



# East Grand Forks Water & Light Department

*Life Connected Since 1909*

## WATER & LIGHT COMMISSION MEETING AGENDA

February 1, 2023

8:00 a.m., City Hall Council Chambers

1. Call meeting to order
2. Approve minutes from previous meeting – January 18, 2023
3. Bills and payroll
4. Comments from the public
5. Reports
  - a. Widseth
    - i. Todd
    - ii. Steve
  - b. City Attorney
6. Old Business
7. Halstad Telephone Company - Dark Fiber Contracts
8. Department Heads
9. Commissioner's reports
10. Adjourn to February 15, 2023 at 8:00 a.m.

Individuals with disabilities, language barriers or other needs who plan to attend the meeting and will need special accommodations should contact Nancy Ellis, ADA Coordinator at (218)-773-2208. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements. Also, materials can be provided in alternative formats for people with disabilities or with limited English proficiency (LEP) by contacting the ADA Coordinator (218)-773-2208 five (5) days prior to the meeting.

Minutes of the regular meeting of the Water, Light, Power and Building Commission of the City of East Grand Forks, Minnesota held on January 18, 2023, at 8:00 am in the City Council Chambers.

Present: Quirk, Grinde, Beauchamp, Riopelle

Absent: None

Also present: Ron Galstad, Keith Mykleseth, Brian Johnson, Todd Grabanski, Steve Emery, Todd Forster, Brianna Feil, Corey Thompson, Jordan Midgarden, Karla Anderson.

It was moved by Commissioner Grinde seconded by Commissioner Beauchamp to approve the minutes of the previous regular meeting of January 4, 2023,

Voting Aye: Quirk, Grinde, Beauchamp, Riopelle

Voting Nay: None

It was moved by Commissioner Beauchamp seconded by Commissioner Grinde to authorize the Secretary to issue payment of the recommended bills and payroll in the amount of \$1,817,781.21.

Voting Aye: Quirk, Grinde, Beauchamp, Riopelle

Voting Nay: None

It was moved by Commissioner Grinde seconded by Commissioner Beauchamp to authorize WSN to file the Plans and Specs for the 2023 Watermain Improvement Project; advertise for bids; set the bid date for 2-14-23 at 10:30 am.

Voting Aye: Quirk, Grinde, Beauchamp, Riopelle

Voting Nay: None

It was moved by Commissioner Grinde seconded by Commissioner Beauchamp to award the contract for the 2023 Soda Ash Equipment Replacement Project to PKG Contracting in the amount of \$233,569.00.

Voting Aye: Quirk, Grinde, Beauchamp, Riopelle

Voting Nay: None

It was moved by Commissioner Grinde seconded by Commissioner Beauchamp to approve the MMUA Delegate Appointment for 2023.

Voting Aye: Quirk, Grinde, Beauchamp, Riopelle

Voting Nay: None

It was moved by Commissioner Beauchamp seconded by Commissioner Grinde to adjourn at 8:18 am to the next regular meeting on February 1, 2023, at 8:00 am to be held in the City Council Chambers.

Voting Aye: Quirk, Grinde, Beauchamp, Riopelle

Voting Nay: None

Lori Maloney  
Commission Secretary

# Accounts Payable

## Check Register Totals Only

User: jmidgarden  
 Printed: 1/26/2023 - 3:34 PM



# City of East Grand Forks

P. O. Box 373  
 East Grand Forks, MN 56721  
 (218) 773-2483

Check	Date	Vendor No	Vendor Name	Amount	Voucher
518490	02/01/2023	ACM502	Acme Electric Companies	190.49	0
518491	02/01/2023	ADV501	Advanced Business Methods	73.45	0
518492	02/01/2023	ARA500	Aramark Uniform Services	408.58	0
518493	02/01/2023	BOR501	Border States Electric Supply	7,652.04	0
518494	02/01/2023	HOM502	Henry Borysewicz	300.00	0
518495	02/01/2023	BUS501	Business Essentials	52.06	0
518496	02/01/2023	EAG501	Eagle Electric	3,105.40	0
518497	02/01/2023	EGF501	EGF City	2,102.21	0
518498	02/01/2023	EXP501	Exponent	532.50	0
518499	02/01/2023	GFT501	GF Thur-O-Clean	962.69	0
518500	02/01/2023	GOP501	Gopher State One-Call	50.00	0
518501	02/01/2023	GRA505	Graymont (WI) LLC	8,666.57	0
518502	02/01/2023	IHM500	iHeartMedia	651.74	0
518503	02/01/2023	LAK501	Lake Aggasiz Water Authority	2,000.00	0
518504	02/01/2023	LEA501	League of MN Cities Insurance Trust	118,327.99	0
518505	02/01/2023	MND504	MN Dept of Health	23.00	0
518506	02/01/2023	MND506	MN Dept of Health - Plan Review	150.00	0
518507	02/01/2023	MMU501	MN Municipal Utilities Assoc	28,487.00	0
518508	02/01/2023	MNR502	MN Rural Water Association	400.00	0
518509	02/01/2023	NAL501	Nalco Company	1,230.66	0
518510	02/01/2023	PIT504	Pitney Bowes	1,032.00	0
518511	02/01/2023	PKM501	PKM Electric Co-op Inc	2,583.87	0
518512	02/01/2023	RMB500	RMB Environmental Laboratories, Inc	108.90	0
518513	02/01/2023	RRV501	RRV Co-op Power Assn	982.26	0
518514	02/01/2023	TOS502	Toshiba America Business Solutions	571.40	0
518515	02/01/2023	TRE504	Treatment Resources, Inc.	529.60	0
518516	02/01/2023	USB502	US Bank Corporate Payment Systems	2,441.71	0
518517	02/01/2023	WAT501	Water & Light Department	1,900.00	0
518518	02/01/2023	XCE501	Xcel Energy	8,002.03	0
Check Total:				193,518.15	

Accounts Payable  
Check Register Totals Only

User: jmidgarden  
Printed: 1/26/2023 - 3:57 PM



**City of East Grand Forks**

P. O. Box 373  
East Grand Forks, MN 56721  
(218) 773-2483

Check	Date	Vendor No	Vendor Name	Amount	Voucher
518519	02/01/2023	HAW501	Hawkins Inc	23,232.00	0
518520	02/01/2023	TEN501	Tenant Sales & Service Company	1,098.83	0
				<hr/> <hr/>	
Check Total:				24,330.83	
				<hr/> <hr/>	

# Accounts Payable

## Check Register Totals Only

User: bfeil  
Printed: 1/27/2023 - 9:51 AM



# City of East Grand Forks

P. O. Box 373  
East Grand Forks, MN 56721  
(218) 773-2483

Check	Date	Vendor No	Vendor Name	Amount	Voucher
518521	02/01/2023	WIN500	Milbank Winwater Works	40,690.00	0
				<hr/> <hr/>	
Check Total:				40,690.00	
				<hr/> <hr/>	

## Transaction Detail - Summary

Trans Date	Posting Date	MCCG Code	MCC	Merchant Category Code Description	Merchant Name	Merchant State/Province	Taxpayer ID Number (TIN)	Trans Amount	Posting Type	Purchase ID	Trans Status	Disputed Status
<b>Name:</b> BRIANNA M FEIL <b>Account Number:</b> **8731 <b>Optional 1:</b> <b>Optional 2:</b> <b>Lost/Stolen Account:</b> <b>Replacement Account:</b> <b>Billing Type:</b> Centrally Billed Account												
<a href="#">01/10/2023</a>	01/11/2023	240507	5411	GROCERY STORES,SUPERMARK	HUGOS #5	MN	450273731	\$ 6.42	<a href="#">Memo</a>	06884680004VPRY702 7723293	Not Reviewed	No
<a href="#">01/10/2023</a>	01/11/2023	240500	5992	FLORISTS	EAST GRAND FLORAL	MN	371917013	62.12	<a href="#">Memo</a>	opsnt99qji1ng	Not Reviewed	No
<a href="#">01/18/2023</a>	01/20/2023	240498	2741	PUBLISHING/PRINTING	DAYDREAMS SPECIALTIES	ND	464456733	14.00	<a href="#">Memo</a>		Not Reviewed	No
<b>Name:</b> BRIAN JOHNSON <b>Account Number:</b> **2647 <b>Optional 1:</b> <b>Optional 2:</b> <b>Lost/Stolen Account:</b> <b>Replacement Account:</b> <b>Billing Type:</b> Centrally Billed Account												
<a href="#">01/19/2023</a>	01/23/2023	240488	3058	DELTA	DELTA AIR 0067912992466	WA		716.41	<a href="#">Memo</a>		Not Reviewed	No
<b>Name:</b> KEITH MYKLESETH <b>Account Number:</b> **1867 <b>Optional 1:</b> <b>Optional 2:</b> <b>Lost/Stolen Account:</b> **9721 <b>Replacement Account:</b> <b>Billing Type:</b> Centrally Billed Account												
<a href="#">01/17/2023</a>	01/19/2023	240493	3501	HOLIDAY INNS	HOLIDAY INN EXPRESS	MN	204318385	108.16	<a href="#">Memo</a>	1860887	Not Reviewed	No
<a href="#">01/20/2023</a>	01/23/2023	240488	4511	OTHER AIRLINES	DENVER AIR CONNECTION	CO		318.00	<a href="#">Memo</a>	43887119465	Not Reviewed	No
<b>Name:</b> RAY RAKOCZY <b>Account Number:</b> **5668 <b>Optional 1:</b> <b>Optional 2:</b> <b>Lost/Stolen Account:</b> <b>Replacement Account:</b> <b>Billing Type:</b> Centrally Billed Account												
<a href="#">01/03/2023</a>	01/04/2023	240498	7311	ADVERTISING SERVICES	INTEGRITY FUNDRAISERS LLC	ND	455394031	13.02	<a href="#">Memo</a>	07AK6YJK8P5123XQQ 9R	Not Reviewed	No
<a href="#">01/04/2023</a>	01/05/2023	240507	5411	GROCERY STORES,SUPERMARK	HUGOS #3	ND	450273731	23.22	<a href="#">Memo</a>	06884680002VPRY702 7632573	Not Reviewed	No
<a href="#">01/10/2023</a>	01/11/2023	240498	7311	ADVERTISING SERVICES	INTEGRITY FUNDRAISERS LLC	ND	455394031	13.69	<a href="#">Memo</a>	06UK7AYL9N5W6GF6A L4	Not Reviewed	No

## Transaction Detail - Summary

Trans Date	Posting Date	MCCG Code	MCC	Merchant Category Code Description	Merchant Name	Merchant State/Province	Taxpayer ID Number (TIN)	Trans Amount	Posting Type	Purchase ID	Trans Status	Disputed Status
<b>Name:</b> ANDREW ROBERTSON <b>Account Number:</b> **5721 <b>Optional 1:</b> <b>Optional 2:</b> <b>Lost/Stolen Account:</b> <b>Replacement Account:</b> <b>Billing Type:</b> Centrally Billed Account												
<a href="#">12/21/2022</a>	12/23/2022	240491	9399	GOVERNMENT SERVICES-OTHER	DEPARTMENT OF LABOR AND I	MN		\$ 20.00	<a href="#">Memo</a>	DLICRW000857809	Not Reviewed	No
<a href="#">01/09/2023</a>	01/11/2023	240491	9399	GOVERNMENT SERVICES-OTHER	DEPARTMENT OF LABOR AND I	MN		20.00	<a href="#">Memo</a>	DLICRW000861439	Not Reviewed	No
<a href="#">01/20/2023</a>	01/23/2023	240491	9399	GOVERNMENT SERVICES-OTHER	DEPARTMENT OF LABOR AND I	MN		20.00	<a href="#">Memo</a>	DLICRW000865133	Not Reviewed	No
<b>Name:</b> MAREN STALEY <b>Account Number:</b> **9812 <b>Optional 1:</b> <b>Optional 2:</b> <b>Lost/Stolen Account:</b> <b>Replacement Account:</b> <b>Billing Type:</b> Centrally Billed Account												
<a href="#">01/18/2023</a>	01/19/2023	240507	5411	GROCERY STORES,SUPERMARK	HUGOS #5	MN	450273731	7.60	<a href="#">Memo</a>	06884680004VPRY702 8019548	Not Reviewed	No
<b>Name:</b> COREY THOMPSON <b>Account Number:</b> **9747 <b>Optional 1:</b> <b>Optional 2:</b> <b>Lost/Stolen Account:</b> <b>Replacement Account:</b> <b>Billing Type:</b> Centrally Billed Account												
<a href="#">01/02/2023</a>	01/03/2023	240498	7372	COMPUTER AND DATA PROCESS	HOVER	MS	721341588	68.18	<a href="#">Memo</a>	01270068	Not Reviewed	No
<a href="#">01/02/2023</a>	01/03/2023	240498	7399	BUSINESS SERVICES -OTHER	AMAZON WEB SERVICES	WA	911986545	3.50	<a href="#">Memo</a>	80000085961645	Not Reviewed	No
<a href="#">01/09/2023</a>	01/10/2023	240491	4814	TELECOM SVC/CRED CRD CALL	ZOOM.US 888-799-9666	CA	611648780	16.06	<a href="#">Memo</a>	opsnt8j1sm7d	Not Reviewed	No
<a href="#">01/13/2023</a>	01/16/2023	240499	5942	BOOK STORES	AMZN MKTP US*859NR38K3 AM	WA	911986545	104.85	<a href="#">Memo</a>	114-9547864-19154	Not Reviewed	No
<a href="#">01/15/2023</a>	01/16/2023	240500	4215	COURIER SERVICES-AIR/GROUND	UPS*1Z0K12T00396216030	GA		21.65	<a href="#">Memo</a>	RMA 23R1159/44814	Not Reviewed	No

## Transaction Detail - Summary

Trans Date	Posting Date	MCCG Code	MCC	Merchant Category Code Description	Merchant Name	Merchant State/Province	Taxpayer ID Number (TIN)	Trans Amount	Posting Type	Purchase ID	Trans Status	Disputed Status
<b>Name:</b> TYLER TRETTER <b>Account Number:</b> **4635 <b>Optional 1:</b> <b>Optional 2:</b> <b>Lost/Stolen Account:</b> <b>Replacement Account:</b> <b>Billing Type:</b> Centrally Billed Account												
<a href="#">12/29/2022</a>	01/02/2023	240491	4900	UTILITIES-ELECTRIC , GAS , WA	MINNESOTA MUNICIPAL UT	MN		\$ 600.00	<a href="#">Memo</a>	4467070	Not Reviewed	No
<a href="#">01/06/2023</a>	01/09/2023	240506	5533	AUTOMOTIVE PARTS,ACCESSO	CARQUEST 2168	ND	560663185	20.51	<a href="#">Memo</a>	00000116	Not Reviewed	No
<a href="#">01/10/2023</a>	01/11/2023	240491	8999	PROFESSIONAL SERVICES	TECHSTREET LLC	DE	853845060	264.32	<a href="#">Memo</a>	6730242689066423203054	Not Reviewed	No
<b>Total Number of Records:</b>								21				
<b>Total</b>								\$2,441.71				

End of Report



## Rebates 02/01/2023

Rebate	Name	Amount
Dishwasher	Barrett	\$50.00
ECM	Gilleland	\$150.00
ECM	Julien	\$150.00
ECM	Matson	\$150.00
ECM	Vonasek	\$150.00
ECM	Monson	\$150.00
ECM	Swanberg	\$150.00
ECM	Schauer	\$150.00
ECM	Robertson	\$150.00
ECM	Berg	\$150.00
ECM	Schauer, S	\$150.00
Refrigerator	Barrett	\$75.00
Refrigerator - Recycle	Plante	\$50.00
Washing Machine - Front Load	Ferraro	\$100.00
Washing Machine - Top Load	Olson	\$75.00
Electric Water Heater	Williams	\$50.00
	Total	\$1,900.00

# Request for Water and Light Commission Action

**Date:** January 26th, 2023

**To:** Water and Light Commission

**From:** Corey Thompson, Technology Manager

**RE:** Dark fiber contracts with Halstad Telephone Company

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## **Background:**

The master fiber optic agreement and the Crystal Sugar project agreement with Halstad Telephone are due for renewal.

After checking with a number of other municipal utilities the lease dark fiber, our \$100 per strand-mile rate is in line with the market at the moment, so do increase is proposed.

## **Recommendation:**

Approve renewed contracts with Halstad Telephone.

MASTER FIBER OPTIC LICENSE AGREEMENT BETWEEN  
WATER, LIGHT, POWER AND BUILDING COMMISSION, A MUNICIPAL UTILITY  
OF AND FOR THE CITY OF EAST GRAND FORKS, MINNESOTA

AND

HALSTAD TELEPHONE COMPANY

FIBER LEASE APPLICANT

THIS AGREEMENT is made this 1st day of February 2023 by and between Water, Light, Power and Building Commission of and for the City of East Grand Forks, Minnesota, a Minnesota Municipal Corporation and, a body politic and corporate and political subdivision of the State of Minnesota, with principal offices located at 600 Demers Avenue, East Grand Forks, Minnesota 56721 (here-in-after referred to as "Water and Light") and Halstad Telephone Company Fiber Lease Applicant. (here-in-after referred to as "Licensee").

WITNESSETH

WHEREAS, LICENSEE is a Telecommunications Company, to provide Telecommunications Services in the State of Minnesota.

WHEREAS, WATER AND LIGHT desires to provide and LICENSEE desires to accept non - exclusive use of telecommunications facilities under the terms and conditions set out in this Agreement; and as detailed in individual Project Agreements which are attached hereto or may be added hereto from time-to-time; and

WHEREAS, WATER AND LIGHT does not currently provide, nor does it intend to provide, regulated Telecommunications Services in the State of Minnesota; and

WHEREAS, WATER AND LIGHT does not desire, in any way to be classified as a Telecommunications Company, as defined by state and federal laws, rules or regulations, as a result of this Agreement; and

WHEREAS, WATER AND LIGHT AND LICENSEE, entered into a license agreement dated September 11, 2009 and it is the intentions of the parties to enter into this agreement for

a continuation of the non-exclusive use of telecommunication facilities of the WATER AND LIGHT.

NOW THEREFORE, In consideration of the mutual covenants herein contained and for other good and valuable consideration, the parties agree that;

## ARTICLE I

### ADOPTION AND INCORPORATION OF RECITALS AND DEFINITIONS

1.1 The above stated recitals are true and correct and are by this reference incorporated herein and made a part hereof.

1.2 When used herein with initial or complete capitalization whether in the singular or in the plural, the following terms shall have the following meanings:

1.2.1 Fiber Acceptance Date is the day that LICENSEE accepts or conditionally accepts the WATER AND LIGHT, Fiber Optic Strands as set forth herein.

1.2.2 WATER AND LIGHT Fiber Optic Facilities and Equipment means WATER AND LIGHT owned and controlled Fiber Optic Strands, cable jacket, conduit and all associated wires cable and hardware, extending to the Points of Demarcation specified in the applicable Project Agreement(s), but does not include any of the necessary electronics to “light” the fibers, nor does it include fiber optic termination equipment or regenerators.

1.2.3 WATER AND LIGHT Fiber Optic Strands or WATER AND LIGHT Fibers or Fibers are all fiber optic strands owned by WATER AND LIGHT and which may or may not be licensed to LICENSEE depending upon the context.

1.2.4 WATER AND LIGHT Outside Plant Facilities or OSP Facilities means all Outside Plant Facilities and right of way owned or controlled by WATER AND LIGHT in the operation of its electric business. Examples include, poles, transmission towers, duct banks, conduit, right of way, manholes, handholds, the WATER AND LIGHT Fiber Optic Facilities and Equipment or any other facility designated by the WATER AND LIGHT Information Systems

Manager in conjunction with the WATER AND LIGHT Standards Group.

1.2.5 Make-Ready Work means all work necessary on WATER AND LIGHT OSP Facilities to accommodate the end-to-end optical connections between the Points of Demarcation required by LICENSEE as specified in the individual Project Agreement(s) in compliance with all applicable engineering specifications and standards for the use of WATER AND LIGHT OSP Facilities, including any and all improvements to WATER AND LIGHT's OSP Facilities necessary to physically accommodate the given fiber optic cable route and to maintain electrical and operating safety standards and fiber circuit continuity. Such work includes, but is not limited to, design engineering, supervision, administration, installation, inspection, of such facilities, as well as any necessary splicing or rearranging of existing WATER AND LIGHT Fiber Optic Facilities and Equipment.

1.2.6 Project is the specific plan for the license of WATER AND LIGHT Fibers to LICENSEE, including but not limited to, route, number of fibers, pricing and other terms and conditions.

1.2.7 Project Agreement is the agreement setting out the specifics of the Project, subject to the terms and conditions of this License Agreement (the Master Fiber Optic License Agreement) and which after execution shall be attached to and incorporated in this Agreement.

1.2.8 Relocation when used in connection with the Relocation of the WATER AND LIGHT Fiber Optic Facilities and Equipment means adjustment, rearrangement or relocation of the WATER AND LIGHT Fiber Optic Facilities and Equipment, including the individual Fiber Optic Strands licensed to LICENSEE.

1.2.9 Point of Presence is a designated local access point to the WATER AND LIGHT fiber optic network.

## ARTICLE II

### MASTER FIBER LICENSE AGREEMENT AND PROJECT AGREEMENTS

This Master Fiber Optic License Agreement (hereinafter "Master License Agreement" or "MLA"), sets forth terms and conditions which shall govern the relationship between the parties under any number of Project Agreements, each of which, when executed, will become a part of, and subject to all provisions of, the Master License Agreement as if set out in full.

### ARTICLE III

#### SCOPE OF AGREEMENT

LICENSEE shall have the exclusive use of certain WATER AND LIGHT Fiber Optic Strands in locations and for such compensation as set forth in the individual Project Agreement(s), which Project Agreement(s) shall be attached hereto and incorporated herein from time-to-time as the parties enter into such Project Agreement(s). Execution of said Project Agreement(s) shall be contingent upon the availability of Fiber Optic Strands, as determined by WATER AND LIGHT. The WATER AND LIGHT Fiber Optic Strands shall be licensed exclusively to LICENSEE from within WATER AND LIGHT's existing fiber optic cable, or from within new Fiber that WATER AND LIGHT constructs, as set out in the applicable Project Agreement(s). Provided, however, nothing herein shall be interpreted as requiring WATER AND LIGHT to construct or install new Fiber Optic Facilities or Equipment. LICENSEE shall pay WATER AND LIGHT for use of the WATER AND LIGHT Fiber Optic Strands as provided in the applicable Project Agreement(s).

### ARTICLE IV

#### TERM – RENEWAL

4.1 Commencement. This Master License Agreement shall commence on the date first set out above (hereinafter "Effective Date") and shall continue for a minimum period of three (3) years, unless sooner terminated as provided in this Agreement. The Master License Agreement shall, upon expiration of the initial three (3) year term, be automatically renewed for

one additional three (3) year term unless either Party provides a written notice of non-renewal to the other Party not less than twelve (12) months but no sooner than twenty-four (24) months prior to the expiration of the original term or any additional term.

4.2 Termination of Project Agreement. All Project Agreements shall terminate upon termination of the three (3) year term set forth above or any renewal thereof, regardless of when such Project Agreement was entered into, unless specifically provided for otherwise in such Project Agreement.

## ARTICLE V

### USE

Absent WATER AND LIGHT's written concurrence, LICENSEE's use of the Fiber Optic Strands is expressly restricted to the conduct of LICENSEE's telecommunications business, including the sub-licensing of such Fiber Optic Strands. There is no restriction, implied or otherwise, on WATER AND LIGHT's use of all installed Fiber Optic Strands that are not dedicated to LICENSEE's use.

## ARTICLE VI

### EXISTING FIBER OPTIC CABLES

6.1 Ownership: The Fiber Optic Facilities and Equipment, including jacket, structure, attachments, conduits and all Fibers which constitute a part of WATER AND LIGHT's OSP Facilities along the designated route(s), shall at all times remain the sole and exclusive property of WATER AND LIGHT. Legal title shall be held by WATER AND LIGHT. Neither the license of the use of the WATER AND LIGHT Fiber Optic Strands to LICENSEE, nor any payments by LICENSEE to WATER AND LIGHT for such use shall create or vest in LICENSEE any easement, interest or any ownership or property right of any nature in the

WATER AND LIGHT OSP Facilities. WATER AND LIGHT warrants, however, LICENSEE's rights to use the designated WATER AND LIGHT Fiber Optic Strands for lawful telecommunications transmission purposes during the term of this Master License Agreement and subject to the terms and conditions of this Master License Agreement and individual Project Agreement(s). LICENSEE shall not grant any security interest in WATER AND LIGHT Fiber Optic Strands used by LICENSEE or any part or component thereof.

6.2 LICENSEE Equipment: Notwithstanding any contrary provisions of this Master License Agreement, LICENSEE shall own all bays, panels, jacks, ironworks, associated electronics, fiber optic termination equipment, regenerators, power sources, and other property and equipment provided by LICENSEE.

6.3 Connection: Unless provided for otherwise in the Project Agreement(s), any required splicing along the route will be performed by WATER AND LIGHT or an approved WATER AND LIGHT contractor. LICENSEE may request that WATER AND LIGHT splice into the existing WATER AND LIGHT Fiber Optic Strands only at pre-existing splice points, subject to WATER AND LIGHT's approval, not to be unreasonably withheld. LICENSEE will schedule all such splicing activities with WATER AND LIGHT at a mutually agreed-upon time. All such splicing shall be paid by LICENSEE and performed by WATER AND LIGHT. LICENSEE shall reimburse WATER AND LIGHT for all WATER AND LIGHT's Make-Ready Work costs associated with the initial network connection, as well as any splicing or re-splicing of existing Fiber Optic Strands necessary to accomplish the desired end-to-end connection required by LICENSEE. WATER AND LIGHT will be responsible for its network electronics and fiber splices inside each WATER AND LIGHT substation or building. LICENSEE will be responsible for its network electronics and fiber splicing inside any LICENSEE buildings and facilities.

6.4 Specifications and Documentation: WATER AND LIGHT will provide to LICENSEE system maps on all existing fiber optic cable routes. The routes will be documented on the system maps and made part of the applicable Project Agreement(s). The fibers shall meet all performance standards and criteria set forth in each Project Agreement's,



“Fiber Optic Cable Specifications”. Both WATER AND LIGHT and LICENSEE are entitled to have representatives present to observe and participate in the analysis and testing of the fibers.

6.5 License Abatement: Abatement of license charges apply only for any new cable section installed under the Project Agreement(s). License charges will begin for existing fibers on the date of acceptance of such fibers.

## ARTICLE VII

### NEW INSTALLATIONS

7.1 Construction: For new installations WATER AND LIGHT shall perform, or cause to be performed, any engineering, cable installation, splicing, material procurement, installation and testing required to complete the installation of the Fiber Optic Facilities and Equipment as set forth in the applicable Project Agreement(s), using WATER AND LIGHT specifications and subject to LICENSEE’s approval. WATER AND LIGHT shall submit the plans for all activities necessary to LICENSEE for approval in advance of WATER AND LIGHT’s procurement and/or construction. In order to expedite construction and subject to WATER AND LIGHT’s prior written approval, LICENSEE may hire a WATER AND LIGHT approved contractor to perform any portion of the above work. WATER AND LIGHT and LICENSEE shall assign a project engineer as a point of contact for all such approvals and will assign construction inspectors for review of all construction activities to assure compliance with the approved design. LICENSEE understands that it is responsible for the construction of a customer drop starting at the Water and Light’s nearest Point of Presence (POP). The Water and Light Department will allow the LICENSEE access to its conduit system to facilitate the construction when possible.

7.2 Connection: Unless provided for otherwise in the applicable Project Agreement, WATER AND LIGHT will install splice points at locations such that WATER AND LIGHT may access the fibers controlled by WATER AND LIGHT. WATER AND LIGHT will be responsible

for its network electronics and fiber splices inside each WATER AND LIGHT substation or building. LICENSEE will be responsible for its network electronics and fiber splicing inside LICENSEE buildings and facilities. All initial splicing along the route to include WATER AND LIGHT fibers outside its substations or buildings will be performed by WATER AND LIGHT or an approved WATER AND LIGHT contractor. LICENSEE may request that WATER AND LIGHT splice into the WATER AND LIGHT Fiber Optic Strands at additional, pre-existing splice points in the future, subject to WATER AND LIGHT's approval, not to be unreasonably withheld. LICENSEE will schedule all such splicing activities with WATER AND LIGHT at a mutually agreed-upon time. All such splicing shall be performed by WATER AND LIGHT. LICENSEE shall reimburse WATER AND LIGHT for all WATER AND LIGHT's Make-Ready costs associated with network connection.

7.3 Specifications and Documentation: All fiber optic cable and hardware attachments utilizing any WATER AND LIGHT OSP Facilities shall be approved by WATER AND LIGHT prior to installation. Permits (when required) are the responsibility of WATER AND LIGHT. WATER AND LIGHT will provide to LICENSEE preliminary fiber optic system maps for the agreed upon route. The final routes will be documented on the fiber optic system maps and made part of this Master Agreement. The Fibers shall meet all performance standards and criteria set forth in each Project Agreement's, "Fiber Optic Cable Specifications". Both WATER AND LIGHT and LICENSEE are entitled to have representatives present to observe and participate in the analysis and testing of the fibers.

7.4 Responsibility for Cost of New Installations: WATER AND LIGHT shall be solely responsible for the total cost of engineering, materials and construction of any new fiber optic cables installed pursuant to this Agreement and any Project Agreement(s), including Make-Ready Work associated with such installations upon its OSP Facilities. Make-Ready Work shall include any and all improvements to WATER AND LIGHT OSP Facilities necessary to physically accommodate the given fiber optic cable route and to maintain electrical and operating safety standards and fiber circuit continuity. All fiber cable installation will be in

accordance with WATER AND LIGHT fiber optic cable engineering, installation procedures and standards. The scope of work required to install the new fiber optic cable shall be detailed in the applicable Project Agreement

7.5 Cost Estimate: Unless otherwise agreed, prior to commencing any new installations, WATER AND LIGHT shall provide LICENSEE with a detailed and good faith estimated cost for such installations. Such good faith estimate shall be attached to and be made part of any Project Agreement for new installations. WATER AND LIGHT and LICENSEE understand and agree that the good faith estimate is an estimate only and that WATER AND LIGHT shall be responsible for the total cost of the Project, provided however, that LICENSEE's cost for any new installation shall not exceed one hundred and twenty five percent (125%) of a valid estimate for that new installation. Should LICENSEE desire to expedite any new construction and hire a WATER AND LIGHT approved contractor to perform any portion of the required work, including design and engineering services, LICENSEE will be solely responsible for any and all additional costs.

7.6 Project Termination Due to Cost: If the cost of a new installation project exceeds the estimated amount plus 25%, then LICENSEE has the option, at its sole discretion, to terminate the particular project in its entirety. In the event of such termination by LICENSEE, LICENSEE's sole liability and responsibility shall be for the costs of the new installation already incurred, including but not limited to all engineering, design, equipment, and materials cost and labor costs up to and including the 25% overage. All facilities already installed, constructed or delivered will become the exclusive property of WATER AND LIGHT. WATER AND LIGHT may, at its option finish the project at its own expense.

7.7 Cost Records: All cost records and accounts of WATER AND LIGHT directly related to the work performed under this Agreement shall be subject to audit by LICENSEE for a period of two years from the completion date of all work performed under this Agreement.

ARTICLE VIII  
ACCEPTANCE

8.1 Acceptance: Prior to licensing WATER AND LIGHT Fiber Optic Strands, WATER AND LIGHT will “Acceptance Test” the WATER AND LIGHT Fiber Optic Strands to insure that the Fibers meet or exceed the “Fiber Specifications” outlined in each Project Agreement. In the event the Fibers meet such specifications, WATER AND LIGHT shall notify LICENSEE in writing of the availability of the Fibers (the Fiber Notice). Within 5 business days of LICENSEE receiving the Fiber Notice, LICENSEE shall give WATER AND LIGHT written notice of any failure of Fibers to satisfy the Acceptance Test, and to meet the specifications.

8.2 Corrections: If LICENSEE gives WATER AND LIGHT written notice of such failure, WATER AND LIGHT shall use its best efforts to promptly correct such failure, whereupon LICENSEE and WATER AND LIGHT shall jointly conduct another Acceptance Test. This procedure shall be repeated until all Fibers meet or exceed the specifications in the applicable Project Agreement.

8.3 Conditional Acceptance: In the event deficiencies continue to be identified after the third round of testing, LICENSEE may, at its option, conditionally accept the Fibers. WATER AND LIGHT will take all reasonable steps to correct any such deficiencies within sixty (60) days of conditional acceptance.

8.4 Acceptance by Default: If LICENSEE does not give WATER AND LIGHT written notice of such failure within five (5) business days of LICENSEE receiving the Fiber Notice, it shall be deemed that LICENSEE has accepted the Fibers.

8.5 Fiber Acceptance Date: The day on which LICENSEE has accepted the Fibers will be considered the Fiber Acceptance Date and such Fiber Acceptance Date shall commence the period of license abatement and/or the start of license payments on existing fiber optic strands.

## ARTICLE IX

### MAINTENANCE AND RESTORATION OF FIBER OPTIC CABLES

WATER AND LIGHT priority shall be to restore electric power circuits before restoration of Fiber Optic Facilities and Equipment.

9.1 Maintenance: WATER AND LIGHT shall be responsible for the maintenance and restoration of the WATER AND LIGHT Fiber Optic Strands. The maintenance and restoration of all of the WATER AND LIGHT Fiber Optic Strands, based upon the number of Fiber Optic Strands dedicated to its use, except as provided below, is the responsibility of WATER AND LIGHT. Provided, however, in the event that WATER AND LIGHT cannot commit to performance of any fiber cable maintenance or restoration to meet LICENSEE's specific needs, LICENSEE may perform such maintenance restoring the entire fiber cable using a WATER AND LIGHT approved contractor and WATER AND LIGHT shall pay LICENSEE for its pro-rata share of all maintenance and restoration costs performed by an approved WATER AND LIGHT contractor. In all cases, WATER AND LIGHT liability of maintenance and restoration shall not exceed the cost WATER AND LIGHT would have incurred had WATER AND LIGHT performed the maintenance.

9.2 Priority: LICENSEE understands and agrees that maintenance and restoration of electric circuits and electric customers may take precedence over all fiber optic cable restoration and maintenance. LICENSEE further understands and agrees that interruption of electric circuits must be scheduled, and that any fiber optic cable maintenance or restoration activity is secondary to WATER AND LIGHT providing reliable electric service to its customers.

9.3 Maintenance Schedule: WATER AND LIGHT agrees to maintain and provide adequate spare equipment and parts as is appropriate. WATER AND LIGHT will endeavor to provide LICENSEE with 15 day advance notice prior to performing any routine service-affecting work. WATER AND LIGHT will endeavor to provide LICENSEE 15 day advance

notice of all routine electric power circuit maintenance that will cause service interruptions to the Fiber Optic Equipment and Facilities.

9.4 Restoration: In the event of any unforeseen interruption of provision of the Fiber Optic Strands (Outage), WATER AND LIGHT shall notify LICENSEE of the Outage and convey the nature and cause of the interruption, the extent of the repairs required, and the estimated time required to restore the fiber optic cable strands. WATER AND LIGHT agrees to use its best efforts to restore the Fiber Optic Strands on an expedited basis, and restore the LICENSEE's Fibers with an equal priority to other Fibers within the cable. WATER AND LIGHT will use its best efforts to dispatch repair technicians within one (1) hour of notification by the LICENSEE of a service and attempt to keep the Outage to less than 4 hours. If it becomes apparent that the outage will exceed 4 hours, WATER AND LIGHT will notify the LICENSEE so that the LICENSEE may, at its option, with a Water and Light approved contractor perform such maintenance restoring the entire fiber optic cable and WATER AND LIGHT shall pay LICENSEE for its pro-rata share of all maintenance and restoration costs performed. If an Outage affecting the Cable occurs, the LICENSEE shall be entitled to an Outage credit against its next-due License payment(s) for each period that the Outage continues. The amount of the Outage credit and the method for calculation shall be as defined in the Project Agreement. The Outage credit is intended as an adjustment to LICENSEE'S license fee payment proportionate to the time that the Fiber Optic Cable experience as an Outage. In no event shall the Outage credit for a particular Project agreement exceed 100 % of the annual monthly license fee for the fiber optic cable strands licensed under that agreement.

9.4.1 Maintenance & Restoration Limitation: Maintenance and restoration provided by WATER AND LIGHT shall be limited to the fiber optic cable and individual Fibers Optic Strands. WATER AND LIGHT shall have no obligation or right to perform maintenance or restoration on any electronics or other equipment not owned by WATER AND LIGHT. LICENSEE shall be solely responsible, at its own expense, for the purchase, installation,

operation, maintenance and repair of all LICENSEE equipment and LICENSEE facilities required in connection with the use of the Fiber Optic Strands.

## ARTICLE X

### RELOCATION OF FIBER OPTIC CABLES

10.1 Requests of WATER AND LIGHT or Third Party. If relocation of WATER AND LIGHT Facilities, including any WATER AND LIGHT Fiber Optic Strands used by LICENSEE, is required by WATER AND LIGHT or by a third party (such as City of East Grand Forks, Minnesota Department of Transportation, Polk County, BNSF, etc.) relocation expenses of the Fiber Optic Cable (including engineering, materials, construction, and Make-Ready Work) shall be borne by WATER AND LIGHT.

10.2 Requests of LICENSEE. If relocation is required by LICENSEE and is not caused by a third party or WATER AND LIGHT, LICENSEE shall pay the total cost of such relocation.

10.3 Power Meter Loses. If a relocation which is required by WATER AND LIGHT or by a third party may result or does result in an increase to the power meter losses such that the losses may be or are in excess of the maximum losses specified in the applicable Project Agreement, then WATER AND LIGHT shall (1) notify LICENSEE to provide LICENSEE time to redesign and make necessary system modifications and (2) cooperate with LICENSEE in making such modifications.

10.4 Avoidance of Interruptions. During any relocation of the WATER AND LIGHT Facilities, WATER AND LIGHT and LICENSEE shall use good faith and care to avoid interruption of or interference with the use by the other of such poles, conduit and cable for the purposes herein described.

## ARTICLE XI

### PAYMENTS, CHARGES AND FEES

11.1 New Installation - Payment for Make-Ready Work, engineering, materials, and construction of any new fiber optic cables installed under this Agreement shall be made by LICENSEE in advance pursuant to a WATER AND LIGHT provided payment schedule necessary to meet the in-service requirements and in accordance with agreed upon project estimates. Within sixty (60) days of completion of construction, WATER AND LIGHT will provide LICENSEE with a detailed and itemized statement of the actual costs incurred in the new installation of the Fiber Optic Facilities and Equipment, and will refund to LICENSEE any advanced payments made by LICENSEE in excess of the actual cost of construction. In the event that the construction costs exceed the advance payments made by LICENSEE, WATER AND LIGHT will invoice LICENSEE and LICENSEE shall make payment to WATER AND LIGHT within 30 days for all charges exceeding the advanced payment made by LICENSEE. Costs in excess of 125 % of the project estimate described in each Project, are subject to Article VII. LICENSEE understands that it is responsible for the construction of a customer drop starting at the WATER AND LIGHT'S nearest Point of Presence (POP) or as agreed to in project agreements. The WATER AND LIGHT will allow the LICENSEE access to its conduit system to facilitate the construction when possible.

11.2 Relocations Payment for Make-Ready Work, engineering, materials, and construction associated with relocation of Fiber Optic Facilities and Equipment required solely by LICENSEE, shall be made by LICENSEE in advance pursuant to a WATER AND LIGHT provided payment schedule necessary to meet WATER AND LIGHT 's requirements.

11.3 License Charges and Fees - In consideration for use of prior existing WATER AND LIGHT Fiber Optic Strands, LICENSEE agrees to compensate WATER AND LIGHT in accordance with the rate schedule identified in each individual Project Agreement. For any



future projects the parties agree that the lease rate shall be \$100.00 per mile unless otherwise noted in the individual project agreement.

11.4 Late Payments - Any payment not made in full when due shall be deemed delinquent and if not made within ninety (90) days after receipt of written notice of delinquency shall entitle the Party to which payment is owed to terminate the Master Agreement or applicable individual Project Agreement(s). Late payments shall accrue interest at the then current rate WATER AND LIGHT charges for late electric payments as provided in WATER AND LIGHT's then current Credit and Collection Policy.

## ARTICLE XII

### WARRANTIES AND REPRESENTATIONS

12.1 WATER AND LIGHT - Except as provided for in Articles VII, VIII and IX, WATER AND LIGHT makes no guarantee or warranty as to (1) the suitability of WATER AND LIGHT Fibers for LICENSEE's use, or (2) the character or degree of the maintenance and restoration service performed. WATER AND LIGHT represents that, to the best of its knowledge and belief as of the Effective Date, the existence of this Agreement does not create an adverse impact on WATER AND LIGHT 'S tax exempt bond status.

12.2 LICENSEE - LICENSEE warrants and represents to the best of its knowledge as follows:

12.2.1 LICENSEE Equipment - That LICENSEE shall be solely responsible, at its own expense, for the purchase, installation, operation, maintenance and repair of all LICENSEE equipment and LICENSEE facilities required in connection with its use of the WATER AND LIGHT Fiber Optic Strands licensed to LICENSEE.

12.2.2 Licenses, Permits - That LICENSEE has received all licenses, permits, and rights authorizing LICENSEE to engage in the use of the WATER AND LIGHT Fiber Optic Strands as specified in Article V. If any permits are validly required of LICENSEE for

LICENSEE's use of the public rights-of-way in addition to those obtained by WATER AND LIGHT as owner of the Fiber Optic Facilities and Equipment and as the entity which will be constructing and installing the facilities in the public-right-of-way, then LICENSEE shall be responsible for obtaining such use permits prior to such use by LICENSEE. In the event, however, that LICENSEE's use of the WATER AND LIGHT Fiber Optic Strands or LICENSEE's execution of this Master Agreement is deemed or determined to violate any government codes, ordinances, laws, rules, regulations or restrictions, then LICENSEE shall be entitled to terminate this Agreement in its entirety and LICENSEE shall have no liability to WATER AND LIGHT whatsoever for any obligations under this Agreement, other than those LICENSEE owed to WATER AND LIGHT prior to the date of terminating this Agreement. Provided, however, that LICENSEE's indemnification of WATER AND LIGHT shall survive termination of this Agreement.

12.2.3 Taxes, Fees: That LICENSEE will pay, when they become due, any and all taxes, assessments, and governmental charges of any kind whatsoever lawfully levied or assessed and attributable to LICENSEE's use of WATER AND LIGHT OSP Facilities or any portion of them, or against LICENSEE's business with regard to operation or use of the WATER AND LIGHT OSP Facilities, including without limitation, all fees due to any federal, state, city or other jurisdiction having the authority to levy any such charges. LICENSEE shall pay without apportionment any taxes levied on it that are based on its business profits attributable to LICENSEE's use of WATER AND LIGHT OSP Facilities or any portion of them. In addition, LICENSEE shall pay, or as appropriate, reimburse WATER AND LIGHT, without apportionment, any ad valorem taxes, fees, assessments or other charges which are assessed against WATER AND LIGHT that arise from LICENSEE's use of the WATER AND LIGHT OSP Facilities or any portion of them, and shall be responsible for any property use fees or consents required by virtue of LICENSEE's use of the WATER AND LIGHT OSP Facilities or any portion of them. WATER AND LIGHT shall pay any taxes, fees, or charges attributable to its ownership of the fiber optic cable or the WATER AND LIGHT OSP Facilities when such

taxes, fees, or charges are not based on or imposed by virtue of LICENSEE's use of any such facilities or its receipt of rental fees from LICENSEE under this Agreement. In the event WATER AND LIGHT becomes a taxable entity, in whole or in part, then LICENSEE shall not be liable for any income taxes imposed on WATER AND LIGHT as a result of profits derived by WATER AND LIGHT.

12.2.4 WATER AND LIGHT Not A Telecommunications Company - That, by entering into this Agreement, and utilizing WATER AND LIGHT OPS Facilities under this Agreement, WATER AND LIGHT will not be classified as a Telecommunications Company, Telecommunications Carrier, Telecommunications Service Provider or any other telecommunications entity as defined by federal or state laws, rules, regulations or administrative orders, nor will WATER AND LIGHT come under the jurisdiction or regulation of any State or Federal regulatory agency which regulates such entities, including, without limitation, the Federal Communications Commission (FCC) or the State Public Service Commission (SPSC). In the event that the existence of this Agreement results in a final order or determination by any court or regulatory or governmental entity (including, but not limited to, the FCC or the SPSC) that classifies WATER AND LIGHT as a Telecommunications Company, Telecommunications Carrier, Telecommunications Service Provider or any other telecommunications entity as defined by federal or state laws, rules, regulations or administrative orders, LICENSEE shall indemnify WATER AND LIGHT, its officers and employees harmless from and against any cost, expense, fine or other financial penalty under federal or state laws, rules, regulations or administrative orders, which WATER AND LIGHT is legally liable to pay as a result of such classification, provided, however, that WATER AND LIGHT shall take all reasonable steps to mitigate and minimize any such expenses, fines or other financial penalties. In no event shall LICENSEE's indemnification hereunder exceed the total of LICENSEE's payments to WATER AND LIGHT during the previous twelve (12) months for the use of WATER AND LIGHT Fiber Optic Strands under this Agreement and any applicable Project Agreements. In the event of any such determination, LICENSEE and

WATER AND LIGHT agree, to cooperate with each other to determine whether and to what extent this Agreement can be amended so as to remove that classification and permit continued performance by both parties, subject to WATER AND LIGHT's right of cancellation under Section 19.3.3.1. Notwithstanding any other provision of this Agreement, if LICENSEE is required to make payments under this indemnification, then LICENSEE will have the right to immediately terminate this Agreement or applicable Project Agreement(s). Such termination, however, shall not extinguish LICENSEE's obligation to indemnify WATER AND LIGHT for all monetary amounts levied until the time of the termination and shall not extinguish LICENSEE's obligation to pay any other amounts owing to WATER AND LIGHT pursuant to this Agreement and any applicable Project Agreement(s).

### ARTICLE XIII

#### ACCESS

WATER AND LIGHT and LICENSEE shall make reasonable effort to provide access when available and necessary to each other through their respective entrance facilities.

### ARTICLE XIV

#### COMPLIANCE WITH LAWS

14.1 WATER AND LIGHT shall have and maintain in effect at all times, all necessary franchises, consents, rights of way, easements, permits and authorizations applicable to this Agreement, if any, from Federal, State, County, City and other regional or local authorities, in order that WATER AND LIGHT may construct, maintain, operate, and WATER AND LIGHT's OSP Facilities.

14.2 LICENSEE. LICENSEE shall have and maintain in effect at all times, all necessary franchises, consents, permits and authorizations applicable to this Agreement, if

any, from Federal, State, County, City and other regional or local authorities, to license and use WATER AND LIGHT's Fiber Optic Strands and LICENSEE's personal property and equipment.

14.3 All Applicable Laws. LICENSEE and WATER AND LIGHT each shall comply with all applicable Federal, state and local laws and regulations, including but not limited to those of the Federal Communications Commission and the State Public Service Commission.

## ARTICLE XV

### LIMITATION OF LIABILITY

WATER AND LIGHT shall not be liable, in law or in equity, to LICENSEE for any damages, losses, or claims whatsoever, attributable to WATER AND LIGHT's acts or omissions, or to the use of any property hereunder, including WATER AND LIGHT Facilities. Except as provided elsewhere in this Agreement, and subject to the provision of Minnesota State Statutes, this limitation shall apply to any and all claims, except as and to the extent caused by or attributable to WATER AND LIGHT's negligence, or intentional breach of this Agreement. Except with respect to direct damages resulting from WATER AND LIGHT's negligence, or intentional breach of this Agreement, LICENSEE's sole remedy against WATER AND LIGHT and its board members, officials, officers and employees shall be specific performance against WATER AND LIGHT.

## ARTICLE XVI

### NO CONSEQUENTIAL DAMAGES

Notwithstanding any other provisions of this Agreement, to the extent permitted by law, and irrespective of any fault or negligence or gross negligence, neither party shall be liable to the other for any indirect, incidental, consequential, or special damages (including without

limitation damages for harm to business, lost revenues, lost savings, or lost profits), regardless of the form of action, whether based on statute, contract, warranty, or tort (including without limitation, negligence of any kind whether active or passive and strict liability). To the extent permitted by law, each Party hereby releases the other (and their respective parents, subsidiaries, and affiliated companies, and each of their respective agents, officers, employees, and representatives) from any claim or liability for any indirect, incidental, consequential, or special damages incurred as a result of or in connection with the performance or nonperformance of this Agreement, and any applicable Project Agreement(s).

## ARTICLE XVI

### NO THIRD PARTY BENEFICIARIES

This Agreement does not provide third parties (including without limitation customers of WATER AND LIGHT or of LICENSEE) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege; except that the provisions hereof involving indemnification or limitation of liability of either Party shall also inure to the benefit of that Party's employees, officers, agents, affiliates, and any other benefited persons specifically identified in the applicable provision. The relationship between WATER AND LIGHT and any of its customers is governed solely by the terms and conditions of their Agreements and applicable tariffs. The relationship between LICENSEE and its customers is governed solely by the terms and conditions of any Agreement(s) between LICENSEE and its customers.

## ARTICLE XVII

### INDEMNITY, HOLD HARMLESS

17.1 LICENSEE Indemnity of WATER AND LIGHT. LICENSEE agrees to indemnify, hold harmless and defend WATER AND LIGHT and its officers and employees, against any

claim, action, loss, damage, injury liability, cost or expense, including, but not by way of limitation, reasonable attorneys' fees and court costs, arising out of injury to persons, including but not limited to death, or damage to property, caused by the negligence of LICENSEE, or its officers, employees, agents, licensees or representatives, in the performance of its rights, duties and obligations under this Agreement.

17.2 WATER AND LIGHT Indemnity of LICENSEE. WATER AND LIGHT, subject to the limitations of Minnesota State Statutes and any subsequent revisions thereto, agrees to indemnify, defend and hold harmless LICENSEE, its affiliates, and respective employees, officers, directors and agents (collectively, "Entities") against any claim, action, loss, damage, injury, liability, cost or expense, including, but not by way of limitation, reasonable attorneys' fees and court costs, arising out of injury to persons, including but not limited to death, or damage to property, caused by the negligence of WATER AND LIGHT, its officers, employees and agents in performing its duties and obligations under this Agreement.

17.3 Binding on Successors. This indemnification shall be binding upon the successors and assigns of LICENSEE and WATER AND LIGHT, provided however, any non-governmental successor of WATER AND LIGHT shall not be subject to the limitation of liability in section number, of state name Statutes.

17.4 Additional Remedies. This indemnification shall be in addition to any other remedy available under this Agreement, or at law or equity, and shall survive the term of this Agreement executed pursuant hereto, with respect to any circumstance or event occurring before termination.

## ARTICLE XVIII

### INSURANCE

18.1. Coverage - Without limiting its liability as stated elsewhere herein, LICENSEE agrees to provide and maintain in force from companies authorized to do business in the State

of Minnesota , and which are reasonably satisfactory to WATER AND LIGHT policies of insurance, with minimum limits as follows:

18.1.1 Worker's Compensation and Employer's Liability insurance for all of LICENSEE's employees. Limit of insurance for Employer's Liability shall be a minimum of \$500,000 per occurrence.

18.1.2 General Liability insurance for bodily injury and property damage of \$1,000,000 each occurrence and \$2,000,000 annual aggregate, combined single limit.

18.1.3 Automobile Liability for bodily injury and property damage (covering owned, hired or non-owned vehicles) of \$1,000,000 each occurrence, combined single limit.

18.1.4 Excess Liability insurance for bodily injury and property damage of \$5,000,000 each occurrence and annual aggregate, combined single limit.

18.1.5 LICENSEE will specify WATER AND LIGHT as an additional insured for all coverages except Worker's Compensation and Employer's Liability. Such insurance will be primary to any and all other insurance or self-insurance maintained by WATER AND LIGHT. LICENSEE will include a Waiver of Subrogation on all required insurance in favor of WATER AND LIGHT, its board members, employees, agents and subcontractors.

18.1.6 Any contractor and subcontractor of LICENSEE will procure and maintain the insurance required of LICENSEE hereunder during the life of this Agreement. Contractors and subcontractors insurance may be either by separate coverage or by endorsement under insurance provided by LICENSEE. LICENSEE will submit contractor's and subcontractor's certificates of insurance to WATER AND LIGHT prior to allowing contractors and subcontractors to perform work.

18.2 Certificate - Within thirty (30) days of the effective date of this Agreement, and in advance of any actual construction, LICENSEE shall furnish WATER AND LIGHT certificates from LICENSEE's insurance carrier showing that LICENSEE carries the requisite insurance and that the policies were issued in accordance with the requirements hereof. Said certificates



shall also provide that such insurance shall not be terminated, changed or endorsed except upon thirty (30) days prior written notice thereof to WATER AND LIGHT.

18.3 Self - Insurance - Notwithstanding the foregoing, LICENSEE may self-insure the above obligations concerning Workers Compensation, upon presentation of a valid certificate of self-insurance from the State of Minnesota Department of Commerce or other evidence of self-insurance acceptable to WATER AND LIGHT.

## ARTICLE XIX

### TERMINATION

19.1 Termination. This Agreement may be terminated prior to expiration of the three (3) year term, or any renewals thereof, as set forth below.

19.2 By LICENSEE. LICENSEE may terminate this Agreement, with or without cause, upon providing WATER AND LIGHT with One Hundred and Twenty (120) days written notice. Provided, however, that if WATER AND LIGHT has already commenced construction of all or a portion of the new fiber optic cable installation, as set forth in any Project Agreement, LICENSEE shall pay the costs of such construction and materials as set forth in VII. In instances where LICENSEE is utilizing existing Fiber Optic Strands, it shall pay a termination fee equal to the applicable license fee for the entire current year. In addition, LICENSEE may also rescind or cancel this Agreement pursuant to the terms and conditions set out in Article XII.

19.3 By WATER AND LIGHT. WATER AND LIGHT may terminate this Agreement for the reasons set forth below:

19.3.1 Default of LICENSEE. Upon default by LICENSEE including, but not limited to, late payments, as described in Article XI, and, if a Project Agreement provides that LICENSEE is responsible for development of the route, for unexcused delay in development of that route that exceeds 120 days.

19.3.2 Excessive Maintenance Costs. In instances where WATER AND LIGHT installs new Fiber Optic Facilities and Equipment, WATER AND LIGHT may terminate this Agreement or applicable Project Agreement(s) if the annual costs incurred by WATER AND LIGHT to provide maintenance and restoration services to the Fiber Optic Strands covered by this Agreement or Project Agreement(s), minus the prorata share of such costs paid by LICENSEE exceed the annual license revenues received from LICENSEE. Provided, however, in recognition of the importance of this Agreement, WATER AND LIGHT hereby agrees not to terminate the Agreement or individual Project Agreement(s) for such reason if LICENSEE agrees to pay for the maintenance of WATER AND LIGHT Fiber Optic Strands as they relate to such Project Agreement(s) in the amount that such annual maintenance costs exceed the annual license revenues from LICENSEE.

19.3.3 If WATER AND LIGHT Is Found A Telecommunications Company By Virtue of This Agreement. By entering into this Agreement and licensing WATER AND LIGHT Facilities to LICENSEE, including for sub-license by LICENSEE, WATER AND LIGHT does not intend to, and shall not, be classified as a Telecommunications Company, Telecommunications Carrier, Telecommunications Service Provider or any other telecommunications entity, as defined in State or Federal law, rules or regulations, nor will WATER AND LIGHT come under the jurisdiction or regulation of any State or Federal regulatory agency which regulates such entities, including, without limitation the Federal Communications Commission or the MINNESOTA Public Service Commission. In the event, however, that the existence of this Agreement results in a final order or determination by any court or regulatory or governmental entity (including, but not limited to, the Federal Communications Commission or the MINNESOTA Public Service Commission) that classifies WATER AND LIGHT as a Telecommunications Company, Telecommunications Carrier, Telecommunications Service Provider or any other telecommunications entity as defined in State or Federal statutes, rules or regulations, LICENSEE and WATER AND LIGHT agree to cooperate with each other to determine whether and to what extent this Agreement can be

amended so as to remove that classification and permit continued performance by both parties.

19.3.3.1 If this Agreement cannot be so amended after good faith efforts by the parties, WATER AND LIGHT may at its sole option immediately terminate this Agreement.

19.4 WATER AND LIGHT Tax Exempt Bond Status. WATER AND LIGHT shall have a right to terminate this Agreement upon one hundred and eighty (180) days written notice in advance to LICENSEE, if the existence of this Agreement creates an adverse impact upon WATER AND LIGHT's tax exempt bond status. Upon receipt of such notice, LICENSEE shall have the right to review with WATER AND LIGHT and its bond counsel the reason(s) for the creation of such adverse impact and to determine, in concert with WATER AND LIGHT, whether the existence thereof can be eliminated by the amendment of this Agreement. In such event WATER AND LIGHT shall, before the effective date of any termination, and if LICENSEE so elects, negotiate in good faith with LICENSEE to amend this Agreement to eliminate the adverse impact. Should WATER AND LIGHT become aware of any pending legislation or regulatory change which is likely to have an adverse impact upon WATER AND LIGHT's tax exempt bond status due to the existence of this Agreement, WATER AND LIGHT shall promptly notify LICENSEE thereof. LICENSEE, at its sole cost and expense, may contest such legislation or regulatory action, including rights of legal challenge and appeal to effect elimination of such adverse impact and WATER AND LIGHT shall support such activities of LICENSEE at no cost or expense to WATER AND LIGHT. Notwithstanding the foregoing, WATER AND LIGHT retains the right to terminate this Agreement at any time if, in its sole judgment, this Agreement creates an adverse impact on its Tax Exempt bond status; however, WATER AND LIGHT agrees that it will not terminate this Agreement until the latest reasonable date as determined by WATER AND LIGHT so as to afford LICENSEE as much time as reasonably possible to make arrangements for relocation of its facilities. In recognition of the importance of this Agreement, WATER AND LIGHT hereby agrees to use due diligence and

professional judgment in any determination or exercise of judgment made pursuant to this subsection 19.4.

ARTICLE XX  
ASSIGNMENT

Restrictions Against Transfer - LICENSEE shall not sell, assign, transfer, or otherwise alienate or dispose of this Agreement, without the prior written consent of WATER AND LIGHT, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, this Agreement may be assigned by LICENSEE without the approval of WATER AND LIGHT to any parent, successor, subsidiary, or any affiliated company of LICENSEE, or any entity that is composed of substantially all of LICENSEE's telecommunications project participants, which are listed on Exhibit \_\_\_ hereto, which may be amended from time to time.

ARTICLE XXI  
WAIVER OF TERMS OR CONDITIONS

Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE XXII  
SEVERABILITY

In the event that any provision of this Agreement shall be held unconscionable, unenforceable, or void for any reason by any tribunal of competent jurisdiction; it is agreed that the provision in question shall be modified to eliminate the elements of concern to the tribunal

and as modified shall be binding on the parties hereto. The remaining provisions shall not be affected by the action of any tribunal or modification of such provision, and shall remain in full force and effect.

ARTICLE XXIII  
FORCE MAJEURE

Except as otherwise expressly provided herein, neither Party shall be liable for any failure or delay in the performance of its obligations under this Agreement due to causes not reasonably within its control, including but not limited to, acts of civil or military authority, including courts and regulatory agencies, acts of God, war, riot or insurrection, inability to obtain required construction permits, blockages, embargoes, sabotages, epidemics, fires, floods, strikes, lockouts or other labor difficulties, provided such labor difficulties do not arise from inequitable labor practices. In the event of any failure or delay resulting from such causes, upon notice to the other party within five (5) days of occurrence of the event giving rise to the delay, the time for performance hereunder shall be extended for a period of time reasonably necessary to overcome the effects of such delays. In the event any such failure or delay shall last for a period of more than one hundred eighty (180) days then either Party may terminate this Agreement forthwith, in whole or in part by notice in writing to the other.

ARTICLE XXIV  
NOTICE

Any notice, request, instruction, demand, consent, or other communication required or permitted to be given under this Agreement shall be in writing and shall be delivered either by hand or by certified mail, postage prepaid, and certified return receipt requested to the following address or such other address as the parties may provide to each other in writing:

To Licensee:  
Halstad Telephone Company  
Halstad, Minnesota 56548  
Attn: CEO, Tom Maroney

To Water, Light, Power and Building Commission  
of and for the City of East Grand Forks, Minnesota:  
600 Demers Avenue  
East Grand Forks, Minnesota 56721  
Attn: General Manager, Keith R. Mykleseth

## ARTICLE XXV

### ALTERATIONS, AMENDMENTS, PROJECT AGREEMENTS

25.1 Alterations and Amendments: No alteration or amendment of this Agreement shall be valid unless the same is made in accordance with the provisions hereof or by an instrument in writing signed by WATER AND LIGHT and by LICENSEE.

25.2 Project Agreements: In the event of a conflict between the terms of this Master Agreement and any Project Agreement, the terms of that Project Agreement shall govern, but only to the extent of the conflict.

## ARTICLE XXVI

### APPLICABLE LAW

The validity, interpretation, and enforcement of this Agreement shall be governed by the laws of Minnesota. The venue of any legal action brought by or filed against WATER AND LIGHT relating to any matter arising under this Master Agreement, or individual Project Agreement(s), shall be exclusively in the state court sitting in Polk County, Minnesota, which has jurisdiction over the matter.

ARTICLE XXVII  
ENTIRE AGREEMENT

This Master Agreement and Exhibits represent the entire Agreement between the parties and supersede all prior Agreements or representations, whether written or oral, with respect to this subject matter hereof. No provision of this Master Agreement may be changed or amended except by written Agreement signed by both parties.

ARTICLE XXVIII  
PARTIES BOUND

This Agreement shall be binding upon the parties hereto and their respective successors, heirs, personal representatives and assigns.

ARTICLE XXIX  
NEGOTIATED AGREEMENT

The parties agree that they have had meaningful discussion and/or negotiation of the provisions, terms and conditions contained in this Agreement. Therefore, doubtful or ambiguous provisions, if any, contained in this Agreement shall not be construed against the Party who physically prepared this Agreement or any such provision thereof.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, by their respective officers thereunto duly authorized, on the day, month and year first above written.

Water, Light, Power and Building Commission a Municipal Utility of and for the City of East Grand Forks, Minnesota

By: \_\_\_\_\_ Date: \_\_\_\_\_, year  
Commission President

Attest: \_\_\_\_\_ Date: \_\_\_\_\_, year  
Secretary to the Commission

AGREED TO:  
LICENSEE

By: \_\_\_\_\_ Date: \_\_\_\_\_, year

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ronald I Galstad City Attorney



**FIBER OPTICS  
LICENSE PROJECT AGREEMENT**

THIS LICENSE is effective as of the 1st day of February 2023 by and between Water, Light, Power and Building Commission of and for the City of East Grand Forks, Minnesota,(Water and Light), and Halstad Telephone Company, (HTC).

**WITNESSETH:**

**WHEREAS**, Water and Light owns and maintains a fiber optic cable (“cable”) as shown on Exhibit “A” attached hereto and incorporated by the reference and has the capacity to maintain and repair the cable; and

**WHEREAS**, HTC desires to license from Water and Light cable, as described in Exhibit “A”; and

**WHEREAS**, HTC has applied for and received a Master Fiber Optic License Agreement from Water and Light;

**WHEREAS**, for purposes of this project license, HTC of Halstad, MN. and North Central Service of Clearbrook, MN. will be considered an approved contractor of Water and Light to make needed repairs to licensed cable, construct a customer drop and provide other services related to this license as agreed to by both parties.

**NOW, THEREFORE**, Water and Light agrees to license to HTC and HTC agrees to license from Water and Light, the cable upon the following terms and conditions:

1. License and Term of License. Water and Light hereby licenses the cable to HTC. The initial Term of this license shall be for a period of three (3) years, each year at the same rate. This license shall commence on February 1<sup>st</sup>, 2023 and terminate on February 1<sup>st</sup>, 2026 subject to renewal for an Extended Term as set forth in Paragraph 5 below.
2. Customer Drops. HTC understands that it is responsible for the construction of a customer drop starting at Water and Light’s nearest Point of Presence (POP). Additional terms may apply as described in Exhibit A.
3. Payment. HTC shall pay to Water and Light for the License of the cable and the other services specified in this License, the sum of \$250 per month based on HTC licensing 1 dark fiber for 2.2 circuit miles. Mileage and quality will be confirmed by an OTDR (optical time-domain reflectometer) test performed by HTC. Payment is to be made in advance on the first day of each month during the duration of this license.
4. Termination. Except as otherwise provided, this license shall terminate at the expiration of the term of the license as set forth in Paragraph 1 above, or earlier upon mutual written agreement of the parties or as provided for in the Master Fiber Optic License Agreement.

5. Renewal Option. Commencement. This License Project Agreement shall commence on the date first set out above (hereinafter “Effective Date”) and shall continue for a minimum period of three (3) years, unless sooner terminated as provided in this Agreement. The License Project Agreement shall, upon expiration of the initial three (3) year term, be automatically renewed for one additional three (3) year term unless either Party provides a written notice of non-renewal to the other Party not less than twelve (12) months but no sooner than twenty-four (24) months prior to the expiration of the original term or any additional term.
6. Title to equipment and Facilities. Title to and ownership of all equipment and facilities Water and Light owns and uses in owning and maintaining the cable shall remain with Water and Light. Neither Water and Light nor HTC shall do anything, in any way, to encumber, to exercise control over, or to represent that it has any rights with respect to the equipment or facilities owned by the other party.
7. Notice of Work Affecting Cable.

HTC’s Network Operations Center:

Halstad Telephone Company  
P.O. Box 55  
Halstad, MN 56548  
Phone: (800) 457-2125  
Fax: (218) 456-2196  
E-Mail [markforseth@rrv.net](mailto:markforseth@rrv.net)

Water and Light’s Network Operations Center:

Water and Light Distribution Service Center  
1010 5<sup>th</sup> Ave NW  
East Grand Forks, MN 56721  
Phone: (218) 773 - 0515  
Fax (218) 773 – 9240  
E-mail [tgrabanski@egf.mn](mailto:tgrabanski@egf.mn)  
or [cthompson@eastgrandforks.net](mailto:cthompson@eastgrandforks.net)

8. Access to Water and Light’s Facilities. Water and Light must be notified if access to any of its facilities is required by HTC. HTC’s personnel must be accompanied by a qualified Water and Light employee while entering any substations, hand holes, or connection point on the fiber optic system. Phone contact numbers will be provided by Water and Light.
9. Notices. All notices and other communications provided for hereunder shall be in writing and shall be personally delivered, mailed or sent electronically to each party as set forth below or at such other address or in such other manner as may be designated by such party in written notice to each of the other parties. All such notices and communications shall be effective when delivered in person, transmitted by fax, sent electronically or upon receipt after dispatch by

certified or registered first class mail, postage prepaid, return receipt requested, to the party to whom the same is so given or made:

If to Water and Light:       General Manager, Keith R. Mykleseth  
East Grand Forks Water and Light Department  
600 DeMers Ave NW  
P.O. Box 322  
East Grand Forks, MN, 56721-0322  
kmykleseth@egf.mn

If to HTC:                   Operations Manager, Mark Forseth  
Halstad Telephone Company  
P.O. Box 55  
Halstad, MN 56548  
[markforseth@rrv.net](mailto:markforseth@rrv.net)

10. Survival. All representations and warranties contained in this license shall survive the execution and delivery of this license and the consummation of the transactions contemplated hereby.
11. Amendment. No amendment or modification of any provision of this license shall be effective unless the same shall be in writing and signed by all of the parties hereto.
12. Successors and Assigns. This license, and the terms, covenants and conditions hereof, shall be binding upon and inure to the benefits of the parties hereto and their respective successors and assigns, but nothing in this license is to be construed as an authorization or right of any party to assign its rights in or delegate its duties under this license without the prior written consent of the other party.
13. Governing Law. This license shall be deemed to be a contract made under and shall be construed, interpreted, governed by and enforced in accordance with the laws of the State of Minnesota.
14. Counterparts. This license may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.
15. Headings. The headings to the paragraphs of the license are intended solely for the convenience of the parties and shall in no way be held to explain, modify, amplify or aid in the interpretation of the provision hereof.
16. Severability. The provisions of this license shall be deemed severable and, if any portion hereof shall be held invalid, illegal or unenforceable for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.
17. Waiver; Remedies cumulative. No waiver of any provision of this license by any party shall be valid unless in writing and signed by the party against whom the waiver is charged. The waiver of any provision of this license shall not operate or be construed as a waiver of any subsequent

breach of that provision or any other provision. Remedies herein provided are cumulative and not exclusive of any other remedy provided by law.

**IN WITNESS WHEREOF**, The parties hereto have executed this license as of the day, Month and year first above written

**HALSTAD TELEPHONE COMPANY**

**WATER AND LIGHT**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title Printed or Typed

\_\_\_\_\_  
Name/Title Printed or Typed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title Printed or Typed

\_\_\_\_\_  
Date

EXHIBIT "A"

DESCRIPTION OF FIBER OPTIC CABLE LICENSED

1. Number of fibers: 1
2. End locations
  - a. Central Substation
  - b. American Crystal Sugar Electric Meter, East Grand Forks, MN
3. Miles of cable Licensed: 2.2
4. Monthly License amount: \$250
5. Additional Terms: Customer Drop. HTC will pull a 12 fiber from the Water and Light American Crystal Sugar POP back to the next Water and Light handhold. HTC would then attach its own conduit to the before-mentioned Water and Light handhold and pull the fiber to the final customer location. Any fiber in Water and Lights conduits and handholds, as a result of this license, will be owned by Water and Light. Any fiber in HTC's conduits and handholds, as a result of this license, will be owned by HTC.
6. Outage Credit: If an Outage affecting the fiber optic cable in this Project Agreement occurs, the LICENSEE shall be entitled to an Outage credit against its next-due License payment(s) calculated at the following rates. The specified % is calculated as a % of the total monthly licensee fee for this specific fiber.

<u>Outage duration</u>	<u>Outage credit % of monthly fee</u>
Less than 1 minute	0%
1 minute to 1 hour	5%
1 hour but less than or equal to 4 hours	20%
Greater than 4 hours but less than or equal to 8 hours	25%
Greater than 8 hours but less than or equal to 16 hours	30%
Greater than 16 hours but less than or equal to 24 hours	40%
Greater than 24 hours	5% for each additional hour, or fraction thereof, not to exceed 100%.

The total of all outage credits applied for outages for this specific Project fiber in a billing month shall not exceed 100% of the total monthly licensee fee for this specific Project fiber.