



Legislation Text

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040472
SUBSTITUTE 1
THE CHAIR

Substitute resolution granting a special privilege to Wisconsin Center District for fiber optic cables within city-owned conduit within the public right-of-way for the premises at 400 West Wisconsin Avenue, in the 4th Aldermanic District. This resolution grants a special privilege to Wisconsin Center District for fiber optic cables within city-owned conduit within the public right-of-way for the premises at 400 West Wisconsin Avenue.

Whereas, Wisconsin Center District desires to install and maintain two runs of communication cabling in existing city-owned conduit within North 6th Street and West State Street and North 4th Street, West Kilbourn Avenue and West Wells Street; and

Whereas, Said communication cabling may only legally encroach into the public right-of-way by granting of a special privilege resolution adopted by the Common Council; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that Wisconsin Center District, 400 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 is hereby granted the following special privileges:

1. To install and maintain communications cabling within city-owned conduit. Said cabling commences at the northline of West Kilbourn Avenue at a point approximately 331 feet west of the westline of North 4th Street and extends south 57 feet. Said cabling then extends 389 feet east to a point approximately 48 feet west of the westline of North 4th Street and 58 feet south of the northline of West Kilbourn Avenue and then extends south 500 feet to a point in West Wells Street. Said cabling then extends west approximately 346 feet to a point 26 feet west of the westline of vacated North 5th Street extended and 14 feet south of the northline of West Wells Street. Said cabling extends south approximately 66 feet and then extends west approximately 290 feet to the endpoint located approximately 321 feet west of the eastline of vacated North 5th Street and 2 feet 6 inches north of the southline of West Wells Street. Total length of said cabling is 1648 feet.
2. To install and maintain communications cabling within city-owned conduit. Said cabling commences at the southline of West State Street at a point approximately 55 feet east of the eastline of North 6th Street and extends north 17 feet. Said cabling then extends approximately 100 feet in a westerly direction to a manhole in the intersection of West State Street and North 6th Street. From this manhole the cabling extends approximately 23 feet to the southwest to enter another manhole, where the cabling then extends south approximately 1160 feet. The cabling then extends east 75 feet to the eastline of North 6th Street from a point approximately 25 feet east of the westline of North 6th Street and 190 feet south of the southline of West Wells Street. Total length of said cabling is 1375 feet.

Said above-mentioned items shall be used, kept and maintained to the satisfaction of the Commissioners of Public Works and Department of Neighborhood Services. All necessary permits shall have been obtained prior to the granting of this special privilege.

Said items shall be maintained or removed from the public right-of-way, at such future time as they are no longer needed, to the satisfaction of the Commissioners of Public Works and Department of Neighborhood Services.

; and, be it

Further Resolved, That this special privilege is granted only on condition that by acceptance of this special privilege the grantee, Wisconsin Center District, shall:

1. Become primarily liable for damages to persons or property by reason of the granting of this special privilege.
2. File with the City Clerk a bond of a surety company duly incorporated in the State of Wisconsin, or duly licensed to do business in this State, in the sum of \$3,000 such bond to be approved by the City Attorney. This applicant shall also file with the City Clerk a certificate of insurance indicating applicant holds a public liability policy in the sum of at least \$50,000 covering bodily injury to any one person and \$100,000 covering bodily injury to more than one person in any one accident and \$20,000 covering property damage to any own owner on the area or areas included within the special privilege and naming the City of Milwaukee as an insured. Both bond and insurance policy shall provide that they shall not be cancelled until after at least thirty days' notice in writing to the City Clerk.
3. Pay to the City Treasurer an annual fee, which has an initial amount of \$3,023.00. The subsequent annual fee is subject to change pursuant to the annual fee schedule in effect at the time of annual billing.
4. Whenever this special privilege is discontinued for any reason whatsoever, including public necessity whenever so ordered by resolution adopted by the Common Council not only remove all construction work executed pursuant to this special privilege, but shall also restore to its former condition and to the approval of the Commissioner of Public Works and curb, pavement or other public improvement which was removed, changed or disturbed by reason of the granting of this special privilege. Such grantee shall be entitled to no damages due to the alteration and/or removal for such purposes.
5. Waive the right to contest in any manner the validity of Section 66.0425 of the Wisconsin Statutes (1999), or the amount of the annual fixed fee, payable on or before July 1st of each year.
6. Put this special privilege into use within one year after approval by the Common Council of the City of Milwaukee; failing to do so in the time specified, the Commissioner of Neighborhood Services shall have the authority to seek, by resolution, revocation of said special privilege.

; and, be it

Further Resolved, That the project is subject to the following additional conditions (consecutively numbered):

7. Only the City will be responsible for repairs in the City conduit system. The Wisconsin Center District will be responsible for the fiber optic cable within said conduit.
8. The fiber optic connection is provided for sole use by the Wisconsin Center District. Any resale or other use of the fiber optic connection or portions of the fiber optic service must be submitted in writing to the City for approval beforehand. Failure to do so will nullify this special privilege.
9. The City of Milwaukee reserves the right to schedule outages as necessary. Notification will be given the Wisconsin Center District as far in advance as possible.
10. In no event shall either party be liable for any punitive, incidental or consequential damages, or for commercial losses suffered by either party as a result of any cause, whether or not that party has received notice of the possibility or certainty of such damages or losses, even if either party has failed in the initial attempts to correct any service interruptions.
11. Subject to the provisions of the Special Privilege, Grantor hereby grants to Grantee the right to use the portion of its Conduit System outlined on Exhibit A attached to this file and made a part hereof for the placement of Grantee's Facilities. Upon mutual agreement of the City Engineer, on behalf of the Grantor, and agreement of the Grantee, Exhibit A may be amended from time to time to reflect changes in the use of the Conduit System by Grantee.
12. No use of Grantor's Conduit System by Grantee or payment of any charges required under this Special Privilege shall

create or vest in Grantee any easements or other ownership or property rights of any nature in the Conduit System. Furthermore, this Special Privilege shall not constitute an assignment of any of Grantor's rights to use public or private property in which the Conduit System is located.

13. Prior to the installation and/or maintenance of its Facilities within the Conduit System located upon public/private property, the Wisconsin Center District 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.

14. Grantor'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 Special Privilege.

15. Nothing contained in this Special Privilege shall be construed to compel the Grantor to construct, reconstruct, retain, extend, or place its Conduit System for use by Grantee unless needed for Grantor's own service requirements.

16. In the event Grantor is required for any reason to relocate its Conduit System, or any portion thereof, by any governmental authority and Grantor elects to relocate its Conduit System, or any portion thereof, Grantee shall have the option to:

(a) request the relocation of Grantee's Facilities along with Grantor's Conduit System and Grantee shall bear its pro rata share of any and all reasonable costs attributable to such relocation, or

(b) terminate this Special Privilege, without any further obligation to Grantor.

17. In the event Grantee requests the relocation of Grantee's facilities as provided in Item 16(a) above, Grantee's pro rata share of any and all costs attributable to such relocation shall be calculated by multiplying Grantor's total cost of relocating the Conduit System by a fraction, the numerator of which shall be the number of innerducts Grantee is occupying within the Conduit System, and the denominator of which shall be the total possible number of innerducts located within the Conduit System.

18. Grantee shall, at its own expense, during the term of this Special Privilege, maintain its Facilities covered by this Special Privilege in a safe condition, properly identified and tagged, in accordance with regulations established by Grantor, so as not to physically conflict or electrically interfere with the Facilities placed in the Conduit System by Grantor or others.

19. Grantee shall notify Grantor ten (10) days in advance by written notice or by telephone notice to Grantor's City Engineer at (414) 286-2400 before any routine repair or maintenance of its Facilities. Except in the event of a Grantee emergency, as described in Item 22, Grantee's employees, agents or contractors will be permitted to enter or work in Grantor's manholes/ handholes only when an authorized employee or agent of Grantor is present. Grantor's agents shall have the authority, without subjecting Grantor to any liability therefor, to suspend Grantee's work or operations in and around Grantor'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 Grantor's facilities, are being followed by Grantee's employees, agents or contractors. In the event of a Grantor imposed suspension of Grantee's work, authorized representatives of Grantor and Grantee 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, Grantor shall provide to Grantee written notice of steps to be taken by Grantee to eliminate any hazardous conditions or to revise any practices deemed to be unsafe. The presence of Grantor's authorized agent shall not relieve Grantee of its responsibility to conduct all of its work in and around Grantor's manholes/handholes in a safe and workmanlike manner.

20. In the event of a Grantor emergency:

(a) Grantor's work shall take precedence over any and all operations of Grantee in Grantor's Conduit System;

(b) Grantor may rearrange Grantee's Facilities in a reasonable manner. Grantee shall reimburse Grantor for all reasonable and direct costs associated with such rearrangement of Grantee's Facilities.

21. In the event of a Grantee emergency, Grantee shall promptly notify Grantor at its Department of Public Works City Engineer at (414) 286-2400 during normal business hours or (414) 286- 3481 after 5:00 p.m. and before 8:00 a.m. prior to performing any maintenance or repair necessary to correct the emergency situation. After such notice is given, Grantee may enter the manholes, handholes and conduits of Grantor to perform any emergency repair or maintenance.

22. Grantor shall exercise caution to avoid damaging Grantee's Facilities and shall make an immediate report to Grantee of any and all damage caused by its employees, agents or contractors. Grantor agrees to reimburse Grantee for all reasonable, actual and direct costs incurred by Grantee for the physical repair of its Facilities damaged by the negligence of Grantor, its employees or agents. However, Grantor shall not be responsible or liable for damages to Grantee's Facilities caused by the negligence of other Grantees whom Grantor has given permission to occupy its Conduit System. Grantor shall establish construction standards and practices for all Grantees so as to avoid damage to Grantee's Facilities in the Conduit System.

23. Grantee shall exercise caution to avoid damaging Grantor's or other Grantees' facilities and shall make a prompt report to Grantor of any and all damage caused by its employees, agents or contractors. Grantee agrees to reimburse Grantor or other Grantees for all reasonable, actual and direct costs incurred by Grantor or other Grantees for the physical repair of its Facilities damaged by the negligence of Grantee, its employees or agents.

24. Grantee 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 Grantor or others sustained or alleged to have been sustained in connection with or to have arisen out of, or resulting from the exercise by Grantee of its rights granted herein, including losses, expenses and damages sustained by Grantor, provided that Grantor shall have given prompt written notice to Grantee of the facts giving rise to such losses, expenses, damages or claims. Grantee hereby agrees to indemnify and hold harmless Grantor, 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 Grantor, its agents or employees or other Grantors, including any failure to comply with Item 13 of this Special Privilege, and pay all damages, costs and expenses (including reasonable attorney's fees) in connection therewith.

25. 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.

26. Except as otherwise provided in these conditions, Grantee has no power, authority or right to create and will not permit any lien or encumbrance, including, without limitation, tax liens, mechanic 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.

27. Grantee shall physically extend and fiscally assume all costs for the duct necessary to be placed (constructed) from present terminus of Grantor's conduit in the intersection of West Wisconsin Avenue and North Plankinton Avenue to the 101 West Wisconsin Avenue property.

28. Grantor and Grantee shall understand that said conduit extension, indicated in item 27 above, shall, upon its placement, become the property of the Grantor and have all of the rights and uses of Grantor's conduit system.

Department of Public Works
Infrastructure Services Division

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March 9, 2007
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