

Contract
City of Waukesha – University of Wisconsin System
Fiber-Optic Communications Facilities Cooperation

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to as the City; and the Board of Regents for the University of Wisconsin System, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706, referred to as the University. Together the City and the University are referred to as the Parties.

Recitals

The City wishes to expand its fiber-optic communications facilities, and the University wishes to share the use of the facilities. The physical location of the City's and University's facilities make it mutually advantageous for the Parties to share certain portions of the City's fiber-optic cables, which will also allow connection of the University to the state Department of Transportation's fiber-optic facilities. The Parties are willing to share in the expense of the expansion of the facilities, and the expense of maintenance.

Now, therefore, the City and University agree and contract as follows:

1. **Extension to University.** The City shall extend its fiber-optic communications cables from the City's Fire Station Number 5 to the University's Waukesha campus. The cables will substantially follow the paths described in the attached Exhibit A, which is incorporated into this Contract by reference. This project is referred to herein as the Work. The City shall be solely responsible for the expenses of the Work, and shall be responsible for entering into contracts with contractors for the performance of the Work.
2. **University Access.** During the Term of this Contract, the University shall be given the exclusive use of four pairs of fiber-optic cables, from the University's Waukesha campus to Fire Station Number 5 and then to the connection with the School District of Waukesha's fiber-optic cables at Splice Point 12, near Bethesda Elementary School. The pairs of cables dedicated to the University's use are referred to herein as the Cables. At the campus, the Cables will terminate at the point designated by the mutual agreement of the Parties, which is referred to herein as the Connection Point. The University will be responsible, at its expense, for connection of the Cables to the University's network beyond the Connection Point.
3. **Standards for Work.** The City shall ensure that the Work is completed using new materials of first quality, in a workmanlike manner, and in accordance with accepted and customary practices in the fiber-optic digital communications industry. The City shall ensure that the Work is done according to all applicable statutes, ordinances, codes and regulations, and shall be responsible at its sole cost for obtaining all necessary permits, permissions, rights-of-way and easements.
4. **Ownership of Cables, Easement across Campus.** The University acknowledges and agrees that by this Contract, the University is granted only a license to use the Cables, and not ownership of any of the City's fiber-optic communications facilities, which shall remain the sole property of the City at all times. If the Connection Point is within the boundaries of the University's campus, then the University grants to the City an easement for the Cables to cross the campus property to the Connection Point.
5. **Repair and Maintenance.** The City shall be responsible, at its sole expense, for the repair and maintenance of the 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. The City shall give the University at least 15 days' notice of scheduled maintenance work that might result in service interruption.

6. **Payment.** The University shall pay the City the following amounts:
 - a. The cost of extending the City's fiber-optic cables to the University's campus, payable in installments of \$60,000.00 within 20 days of the execution of this Contract, \$60,000.00 upon completion of installation of the fiber-optic cables, and any remaining balance upon successful implementation of the expanded Network.
 - b. A continuing Service Fee of \$270 per month during the Term of this Contract. If additional cables are dedicated to the University in the future, the Service Fee shall equal \$270 per month per pair of cables. Maintenance fees shall be invoiced annually in December for that year. The Service Fee is subject to adjustment as described in Section 7.
 - c. Payment terms for all invoices are net 30 days.
7. **Adjustment of Service Fee.** The Service Fee described in Section 6.b shall be adjusted on the dates 5, 10 and 15 years after the execution of this Contract, as follows: The City will obtain the most-recently published "Consumer Price Index – All Urban Consumers (CPI-U) All Items (1982-84=100)", published by the Bureau of Labor Statistics of the United States Department of Labor. The most-recent index in "All Items-US City Average" shall be divided by 233.707. The resulting quotient shall be multiplied by \$270, and the product shall then be the Service Fee for the subsequent five-year period; provided, however, the Service Fee shall not be decreased from the amount applicable to the just-ending five-year period.
8. **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.
9. **Time.** The City shall arrange for construction to commence within 30 days after receipt of the initial installment payment described in Section 6.a. The City shall enforce the time of completion terms of the construction contract on the contractor, and shall ensure that completion occurs as promptly as possible.
10. **Warranty Disclaimer, Waiver of Damages.** The City represents that the Cables will be installed substantially in compliance with Exhibit A, and that it will enforce all manufacturer and installer warranties with respect to the materials and workmanship of the installation of the fiber-optic cables. However, the City provides, and the University accepts, the Cables as-is. The City expressly disclaims all warranties, whether expressed or implied, with respect to the Cables, including, but not limited to, their suitability and fitness for the University's intended purposes, or the quality, availability or reliability of data transmission through the Cables. The City's sole responsibility for the Cables is the contractual maintenance and repair as described in Section 5, and the University waives all claims, demands and causes of action against the City for any incidental or consequential damages arising from the University's use of the Cables, or the Cables' performance.
11. **Insurance.** The City shall maintain casualty loss insurance coverage for its fiber-optic facilities, including the Cables, at the City's sole expense, with limits sufficient to cover all reasonably-anticipated losses to the Network. The City shall provide proof of coverage to the University upon request.
12. **Remedies upon Breach.** Upon breach of the payment obligations contained in Section 6, the City may, at its option, terminate this Contract and disconnect the Cables, provided the City shall give the University written notice of breach, and shall allow the University 10 days from the date of the notice to cure the breach.
13. **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.

- 14. **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. Stats. §893.80 or any other law.
- 15. **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.
- 16. **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.
- 17. **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.
- 18. **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.
- 19. **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: _____

Board of Regents, University of Wisconsin System

 By (print name) _____
 Title: _____
 Date: _____