

Intergovernmental Cooperation Contract
City of Waukesha – City of New Berlin
Fiber-Optic Communications Facilities

This Contract is entered into pursuant to Wis. Stats. §66.0301 by and between Waukesha of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to as Waukesha; and Waukesha of New Berlin, a Wisconsin municipal corporation, 3805 South Casper Drive, New Berlin, Wisconsin 53151; referred to as New Berlin. Together, Waukesha and New Berlin are referred to as the Parties.

Recitals

Waukesha has fiber-optic communications facilities that connect with the Carroll University Grad Center fiber-optic network, and provide access to WiscNet. Waukesha's fiber-optic communications facilities are referred to herein as the Network. New Berlin wishes to access and share the use of portions of the Network; the Network has sufficient excess capacity; and Waukesha is willing to allow New Berlin to access and share use of portions of the Network.

Now, therefore, Waukesha and New Berlin agree and contract as follows:

1. **Access to Network.** During the Term of this Contract, New Berlin shall be allowed to connect its own fiber-optic cables with the Network at Waukesha Fire Station Number 2. The point at Fire Station Number 2 at which New Berlin's cables connect with the Network shall be designated by Waukesha, and is referred to herein as the Connection Point. Also during the Term of this Contract, New Berlin shall be given the exclusive use of two pairs of fiber-optic cables in the Network, from Fire Station Number 2 to Carroll University's Graduate Center on Davidson Road. The pairs of cables dedicated to New Berlin's use are referred to herein as the Network Cables. New Berlin will be responsible, at its sole expense, for construction of fiber-optic cables from its existing system to Fire Station Number 2, including all costs of acquiring right-of-way, licenses, permits, and costs of connection to the System. Waukesha shall grant to New Berlin easements as necessary for New Berlin's cables to enter onto the premises of Fire Station Number 2 and for connection to be made to the System.
2. **Connection to WiscNet Network.** Waukesha shall ensure that the Network Cables are connected to the Carroll University Graduate Center, according to National Fire Protection Agency (NFPA) ANSI/NFPA-70 (2011 Ed.), the National Electric Service Code, American National Standards Institute (ANSI) Section C1, C2, ANSI/EIA/TIA-568-B Commercial Building Telecommunications Cabling Standard, and ANSI/EIA/TIA-607 Commercial Building Grounding Requirements for Telecommunications. Waukesha shall be responsible only for the physical connection of the cables, and shall not be responsible for the provision of any data transmitted over the cables. New Berlin shall be responsible, at its sole expense, for contracting with Waukesha Education and Community Area Network (WECAN), WiscNet, and other service providers for provision of data services over the Network Cables.
3. **Ownership of Cables, Easement across Campus.** New Berlin acknowledges and agrees that by this Contract, New Berlin is granted only a license to use the Network Cables, and is not granted ownership of any of the Network, which shall remain the sole property of Waukesha at all times.
4. **Repair and Maintenance.** Waukesha shall be responsible, at its sole expense, for the repair and maintenance of the Network Cables, including repairs to conduits, utility-pole attachments, and fiber-optic cables themselves. Repairs shall be completed as soon as reasonably possible, with the expectation that most repairs will be completed within 24 hours of notice. Waukesha shall give New Berlin at least 15 days' notice of scheduled maintenance work that might result in service interruption. New Berlin shall be responsible, at its sole expense, for the repair and maintenance of all cables required to connect New Berlin's facilities with the Connection Point.
5. **Annual Service Fee.** New Berlin shall pay Waukesha an annual Service Fee during the Term of this Contract, in advance, beginning on the date of connection of New Berlin's cable to the Connection Point and on each

anniversary of that date. Waukesha shall invoice New Berlin, and all invoices shall be payable within 30 days after invoice date. The Service Fee shall be as follows:

Year 1	\$6,480.00	Year 8.....	\$7,969.58	Year 15.....	\$9,801.58
Year 2	\$6,674.40	Year 9.....	\$8,208.67	Year 16.....	\$10,095.63
Year 3	\$6,874.63	Year 10.....	\$8,454.93	Year 17.....	\$10,398.50
Year 4	\$7,080.87	Year 11.....	\$8,708.58	Year 18.....	\$10,710.45
Year 5	\$7,293.30	Year 12.....	\$8,969.84	Year 19.....	\$11,031.77
Year 6	\$7,512.10	Year 13.....	\$9,238.93	Year 20.....	\$11,362.72
Year 7	\$7,737.46	Year 14.....	\$9,516.10		

6. **Additional Cable Pairs.** If additional cables are dedicated to New Berlin in the future by the mutual agreement of the Parties, then the annual Service Fee shall be increased by the following amounts, per pair of cables added:

Year 1	\$3,240.00	Year 8.....	\$3,984.79	Year 15.....	\$4,900.79
Year 2	\$3,337.20	Year 9.....	\$4,104.34	Year 16.....	\$5,047.81
Year 3	\$3,437.32	Year 10.....	\$4,227.47	Year 17.....	\$5,199.25
Year 4	\$3,540.44	Year 11.....	\$4,354.29	Year 18.....	\$5,355.23
Year 5	\$3,646.65	Year 12.....	\$4,484.92	Year 19.....	\$5,515.88
Year 6	\$3,756.05	Year 13.....	\$4,619.47	Year 20.....	\$5,681.36
Year 7	\$3,868.73	Year 14.....	\$4,758.05		

The additional Service Fee shall be prorated in the year the additional pairs are added as of the date the additional cable pairs are connected to the Connection Point.

7. **Term.** This Contract shall commence upon its execution, and shall continue for a period of twenty (20) years, unless terminated earlier by the mutual agreement of the Parties. There shall be no pro-ration or refund of Service Fees upon termination.
8. **Warranty Disclaimer, Waiver of Damages.** Waukesha provides, and New Berlin accepts, the Network Cables as-is. Waukesha expressly disclaims all warranties, whether expressed or implied, with respect to the Network Cables, including, but not limited to, their suitability and fitness for New Berlin's intended purposes, or the quality, availability or reliability of data transmission through the Cables. Waukesha's sole responsibility for the Network Cables is the contractual maintenance and repair as described in Section 4, and New Berlin waives all claims, demands and causes of action against Waukesha for any direct, incidental or consequential damages arising from New Berlin's use of the Cables, or the Cables' performance, including loss of data or loss of service.
9. **Insurance.** Waukesha shall maintain casualty loss insurance coverage for its fiber-optic facilities, including the Network Cables, at Waukesha's sole expense, with limits sufficient to cover all reasonably-anticipated losses to the Network. Waukesha shall provide proof of coverage to New Berlin upon request.
10. **Remedies upon Breach.** Upon breach of the payment obligations contained in Section 5, Waukesha may, at its option, terminate this Contract and disconnect the Network Cables at the Connection Point, provided Waukesha shall give New Berlin written notice of breach, and shall allow New Berlin 10 days from the date of the notice to cure the breach.
11. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent Contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.

12. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stat. §893.80 or any other law.
13. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.
14. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
15. **Integration.** This Contract embodies the entire agreement of the Parties with respect to the subject matter expressed herein. All other inconsistent agreements and understandings of the Parties with respect only to the subject matter expressed herein are superseded and are unenforceable.
16. **Amendments.** No amendments, additions, or changes of any kind to this Contract will be valid unless in writing and signed by all of the Parties to this Contract.
17. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. The Parties agree that if a lawsuit is necessary with respect to this Contract, it will be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

City of Waukesha

 By Shawn N. Reilly, Mayor
 Date: _____

 Attested by Gina L. Kozlik, City Clerk
 Date: _____

City of New Berlin

 By (print name) _____
 Mayor
 Date: _____

 Attested by _____
 City Clerk
 Date: _____