

# **RESOLUTION OF THE CITY COUNCIL**

*No. 253*

*Approved June 16, 2008*

IT IS HEREBY RESOLVED, That His Honor, the Mayor, is authorized to grant one non-exclusive sub-surface easement for George and Magee Streets in the City of Providence to Brown University ("Brown"). Said easement shall be granted specifically upon the following provisions:

1. Said easement on George and Magee Streets shall not exceed nine hundred fourteen (914) square feet, plus or minus, and indicated on accompanying map marked "Providence, R.I. Department of Public Works – Engineering Office, Street Line Section Plan No. 064814 dated January 23, 2008" (Exhibit A). Said easement shall be utilized only for the installation, maintenance, repair and/or replacement of utilities, including without limiting the generality of the foregoing, electric, telephone, cable television, data transmission, fiber optic gas, high temperature hot water, chilled water, and fuel oil piping, and similar utility lines for:

The easement shall not exceed the shaded area bounded by a line with points (A-B-C-D-E-F-G-H-I-J-K-L-M-N-O-P-Q-R-S-T-A) as shown on Exhibit A. Said easement is approximately nine hundred fourteen (914) square feet total area.

2. The above referenced area, as shown on Exhibit A, is hereinafter referred to as the "Premises". Said easement shall be deemed to run with the land and shall be binding on and for the benefit of any successors in title and the easement or a memorandum of same shall be recorded in the Office of Land Records for the City of Providence.

3. Said easement shall be subject to a right of reverter/right of reversion in the event that the easement is no longer utilized for a period of ten (10) years for the aforementioned purposes.

4. As consideration for this Easement, Brown shall tender the sum of thirteen thousand, seven hundred ten dollars (\$13,710.00) in legal tender of the United States of America.

5. Any breakout necessary for installation and/or repair or replacement shall be resurfaced or rehabilitated in accordance with relevant ordinances and industry standards and to the reasonable satisfaction of the Director of the Department of Public Works.

6. The installation of utilities or utility lines shall be underground so as to preserve the public right-of-way. Brown and its successors and assigns may enter upon said Premises, to dig or excavate the soil in said Premises, to clear the Premises of vegetation and any natural or manmade structures for both access and safety purposes and to do any other acts which are necessary to carry out the purposes for which said Easement is given and to provide for the effective use thereof.

7. Any installation of electrical mechanisms shall be subject to the approval of the Director of the Department of Inspections & Standards.

8. Petitioner shall ascertain that construction results in no adverse impact on any existing utility company and shall ensure the continued integrity of those existing structures.

9. Brown shall execute an indemnification and hold-harmless agreement with the City of Providence. Said agreement shall be approved by the Department of Law of the City of Providence.

10. Brown shall supply the City of Providence with an insurance policy naming said City of Providence, its agents, officers, servants and employees as additional-named insureds in a sum not less than one hundred thousand dollars (\$100,000.00) which policy shall be approved by the Department of Law of the City of Providence.

11. Brown shall not lay, construct or affix to the realty any temporary or permanent structure other than that described earlier herein.

12. Brown recognizes the applicability of Sections 23-107, 23-108 and 23-109 of the Code of Ordinances which read as follows:

**23-107. Public work of city to take precedence over installations.**

No right of any person to maintain, use or operate any poles, wires, cables, conduits, ducts, pipes, manholes, handholes, or other appliances or appurtenances in any street or other traveled way in the city, shall be in preference or hindrance of public work in the city, and should any of the same in any way interfere with the construction, alteration or repair of any public work in any such street or way, whether done by the city directly or by any contractor for the city, such person shall at his own expense protect, alter or move any of the same so interfering to some other location in such street or way, or discontinue the use and operation thereof for the time being, as directed by the director of public works, without the city being liable for any damages suffered by such person thereby. The City shall notify such person a reasonable time in advance of any public work, which will interfere with any of the same or the use or operation thereof. In case such person shall fail to comply with any such direction of said director, the city may protect, alter or move the same, and recover the cost thereof from such person.

**23-108. Precedence of wires, apparatus of city signal service.**

The wires, poles, posts, structures and supports of the telephone, fire alarm and police signal service maintained by the city shall at all times take precedence and right-of-way as to all other wires, poles, posts, structures and supports maintained or erected in the city; and no lineman or other person, either in erecting wires, poles, posts, structures or supports in any way whatsoever shall interfere with, or disturb, disarrange or change any wires maintained by the city, or any appurtenance thereof; and in every instance of removal of any of said wires, poles, posts, structures or supports for the accommodation of any other corporation or party, or to place the same beyond danger from the electric current of any other corporation or party, the expense incident to said removal shall be paid immediately by such other corporation or party.

**23-109. Indemnity of city against claims arising out of electrical installation.**

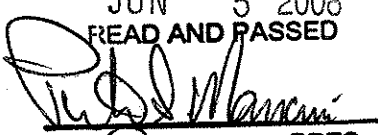

Every person erecting, maintaining or using electric wires or poles, fixture or structures, for the support or conducting of the same shall indemnify and save harmless the city, its officers, agents and servants, from and against all lawful claims and demands for injuries to persons or property occasioned by the existence of such poles, wires, fixtures or structures or the transmission of electric current by means thereof or by the digging up, opening or keeping open of any street, highway, traveled way, public place or part thereof, which shall be or has been opened for the purpose of installing, constructing or repairing any underground conduit, duct, structure, appliance or appurtenance by or for such person, or by any failure of such person to restore and keep in sound and safe condition for the required time any ground opened or dug up in the prosecution of any of its work in any street, way or place. The city, city council, or the officers, agents or servants of the city, exercising the rights, powers or permission, and subject to the restrictions, respectively given and reserved herein shall not be held liable by such person or corporation on account thereof, or by reason of any injury or damage caused thereby.


and Brown, for itself and its successors, agrees to comply with the same.

13. In addition to Paragraph 12 above, in the event that the City of Providence or its designee shall, for any public purpose, require the extinguishment of the easement granted herein and upon the reasonable notification hereinbefore mentioned, Brown shall remove said improvements to the easement areas, provided, however, that because Brown has paid consideration for said Easement, Brown shall be entitled to just compensation for any such taking for public purposes.

14. The easement shall be executed, delivered and accepted upon the express terms, covenants and conditions contained herein, which terms, covenants and conditions shall be binding upon and insure to the benefit of the parties hereto and their successors, heirs, legal representatives, and assigns. The easement is intended to be governed by and construed in accordance with the laws of the State of Rhode Island. The easement may not be amended or modified except pursuant to a written instrument signed by all parties thereto.

15. Such other terms and conditions as may be reflected in the record and minutes of the City Council Committee on Public Works and/or as may be deemed appropriate by the Mayor or the Department of Law.

IN CITY COUNCIL  
JUN 5 2008  
READ AND PASSED  
  
PRES.  
  
CLERK

APPROVED  
  
MAYOR 6/16/08