

TEARMAN SPENCER
City Attorney

ODALO J. OHIKU
ROBIN A. PEDERSON
S. TODD FARRIS
JENNIFER L. WILLIAMS
Deputy City Attorneys



Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551
Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

HEIDI WICK SPOERL
KATHRYN Z. BLOCK
THOMAS D. MILLER
PETER J. BLOCK
PATRICK J. MCCLAIN
HANNAH R. JAHN
JULIE P. WILSON
MEIGHAN M. ANGER
ALEXANDER R. CARSON
ALEXANDER T. MUELLER
ALEXANDER D. COSSI
LISA A. GILMORE
KATHERINE A. HEADLEY
L. ANTHONY JACKSON
STACY J. MILLER
MICHAEL C. RADAVIDH
JORDAN M. SCHETTLE
THERESA A. MONTAG
ALEXANDER E. FOUNDOS
TRAVIS J. GRESHAM
KYLE W. BAILEY
JOSEPH M. DOBBS
WILLIAM K. HOTCHKISS
CLINT B. MUCHE
JOANNA FRACZEK
Assistant City Attorneys

December 19, 2023

To the Honorable Common Council
of the City of Milwaukee
Room 205 – City Hall

Re: Resolution Authorizing Settlement in the lawsuit entitled
Midwest Fiber Network, LLC v. City of Milwaukee
Case Number: 22-CV-3366

Dear Council Members:

Enclosed please find a proposed resolution to approve a structured settlement for a total of \$325,000 over five years to settle the claims raised by Paige Rice in the lawsuit *Midwest Fiber Network, LLC v. City of Milwaukee* in Milwaukee County Court Case Number 22-CV-3366, as well as a fiscal impact statement.

This suit was filed in Milwaukee Circuit Court on May 25, 2022, alleging \$500,561.98 in damages sounding in negligence and breach of contract. On May 27, 2016, the City began excavation in the area of 1000 S. 5th Street. In the course of their work, they struck and damaged buried fiber belonging to Midwest Fiber Network, LLC (“Midwest”). Midwest has leased underground conduit space from the City since 2002. The damaged fiber was located in buried conduit belonging to the City.

The lease agreement provides that the City shall “exercise caution to avoid damaging [Midwest’s fiber] ... [and] agrees to reimburse Licensee for all reasonable, actual and direct costs incurred ... for the physical repair of its Facilities damaged by [the City]. State statute additionally provides that excavators shall provide at least three (3) working days advance notice before beginning excavation activities. Wis. Stat. § 187.0175. A violation of this statute constitutes negligence *per se*.

Although the City submitted two notice tickets prior to beginning excavation, its work was not properly noticed under the terms of the statute. Thus, liability cannot be denied.

The parties attended mediation with Hon. Richard Sankovitz (Ret.) on October 17, 2023. Midwest requested their total cost of permanent repairs, but expressed openness to a resolution in the nature of credit against future licensing fees related to conduit space. Following lengthy negotiation, the parties agreed in principle, subject to formal approval



by the City Council and Mayor, to licensing fee credits totaling \$325,000 to be applied over a period of years as follows: \$100,000 credit in fiscal year 2024, with the balance applied equally to over the next four years (i.e. \$56,250 in credit to be applied in 2025, 2026, 2027 and 2028 respectively).

Historic licensing fees related to Midwest have been between \$200,000 and \$250,000 per year. This settlement proposal would avoid any admission of liability or entry of judgment against the City. The structure of the agreement would diminish, but not completely exhaust, expected revenue from Midwest licensing fees in the next 5 years. Midwest maintained that if mediation were unsuccessful they would not revisit a structured payment schedule after trial. This matter was presented to the Judiciary and Legislative Committee in closed session on November 13, 2023. The Committee informally expressed agreement with and assent to the proposed settlement.

Based on the facts and circumstances developed in the course of discovery, and the applicable legal standards, including those related to negligence *per se* under Wis. Stat. 187.0175, the City Attorney's Office recommends that the proposed settlement is in the City's best interest.

Upon formal approval of this agreement, Midwest will execute a settlement agreement and general release of all claims arising out of the May 25, 2022, incident. The parties further agree that the agreement will expressly disclaim any admission of liability on behalf of the City of Milwaukee.

We request that this matter be assigned for hearing in closed session before the Judiciary and Legislative Committee and the Finance and Personnel Committee to be followed by an open session to effectuate settlement of this matter.

Very truly yours,



TEARMAN SPENCER
City Attorney



CLINT MUCHE
Assistant City Attorney

TS/CBM/cdr

Enclosures

1029-2022-879/288901