

**CONDUIT OCCUPANCY LICENSE AGREEMENT BETWEEN THE CITY OF
MILWAUKEE AND EVERSTREAM GLC HOLDING COMPANY LLC**

This Conduit Occupancy License Agreement (“Agreement”) is entered into as of the ____ day of _____, 2019, (the “Effective Date”), by and between the City of Milwaukee (“City”), a municipal corporation, having its principal place of business at 200 East Wells Street, Milwaukee, Wisconsin 53202 and Everstream GLC Holding Company LLC (“Everstream”) having its principal place of business at 1228 Euclid Avenue, Suite 250, Cleveland Ohio 44115 (collectively, the “Parties”).

WHEREAS, the City owns and operates a conduit system located in the City of Milwaukee, County of Milwaukee, State of Wisconsin (“Conduit System”); and

WHEREAS, Everstream has registered in accordance with sec. 98-7, Milwaukee Code of Ordinances, for permission to place and maintain telecommunications facilities (“Everstream Facilities”) in the portions of the City’s Conduit System described on Exhibit A to this Agreement; and

WHEREAS, City has agreed pursuant to sec. 98-5, Milwaukee of Ordinances, to permit, under certain conditions and for a 4 year renewable term at the parties’ option, on a license basis, the placement of Everstream’s Facilities within the portion of the City’s Conduit System designated in Everstream’s Facilities conduit map on file in the office of the City Engineer and the Department of Public Works and summarized herein as Exhibit A; and

WHEREAS, the Common Council of the City of Milwaukee has authorized this Agreement via Common Council Resolution File No. _____ adopted on _____; and

Now, Therefore, In consideration of the foregoing and of the mutual covenants provided herein, the Parties agree as follows:

A. SCOPE OF AGREEMENT

1. Grant of Use. Subject to the provisions of this Agreement, the City hereby grants to Everstream, on a license basis (“License”), the right to use the portion of City’s Conduit System outlined on Exhibit A for the placement of Everstream’s Facilities. Upon mutual agreement of the City, through its City Engineer, and Everstream, Exhibits A & B may be amended from time to time to reflect changes in the use of the Conduit System by Everstream.
2. Non-Vesting Provision. No use of the City’s Conduit System by Everstream or payment of any fees required under this Agreement shall create or vest in Everstream any easements or other ownership or property rights of any nature in the Conduit System. Furthermore, this Agreement shall not constitute an assignment of any City rights to use public or private property in which the

Conduit System is located. In the event any property owner or municipal or other public authority terminates any permit or other right of Everstream to occupy the Conduit System, Everstream shall have the right to protest by appropriate proceedings, or renegotiate the termination of such permit. In such event, Everstream shall indemnify and hold the City harmless from any expense, legal action or cost, including reasonable attorney's fees, resulting from the exercise of its rights under this paragraph. In the event that Everstream has exhausted all its rights of appeal in protesting the above and has failed to obtain the relief sought in such proceedings or appeal, or if any renegotiations have failed, the City shall have the right to terminate this Agreement by giving at least ninety (90) days written notice to Everstream. In no event shall the foregoing allow for an appeal of the City's right to terminate any permit or right of Everstream allowed under this Agreement. Upon the effective date of termination undertaken in accordance with the provisions of the preceding sentence, this Agreement shall become null and void and neither party hereto shall have any further obligation to the other with respect thereto unless otherwise indicated herein.

3. Permits and Approvals Required. Prior to the installation of Everstream's Facilities within the Conduit System located upon public/private property, Everstream shall be responsible for obtaining from the appropriate public and/or private authority any required authorization(s), permits or easements to install Everstream's Facilities within any portion of the Conduit System.
4. City's Maintenance Right. The City's right to maintain its Conduit System and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements is in no manner limited by this Agreement.
5. No Restriction on the City. Nothing contained in this Agreement shall be construed to compel the City to construct, reconstruct, retain, extend, or place its Conduit System for use by Everstream unless needed for the City's own service requirements. Notwithstanding the foregoing, Everstream shall have the right to terminate this Agreement upon ninety (90) days' prior written notice to the City in the event Everstream is unable, because of the condition of the Conduit System, to use the Conduit System in the manner originally contemplated herein.
6. Compliance with Law. Nothing contained in this Agreement shall be construed as a limitation, restriction or prohibition against the City with respect to any agreement or arrangement which the City has heretofore entered into with others not parties to this Agreement regarding the Conduit System covered by this Agreement. This Agreement is subject to all laws, ordinances and regulations which in any manner affect the rights and obligations of the Parties under this Agreement and the Parties shall at all times observe and comply with all laws, ordinances, and regulations so long

as such laws, ordinances or regulations remain in effect. Everstream specifically agrees to comply with all the provisions of Chapter 98, Milwaukee Code of Ordinances, which provisions are specifically incorporated herein and made a part hereof.

7. Locate Request. Everstream shall register Everstream's Facilities with Diggers' Hotline in addition to other existing Everstream facilities. The City will not be listed as an owner of Everstream's Facilities, for purposes of Wis. Stat. § 182.0175(2m), even though Everstream's Facilities will run in the Conduit System in some locations. Everstream shall be responsible for responding to all facility locate requests for Everstream Facilities. If Everstream is not currently a member of Diggers' Hotline, Everstream shall become a member in order to receive notifications from Diggers' Hotline and locate their corresponding facilities.

B. TERM

This Agreement shall become effective on the Effective Date and shall continue in effect for four (4) years thereafter unless terminated as provided for herein or by operation of law (the "Initial Term"). The Initial Term may be extended for additional 1 year periods, upon the terms and conditions except for the Occupancy Fee which shall be recomputed by City for each successive year in accordance with sec. 98-13, Milwaukee Code of Ordinances as amended from time to time, if a written extension agreement is executed by City's Commissioner of Public Works and Everstream. The Initial Term along with any extensions agreed to hereunder shall collectively be referred to as the "Term".

C. EVERSTREAM OPTION ON RELOCATION

1. In the event the City elects, in its sole discretion, to relocate its Conduit System, or any portion thereof, Everstream shall have the option to:
 - a. request the relocation of Everstream's Facilities along with the City's Conduit System and Everstream shall bear its pro rata share of any and all reasonable costs attributable to such relocation, or
 - b. terminate this Agreement without any further obligation to the City as per Section I(2).
2. In the event Everstream requests the relocation of Everstream's Facilities as provided in Section C.1.a. above, Everstream's pro-rata share of any and all costs attributable to such relocation shall be calculated by multiplying City's total cost of relocating the Conduit System by a fraction, the numerator of which shall be the number of innerducts Everstream is occupying within the Conduit System, and the denominator of which shall be the total possible number of innerducts located within the Conduit System.

D. CONSTRUCTION AND MAINTENANCE

1. Application Process. Subsection D(1) applies only in instances where Everstream desires apply to expand its use of the City's Conduit beyond the initial use as outlined in Exhibits A and B.
 - a. Everstream shall submit to the City Engineer a detailed request to occupy City conduit, which shall include the route of the requested occupancy, size of cable, excess cable storage requirements, construction design drawings, and installation schedule ("Occupancy Application").
 - b. The City shall review the Occupancy Application and determine the feasibility of the request. If the City determines that the Occupancy Application is preliminarily feasible, the City shall notify Everstream of its determination.
 - c. Everstream shall obtain all necessary permits to allow Everstream or its contractor to enter the City's Conduit System to survey for possible occupancy space and Everstream shall provide the survey information to the City for its review. The City shall review the manhole survey information to determine if there is sufficient available space within the City's Conduit. If the City determines that there is sufficient space, then the City shall calculate the License fee for Conduit Occupancy ("License Fee") due from Everstream and further described in Section G.1 below, notify Everstream that the Occupancy Application is approved, and shall set forth any installation instructions ("Notice to Proceed"). Everstream shall obtain all necessary permits to install its cable according to the installation instructions provided by the City.
2. Construction Practices. Everstream shall, at its own expense, during the Term, maintain Everstream's Facilities in a safe condition, properly identified and tagged along with a pull rope alongside Everstream cable, in accordance with regulations established by the City, so as not to physically conflict or electrically interfere with the facilities placed in the Conduit System by the City or others.
3. Construction Management. Except in the event of an Everstream emergency as described in Section E.2 below, Everstream shall notify the City ten (10) days in advance by written notice at the address below before any routine repair or maintenance of Everstream's Facilities:

Mr. Samir Amin
City Engineer
Zeidler Municipal Building
841 North Broadway, Room 701

Everstream shall be responsible for obtaining all necessary City permits before occupying the right of way and accessing the manholes. Everstream shall comply with all OSHA rules and regulations for confined space entry which includes keeping on file the necessary confined spaces entry form. The City or its agents shall have the authority, without subjecting the City to any liability therefore, to suspend Everstream's work or operations in and around City's manholes/handholes if, in the sole discretion of the City employee or agent, any hazardous conditions arise or any unsafe practices, including unsafe practices which may threaten the integrity of the City's facilities, are being followed by Everstream's employees, agents or contractors. In the event of a City imposed suspension of Everstream's work, authorized representatives of the City and Everstream shall promptly meet at the earliest mutually possible time but no more than three (3) business days after the imposition of the suspension, to take all steps necessary to continue. Within that time, the City shall provide to Everstream written notice of steps to be taken by Everstream to eliminate any hazardous conditions or to revise any practices deemed to be unsafe. The presence of the City or its authorized agent shall not relieve Everstream of Everstream's responsibility to conduct all of its work in and around the City's manholes/handholes in a safe and workmanlike manner.

4. Occupancy Plan. After any updates to Everstream's Facilities within the City conduit system, Everstream shall provide the City with an updated map indicating all City conduit occupied by Everstream.

E. EMERGENCY PROCEDURES

1. City Emergency. In the event of a City emergency:
 - a. The City's work shall take precedence over any and all operations of Everstream in the City's Conduit System;
 - b. The City may rearrange Everstream's Facilities in a reasonable manner.
2. Everstream Emergency. In the event of an Everstream emergency, Everstream shall promptly notify the City at the Unified Call Center at (414) 286-3481 prior to performing any maintenance or repair necessary to correct the emergency situation. After such notice is given, Everstream may enter the City's manholes, handholes, and conduits to perform such necessary emergency repair or maintenance, provided that notwithstanding the completion of the emergency repair or maintenance, Everstream shall apply for a DPW permit as soon as reasonably practicable thereafter.

F. MAINTENANCE AND INSPECTION RIGHTS

1. Maintenance upon Everstream Default. If any part of Everstream's Facilities is not placed and maintained in accordance with the terms and conditions set forth in this Agreement and Everstream has not corrected the violation within thirty (30) days from receipt of written notice thereof from the City, then, in such event, the City may, at its option, correct said condition and notify Everstream in writing prior to performing such work. However, in the event such conditions pose an immediate threat to the safety of the City's employees or the public, interfere with the performance of the City's service obligations, or pose an immediate threat to the physical integrity of the City's facilities, and prior notice to Everstream before the City performs such work is not reasonable under the circumstances, the City may perform such work and/or take such action that it deems necessary without first giving written notice to Everstream and without subjecting itself to any liability for damage to Everstream's Facilities or for any interruption of EverStrem's services. As soon as practicable thereafter, the City will advise Everstream in writing of the work performed or the action taken. Everstream shall be responsible for all expenses reasonably incurred by the City associated with any work or action performed by the City pursuant hereto and shall reimburse the City within thirty (30) days from its receipt of the City's itemized invoice and supporting documentation.
2. Inspection Rights. The City reserves the right to make inspections of any part of Everstream's Facilities in the Conduit System at any time. The making of inspections or the failure to do so shall not operate to impose upon the City any liability of any kind nor relieve Everstream of any responsibility, obligations or liability assumed under this Agreement.

G. FEES AND CHARGES

1. The Conduit Occupancy Fee due shall be \$8,484.45 per year ("Occupancy Fee") established in accordance with sec. 98-13 Milwaukee Code of Ordinances as amended from time to time. The Occupancy Fee has been calculated in accordance with the worksheet attached as Exhibit B. The Occupancy Fee is subject to change at any time sec. 98-13 Milwaukee Code of Ordinances is amended.
2. Within 30 days of receipt of the Notice to Proceed described in Section D.1.c above, Everstream shall pay the City the Occupancy Fee established in accordance with sec. 98-13, Milwaukee Code of Ordinances as amended from time to time for the first year of the Term.
3. Each year, within 30 days of the yearly anniversary of the receipt of the Notice to Proceed described in Section D.1.c above, Everstream shall pay the City the Occupancy Fee established in accordance with sec. 98-13, Milwaukee

Code of Ordinances as amended from time to time for the subsequent year of the Term.

4. All standard DPW permit fees shall apply.
5. Late Payments. If Everstream does not make timely payment pursuant to this Section it shall pay simple interest at the rate of one percent per month as well as any costs of collection including but not limited to attorney's fees, expenses, or court fees.

H. LIABILITY AND INDEMNIFICATION

1. City Liability. The City shall exercise reasonable caution to avoid damaging Everstream's Facilities and shall make a report to Everstream of any and all damage caused by its employees, agents or contractors as soon as practical after such damage occurs. The City agrees to reimburse Everstream for all reasonable, actual, and direct costs incurred by Everstream for the physical repair of Everstream's Facilities damaged by the negligence of the City, its employees, or agents. However, the City shall not be responsible or liable for damages to Everstream's Facilities caused by the negligence of other licensees whom the City has given permission to occupy its Conduit System.
2. Everstream Liability. Everstream shall exercise caution to avoid damaging the City's or other licensees' facilities and shall make a prompt report to the City of any and all damage caused by its employees, agents or contractors. Everstream agrees to reimburse the City or other licensees for all reasonable and actual costs incurred by the City or other licensees for the physical repair of its facilities damaged by the acts or omissions of Everstream, its employees or agents.
3. Everstream Indemnification Obligation. Everstream assumes entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of an injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of the City or others sustained or alleged to have been sustained in connection with or to have arisen out of, or resulting from the exercise by Everstream of its rights granted herein, including losses, expenses and damages sustained by the City, provided that the City shall have given written notice to Everstream of the facts giving rise to such losses, expenses, damages or claims as soon as practical. Everstream shall indemnify the City and its officers, agents, employees, and other licensees for all losses, damages, costs, expenses, judgments, accrued interest, liabilities, or decrees arising out of any claim, action in a court, or proceeding before an administrative agency that is brought against the City or any of its subcontractors, officers, agents, employees, or other licensees, including any failure to comply with Paragraph

A.3 of this Agreement, for the acts or omissions of Everstream or any of its subcontractors, officers, agents, or employees in whole or in part in the performance of the covenants, acts, matters or things covered by this Agreement, or for injury or damage caused by the alleged acts or omissions of Everstream or any of its subcontractors, its officers, agents or employees. The City will, at its sole option, decide whether to tender the defense of any claim, action in court, or proceeding before an administrative agency in which Everstream has a duty to indemnify to Everstream or its insurer and upon such tender it shall be the duty of Everstream and its insurer to defend such claim, action, or proceeding without cost or expense to the City or its officers, agents, employees, or licensees using counsel selected by Everstream and its insurer and approved by the City. Everstream shall not settle any claim, action in any court, or proceeding before an administrative agency relating to the City unless the City consents to the settlement in writing.

4. No Liability for Consequential Damages. Notwithstanding the anything contained herein, the City shall not be liable to Everstream for indirect or consequential damages of Everstream or of third parties, including, but not limited to, any interruption of service or for any loss of revenues resulting therefrom, whether caused by the negligence of either party or not.

I. TERMINATION

1. Mutual Termination. This Agreement may terminate at any time upon written mutual agreement of the Parties.
2. Termination by Default. If at any time either party fails or refuses to perform any of the conditions contained in this Agreement, and such failure or refusal shall continue for thirty (30) days after receipt of written notice from the other party, the non-defaulting party, at its election and upon ten (10) days advance written notice to the other party, may terminate this Agreement. Notwithstanding the above, where a default cannot reasonably be cured by the City within thirty (30) days, if the City shall proceed promptly to cure the same and prosecute such cure with all due diligence, the time for curing the default shall be extended for such a period of time as may be reasonably necessary to complete such cure. Any extension of the thirty (30) day cure period granted to Everstream by the City shall only be effective if the City grants the same in writing. The waiver by either party of any breach of any term, covenant or condition shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition.
3. Removal upon Termination. Upon termination of this Agreement for any reason, Everstream shall remove Everstream's Facilities within ninety (90) days following termination. In the event Everstream fails to remove Everstream's Facilities within ninety (90) days, the Everstream Facilities shall

be deemed abandoned and the City, at its sole discretion and without liability, shall remove the Everstream Facilities and Everstream shall reimburse the City for all costs reasonably associated with such removal.

4. Liability Not Extinguished. Termination of this Agreement shall not affect either party's liabilities or obligations incurred prior to the effective date of termination or any liabilities incurred or obligations that survive termination of this Agreement pursuant to Section I(5).
5. Federal Debarment and Suspension. The City reserves the right to immediately terminate this Agreement without advanced notice to Everstream if Everstream is presently or becomes during the term of this Agreement identified on the list of parties excluded from federal procurement and non-procurement contracts.
6. Survival. The following Sections survive termination of this Agreement: A(2), A(4), A(6), F, G(5), H, I(3), I(4), I(6), L, & M.

J. INSURANCE

1. Insurer Qualification. Everstream shall carry comprehensive or commercial general liability insurance together with coverage for contractual liability, issued by insurance carriers licensed to do business in the State of Wisconsin and maintaining an A- or better rating as established by A.M. Best & Company. The amounts of such insurance shall be in the amount of not less than \$1,000,000 as to any one occurrence and \$2,000,000 general aggregate. Everstream shall also carry such insurance as will protect it from all claims under any Worker's Compensation Law in effect that may be applicable to it. Everstream shall submit to the City certificates by each company insuring Everstream to the effect that it has insured Everstream for all liabilities of Everstream covered by this Agreement.
2. Liability Not Reduced. The required minimum limits of coverage shown above do not limit or diminish Everstream's liability under this Agreement.
3. Form of Certification. Everstream shall submit to the City a standard "Accord" insurance certificate (or comparable form reasonably acceptable to the City) signed by an authorized representative of its insurance company, certifying that the insurance coverage required hereunder is in effect for the purposes of this Agreement. Said insurance certificate shall certify that no material alteration, modification or termination of such coverage shall be effective without at least thirty (30) days' advance written notice to the City.
4. City as Additional Named Insured. All policies (excluding worker's compensation) shall include the City as an additional insured.

5. Insurance Document Review. At the City's sole cost, Everstream shall permit any authorized representative of the City to examine Everstream's original insurance policies should the City so reasonably request. In the event the City reviews Everstream's insurance policies, the City shall keep all information concerning Everstream's insurance policies confidential to the extent permissible under law.
6. Failure to Provide Insurance. Should Everstream at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled or non-renewed, the City shall have the right to, in its sole discretion, either immediately terminate this Agreement or secure substitute coverages and Everstream shall reimburse the City for all actual and direct expenses and premiums reasonably paid in connection with such substitute coverage.
7. Effective Period. All insurance required in accordance with this Agreement must be effective before the City will authorize installation of Everstream's Facilities within the Conduit System and shall remain in force until such time as this Agreement is terminated and Everstream's Facilities are removed from the Conduit System or abandoned by Everstream.
8. Alternate Coverage. A combination of primary and excess/umbrella liability policies will be acceptable as a means to meet the limits required under this Agreement.

K. ASSIGNMENT

1. Assignment Requires Consent. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or permitted assigns; provided, however, that no assignment hereof or of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of each party hereto, which consent shall not be unreasonably withheld or unduly delayed.
2. Obligations After Assignment. In the event of any assignment by either party undertaken pursuant to subparagraph (1) above, except as expressly set forth therein, the assigning or transferring party shall remain liable for all its obligations under this Agreement, unless: (a)(i) the other party consents to release, by written instrument, the assigning or transferring party from such obligations, and (ii) the assignee or transferee shall have affirmatively assumed in writing all of the obligations of the assigning or transferring party under this Agreement.

L. NOTICES.

Except as expressly indicated in this Agreement, all notices and other communications to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given (i) if personally delivered to the person being served or to an officer of the corporate party being served; (ii) if mailed by United States certified mail, return receipt requested, postage prepaid; or (iii) if delivered by overnight carrier, delivery receipt requested, to the parties at the following addresses:

If to City:

Mr. Samir Amin
City Engineer
Zeidler Municipal Building
841 North Broadway, Room 701
Milwaukee, WI 53202

If to Everstream:

Mr. Bill Fenton
VP of Operations
Everstream
324 East Wisconsin Ave, Suite 730
Milwaukee, WI 53202

With a copy to:

Everstream GLC Holding Company LLC
1228 Euclid Avenue
Suite 250
Cleveland, Ohio 44115
Attention: General Counsel

M. GENERAL PROVISIONS

1. Liens and Encumbrances. Except as otherwise provided in this Agreement, Everstream has no power or right to create and will not permit any lien or encumbrance, including, without limitation, tax liens, mechanics liens, or other liens or encumbrances with respect to work performed or equipment furnished, in connection with the installation, repair, maintenance or operation of Everstream's Facilities installed within the Conduit System.
2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to the principles of conflict of law. Any litigation relating to the formation, interpretation or alleged breach of this Agreement must be brought in the state and federal courts having jurisdiction in Milwaukee County, Wisconsin, and Everstream consents to the jurisdiction of such courts.

6. Records. Everstream understands that the City is bound by the Wisconsin Public Records Law, Wis. Stat. §19.21, *et. seq.* Pursuant to Wis. Stat. §19.36(3), the City may be obligated to produce, to a third party, the records of Everstream that are “produced or collected” by Everstream under this Agreement (“Records”). Everstream is further directed to Wis. Stat. §19.21, *et. seq.*, for the statutory definition of Records subject to disclosure under this paragraph, and Everstream acknowledges that it has read and understands that definition. Irrespective of any other term of this Agreement, Everstream is (1) obligated to retain Records for seven years from the date of the Record’s creation, and (2) produce such Records to the City if, in the City’s determination, the City is required to produce the Records to a third party in response to a public records request. Everstream’s failure to retain and produce Records as required by this paragraph shall constitute a material breach of this Agreement, and Everstream must defend and hold the City harmless from liability due such breach.

4. Conflict of Interest.
 - a. Interest in Agreement. No officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any of the matters to which this Agreement pertains shall have any personal interest, direct or indirect, in this Agreement.
 - b. Interest of Other Local Public Officials. No member of the governing body of the City and no other public official of the City who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement shall have any personal interest, direct or indirect, in this Agreement.
 - c. Interest of Everstream and Employees. Everstream covenants, acknowledges, and agrees that no person who exercises any functions or responsibilities in connection with this Agreement has any personal financial interest, direct or indirect, in this Agreement. Everstream further covenants and acknowledges that it has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with its performance under this Agreement. Everstream further covenants that, in the performance of its obligations under this Agreement, no person having any such conflicting interest shall be employed.

5. Discrimination Prohibited.
 - a. In all hiring or employment made possible by or resulting from this Agreement there will not be any discrimination against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status or sexual orientation, gender identity or expression,

victimhood of domestic abuse or sexual assault, past or present membership in the military service, HIV status, domestic partnership, genetic identity, homelessness, or familial status, or based upon affiliation with or perceived affiliation with any of these protected categories. This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices required or to be provided by federal or state agencies involved setting forth the provisions of the clause.

- b. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement. The City and each employer will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.
 - c. Everstream agrees it will comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.
 - d. Everstream shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to Agreements or subcontracts for standard commercial supplies or raw materials.
6. Severability. If any term of this Agreement is, to any extent, held invalid or incapable of being enforced, such term shall be excluded only to the extent of such invalidity or unenforceability. All other terms hereof shall remain in full force and effect and, to the extent possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term as determined by the City. If such invalid and unenforceable term has a material and adverse effect on a party and a valid and enforceable replacement that comes closest to expressing the intention of such invalid or unenforceable term as determined by the City cannot be created, the party materially and adversely impacted shall be allowed to terminate the Agreement pursuant to Section I(2).
7. Entire Agreement/Amendment. This Agreement sets forth all of the covenants, provisions, agreements, conditions, and understandings between the Parties and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, other than are herein set forth. This

Agreement may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the Parties to this Agreement.

- 8. Waiver. Nothing in this Agreement shall be construed to waive any privilege, right of recovery, cause of action, defense, remedy, category of damages, or immunity to which the City is entitled under common law, or federal, state, or local law; waiver of any of the foregoing may only be accomplished in writing by an individual with the authority to bind the City
- 9. Titles. The titles of sections in this Agreement are for convenience only and do not limit or construe the meaning of any section.
- 10. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered to be one and the same agreement, and shall become effective on the date indicated after one or more counterparts have been signed by each of the parties and delivered to the other party.

In Witness Whereof, The Parties have executed this Agreement as of the day and year first above written.

CITY OF MILWAUKEE

**EVERSTREAM GLC HOLDING
COMPANY LLC**

By: _____
Commissioner of Public Works

By: _____

Name (Printed): _____

Dated: _____

Title: _____

Dated: _____

COUNTERSIGNED:

Martin Matson, Comptroller

Dated: _____

Approved as to form, execution, and
content this __ day of _____, 2019.

Assistant City Attorney