESPONSIBLE FOR THE CONTENT OF THE TRANSMISSIONS THAT MAY PASS THROUGH THE EVERSTREAM NETWORK CONNECTION, OR RELATED COMMUNICATION SERVICES. NEITHER EVERSTREAM NOR ITS SERVICE SUPPLIERS SHALL BE LIABLE FOR THE ACCURACY OR QUALITY OF INFORMATION OBTAINED OR DATA TRANSMITTED THROUGH USE OF THE EVERSTREAM NETWORK CONNECTION, OR RELATED SERVICES.

#### **16.0 FORCE MAJEURE**

Notwithstanding anything to the contrary, a Party shall have no liability to the other due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, fiber cuts, natural disaster, regulation or governmental acts, fire, civil disturbance, weather, or any unauthorized access to or destruction or modification of the Service, in whole or in part (each a "Force Majeure Event").

#### **17.0 ENTIRE AGREEMENT**

The MSA, including without limitation all Attachments, sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the Parties with respect to such subject matter.

#### **18.0 ORDER OF PRECEDENCE AND CONFLICTS**

Each Service shall be provisioned pursuant an associated Service Order and the MSA. If documents referred to in this MSA conflict with one another (including conflicting contract expiration dates), any such conflicts will be rectified in the following order: (a) Applicable Addendum, Attachment, Service Order; (b) MSA.

#### **19.0 COMPLIANCE WITH LAWS**

- 19.1 As between the Parties, Everstream shall obtain and maintain at its own expense, all licenses, approvals and regulatory authority required by law with respect to Everstream's operation and provision of the Services. Subscriber shall obtain and maintain at its own expense, all licenses, approvals and regulatory authority required by law with respect to Subscriber's use of the Services as contemplated in the MSA. Unless specified otherwise in the MSA or associated Service Order, each Party shall provide all notices, pay all fees and comply with all laws, ordinances, rules and regulations relating to its performance obligations specified in the MSA.
- 19.2 The MSA, including the Attachments and associated Service Order(s), are subject to all applicable federal, state or local laws and regulations in effect in the relevant jurisdiction(s) in which Everstream provides the Services. If any provision of the MSA, the Attachments, or the associated Service Order(s) contravene or are in conflict with any existing law or regulation, the terms of such law or regulation shall take priority over the relevant provision of the MSA, the Attachments, and/or the associated Service Order(s). If the relevant law or regulation applies to some but not all of the Service(s) being provided under the MSA, then such law or regulation shall take priority over the relevant provision of the MSA, the Attachments,

and/or the associated Service Order(s) only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in the herein, nothing contained in the MSA shall constitute a waiver by Everstream of any rights under applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or equipment.

#### **20.0 GOVERNING LAW AND JURISDICTION**

- 21.0 This Agreement shall be governed and interpreted in accordance with the laws of the State of Illinois. Any litigation arising out of or relating to this Agreement shall be brought in the state courts of McHenry County, Illinois or, if it has or can acquire jurisdiction, in the United States District Court for the Northern District of Illinois, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such litigation, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the litigation shall be heard and determined only in any such court, and agrees not to bring any litigation arising out of or relating to this Agreement in any other court.

#### **SEVERABILITY**

In the event that any portion of the MSA is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the Parties set forth in the MSA and the remainder of the MSA shall remain in full force and effect.

#### **22.0 ASSIGNMENT**

Subscriber may not assign the MSA or any associated Service Order without the prior written consent of Everstream, except to a party that acquires all or substantially all of Subscriber's assets that agrees to fulfill Subscriber's obligations herein. Everstream may assign its rights and obligations under the MSA including, without limitation, in whole or in part, to any affiliate or a party that acquires all or substantially all of Everstream's assets, without the prior written approval of or notice to Subscriber. Subscriber understands and agrees that, regardless of any such assignment, the rights and obligations of Everstream in the MSA may accrue to, or be fulfilled by, any affiliate, as well as by Everstream and/or its subcontractors.

#### **23.0 GENERAL**

- 23.1 If either Party fails to enforce any right or remedy under this MSA, that failure is not a waiver of the right or remedy for any other breach or failure by the other Party. No waiver of any right hereunder, or breach of, this MSA will be effective unless in writing and signed by an authorized representative of the Party against whom the waiver is sought to be enforced.
- 23.2 There are no Third-Party beneficiaries to the MSA. The Parties to the MSA are independent contractors.

#### **24.0 NOTICES**

Any notice under the MSA shall be given in writing and shall be deemed to have been provided when received by the other Party at the respective addresses below:

##### **Everstream:**

Everstream Solutions LLC  
Attn: General Counsel  
1228 Euclid Avenue  
Suite 250  
Cleveland, OH 44115

##### **Subscriber:**

McHenry County Conservation District  
Attn: Director of Administration & Finance  
18410 US Highway 14  
Woodstock, IL 60098

#### **25.0 COUNTERPARTS**

The MSA may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Facsimile and electronic signatures will be deemed to be original signatures.

## 26. INSURANCE REQUIREMENTS:

26.1 Everstream shall obtain insurance of the types and in the amounts listed below.

### A. Commercial General and Umbrella Liability Insurance

Everstream shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Subscriber shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to Subscriber. Any insurance or self-insurance maintained by Subscriber shall be excess of Everstream's insurance and shall not contribute with it.

### B. Business Auto and Umbrella Liability Insurance

If applicable, Everstream shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

### C. Workers Compensation Insurance

If applicable, Everstream shall maintain workers compensation and employer's liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If Subscriber has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 11 under the Commercial General and Umbrella Liability Insurance required in this Agreement, Everstream waives all rights against Subscriber and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Everstream's use of the Premises.

### D. General Insurance Provisions

#### 1. Evidence of Insurance

Prior to entering the Premises or performing any work under this Agreement, Everstream shall furnish Subscriber with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to Subscriber prior to the cancellation or material change of any insurance referred to therein. Written notice to Subscriber shall be by certified mail, return receipt requested.

Failure of Subscriber to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Subscriber to identify a deficiency from evidence that is provided shall not be construed as a waiver of Everstream's obligation to maintain such insurance.

Subscriber shall have the right, but not the obligation, of prohibiting Everstream from occupying the Premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Subscriber.

Failure to maintain the required insurance may result in termination of this Agreement at Subscriber's option.

Everstream shall provide certified copies of all insurance policies required above within 10 days of Subscribers' written request for said copies.

#### 2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Subscriber has the right to reject insurance written by an insurer it deems unacceptable.

#### 3. Cross-Liability Coverage

If Everstream's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

#### 4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Subscriber. At the option of the Subscriber, Everstream may be asked to eliminate such deductibles or self-insured retentions as respects the Subscriber, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

#### 5. Subcontractors.

Everstream shall cause each subcontractor employed by Everstream to purchase and maintain insurance similar to the type specified above. When requested by the Subscriber, Everstream shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

26.2 Subscriber shall obtain and keep in force during the duration of this Agreement broad form comprehensive general public liability insurance with the following minimum limits: The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law:

- A. Comprehensive general liability, with a limit of not less than \$2,000,000 each occurrence. e.
- B. Workers' compensation insurance in accordance with the provisions of the laws of the State of Illinois, including occupational disease provisions, for all applicable employees pursuant to this Agreement.
- C. Comprehensive automobile liability, with coverage to include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed, covering personal injury, bodily injury and property damage, with a combined single limit coverage of \$1,000,000.00.



The minimum insurance coverage specified in this Paragraph 2.4 may be provided by self-insurance, participation in a risk management pool, commercial policies of insurance, or a combination thereof.

**27.0 NO WAIVER OF TORT IMMUNITY:**

Nothing contained in this Agreement shall constitute a waiver by Subscriber of any right, privilege or defense available to Subscriber under statutory or common law, including, but not limited to, the Illinois Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 et seq., as amended.).

**28.0 CONFLICT OF INTEREST:**

Everstream represents and certifies that, to the best of its knowledge, (1) no Subscriber employee or agent is interested in the business of Everstream or this Agreement; (2) as of the date of this Agreement neither Everstream nor any person employed or associated with Everstream has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither Everstream nor any person employed by or associated with Everstream shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

**29.0 NO COLLUSION:**

Everstream represents and certifies that (1) Everstream is not barred from contracting with a unit of state or local government as a result of (a) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless Supplier is contesting, its liability for the tax or the amount of the tax in accordance with the procedures established by the appropriate revenue act; or (b) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Illinois Criminal Code of 1961 (720 ILCS 5/33E-1 et seq; and (2) this Agreement is made by Everstream without collusion with any other person, firm, or corporation. If at any time it shall be found that Supplier has, in procuring this Agreement, colluded with any other person, firm, or corporation, then Everstream shall be liable to

Subscriber for all loss or damage that Subscriber may suffer, and this Agreement shall, at Subscriber's option, be null and void.

**30.0 SEXUAL HARASSMENT POLICY :**

Everstream certifies that it has a written Sexual Harassment Policy in full compliance with 775 ILCS 5/2-105(A)(4).

**31.0. NON-DISCRIMINATION:**

In all hiring or employment by Everstream pursuant to this Agreement, there shall be no discrimination against any employee or applicant for employment because of age, race, gender, creed, national origin, marital status, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. Everstream agrees that no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by, or resulting from, this Agreement.

**32.0. FREEDOM OF INFORMATION ACT (FOIA):**

Everstream agrees to maintain the records and documents for this project in compliance with the Freedom of Information Act, 5 ILCS 140/1 et seq. In addition, Everstream shall produce records which are responsive to a request received by the Subscriber under the Freedom of Information Act so that the Subscriber may provide records to those requesting them within the time frames required by law. If additional time is necessary to compile records in response to a request, then Everstream shall so notify the Subscriber and if possible, the Subscriber shall request an extension so as to comply with the Act. In the event that the Subscriber is found to have not complied with the Freedom of Information Act based upon Everstream's failure to produce documents or otherwise appropriately respond to a request under the Act, then Everstream shall indemnify and hold the Subscriber harmless, and pay all amounts determined to be due including but not limited to fines, costs, attorneys' fees and penalties.

**ACCEPTED AND AGREED AS OF THE EFFECTIVE DATE:**

**EVERSTREAM SOLUTIONS LLC**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name (Print or Type)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**SUBSCRIBER**

*Elizabeth Kessler*  
\_\_\_\_\_

Authorized Signature

Elizabeth S. Kessler  
Name (Print or Type)

Executive Director  
Title

**Jun 24, 2020**

\_\_\_\_\_  
Date

## RIGHT OF ENTRY INTO CUSTOMER PREMISE

THIS RIGHT OF ENTRY AGREEMENT ("Agreement"), dated this 21st day of April, 2020, is by and between McHenry County Conservative District (hereinafter the "Owner"), whose address is 18410 US HWY 14 Woodstock IL 60098 and Everstream GLC Holding Company LLC (herein after "Everstream", or "Operator") with offices at 1228 Euclid Ave. Suite 250 Cleveland, OH 44115.

1. Owner represents and warrants that it is the sole legal and equitable owner in fee simple of the property located at \_\_18410 US HWY 14 Woodstock IL 60098\_\_\_\_\_ (including the underlying land and all improvements located thereon from time to time, the "Premises"), more particularly described in the legal description attached hereto, and has full power to convey the rights set forth in this Agreement.
2. In consideration of the mutual benefits and obligations set forth herein, Owner hereby grants to Everstream a right of entry in, on, over, under, through, and across the Premises for the purpose of installing, operating, repairing, replacing, relocating, removing, and maintaining all necessary equipment, including lines, wires, poles, conduits, pipes, converters, amplifiers, splitters, lock boxes and facilities (collectively, the "System"), to provide Everstream's cable television, data, Internet, telecommunication and other entertainment services (collectively, "Services") to occupants of the Premises (collectively, "Tenants").
3. Everstream shall have the right to install, operate, repair, replace, relocate, remove, and maintain the System to provide Services to Owner.
4. Owner shall provide without charge to the Everstream adequate space and right of access, including rights of ingress and egress for installation, operation, repair, replacement, relocation, removal, and maintenance connected with the delivery of Services to Owner.
5. Ownership of all parts of the System shall be and remain the personal property of Everstream. No entity, other than Everstream, may use any part of the System. Everstream shall install and maintain the System on the Premises. The System shall be installed in accordance with good engineering practices and shall conform to normal System installations that are standard in the industry. If Owner requests, Everstream shall submit drawings and plans for Owner's advance approval, such approval not to be unreasonably withheld, conditioned, or delayed.
6. Everstream agrees to maintain public liability insurance of not less than One Million (\$1,000,000) Dollars for injury to any one person; One Million (\$1,000,000) Dollars for injury resulting from any one accident and property damage of not less than One Million (\$1,000,000) Dollars.
7. Except as expressly stated in this agreement, Everstream makes no representations or warranties expressed or implied regarding the system or the services, including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or that the services will be uninterrupted

1228 Euclid Ave. Suite 250 Cleveland, OH 44115

[www.everstream.net](http://www.everstream.net)

or error free, and all such warranties are hereby disclaimed by Everstream and waived by owner to the extent not prohibited by laws. Everstream shall not be liable to owner or to any third party for any indirect, special, exemplary, punitive, incidental or consequential damages, even if advised of the possibility thereof.

8. Everstream shall be responsible for any and all damages directly caused to the Premises by its workmanship and/or direct damages caused to the Premises during installation except for nails, screws and the like used for the attachment of equipment or the boring of holes which is part of normal workmanship related to the installation of the System, which shall not be construed as damages.
9. Owner reserves the right to grant other easements on or rights of access to the Premises, but will not allow such other grants to interfere with this Agreement.
10. This Agreement constitutes the entire agreement relating to "Right of Entry Into Customer Premise between the parties.

**Everstream**

Signed By: \_\_\_\_\_ Printed Name/

Title \_\_\_\_\_

**Owner: McHenry County Conservation District**

Signed By: Elizabeth Kessler

Printed Name/Title: Elizabeth S. Kessler/Executive Director

6/24/2020

1228 Euclid Ave. Suite 250 Cleveland, OH 44115

[www.everstream.net](http://www.everstream.net)

## ADDENDUM TO RIGHT OF ENTRY INTO CUSTOMER PREMISE AGREEMENT

This Addendum (“Addendum”) is made to that particular “Right of Entry into Customer Premise” (“Agreement”) by and between Everstream GLC Holding Company LLC, a Delaware limited liability company (“Everstream”), and McHenry County Conservation District, an Illinois unit of local government (“Owner”). This Addendum modifies and supplements the Agreement. In the event of any conflict between the provisions of the Agreement and this Addendum, the provisions of this Addendum shall control. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

### AGREEMENT

1. Revise **Paragraph 4** by adding the following additional language:

Everstream and Owner shall reasonably cooperate in the coordination of Everstream’s access to and use of the Premises so as to minimize any adverse impact on Owner’s use of the Premises. Everstream shall notify Owner at least seven (7) days prior to commencement of any maintenance or construction on the Premises, and otherwise provide Owner with reasonable advance notice of any other planned activities on the Premises that may affect Owner’s conduct of its normal activities and use of the Premises.

2. Strike **Paragraph 6** in its entirety and replace with the following new language:

Everstream shall obtain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Everstream shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Owner shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to Owner. Any insurance or self-insurance maintained by Owner shall be excess of Everstream’s insurance and shall not contribute with it.

B. Business Auto and Umbrella Liability Insurance

If applicable, Everstream shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

C. Workers Compensation Insurance

If applicable, Everstream shall maintain workers compensation and employer's liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If Owner has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 11 under the Commercial General and Umbrella Liability Insurance required in this Agreement, Everstream waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Everstream's use of the Premises.

D. General Insurance Provisions

1. Evidence of Insurance

Prior to entering the Premises or performing any work under this Agreement, Everstream shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested.

Failure of Owner to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Everstream's obligation to maintain such insurance.

Owner shall have the right, but not the obligation, of prohibiting Everstream from occupying the Premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner.

Failure to maintain the required insurance may result in termination of this Agreement at Owner's option.

Everstream shall provide certified copies of all insurance policies required above within 10 days of Owners' written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is

less than A VII or a Best's rating is not obtained, the Owner has the right to reject insurance written by an insurer it deems unacceptable.

### 3. Cross-Liability Coverage

If Everstream's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

### 4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Owner. At the option of the Owner, Everstream may be asked to eliminate such deductibles or self-insured retentions as respects the Owner, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

### 5. Subcontractors.

Everstream shall cause each subcontractor employed by Everstream to purchase and maintain insurance of the type specified above. When requested by the Owner, Everstream shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

### 3. Insert new **Paragraph 12** as follows:

Everstream shall indemnify and hold harmless the Owner and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising from or in any way connected with (i) the conduct or management arising from Everstream's use or occupation of the Premises or of any business or activity therein, or any work or thing whatsoever done, or condition created in or about the Premises during the term of this Agreement; (ii) any act, omission wrongful act or negligence of Everstream or any of Everstream's subtenants or licensees (if applicable), or the partners, directors, officers, agents, employees, invitees or contractors of Everstream or Everstream's subtenants or licensees; (iii) any accident, injury or damage whatsoever occurring in or at the premises regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Everstream shall similarly protect, indemnify and hold and save harmless the Owner, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Everstream's breach of any of its obligations under, or Everstream's default of, any provision of the Agreement.

### 4. Insert new **Paragraph 13** as follows:

Nothing contained in this Agreement shall constitute a waiver by Owner of any right, privilege or defense available to Owner under statutory or common law, including, but not limited to, the Illinois Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 *et seq.*, as amended.).

All other terms and conditions contained in the Agreement remain unchanged. The Agreement and this Addendum contain all of the terms and conditions agreed to by the parties with respect to the subject matter hereof, and no other alleged communications or agreements between the Parties, written or otherwise, shall vary the terms hereof. Any modification of the Agreement must be in writing and signed by all parties.

**IN WITNESS WHEREOF**, the parties have executed this Addendum as of the dates set forth below.

**EVERSTREAM GLC HOLDING COMPANY, MCHENRY COUNTY CONSERVATION DISTRICT  
LLC**

*Elizabeth Kessler*

By: Elizabeth S. Kessler

By: \_\_\_\_\_

Its: Executive Director

Its: \_\_\_\_\_

*Andy Dylak*

ATTEST: Andy Dylak

ATTEST: \_\_\_\_\_

Its: Director of Administration & Finance

Its: \_\_\_\_\_

Date: June 24, 2020

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



FASTER FIBER. BETTER BUSINESS.

Sales Agent: Pat Brewer  
pbrewer@everstream.net  
815-847-0119

Quote #: Q-13092-1  
Date: 4/15/2020  
Expires On: 5/9/2020

Customer Details

Contact Name: Anne Basten  
Email: [redacted]  
Account Name: McHenry County Conservation District  
Bill to Contact Name: [redacted]  
Phone: [redacted]  
Billing Address: [redacted]

18410 US Highway 14 A Location: Headend  
Z Location: 18410 US Highway 14, Woodstock, IL 60098

QTY	Product Name	Bandwidth (Mbps)	Term	Non-Recurring Charges	Monthly Recurring Charges
1.00	Dedicated Internet Access	50	60		\$500.00
1.00	IPv4 Blocks /29 (6 usable)		60		\$0.00

Total NRC (Non-Recurring Charges) \$0.00  
Total MRC (Monthly Recurring Charges) \$500.00

Comments

Term: The initial term for this SO shall be one (1) year ("Initial Term"). The Initial Term shall automatically renew every twelve (12) months for a period of four (4) years unless Subscriber provides Everstream written notice no less than one hundred twenty (120) days prior to the expiration of the Term. Their will be no pricing adjustments during the first 5 years of service.

Service Order Details

Subscriber approves and accepts this Services Order Amendment is governed by the Master Services Agreement between Subscriber and Everstream (the 'MSA') [as amended]. Subscriber agrees to be bound by the terms and conditions of the MSA. The Requested FOC (Firm Order Commitment) date is subject to Everstream's internal provisioning, and an actual FOC Date will be issued to Subscriber in accordance with the MSA. Terms of Service, including all active Subscriber Service Order Amendment(s), together with your Everstream Master Services Agreement, constitute the entire agreement between you and Everstream relating to these Services. You are not entitled to rely on any other agreements or undertakings relating to Services provided by Everstream. Invoicing of service(s) shall begin with the issue of a Service COFA document post-installation. The delivered service(s) will be considered accepted by SUBSCRIBER as certified to be error free and built to "Service Order" specifications at the conclusion of a five (5) day acceptance period. Internet service provides one (1) public-facing IPV4 /30 address.

Subscriber shall pay all federal, state, and local taxes, government fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of the Master Agreement including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable.

SIGNATURES

SUBSCRIBER AUTHORIZED SIGNATURE

Signature:

Print: Andy Dylak McHenry Co Conservation District

Title Position: Director of Administration & Finance

Date: June 24, 2020

EVERSTREAM

Signature:

Print:

Title Position:

Date:



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# Resolution 20-53 Everstream contract

Final Audit Report

2020-06-24


Created:	2020-06-24
By:	Anne Basten (abasten@mccdistrct.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAD2aNovZDBPzdN3m1YgG4_2wcHkZXCJSP

## "Resolution 20-53 Everstream contract" History


-  Document created by Anne Basten (abasten@mccdistrct.org)  
2020-06-24 - 5:21:34 PM GMT- IP address: 208.88.94.100
-  Document emailed to Vernon M Scacci (vscacci@mccdistrct.org) for signature  
2020-06-24 - 5:23:25 PM GMT
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2020-06-24 - 8:10:29 PM GMT- IP address: 99.117.11.28
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-  Email viewed by Carolyn Campbell (ccampbell@mccdistrct.org)  
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-  Email viewed by Elizabeth Kessler (ekessler@mccdistrct.org)  
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-  Document e-signed by Elizabeth Kessler (ekessler@mccdistrct.org)  
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-  Document emailed to Andrew Dylak (adylak@mccdistrct.org) for signature  
2020-06-24 - 9:27:53 PM GMT

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2020-06-24 - 9:31:31 PM GMT