

STORM SEWER EASEMENT

DRAFT

This Easement Agreement for the Placement and Repair of a Storm Sewer Pipe and Drainage Basin (the "Easement") is entered into as of this ____ day of _____, 20__, by and between MILWAUKEE COUNTY, a Municipal Body Corporate duly organized and existing under and by virtue of the laws of the State of Wisconsin, Grantor, (herein after referred to as "County"), and The Village of Whitefish Bay (herein after referred to as "Grantee").

- 1. **Easement Area.** Storm Sewer Pipe and related facilities (including without limitation water pipes, lines, drains and equipment, maintenance area,) (collectively, the "Storm Water Facilities") in Milwaukee County Park Property, in the area legally described in Exhibit A and depicted in Exhibit B, which exhibits are attached hereto and incorporated herein by reference. Those portions of the Property occupied by the Water Facilities are hereinafter collectively referred to as the "Easement Area".
- 2. **Term.** The term of this Easement shall be for an initial period of ninety-nine (99) years, subject to early revocation or termination pursuant to the terms of this Easement. This Easement shall commence as of ____ day of _____, 20__ (the "Effective Date) and expire on the ____ day of _____, 20__.
- 3. **Easement Fee.** Grantee shall pay to the County a onetime fee (the "Easement Fee") of Five dollars (\$5.00) per lineal foot for the use of the Premises. The lineal distance, which the Equipment occupies in the Premises, is approximately 350 lineal feet. The initial annual Easement Fee is, therefore, one thousand seven hundred and fifty dollars (\$1,750.00). The first payment shall be due upon execution of this Easement. All payments are to be made to payable to the Milwaukee County Treasurer and sent or personally delivered to the County's Department of Parks, Recreation and Culture at the address specified in Paragraph 21. The easement fee shall be put in a trust fund for the benefit of parks natural areas.
- 4. **Hold Over.** In the event the Grantee shall continue to occupy or use the Premises after the expiration of the Easement or any extension thereof, such holding over shall be deemed to constitute an occupancy from month to month, upon the same terms and conditions as herein provided, and in no event shall the occupancy be deemed to be from one (1) year to one (1) year.
- 5. **Working Plans.** The construction drawings, the location maps, the Equipment location information, and the as-built survey required in Paragraph 11(g) below, all prepared by the Grantee, for the Grantee's fiber optic cable installation project to which this Easement relates (collectively hereinafter referred to as the "Working Plans") are made part of this Easement by reference. Throughout the initial term and any renewal of this Easement, the Grantee shall provide the County with copies of and/or information from the Working Plans as requested or required by the County.
- 6. **Use.** The Grantee's use of the Premises shall be limited to the placement, construction, operation, maintenance, repair, replacement, and removal of the Storm Water Facilities. The Parties acknowledge that this Easement is non-exclusive and that the County will continue to use the Premises and shall have the right to make other agreements, such as leases, licenses, and easement with one or more utilities or other entities provided that any such subsequent agreements shall not interfere with the Grantee's rights under this Easement. Equipment other than that which is defined is in relation to storm water management shall be installed only upon amendment of this Easement or negotiation of an additional Easement Agreement.
- 7. **Construction.**
 - (a) Grantee shall provide written notice to the Director of the Milwaukee County Department of Parks, Recreation and Culture prior to the commencement of work within the Easement Area by the Grantee. Said notice shall indicate the anticipated start date and duration of the proposed work and include; plans showing the location, depth, type of installation, trees and shrubs within line or easement area, drawings and specifications detailing construction methodology, the erosion and sedimentation control plan and the preservation and

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restoration methods to be employed. These shall be reviewed and approved by the County prior to commencing any construction activities. Said approval shall not be unreasonably withheld and the review will be made in a timely fashion. Violation of the aforementioned conditions during periods of emergency shall not result in cancellation or penalty. Within 24 hours of an incident constituting an emergency, Grantee shall give notice to the Director of the Department of Parks, Recreation and Culture, Milwaukee County, of such emergency.

(b) No trees, shrubs, or vegetation adjacent to the easement area shall be removed, trimmed or damaged without the written permission of the department of Parks, Recreation and Culture. In that regard, a specific construction and restoration landscaping plan has been reviewed and approved by said department of the County.

8. **Right-of-Entry Fee.** Grantee shall, at all times, obtain a Right-of-Entry Permit from County before performing any ground disturbing activities in any part of the Premises. The Permit to disturb or dig in the Premises requires fees for inspection. Any Grantee failing to obtain a Permit to disturb or dig in the Premises is subject to penalty. The Permit to disturb or dig in the Premises can be obtained at the Milwaukee County Department of Parks, Recreation and Culture, 9480 Watertown Plank Rd. Wauwatosa, Wisconsin, 53226.

9. **Construction or Mechanics Liens.**

(a) Grantee shall not suffer or permit any construction or mechanics' liens to be filed, or if filed, to remain uncontested, against the fee of the Premises, nor against the Grantee's interest in the Premises, by reason of work, labor services or materials supplied, or claimed to have been supplied, to the Grantee or anyone holding the Premises, or any part thereof, through or under the Grantee; and nothing contained herein shall be deemed or construed in any way as constituting the consent or request of the County, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or material man for the performance of any labor or furnishing of any materials, for any specific improvement, alteration or repair of or to the Premises or any part thereof, nor as giving the Grantee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanics' or construction liens against the fee of the Premises. If any such lien is filed, the Grantee shall immediately cause the same to be discharged or released or shall upon request provide adequate and acceptable security or bond to protect the County's interest.

(b) If any such construction or mechanics' lien shall at any time be filed against the Grantee's interest in the Premises, the Grantee covenants that it will promptly take and diligently prosecute appropriate action to have the same discharged by payment, bonding or otherwise. Upon the Grantee's failure to do the foregoing, the County may take such action as may be reasonably necessary to protect the County's interest, in addition to any other right or remedy which it may have. Any amount paid by the County in connection with such action shall be repaid by the Grantee to the County upon demand, together with interest thereon at the rate of twelve percent (12%) per annum.

10. **Special Conditions.**

(a) No exterior storage of materials, equipment or vehicles is permitted on the Premises, except the temporary and orderly placement of items in conjunction with construction, maintenance, repair, replacement, or removal activities.

(b) Grantee shall be responsible for maintaining the Equipment.

(c) The County shall not be liable for any damage to the Equipment that may be caused by County, its employees, contractors, or others.

(d) Any modifications to the Equipment shall be subject to the written approval of the Parks Director and any other required governmental approvals.

(e) The Equipment shall remain the exclusive property of the Grantee.

(f) The Grantee shall in no way encumber, or allow to be encumbered, the County's title to the Premises.

(g) Within thirty (30) days following installation of the Equipment, the Grantee shall provide the County with an as-built survey showing the actual location of the Equipment. Said survey shall be accompanied by a complete and detailed inventory of all Equipment installed.

(h) The Grantee shall, at its own expenses, keep and maintain the Premises in a presentable condition consistent with good business practice. Whether during installation, ongoing repair and maintenance, or removal of the Equipment throughout the initial term and any renewal of this Easement or any holdover period, the Grantee shall repair, replace, restore, reseed, and/or replant topsoil, grass, shrubbery, or other plantings lost, damaged, or destroyed in the course of the Grantee's work. The restoration of any disturbed surface area shall be done in a timely and good workman-like manner immediately following the Grantee's work, subject only to weather conditions. Restoration shall be done to a condition satisfactory to County Parks staff, but not less than the condition that existed before the initial installation of the Equipment.

(i) If the County, at its sole discretion, determines that the location of the Grantee's Equipment prevents or impedes the construction of a public improvement and that no reasonable alternative is available, the Grantee, at its own expense, shall relocate its Equipment on the Premises to accommodate the public improvement.

(j) The Grantee shall contact Diggers Hotline, the Park Maintenance Division of the Milwaukee County Department of Parks, Recreation and Culture and all applicable municipalities prior to commencing any construction to verify all pertinent easements and existing utility locations with the Easement Area. Punitive damages will be charged, if easement are not strictly adhered to, for addition personal charges and subsequent property damages.

(k) Grantee shall secure and pay for all permits required by any governing body or agency, including but not limited to, the Milwaukee County Department of Parks, Recreation and Culture before any substantial construction, repair or maintenance work commences. All Grantee construction, operation and repairs of the facilities installed within the Easement Area shall be completed at no expense to the County.

11. Taxes.

(a) Real Estate Taxes. County is a tax-exempt entity. Should any Milwaukee County Ordinance or State of Wisconsin Statute require that any of the Premises be subject to real estate taxes or assessments, the Grantee shall be liable for the Grantee's proportionate share of all such real estate taxes and assessments and for all taxes imposed on the full value of the Grantee's Equipment, if any, constructed on the Premises.

(b) Personal Property Taxes. Grantee shall pay, before delinquency, all municipal, county and state or federal taxes assessed any interest of the Grantee in the Premises or assessed against the Equipment.

12. Indemnification and Insurance.

(a) Except as otherwise provided, County and Grantee shall be responsible for the consequences of their own acts or omissions and those of its employees, boards, commissions, agencies, officers and representatives and be responsible for losses, claims, liabilities, which are attributable to such acts or omissions.

(b) In furtherance hereof, Grantee also hereby agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless, the County and its agents, officers and employees, from and against all loss or expense including costs and attorney's fees by reason of liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of the Contractor, or its (their) agents which may arise out of or are connected with the activities covered by this Easement.

(c) Grantee shall, to the full extent provided for under any environmental laws, rules and regulations, be responsible for any repair, cleanup, remediation or detoxification arising out of (1) any hazardous materials brought onto or introduced into the Premises or surrounding areas by Grantee, its agents or guests, and/or (2) hazardous materials whose presence pre-exists the commencement of Grantee's Easement term, located in and on the Premises, that are discovered or disturbed as a result of Grantee's construction activities on, at or near the Premises. Grantee shall indemnify, defend and hold County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom.

(d) Grantee shall, at its own cost and expense during the term of this Easement, keep the Facilities insured against loss or damage by fire and such other contingencies included in an all-risk insurance policy covering the cost of the Facilities. Grantee shall also, during the entire term of this Easement, keep in full force and effect a policy of commercial general liability insurance with respect to Grantee's activities in and around the Easement Areas in an amount of not less than \$1,000,000 combined single limit. Grantee shall also maintain insurance coverage for worker's compensation claims as required by the State of Wisconsin, including employer's liability.

Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. Milwaukee County, as its interests may appear, shall be named as an additional insured and be afforded a thirty (30) day written notice of cancellation or non-renewal. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by the County for the duration of this Easement. Additional information as to policy form, retroactive date, discovery provisions and applicable retentions shall be submitted to County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this Agreement. The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the County Risk Manager.

13. Assignment and Subletting. The Grantee shall not assign this Easement nor sublet the Premises, or any portion thereof, without the prior written consent of the County. Said consent may be withheld at the sole discretion of the County but shall not be unreasonably withheld. Before an assignment shall be effective, any assignee shall assume in writing all obligations of the Grantee under the terms and conditions of this Easement.

14. Revocation and Termination.

(a) The County shall have the right, at its sole option, to declare this easement void, revoke the same, reenter and take possession of the Premises under the following conditions:

(1) By giving the Grantee thirty (30) days written notice, upon or after any one of the following events:

- (i) The abandonment by the Grantee of the Premises.
- (ii) The use of the Premises for an illegal purpose.
- (iii) The non-use of the Premises after one (1) year.

In the event of revocation under this Subparagraph, the County shall retain any Easement Fee that has been prepaid.

(2) By giving the Grantee thirty (30) days written notice specifying the nature of the default in the event the Grantee defaults in the performance of any term or condition of the easement other than those as set forth in Subparagraph 15(a)(1). 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. In the event of revocation under this Subparagraph, any prepaid Easement Fee shall be prorated on a per diem basis and refunded to the Grantee.

(3) Effective at any time following the expiration of the first renewal term, by giving the Grantee a minimum one (1) year's prior written notice of revocation in the event the Premises, in the sole discretion of the governing body of the County, are desired for any public purpose or use, which use shall exclude Grantee's permitted use under the easement and any similar private use by any additional telecommunications provider. Any Easement Fee that has been prepaid for the period following the date the Equipment is relocated shall be prorated on a per diem basis and refunded to the Grantee. In the event of revocation under this Subparagraph, the County shall use its best efforts to provide Grantee with a satisfactory alternate location on County-owned property, which could accommodate the Equipment.

(b) The Grantee shall have the right to terminate this easement at any time during the initial term of this easement or any renewal terms by giving the County a minimum of one (1) year's written notice of termination. In the event of termination under this Subparagraph, the date of termination must coincide with the anniversary of the Effective Date.

15. **Rights Upon Expiration, Revocation or Termination.** Upon the expiration, revocation, or termination of this easement for cause, the Grantee's rights in the Premises and its obligations hereunder (except any obligations that by their nature or by their language survive termination) shall cease, and the Grantee shall immediately surrender the Premises, subject to the provisions of Paragraph 18.

16. **Compliance.** The Grantee shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the County, the State of Wisconsin, the federal government, and any other governmental authority having jurisdiction over the Premises.

17. **Hazardous Substance Indemnification.** The Grantee represents and warrants that its use of the Premises herein will not generate any hazardous substance; and that it will not store or dispose on the Premises, nor transport to or over the Premises, any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic wastes, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

18. **Removal and Disposal of Equipment.** Upon the expiration, revocation or termination of this easement, the Grantee, at the Grantee's sole cost, shall remove from the Premises all of the Equipment installed by the Grantee. The Grantee shall also repair any damages it causes to the Properties to a condition equivalent to that which existed prior to the date that the Grantee first occupied the Premises. Removal of Equipment and repair of the Properties shall be accomplished within sixty (60) days of expiration, revocation, or termination of the easement, except as may be adjusted by the County to allow for winter conditions. The expiration or termination of this easement shall not become effective until removal and repair have been accomplished to the satisfaction of the County; however, during such removal and repair period the Grantee's right to use the Premises shall be limited to removal and repair activities. In the event the Grantee fails to accomplish said removal and repair, the County may cause the removal and repair to be accomplished at the Grantee's expense and with no liability or cost to the County. The County may waive or alter this removal and repair requirement if, at its sole discretion, it so chooses. Any such waiver or alteration shall not reduce the time allowed for the removal or repair activities or place conditions on the Grantee which are greater than those provided in this Paragraph.

19. **Premises Required by Eminent Domain.**

(a) In the event the Premises or any part thereof shall be needed either permanently or temporarily for any public or quasi-public use or purpose by any authority in appropriation proceedings or by any right of eminent domain, the entire compensation award therefore, including by not limited to, all damages and compensation for the diminution of value of this Easement, and the reversion and fee interests, shall belong to the County without and deduction there from for any present or future estate of the Grantee, and the Grantee hereby assigns to the County all of its right, title and interest to any such award. However, the Grantee shall have the right to recover from the condemning authority such compensation as may be separately awarded to the Grantee for moving and relocation expenses.

(b) In the event the whole of the Premises or any part thereof shall be taken or condemned so that the balance cannot be used for the same purpose and with substantially the same utility to the Grantee as immediately prior to such taking, this Easement shall terminate upon delivery of possession to the condemning authority and any Easement Fee that has been prepaid for the period following the termination shall be prorated on a per diem basis and refunded to the Grantee unless the Grantee will receive compensation for any prepaid Easement Fee from the condemning authority.

20. **Right of Entry.** The County or its representatives shall have the right to enter upon the Premises (but shall not have access to the Equipment without prior notice to the Grantee or without allowing the Grantee to have its representative accompany the County) at any reasonable time for the following purposes:

(a) To make any inspection it may deem expedient to the proper enforcement of any term or condition of this Easement.

(b) For the purpose of performing work related to any public improvement, provided that the County restores the Premises to a condition equivalent to that which existed on the date the County initiated the installation of the public improvement. The Grantee agrees to hold the County harmless for any loss of access to the Premises by the Grantee, which may occur during the period of installation of the public improvement.

21. **Notices.** All notices to be given under the terms of this Easement shall be signed by the person sending the same, and shall be sent by mail or personal delivery to the address of the Parties specified below:

To Grantee:

To County:

Milwaukee County Parks
Parks Director
9480 Watertown Plank Road
Wauwatosa, WI 53226

Any party hereto may, be giving five (5) days written notice to the other party in the manner stated herein, designate any other address in substitution of the address shown above to which notice shall be given.

22. **Severability.** If any term or provision of this Easement or the application thereof to the County or the Grantee or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Easement, or the application of such terms or provisions to the County or the Grantee or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Easement shall be valid and be enforceable to the fullest extent permitted by law.

23. **Non-Discrimination.** In the performance of the services under this Easement, the Grantee agrees not to discriminate because of race, religion, marital status, age, color, sex, disability, or national origin.

24. **No Waiver.** No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the County or the Grantee shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the County or the Grantee herein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

25. **Entire Agreement.** The entire agreement of the parties is contained herein and this Easement supersedes any and all oral contracts and negotiations between the parties.

26. **Conflict of Interest.** The Grantee shall not employ or contract with any person currently employed by the County for any services included under the provisions of this Easement.

27. **Law Applied.** This Easement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin and Wisconsin Courts.

28. **Goodwill.** Any and all goodwill arising out of this Easement inures solely to the benefit of the County; the Grantee waives all claims to benefit of such goodwill.

29. **Quiet Enjoyment.** Pursuant to this Easement and subject to the rights and privileges retained by the County and granted to other grantees, the County hereby covenants and agrees that if the Grantee shall perform all of the covenants and agreements herein to be performed on the Grantee's part, the Grantee shall, at all times during the continuance hereof, have the peaceable and quiet enjoyment and possession of the Premises without any manner of hindrance from the County or any person lawfully claiming the Premises.
30. **Public Record.** This Easement shall be recorded, at the Grantee's expenses, at the office of the Milwaukee County Register of Deeds after it is executed by the parties.

NOW, THEREFORE, it is further agreed that the Grantee in consideration of the Easement so granted to it through all the land previously described, hereby covenants and agrees with the County that it will construct and maintain said facilities in good order and condition and that, in and during the construction of said facilities and thereafter in and about their operation, maintenance, repair or reconstruction, will indemnify and save harmless the County, its successors and assigns, from all loss or injury to its property due to such construction, operation, maintenance, repair and reconstruction, and that no special charge will be made against said land, for the cost of such construction, operation, maintenance, repair and reconstruction. The County reserves unto itself, its successors and assigns, all mineral rights and the right to make such use of the land included in the previously described easement area except the right to erect buildings or other structures thereon, as will not injure or disturb said underground conduit and cables or its appurtenances; provided, however, that plans for said improvements be reviewed and approved by the Grantee prior to construction. Said approval will not be unreasonably withheld and the review will be made in a timely fashion for no charge to the County.

SIGNATURE PAGES FOLLOW:

IN WITNESS WHEREOF, the authorized representatives of the above named parties have caused their hands and seals to be hereunto affixed.

MILWAUKEE COUNTY

(Signature)
DAVID CROWLEY, COUNTY EXECUTIVE
(Print Name-Title)

(Date)
State of Wisconsin)
) ss.
_____ County)

On the above date, this instrument was acknowledged before me by the above named _____ of _____

_____, known to me to be such officer, and who acknowledged that she executed the forgoing instrument on its behalf for the purpose aforesaid and by its authority as such officer.

(Signature, Notary Public, State of Wisconsin)

(Print or Type Name, Notary Public, State of Wisconsin)

(Date Commission Expires)

(Signature)
GEORGE CHRISTENSON, MILWAUKEE COUNTY CLERK
(Print Name-Title)

State of Wisconsin)
) ss.
_____ County)

On the above date, this instrument was acknowledged before me by the above named _____ of _____

_____, known to me to be such officer, and who acknowledged that she executed the forgoing instrument on its behalf for the purpose aforesaid and by its authority as such officer.

(Signature, Notary Public, State of Wisconsin)

(Print or Type Name, Notary Public, State of Wisconsin)

(Date Commission Expires)

Approved as to form:

Reviewed by:

Milwaukee County Corporation Counsel

Milwaukee County Risk Management

[
a Wisconsin [
By its []

(Signature)

(Print Name and Title)

(Date)

State of Wisconsin)
) ss.
_____ County)

On the above date, this instrument was acknowledged before
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of _____

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(Print or Type Name, Notary Public, State of Wisconsin)

(Date Commission Expires)