

CITY OF KIRTLAND

RESOLUTION NUMBER 22-R-31

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH EVERSTREAM SOLUTIONS LLC FOR THE UPGRADE OF THE CITY'S INTERNET SERVICES, AND DECLARING AN EMERGENCY.

WHEREAS, the Mayor, with the assistance of its IT consultant at Fairsite Technologies, have determined that the current internet services are insufficient to support the City and its expanding need for broadband internet; and

WHEREAS, the IT consultant has solicited and vetted various vendors, ultimately recommending that the Mayor enter into an agreement with Everstream Solutions LLC for dedicated internet access, said agreement is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the Mayor agrees with his consultant and requests authorization from this Council to enter into said agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kirtland, County of Lake and State of Ohio, that:

SECTION 1: The Mayor is hereby authorized to upgrade the City's internet services. The City is hereby authorized to enter into an agreement with Everstream Solutions LLC for the terms and conditions as set forth in Exhibit A.

SECTION 2: The Mayor is hereby authorized to sign any documents to complete any purchase or contract for services as described herein.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were passed in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 4: This Resolution is hereby declared to be an emergency measure necessary for the preservation of the public peace, safety and welfare of the citizens of the City of Kirtland. The emergency is necessary in order to allow the City to upgrade its internet services which would

ensure the continuity of municipal services. Therefore, this Resolution shall be in full force and effect immediately upon its passage by the affirmative vote of five (5) members of Council and approval by the Mayor, otherwise this Resolution shall be in effect from and after its adoption at the earliest period allowed by law.

First Reading: _____
Second Reading: _____
Third Reading: _____

DATE PASSED: _____

President of Council

Submitted to the Mayor for his
Approval on this _____ day of
_____, 2022.

ATTEST:

Approved by the Mayor on this _____
day of _____, 2022.

Clerk of Council
Internet Upgrade with Everstream

Mayor Kevin F. Potter

ENTERPRISE MASTER SERVICES AGREEMENT

This Master Services Agreement (“Agreement”), effective the date of the last signature below (the “Effective Date”), is entered into by and between EVERSTREAM SOLUTIONS LLC, an Ohio limited liability company, with a principal place of business at 1228 Euclid Ave., Suite 250, Cleveland, Ohio 44115 together with its affiliate, Everstream GLC Holding Company LLC, (collectively “Everstream”), and City of Kirtland, an Municipality, with a place of business at _9301Chillicothe Rd. Kirtland, Ohio 44094_ (“Subscriber”). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Everstream and Subscriber (collectively, the “Parties” or each individually a “Party”) agree as follows:

1.0 AGREEMENT

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

2.0 SERVICES AND SERVICE ORDERS

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

3.0 SERVICE & EQUIPMENT INSTALLATION

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

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

4.0 SUPPORT & MAINTENANCE

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

5.0 DESCRIPTION OF BASIC SERVICES

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

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

5.2 NETWORK OPERATIONS SUPPORT.

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

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

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

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

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

- 5.4 **SUBSCRIBER CONNECTION VIA FIBER BUILD TO THE EVERSTREAM NETWORK.** At Subscriber's written request, Everstream will provide to Subscriber, pricing for the installation and maintenance of a dedicated fiber connection from an agreed upon Subscriber site to the Everstream Network. Subscriber may elect in writing to have Everstream, on Subscriber's behalf, responsible for procuring a dedicated fiber connection between Subscriber's site and the Everstream Network. Should Subscriber elect in writing to have Everstream procure a dedicated fiber connection, Everstream will oversee the installation and maintenance of that connection on Subscriber's behalf, and will provide connection engineering and maintenance support during and after the installation of the connection. Everstream will provide routine and reasonable Services related to network interface planning, engineering, and consulting support in installing and configuring the Subscriber's dedicated fiber connection to the Everstream Network. Based on the associated Service Order, Subscriber is directly responsible for the payment of all installation, recurring and non-recurring charges required to be paid to Everstream or third parties with respect to each Subscriber dedicated fiber connection to the Everstream Network. Payments for these Services will be due when Subscriber orders the connection.
- 5.5 **OWNERSHIP OF CONNECTION.** Any Connection from the Everstream Network up to the Demarcation Point becomes part of the Everstream Network upon installation. Subscriber has no ownership interest in the connection up to the Demarcation Point
- 5.6 **SERVICE UPGRADES.** At any time, Subscriber may elect in writing to increase the bandwidth of its connection to the Everstream Network without contract extension or the number of Subscriber sites connected to the Everstream Network. As part of any such Service Upgrade, Subscriber will use its best efforts to cooperate with Everstream in coordinating the engineering, installation, testing and production use of the new connection except as provided elsewhere in this Agreement. If the Service Upgrade imposes different requirements for environmental conditions, supplemental Equipment or similar items, Subscriber will have the option to comply with those requirements and acquire (either directly or through Everstream) the necessary Equipment and pay any and all fees due under the associated Service Order, continue the Agreement according to the original Terms, or terminate the associated Service Order.
- 5.7 **EQUIPMENT RECOMMENDATION.** Subscriber agrees to employ commercially reasonable efforts to house Everstream-provided Equipment in accordance to the "Environmental Recommendations" provided by Everstream. This includes the provisioning of power and space for Equipment needed to operate connection at Subscriber site(s) to Everstream Network.
- 6.0 **SUBSCRIBER OBLIGATIONS**
- 6.1 Subscriber's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations and the Terms of the Master Agreement. Subscriber shall not resell or redistribute (whether for a fee or otherwise) the Service(s), or any portion thereof, or make any use of the Service other than for Subscriber's internal business purposes, unless otherwise agreed in writing by Everstream. Subscriber shall ensure that its End Users' use of the Service, if any, shall comply with all applicable laws and regulations and Terms of the Master Agreement. Upon reasonable notice to Subscriber, Everstream may audit Subscriber's

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

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

7.0 TERM

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

8.0 PAYMENT

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

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

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

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

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

9.0 TAXES

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

10.0 PROPRIETARY RIGHTS AND CONFIDENTIALITY

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

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

10.2 Subscriber shall maintain in confidence, and not to disclose to third-parties, or use, except for such use as is expressly permitted in the MSA, the Everstream Materials and together with any other information or materials provided by Everstream in connection with the MSA that is identified or marked as confidential or are otherwise reasonably understood to be confidential, including but not limited to the content of the MSA.

10.3 If software is provided to Subscriber under the Master Agreement, Everstream grants Subscriber a limited, non-exclusive and non-transferable license to use such software, in object code form only, solely for the purpose of using the Service for Subscriber's internal business purposes during the Term.

11.0 EQUIPMENT UPGRADES AND MODIFICATIONS

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

12.0 TERMINATION

12.1 Either Party may terminate a Service Order: (a) upon thirty (30) days written notice to the other Party of the other Party's material breach of the MSA or associated Service Order, provided that such material breach is not cured within such thirty (30) day period; (b) immediately, in the event that the other Party liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for general relief from its debtors, initiates any proceeding seeking general protection from its creditors, or is removed or delisted from a trading exchange (individually a "Bankruptcy Event"); (c) immediately, in the event that, after entering into a Service Order, Everstream conducts a site survey and learns that the construction costs shall require a material increase in the Service Charges; or (d) upon at least ninety (90) days written notice to the other Party before the end of an Initial Term or Renewal Term. In the event that Subscriber fails to comply with any applicable laws or regulations or the Terms of the MSA, upon thirty (30) days' written notice, Everstream may suspend or discontinue any applicable Service in whole or in part without further notice, provided that such failure is not cured within such thirty (30) day period. In addition, Everstream may immediately terminate or suspend Subscriber's use of the Service if such use is determined by Everstream, in its sole discretion, to be resulting in a material degradation of the Everstream network, until such time as such degradation has been remedied.

12.2 Upon the Termination or expiration of the MSA, including all associated Service Orders: (a) Everstream's obligations under the MSA shall immediately cease; (b) Subscriber shall promptly pay all amounts due and owing to Everstream for Service(s) delivered prior to the date of Termination or expiration, and any commercially reasonable deinstallation fees, if any; (c) Subscriber shall promptly cease all use of any software provided by Everstream under the MSA, and shall return such software to Everstream; and (d) Subscriber shall return to Everstream or permit Everstream to remove, in Everstream's discretion, the Everstream Equipment in the same condition as when received, ordinary wear and tear excepted. Subscriber shall reimburse Everstream for the reasonable and

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

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

12.4 The provisions of Sections 7 - 9, 11 - 15, 17 18, 19, 21 - 23 and 25 of the MSA and the Attachments shall survive the Termination or expiration of the MSA.

13.0 INDEMNIFICATION

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

14.0 DISCLAIMER OF WARRANTY

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

15.0 LIMITATION OF LIABILITY

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

THE MSA (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY) SHALL BE LIMITED TO THE FEES PAID OR OWED BY SUBSCRIBER UNDER THE SERVICE ORDER THAT IS THE SUBJECT MATTER OF THE CLAIM IN THE TWELVE (12) MONTHS PRECEDING THE DATE THE CLAIM ARISES. IN NO EVENT SHALL EVERSTREAM'S AFFILIATES OR SUPPLIERS HAVE ANY LIABILITY TO SUBSCRIBER UNDER THE MASTER AGREEMENT. EVERSTREAM SHALL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES ARISING AS A RESULT OF THE UNAVAILABILITY OF THE SERVICE, INCLUDING THE INABILITY TO REACH EMERGENCY SERVICES, THE INABILITY TO CONTACT A SECURITY SYSTEM OR REMOTE MEDICAL OR OTHER MONITORING SERVICE PROVIDER OR ANY FAILURE OR FAULT RELATING TO SUBSCRIBER EQUIPMENT, FACILITIES OR SERVICES.

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

16.0 FORCE MAJEURE

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

17.0 ENTIRE AGREEMENT

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

18.0 ORDER OF PRECEDENCE AND CONFLICTS

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

19.0 COMPLIANCE WITH LAWS

19.1 As between the Parties, Everstream shall obtain and maintain at its own expense, all licenses, approvals and regulatory authority required by law with respect to Everstream's operation and provision of the Services. Subscriber shall obtain and maintain at its own expense, all licenses, approvals and regulatory authority required by law with respect to Subscriber's use of the Services as contemplated in the MSA. Unless specified otherwise in the MSA or associated Service Order, each Party shall provide all notices, pay all fees and comply with all laws, ordinances, rules and regulations relating to its performance obligations specified in the MSA.

19.2 The MSA, including the Attachments and associated Service Order(s), are subject to all applicable federal, state or local laws and regulations in effect in the relevant jurisdiction(s) in which Everstream provides the Services. If any provision of the MSA, the Attachments, or the associated Service Order(s) contravene or are in conflict with any existing law or regulation, the terms of such law or regulation shall take priority over the relevant provision of the MSA, the Attachments, and/or the associated Service

Order(s). If the relevant law or regulation applies to some but not all of the Service(s) being provided under the MSA, then such law or regulation shall take priority over the relevant provision of the MSA, the Attachments, and/or the associated Service Order(s) only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in the herein, nothing contained in the MSA shall constitute a waiver by Everstream of any rights under applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or equipment.

20.0 GOVERNING LAW AND JURISDICTION

This MSA shall be governed by and construed in accordance with applicable U.S. federal law and the laws of the State of Ohio, without regard to conflict of law principles. Each Party consents to the exclusive jurisdiction and venue of the U.S. federal and Ohio state courts located in and serving the City of Cleveland, in connection with any dispute arising out of or in connection with this Master Agreement and/or its subject matter. Any claim that Subscriber wishes to assert under the MSA must be initiated not later than one (1) year after the claim arose.

21.0 SEVERABILITY

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

22.0 ASSIGNMENT

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

23.0 GENERAL

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

23.2 There are no Third-Party beneficiaries to the MSA. The Parties to the MSA are independent contractors.

24.0 NOTICES

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

<p>Everstream: Everstream Solutions LLC Attn: General Counsel 1228 Euclid Avenue Suite 250 Cleveland, OH 44115</p>	<p>Subscriber: _____ _____ _____ _____</p>
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25.0 COUNTERPARTS

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

ACCEPTED AND AGREED AS OF THE EFFECTIVE DATE:

EVERSTREAM SOLUTIONS LLC

SUBSCRIBER

Authorized Signature

Authorized Signature

Name (Print or Type)

Name (Print or Type)

Title

Title

Date

Date



FASTER FIBER. BETTER BUSINESS.

Quote #: Q-50196-1
Date: 4/12/2022
Expires On: 4/22/2022

Sales Agent: Rich Dugger
rdugger@everstream.net
440-382-1212

Customer Details

Contact Name: Kevin Potter
Email: kpotter@kirtlandohio.com
Account Name: City of Kirtland
Bill to Contact Name: Lisa Knazek
Phone: 440-256-3332
Billing Address: 9301 Chillicothe Rd, Kirtland OH, 44094-8501

9301 Chillicothe Rd
A Location: Headend
Z Location: 9301 Chillicothe Rd, Kirtland, OH 44094

Table with 6 columns: QTY, Product Name, Bandwidth (Mbps), Term, Non-Recurring Charges, Monthly Recurring Charges. Includes rows for Dedicated Internet Access and IPv4 Blocks /29.

Comments

Service Order Details

Subscriber approves and accepts this Services Order Amendment is governed by the Master Services Agreement between Subscriber and Everstream (the 'MSA') [as amended]. Subscriber agrees to be bound by the terms and conditions of the MSA. The Requested FOC (Firm Order Commitment) date is subject to Everstream's Internal provisioning, and an actual FOC Date will be issued to Subscriber in accordance with the MSA. Terms of Service, including all active Subscriber Service Order Amendment(s), together with your Everstream Master Services Agreement, constitute the entire agreement between you and Everstream relating to these Services. You are not entitled to rely on any other agreements or undertakings relating to Services provided by Everstream. Invoicing of service(s) shall begin with the issue of a Service COFA document post-installation. The delivered service(s) will be considered accepted by SUBSCRIBER as certified to be error free and built to "Service Order" specifications at the conclusion of a five (5) day acceptance period. Unless otherwise specified above, Internet service provides one (1) public-facing IPV4 /30 address. Subscriber shall formally demonstrate usage requirement(s) prior to IPV4 Addresses being issued by Everstream. Unless otherwise specified above, Services up to one (1) Gbps will be delivered at a single one (1) Gbps port, Services ranging from one (1) Gbps to ten (10) Gbps will be provided by way of one (1) ten (10) Gbps port, and Services greater than ten (10) Gbps will be provide by way of one (1) one hundred (100) Gbps port.

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

SIGNATURES

SUBSCRIBER AUTHORIZED SIGNATURE

Signature:

Print:

Title Position:

Date:

EVERSTREAM

Signature:

Print:

Title Position:

Date:

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