

**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE CITY OF  
MILWAUKEE AND THE UNIVERSITY OF WISCONSIN-MILWAUKEE REGARDING  
CONDUIT OCCUPANCY**

This Intergovernmental Cooperation Agreement ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016, (the "Effective Date"), by and between the City of Milwaukee ("City"), a municipal corporation, having its principal place of business at City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202 and the University of Wisconsin-Milwaukee ("UWM"), an agency of the State of Wisconsin, having its principal place of business at \_\_\_\_\_ (collectively, the "Parties").

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

WHEREAS, UWM has requested permission to place and maintain telecommunications facilities ("UWM's Facilities") in the portions of the City's Conduit System described on Exhibit A to this Agreement; and

WHEREAS, the City and UWM share telecommunications fiber at several facilities to enable and support various City/UWM partnerships and the City anticipates further benefits from its agreement to permit UWM to occupy portions of the City's Conduit System; and

WHEREAS, due to these intergovernmental benefits the City will not charge a conduit occupancy license fee for UWM's occupancy of the City's Conduit System pursuant to the terms of this Agreement; and

WHEREAS, Wisconsin Statute § 66.0301 authorizes municipalities and state agencies to contract with each other for the receipt or furnishing of services; and

WHEREAS, UWM does not provide telecommunications services for a fee directly to the public and is therefore not covered by Chapter 98 of the Milwaukee Code of Ordinances; and

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

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

**A. SCOPE OF AGREEMENT**

1. Grant of Use. Subject to the provisions of this Agreement, the City hereby grants to UWM, on a license basis ("License"), the right to use the portion of City's Conduit System outlined on Exhibit A for the placement of UWM's Facilities. Upon mutual agreement of the City, through its City Engineer, and UWM, Exhibit A may be

amended from time to time to reflect changes in the use of the Conduit System by UWM.

2. Non-Vesting Provision. No use of the City's Conduit System by UWM or payment of any fees required under this Agreement shall create or vest in UWM any easements or other ownership or property rights of any nature in the Conduit System. Furthermore, this Agreement shall not constitute an assignment of any City rights to use public or private property in which the Conduit System is located. In the event any property owner or municipal or other public authority terminates any permit or other right of UWM to occupy the Conduit System, UWM shall have the right to protest by appropriate proceedings, or renegotiate the termination of such permit. In such event, UWM shall indemnify and hold the City harmless from any expense, legal action or cost, including reasonable attorney's fees, resulting from the exercise of its rights under this paragraph. In the event that UWM has exhausted all its rights of appeal in protesting the above and has failed to obtain the relief sought in such proceedings or appeal, or if any renegotiations have failed, the City shall have the right to terminate this Agreement by giving at least ninety (90) days written notice to UWM. Upon the effective date of termination undertaken in accordance with the provisions of the preceding sentence, this Agreement shall become null and void and neither party hereto shall have any further obligation to the other with respect thereto.
3. Permits and Approvals Required. Prior to the installation of UWM's Facilities within the Conduit System located upon public/private property, UWM shall obtain from the appropriate public and/or private authority any required authorization(s), permits or easements to install its Facilities within any portion of the Conduit System.
4. City's Maintenance Right. The City's right to maintain its Conduit System and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements is in no manner limited by this Agreement.
5. No Restriction on the City. Nothing contained in this Agreement shall be construed to compel the City to construct, reconstruct, retain, extend, or place its Conduit System for use by UWM unless needed for the City's own service requirements. Notwithstanding the foregoing, UWM shall have the right to terminate this Agreement upon ninety (90) days' prior written notice to the City in the event UWM is unable, because of the condition of the Conduit System, to use the Conduit System in the manner originally contemplated herein.
6. Compliance with Law. Nothing contained in this Agreement shall be construed as a limitation, restriction or prohibition against the City with respect to any agreement or arrangement which the City has heretofore entered into with others not parties to this Agreement regarding the Conduit System covered by this Agreement. This Agreement is subject to all laws, ordinances and regulations which in any manner affect the rights and obligations of the Parties under this Agreement, so long as such laws, ordinances or regulations remain in effect.

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

B. TERM

This Agreement shall become effective on the Effective Date and shall continue in effect for a period of two years thereafter unless terminated as provided herein or by operation of law.

C. UWM OPTION ON RELOCATION

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

D. CONSTRUCTION AND MAINTENANCE

1. Application Process.
  - a. UWM shall submit to the City Engineer a detailed request to occupy City conduit, which shall include the route of the requested occupancy, size of cable, excess cable storage requirements, construction design drawings, and installation schedule ("Occupancy Application").

- b. The City shall review the Occupancy Application and determine the feasibility of the request. If the City determines that the Occupancy Application is preliminarily feasible, the City shall notify UWM of its determination.
  - c. UWM shall obtain all necessary permits to allow UWM's contractor to enter the City's Conduit System to survey for possible occupancy space and UWM shall provide the survey information to the City for its review. The City shall review the manhole survey information to determine if there is sufficient available space within the City's Conduit. If the City determines that there is sufficient space, then the City shall notify UWM that the Occupancy Application is approved and shall set forth any installation instructions ("Notice to Proceed"). UWM shall obtain all necessary permits to install its cable according to the installation instructions provided by the City.
2. Construction Practices. UWM shall, at its own expense, during the term of this Agreement, maintain UWM's Facilities in a safe condition, properly identified and tagged along with a pull rope alongside UWM cable, in accordance with regulations established by the City, so as not to physically conflict or electrically interfere with the facilities placed in the Conduit System by the City or others.
3. Construction Management. Except in the event of a UWM emergency as described in Section E.2 below, UWM shall notify the City ten (10) days in advance by written notice at the address below before any routine repair or maintenance of UWM's Facilities:

Mr. Jeffrey S. Polenske  
City Engineer  
Zeidler Municipal Building  
841 North Broadway, Room 701  
Milwaukee, WI 53202

UWM shall obtain all necessary City permits before occupying the right of way and accessing the manholes. UWM shall comply with all OSHA rules and regulations for confined space entry which includes keeping on file the necessary confined spaces entry form. The City's agents shall have the authority, without subjecting the City to any liability therefore, to suspend UWM's work or operations in and around City's manholes/handholes if, in the sole discretion of said employee or agent, any hazardous conditions arise or any unsafe practices, including unsafe practices which may threaten the integrity of the City's facilities, are being followed by UWM's employees, agents or contractors. In the event of a City imposed suspension of UWM's work, authorized representatives of the City and UWM shall promptly meet at the earliest mutually possible time but no more than twelve (12) hours after the imposition of the suspension, to take all steps necessary to continue. Within that time, the City shall provide to UWM written notice of steps to be taken by UWM to eliminate any hazardous conditions or to revise any practices deemed to be unsafe. The presence of the City's authorized agent shall not relieve UWM of its

responsibility to conduct all of its work in and around the City's manholes/handholes in a safe and workmanlike manner.

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

E. EMERGENCY PROCEDURES

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

F. MAINTENANCE AND INSPECTION RIGHTS

1. Maintenance upon UWM Default. If any part of UWM's Facilities is not placed and maintained in accordance with the terms and conditions set forth in this Agreement and UWM has not corrected the violation within thirty (30) days from receipt of written notice thereof from the City, then, in such event, the City may, at its option, correct said condition and notify UWM in writing prior to performing such work. However, in the event such conditions pose an immediate threat to the safety of the City's employees or the public, interfere with the performance of the City's service obligations, or pose an immediate threat to the physical integrity of the City's Facilities, and prior notice to UWM before the City performs such work is not possible or reasonable under the circumstances, the City may perform such work and/or take such action that it deems necessary without first giving written notice to UWM and without subjecting itself to any liability for damage to UWM's Facilities or for any interruption of UWM's services. As soon as practicable thereafter, the City will advise UWM in writing of the work performed or the action taken. UWM shall be responsible for all direct expenses reasonably incurred by the City associated with any work or action performed by the City pursuant hereto and shall reimburse the City within thirty (30) days from its receipt of the City's itemized invoice and supporting documentation.

2. Inspection Rights. The City reserves the right to make periodic inspections of any part of UWM's Facilities in the Conduit System. The making of periodic inspections or the failure to do so shall not operate to impose upon the City any liability of any kind nor relieve UWM of any responsibility, obligations or liability assumed under this Agreement.

G. PERMIT FEES

1. All standard DPW permit fees shall apply.

H. LIABILITY AND INDEMNIFICATION

1. City Liability. The City shall exercise caution to avoid damaging UWM's Facilities and shall make an immediate report to UWM of any and all damage caused by its employees, agents or contractors. The City shall not be responsible or liable for damages to UWM's Facilities caused by the negligence of the City or other licensees whom the City has given permission to occupy its Conduit System.
2. UWM Liability. UWM shall exercise caution to avoid damaging the City's or other licensees' facilities and shall make a prompt report to the City of any and all damage caused by its employees, agents or contractors. UWM agrees to reimburse the City or other licensees for all reasonable, actual and direct costs incurred by the City or other licensees for the physical repair of its Facilities damaged by the negligence of UWM, its employees or agents.
3. UWM Indemnification Obligation. UWM assumes entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of an injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of the City or others sustained or alleged to have been sustained in connection with or to have arisen out of, or resulting from the exercise by UWM of its rights granted herein, including losses, expenses and damages sustained by the City, provided that the City shall have given prompt written notice to UWM of the facts giving rise to such losses, expenses, damages or claims. UWM agrees to indemnify and hold harmless the City, its agents and employees from any and all suits or actions brought against them, or any of them, based on any such alleged injury or damage, except for loss caused by direct or negligent action or omission of the City, its agents or employees or other licensee, including any failure to comply with Paragraph A.3 of this Agreement, and pay all damages, costs, and expenses (including reasonable attorney's fees) in connection therewith.
4. No Liability for Consequential Damages. Notwithstanding the above, neither party shall be liable to the other for indirect or consequential damages of the other party or of third parties, including, but not limited to, any interruption of service or for any loss of revenues resulting therefrom, whether caused by the negligence of either party or not.

I. TERMINATION

1. Mutual Termination. This Agreement may terminate at any time upon written mutual agreement of the Parties.
2. Termination by Default. If at any time either party fails or refuses to perform any of the conditions contained in this Agreement, and such failure or refusal shall continue for thirty (30) days after receipt of written notice from the other party, the non-defaulting party, at its election and upon ten (10) days advance written notice to the other party, may terminate this Agreement. Notwithstanding the above, where a default cannot reasonably be cured within thirty (30) days, if the defaulting party shall proceed promptly to cure the same and prosecute such cure with all due diligence, the time for curing the default shall be extended for such a period of time as may be reasonably necessary to complete such cure. The waiver by either party of any breach of any term, covenant or condition shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition.
3. Removal upon Termination. Upon termination of this Agreement for any reason, UWM shall remove its Facilities within ninety (90) days following termination. In the event UWM fails to remove its Facilities within ninety (90) days, the Facilities shall be deemed abandoned and the City, at its sole discretion and without liability, shall remove the Facilities and UWM shall reimburse the City for all actual and direct costs reasonably associated with such removal.
4. Liability Not Extinguished. Termination of this Agreement shall not affect either party's liabilities and obligations incurred prior to the effective date of termination.

J. INSURANCE

1. Insurer Qualification. UWM shall carry comprehensive or commercial general liability insurance together with coverage for contractual liability, issued by insurance carriers licensed to do business in the State of Wisconsin and maintaining an A- or better rating as established by A.M. Best & Company. The amounts of such insurance shall be in the amount of not less than \$1,000,000 as to any one occurrence and \$2,000,000 general aggregate. UWM shall also carry such insurance as will protect it from all claims under any Worker's Compensation Law in effect that may be applicable to it. UWM shall submit to the City certificates by each company insuring UWM to the effect that it has insured UWM for all liabilities of UWM covered by this Agreement.
2. Liability Not Reduced. The required minimum limits of coverage shown above do not limit or diminish UWM's liability under this Agreement.
3. Form of Certification. UWM shall submit to the City a standard "Accord" insurance certificate (or comparable form reasonably acceptable to the City) signed by an

authorized representative of its insurance company, certifying that the insurance coverage required hereunder is in effect for the purposes of this Agreement. Said insurance certificate shall certify that no material alteration, modification or termination of such coverage shall be effective without at least thirty (30) days' advance written notice to the City.

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

K. NOTICES.

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

If to City:

Mr. Jeffrey S. Polenske  
City Engineer  
Zeidler Municipal Building  
841 North Broadway, Room 701  
Milwaukee, WI 53202



If to UWM:  
[Insert Contact name and address]

L. ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the Parties and shall not be transferred, assigned or sublet to any other entity.

M. GENERAL PROVISIONS

1. Liens and Encumbrances. Except as otherwise provided in this Agreement, UWM has no power or right to create and will not permit any lien or encumbrance, including, without limitation, tax liens, mechanics liens, or other liens or encumbrances with respect to work performed or equipment furnished, in connection with the installation, repair, maintenance or operation of its Facilities installed within the Conduit System.
2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to the principles of conflict of law.
3. Records. Records shall be maintained by UWM for a period of seven years after termination of this Agreement. In addition, the Parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of the Agreement are subject to and conditioned on the provisions of Wis. Stat. §§ 19.21-39. UWM acknowledges that it is obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law. UWM shall agree to cause others under its control to cooperate with the City in the event that any of them receive a request under Wisconsin's Public Records Law for this Agreement or for any record relating to, or produced or collected under this Agreement which is subject to the Public Records Law.
4. Conflict of Interest.
  - a. Interest in Agreement. No officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any of the matters to which this Agreement pertains shall have any personal interest, direct or indirect, in this Agreement.
  - b. Interest of Other Local Public Officials. No member of the governing body of the City and no other public official of the City who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement shall have any personal interest, direct or indirect, in this Agreement.

- c. Interest of UWM and Employees. UWM covenants, acknowledges, and agrees that no person who exercises any functions or responsibilities in connection with this Agreement has any personal financial interest, direct or indirect, in this Agreement. UWM further covenants and acknowledges that it has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with its performance under this Agreement. UWM further covenants that, in the performance of its obligations under this Agreement, no person having any such conflicting interest shall be employed.
5. Discrimination Prohibited.
- a. In all hiring or employment made possible by or resulting from this Agreement there will not be any discrimination against any qualified employee or qualified applicant for employment because of race, color, religion, sexual orientation, sex, national origin or ancestry, age, disability, lawful source of income, marital status, gender identity or expression, past or present membership in the military service, or familial status, or based upon affiliation with or perceived affiliation with any of these protected categories. This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices required or to be provided by federal or state agencies involved setting forth the provisions of the clause.
  - b. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement. The City and each employer will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.
  - c. UWM agrees it will comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.
  - d. UWM shall use good faith efforts to cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to Agreements or subcontracts for standard commercial supplies or raw materials.
6. Severability. If any term or provision of this Agreement shall to any extent be declared invalid or unenforceable, then the remainder of this Agreement shall not be

affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.

7. Entire Agreement/Amendment. This Agreement sets forth all of the covenants, provisions, agreements, conditions, and understandings between the Parties and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, other than are herein set forth. This Agreement may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the Parties to this Agreement.
8. Waiver. Neither arty shall be deemed to have waived any of its respective rights hereunder unless the Party shall have signed such waiver in writing.
9. Titles. The titles of sections in this Agreement are for convenience only and do not limit or construe the meaning of any section.
10. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered to be one and the same agreement, and shall become effective on the date indicated after one or more counterparts have been signed by each of the parties and delivered to the other party.

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

**CITY OF MILWAUKEE**

**UNIVERSITY OF WISCONSIN-  
MILWAUKEE**

By: \_\_\_\_\_  
Commissioner of Public Works

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Name (Printed): \_\_\_\_\_

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

Dated: \_\_\_\_\_

**COUNTERSIGNED:**

\_\_\_\_\_  
Martin Matson, Comptroller

Dated: \_\_\_\_\_

Approved as to form, execution, and  
content this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Assistant City Attorney

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