



Legislation Text

File #: 62352, **Version:** 2

Fiscal Note

The City's Engineering Division and Real Estate Services have reviewed and approved the proposed easement. No City appropriation is required.

Title

SUBSTITUTE Authorizing the execution of an Underground Fiber Optic Conduit and Cable Line Easement to Dane County across portions of City-owned land located at 7401 USH 12 & 18. (16th AD)

Body

WHEREAS, the City of Madison ("City") owns property located at 7401 USH 12 & 18 ("Property"), a general open space area adjacent to the Rodefeld Landfill site; and

WHEREAS, Dane County ("Grantee") leases the Property for groundwater monitoring, soil stockpiles, and other purposes associated with the Grantee's operation of said landfill, pursuant to that Lease ("Lease") recorded June 23, 2014 as Doc. No. 5078421 in the office of the Register of Deeds for Dane County, Wisconsin; and

WHEREAS, the Grantee has requested an Underground Fiber Optic Conduit and Cable Line Easement across portions of the Property for new telecommunication facilities, a use that is allowed under the terms of said Lease; and

WHEREAS, City of Madison Engineering Division and Office of Real Estate Services staff has reviewed and approve of the granting of said easement.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to execute an Underground Fiber Optic Conduit and Cable Line Easement to Dane County across portions of the Property, legally described on attached Exhibit A and depicted on attached Exhibit B, subject to the following conditions:

1. Use. The Grantee's use of the Easement Area shall be limited to the right to construct, maintain, operate and/or remove underground fiber optic cable facilities, including, without limitation, cables, wires and conduit (collectively, the "Facilities"), together with the right of ingress and egress across the Easement Area for the purpose of access to and use of the Facilities.
2. Restrictions on Use. Notwithstanding the provisions of Paragraph 1, the Grantee's use of this Easement shall be restricted as follows:
 - a. No boxes, switch-gears, meters, valves, or other above-ground facilities will be allowed in the Easement Area without prior written approval of the City.
 - b. This Easement shall not be used for the purpose of constructing or operating a video service, as that term is defined by Wis. Stat. Section 66.0420(2)(y)., without first obtaining a franchise from the State of Wisconsin.
 - c. Grantee shall not use the Easement Area for open storage of or permanent parking of vehicles or equipment of any kind.
3. Construction, Repair and Maintenance.
 - a. Initial construction of the Facilities shall not commence without the prior written approval of applicable plans

and specifications by the City.

- b. With the exception of routine maintenance and repairs and normal utilization of the Facilities, no changes to or alterations of the Facilities shall be permitted without the prior written approval of applicable plans and specifications by the City.
 - c. The work of construction, repair and maintenance shall be done and completed in a good and professional manner at the sole expense of the Grantee and shall be performed in such a manner as in no way to interfere with or endanger the use of the Easement Area. In all cases, the Grantee shall be responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any construction, repair or maintenance activity.
 - d. No trees or plantings shall be removed from the Easement Area or otherwise disturbed without the prior written approval of the City.
 - e. Following the installation of the Facilities and final grading of the Easement Area (or as soon thereafter as weather reasonably permits), the Grantee will promptly restore the Easement Area in a manner satisfactory to the City.
 - f. Following the installation of the Facilities and final grading of the Easement Area, no grade change to the Easement Area shall be made by either party without the prior written approval of the other party.
 - g. If the Facilities are required to be moved for the construction, maintenance, or reconstruction of future street improvements, the relocation shall be completed solely at the cost of the Grantee.
 - h. In the event that the any of the lands subject to easement area are acquired for public right of way purposes or declared a public right of way, the portion of the easement within the public right of way shall terminate upon the establishment of the public right of way by acquisition or declaration.
4. Reasonable Use and Occupation by City. The City reserves the right of reasonable use and occupation of the Easement Area, provided that such use and occupancy shall not interfere with or disturb the installation, operation, maintenance, repair, replacement and/or modification of the Facilities. If any reasonable use and occupation of the Easement Area by the City shall necessitate the Grantee to remove or relocate the Facilities or any part thereof, the Grantee shall perform such work at such time as the City may approve; at the expense of the Grantee.
5. Term. This Easement shall continue for so long as the Facilities are in use, and in the event and to the extent that the Facilities shall be removed or abandoned then this Easement shall terminate and the Grantee will execute and deliver to the City such document(s) as may be requested for the purpose of further evidencing the termination of the rights granted hereby.
6. Notice of Entry. Except for emergencies, routine maintenance and repairs, and normal utilization of the Facilities, the Grantee shall give the City at least thirty (30) days written notice before entering upon the Easement Area for construction purposes or for the purpose of performing significant alteration to or removal of the Facilities.
7. Termination. In the event the Grantee defaults in the performance of any term or condition of this Easement and fails to remedy such default within thirty (30) days after written notice from the City, the City shall have the right, at its sole option, to declare this Easement void and terminate the same. Notwithstanding the foregoing, if such default is not a health or safety violation and cannot, because of the nature of the default, be cured within said thirty (30) days, then the Grantee shall be deemed to be complying with such notice if, promptly upon receipt of such notice, the Grantee immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable.
8. Restoration of Easement Area. Upon the termination of this Easement for any cause, the Grantee shall remove the Facilities and all appurtenances and shall promptly restore the Easement Area in a manner satisfactory to the City.

9. Indemnification. City and Grantee shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, boards, commissions, agencies, officers, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions including providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, agents, boards, commissions, agencies, officers and representatives. It is not the intent of the parties to impose liability beyond that imposed by state statutes. The obligations of the parties under this paragraph shall survive the expiration or termination of this Easement.
10. Authorized Agent. The City of Madison Engineer or the Engineer's designee is hereby designated as the official representative of the City for the enforcement of all provisions of this Easement, with authority to administer this Easement lawfully on behalf of the City.
11. Compliance. The City and the Grantee shall comply with all applicable laws, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety.
12. Severability. If any term or provision of this Easement is held to be invalid or unenforceable by a court of competent jurisdiction, then such holding shall not affect any of the remaining terms and provisions of this Easement and the same shall continue to be effective to the fullest extent permitted by law.
13. Binding Effect. This Easement shall inure to the benefit of the Grantee and shall be binding upon the City, and their respective successors and assigns.