

**MANITOWOC PUBLIC UTILITIES  
DARK FIBER LICENSE SERVICE AGREEMENT**

1. This Dark Fiber License Service Agreement ("Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between the Manitowoc Public Utilities, 1303 South 8<sup>th</sup> Street, Manitowoc, WI ("MPU") and the City of Manitowoc, 900 Quay Street, Manitowoc, WI ("Customer") for the purpose of establishing the terms and conditions under which MPU will license the use of certain dark fibers (referred to herein as "DF Service") to Customer. **This Agreement voids and supersedes all previous Dark Fiber License Service Agreements between the Customer and MPU.**
  
2. **License Granted.** Subject to the terms of this Agreement, MPU hereby grants Customer a revocable and exclusive license authorizing Customer to use strands of dark fiber (the "Licensed Fibers"), which dark fiber shall be installed between Access Points located as indicated on Exhibit A ("Access Points"). The parties shall mutually agree upon specific location for the fiber termination point within Customer's buildings. Customer's right to use the Licensed Fibers shall, at all times, be subordinate to MPU's obligation to provide a safe and reliable supply of electricity to its customers.
  
3. **Services.**
  - a. MPU shall install, operate, and maintain the Licensed Fibers. The installation of the Licensed Fibers shall be completed in accordance with the National Electric Safety Code and all other applicable safety codes and rules. Customer will, at its own expense, be responsible for all site restoration activities after installation of the DF Service.
  
  - b. MPU shall provide Customer a fiber optic termination point at each of the Customer's sites. MPU shall provide any necessary fiber termination racks and conduit. The fiber termination rack shall be considered the demarcation point between MPU and Customer equipment. Customer shall provide any and all electronic equipment required to interface with the Licensed Fibers.
  
  - c. MPU shall be responsible for the operation and ordinary maintenance and repair of the Licensed Fibers. For purposes of this Agreement, "ordinary maintenance and repair" shall mean semi-annual or annual visual inspection and any pole transfers.
  
  - d. Customer must have a process in place that will allow MPU reasonable access to Customer's buildings during an emergency.
  
4. **Installation and Access.** MPU will install service on or about **January 1, 2014** ("Installation Date"). During and following installation, Customer will provide MPU with reasonable access to Customer's site to install, inspect, repair, and maintain MPU's equipment. Upon termination of the DF Service, Customer will permit MPU to remove equipment previously installed by MPU to provide the DF Service.

5. **Installation and License Fees.**

- a. During the initial term of this Agreement, Customer shall pay MPU an Annual License Fee in the amount of **Seventeen Thousand, One Hundred and Seven Dollars and Eighty Nine Cents (\$17,107.89) per year**. The Annual License Fee shall be for the operation and maintenance of the DF Service. MPU shall invoice Customer for such Annual License Fee and Customer shall pay the invoice within thirty (30) days of the date of the invoice.
  - b. During the initial term and any renewal term, the Annual License Fee may be increased by no more than three percent (3%) per year over the Annual License Fee in effect the immediately preceding year.
  - c. Customer shall pay to MPU an Installation Fee in an amount of **Two Hundred Thirty Thousand, Five Hundred and Seventy One Dollars (\$230,571)**. MPU shall amortize and invoice Customer for the installation fee in **nine annual payments of \$29,860.00 and a tenth annual payment of \$ 28,438.09**. The first payment will be due on July 1, 2014 with subsequent payments due on July 1 of years 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022 and 2023. Customer further agrees to pay the entire Installation Fee regardless of early termination of this Agreement.
  - d. In the event that Customer fails to pay any amounts owed to MPU when due, Customer shall pay to MPU a late fee on the total payment due of one percent (1%) per month.
  - e. Customer will reimburse MPU on a time and materials basis for any modification or equipment relocation requests that Customer makes of MPU.
6. **Term.** This Agreement shall commence on the Installation Date, and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for an initial term of ten (10) years. Either party may terminate this Agreement at the end of the initial term by giving to the other party written notice to terminate this Agreement at least one (1) year prior to the end of such term. Upon failure to give such notice, this Agreement shall automatically continue in force until terminated by either party after one (1) year's written notice.
7. **Default/Termination.** MPU may terminate this Agreement on giving Customer thirty (30) days written notice in the event any of the following occur:
- a. Customer fails to pay the license fee or any other sums to MPU when due and does not cure that default within thirty (30) days after written notice thereof by MPU.
  - b. Customer defaults in the performance of any other term of this Agreement and does not cure that default within thirty (30) days after written notice thereof by MPU, provided that such period shall be extended as reasonably necessary in the event that Customer is proceeding in good faith with due diligence to cure such default but is unable to do so within thirty (30) days.

- c. MPU grant of this license or Customer use of the Licensed Fibers or DF Service becomes illegal under any applicable federal, state or local law, rule or regulation.
8. **Early Termination by Customer.** Customer may terminate this Agreement for any reason on giving MPU one (1) year's prior written notice of its intent to terminate. In such event, Customer shall not be entitled to a refund of any prepaid license fee. Upon notice of such termination, all prepaid fees and charges shall be retained by MPU, and Customer shall immediately pay to MPU a buyout payment in an amount equivalent to 100% of the Annual License Fee in effect at the time the notice of termination is given.
9. **Ownership.** At all times, the ownership and rights of possession to the Licensed Fibers, conduit, termination racks and all other MPU-installed equipment shall remain in MPU, and Customer shall have no ownership interest therein.
10. **LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES SHALL MPU BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THE LICENSED FIBERS OR THE DF SERVICE INCLUDING, BUT NOT LIMITED TO, DAMAGE OR LOSS OF PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES, OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY CONSTRUCTION, RECONSTRUCTION, RELOCATION, REPAIR OR MAINTENANCE PERFORMED BY, OR FAILED TO BE PERFORMED BY MPU OR ANY OTHER CAUSE WHATSOEVER.
11. **Lawful Uses.** Customer agrees to use the Licensed Fibers only for lawful purposes. The transmission of any material in violation of any federal, state, or local laws or regulations is prohibited.
12. **NO WARRANTIES/REPRESENTATION.** MPU MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO THE LICENSED FIBERS OR DF SERVICE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH WARRANTIES ARE HEREBY DISCLAIMED. THIS DISCLAIMER INCLUDES LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES, MISS-DELIVERIES OR INTERRUPTIONS OF DF SERVICE HOWEVER CAUSED.
13. **Interruption of DF Service.** Customer acknowledges that routine maintenance and periodic system repairs, upgrades and reconfigurations, public emergency or necessity, force majeure, restrictions imposed by law, acts of nature, labor disputes and other situations, including mechanical or electronic breakdowns may result in temporary impairment or interruption of DF Service and MPU shall have no liability arising out of service interruptions or impairments.
14. **Indemnification.** Customer is responsible for all actions it takes or causes to be taken in connection with its use of the DF Service. As a condition of taking DF Service, Customer agrees to indemnify and hold harmless the City of Manitowoc, its council members, elected

officials, commission members, and employees from any and all liability, loss, claims, costs, damages, fines, forfeitures, penalties, expenses (including reasonable attorneys' fees), or lawsuits arising in any way from Customer's use of the DF Service or Customer's breach of any provision of this Agreement

15. **No Waiver.** Nothing in this Agreement shall be deemed a waiver by the City of Manitowoc of the provisions of Section 893.80, Wis. Stats.
16. **Assignment.** Customer may not assign, or otherwise transfer all or any part of its interest in this Agreement or the license granted to Customer hereunder without the prior written consent of MPU.
17. **Customer Service.** MPU agrees to provide a customer service telephone number, which shall be answered twenty-four (24) hours a day. Whenever reasonably possible, repairs to the Licensed Fibers will be completed within twenty-four (24) hours.
18. **Restoration of Service.** In the event of a storm or accident or other like event that causes damage to the Licensed Fibers and to MPU's electric power distribution system, MPU shall have the right to restore electric service to its customers before undertaking repairs to the Licensed Fibers, as MPU deems necessary in its sole discretion.
19. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters covered under this Agreement.
20. **Notices.** All notices, requests, demands, and other communications hereunder shall be given in writing and shall be personally delivered; sent by facsimile transmission, or other electronic means of transmitting written documents; or sent to the parties at their respective addresses by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service. The respective addresses to be used for all such notices, demands, or requests are as follows:

**If to MPU:** Manitowoc Public Utilities  
Attn: General Manager  
1303 South 8th Street  
P.O. Box 1090  
Manitowoc, WI 54221-1090

**If to Customer:** City of Manitowoc  
900 Quay Street  
Manitowoc, WI 54220

21. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to its conflict of law provisions.
22. **Severability.** If any one of the paragraphs in the Agreement is found to be unenforceable or invalid, Customer's and MPU's agreement on all other paragraphs is not affected.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first written above.

**Licensor:** Manitowoc Public Utilities

**Licensee:** City of Manitowoc

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Printed Name:** Nilaksh Kothari

**Printed Name:** \_\_\_\_\_

**Title:** General Manager

**Title:** \_\_\_\_\_

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

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

**Witness:** \_\_\_\_\_

**Witness:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

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

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

**EXHIBIT A  
ACCESS POINTS**

A.) Two Licensed Fibers between City Hall, 900 Quay Street, and each of the following locations:

- 1.) Wastewater Treatment, 1015 S. Lakeview Drive
- 2.) Library, 707 Quay Street
- 3.) Transit Transfer Center, 915 South 11<sup>th</sup> Street
- 4.) Rahr West Museum, 610 North 8<sup>th</sup> Street
- 5.) Fire Station #2, 1410 North 8<sup>th</sup> Street
- 6.) Fire Station #3, 3820 Dewey Street
- 7.) Fire Station #4 via Fleetwood Parks, 1125 Fleetwood Drive
- 8.) Park and Recreation Offices, 930 North 18<sup>th</sup> Street
- 9.) Visitor Convention Bureau, 4221 Calumet Avenue
- 10.) Department of Public Works, 2655 South 35<sup>th</sup> Street
- 11.) Senior Center, 3330 Custer Street
- 12.) Evergreen Cemetery Office, 2110 Michigan Ave
- 13.) Fleetwood Parks, 1105 Fleetwood Drive
- 14.) Manitowoc County Sheriff's building, 1025 S. 9<sup>th</sup> Street

B.) Four Licensed Fibers between City Hall, 900 Quay Street, and the following location:

- 1.) Evergreen Cemetery Fire Tower, 746 Revere Drive
- 2.) Safety Building, 911 Franklin Street