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LICENSED TO PRACTICE IN NORTH DAKOTA AND MINNESOTA

June 3, 2022

Konrad Crockford  
Director, Compliance Division  
Public Service Commission  
State of North Dakota  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

VIA EMAIL ONLY: [kcrockford@nd.gov](mailto:kcrockford@nd.gov)

Re: ND One-Call Excavation Notice System: N.D.C.C. § 49-23; Case #GS-22-168  
Our file: KVC/6616

Mr. Crockford,

I represent Eatherly Constructors, Inc. (“ECI”) in a civil lawsuit against Halstad Telephone Company (“HTC”). ECI received your letter dated May 11, 2022 regarding Case # GS-22-168 or HTC’s North Dakota One-Call Complaint (the “Complaint”). This letter is a response to the Complaint. It is my understanding that ECI received your letter on May 23, 2022. My client and I appreciate you agreeing to extend the response deadline.

It is my understanding that ECI has been in business for over 50 years and has performed excavation projects in at least eight states including North Dakota. ECI was recognized as a business entity by the North Dakota Secretary of State in 1982 and is currently in good standing. It is also my understanding that ECI has performed multiple projects in North Dakota and has excavated over 1,200 miles in North Dakota the last ten years alone. To ECI’s knowledge, it has never received a North Dakota One-Call complaint.

ECI has read the Complaint and inspected the documents attached to the Complaint. ECI denies each and every allegation in the Complaint unless hereinafter specifically admitted, qualified, or explained. ECI admits that it performed excavation work to lay water pipes near the Hillsboro/Cummings North Dakota area on or around June 19, 2021. It also admits that it cut HTC cables at approximately 4:00 PM on June 19, 2021. However, it denies that it violated N.D.C.C. § 49-23 or was negligent in the excavation of the area and thus ECI has refused to pay for the cable repairs. It is ECI’s position that HTC’s locator did not properly locate HTC’s cables.

ECI agrees that it submitted the North Dakota One Call Ticket Number 21060828 (“Ticket”) on or about June 9, 2021. ECI agrees that the Ticket attached to the Complaint is an accurate copy of the said Ticket. It also agrees that the Google map attached to the Complaint is an accurate depiction of the dig location area described in the Ticket. ECI understands that several utilities (listed on the Ticket), including HTC, located their underground facilities in response to the Ticket submission. ECI understands that HTC hired LSI Utility Locating Services, Inc. to perform the locating on its behalf.

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Response to North Dakota One-Call Complaint  
Eatherly Constructors, Inc.  
Kenneth Carlsen, Attorney

ECI admits that several utility's markers and flags were present in the area on or before June 19, 2021. After walking the area before it began digging, noting the many flags in the area, ECI determined that the path laid out by the engineering plans was free of underground facilities. ECI commenced digging a ten-foot-deep trench according to plan and at approximately 4:00 PM cut the HTC cables.

Pursuant to N.D.C.C. § 49-23, ECI notified HTC that day of the incident. ECI remained available and was near or at the site for several days after the incident. ECI observed HTC repair the cables over several days and then assisted HTC with burying the cables after their repair was complete.

ECI cannot speak to the photos marked as #1 and #2 in the Complaint except that the white pipe depicted in the photos could be pipe ECI used in its water line project. ECI admits that photos #3, #4, and #5 appear to be accurate depictions of the dig site after the incident. The Caterpillar equipment in the photos appears to be ECI equipment, but the Chevrolet truck in the photos appears to belong to HTC. HTC was not at the dig site on the day of the incident until after ECI notified them of the cut cables.

The flags and markers in the photos #3, #4, and #5 appear to belong to HTC. However, it is ECI's position that these markers and flags depicted in the photos were placed there sometime after ECI cut the cables. In its many years of excavation experience, ECI believes there is little chance the markers and flags depicted in the photos would have survived a nearby excavation of a deep trench. The sheer volume of dirt being moved and heaped upon the site by machines would have obliterated most flags and markers. Additionally, the Ticket shows there were five other utilities besides HTC that marked the area. ECI remembers the nearby area being full of flags and markers from several different utilities. However, photos #3, #4, and #5 do not show markers or flags of other utilities.

Finally, the placement of the white valve riser depicted in photos #3 and #4, also supports ECI's position. It is my client's understanding that an engineer installed the valve riser after locating was complete but before excavation began. ECI does not believe an engineer would have placed a valve riser where it is depicted if cables were located in the planned path. Thus, it is ECI's position that the markers and flags were placed sometime after ECI cut the cables. ECI believes the locator did not properly locate the HTC cables prior to the dig; therefore, it denies that it violated N.D.C.C. § 49-23 or was negligent.

Sincerely,

*/s/ Kenneth V. Carlsen*

Kenneth V. Carlsen  
kcarlsen@camrudlaw.com