

Communication Facilities Use License Agreement
City of Waukesha – Franklin Public School District

This Agreement is by and among the City of Waukesha, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to herein as the City; the Franklin Public School District, 8255 West Forest Hill Avenue, Franklin, Wisconsin 53132, referred to herein as the School District. Together, the City and the School District are referred to herein as the Parties.

Recitals

The City and School District are both members of WECAN, the Waukesha Education Community Area Network, an organization of schools, school districts, and municipalities for the cooperative use of fiber-optic cables, underground conduits, aerial pole-mounted cables, hand-holes, junction boxes, switches, and other digital-communication facilities.

The City operates an outfall of its return-flow pipeline at the Root River in the City of Franklin, at which there is monitoring equipment that can communicate data to the City by fiber-optic cable connection. The City can use WECAN for the transmission of the data, requiring only that the outfall be connected to the nearest WECAN facility.

The School District building at 8255 West Forest Hill Avenue is the nearest WECAN facility to the outfall, and the School District is willing to allow the City to connect its fiber-optic cable to WECAN at that location.

Therefore, in consideration of their mutual promises herein, the adequacy and sufficiency of which to support this Agreement as a binding contract is acknowledged, the Parties agree and contract as follows:

1. **License for Use.** The School District grants the City a license to install, operate, maintain, repair, and replace fiber-optic communications cables and related facilities and equipment, referred to herein as the Cable, on the grounds and in the School District Building at 8255 West Forest Hill Avenue, and to connect the Cable to the WECAN in the IT Data Center in the School District Building. The Cable is in underground conduit within the Forest Hill Avenue right-of-way, and shall be installed from a hand-hole in the right-of-way to the School District Building through underground conduit to an entry point on the School District Building specified by the School District. The Cable shall run from the building entry point to the IT Data Center along the route specified by the School District.
2. **Right of Access.** The School District shall grant the City and School District and their employees and contractors access to the Cable as reasonably necessary for installation, operation, maintenance, repair, and replacement. Access shall be allowed any time during regular business hours, provided at least one hour's prior notice shall be given to the School District. Access needed during non-business hours will require 72 hours advance notice. The IT Data Center shall remain locked when staff are not present, and the public and other unauthorized persons shall not be given access to the IT Data Center.
3. **School District Obligations.** The School District shall not take any actions that could reasonably be foreseen to damage the Cable or affect its functionality, including but not limited to any excavation in the area of the underground conduit, and will give the City at least 72 hours' advance notice of any planned activities that may affect the Cable or the WECAN facilities.
4. **Maintenance, Repair, and Replacement of the Cable.** The City shall be solely responsible for the expenses of purchasing, installing, operating, maintaining, repairing, and replacing the Cable. The School District shall not be responsible for any maintenance, repair or replacement of the Cable.

5. **Consideration.** The School District acknowledges that it receives the benefit of the free use of City-owned underground fiber-optic conduits for its fiber-optic cables elsewhere in the City of Franklin and 12 strands of fiber starting at 76th Street and Ryan Road north to the School District. This use is sufficient and adequate consideration to support this Agreement.
6. **Term.** This Agreement shall commence on its execution and shall remain in effect for twenty-five (25) years from the date of signature. Termination may also be done at any time by the mutual written agreement of the Parties.
7. **Warranty Disclaimer.** The School District makes no warranties of any kind, expressed or implied, with respect to the condition of the IT Data Room, the interior routing of the Cable, or the conduit leading from the School District Building to the Forest Hill Avenue right-of-way. The City takes these things as-is, where-is, and with all faults. The School District shall not be liable for any interruption of service or data loss arising from the condition of these things, except to the extent that they arise from the School District's breach of this Agreement.
8. **Indemnification.** The City shall indemnify and hold the School District harmless from any damages or liabilities arising in any way in relation to the presence or operation of the Cable in or on School District property, except to the extent the damages or liabilities arise from the acts or omissions of the School District or its employees, agents, or Contractors.
9. **Insurance.** The City shall maintain public liability insurance with limits of not less than \$10,000,000 and the policy shall name the School District as an additional insured.
10. **Parties Are Independent Contractors.** Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent Contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to Agreements, and have no vicarious liability for the other's acts or omissions.
11. **Governmental Immunities, Liability Limits, and Notice Requirements Preserved.** Nothing in this Agreement shall be construed to be a waiver or modification of the governmental immunities, notice requirements, or limitations of liability imposed by Wis. Stats. §893.80 or any other law.
12. **Notices.** All notices required by this Agreement, and all other communications between the Parties, shall be addressed as follows:

To the City:	Attention IT Director City of Waukesha 201 Delafield Street Waukesha WI 53188
To the School District:	Attention [Director of Technology] [Franklin Public School District] [8255 West Forest Hill Avenue] [Franklin, WI. 53132]
13. **Corporate Authorization.** The individuals executing this Agreement on behalf of the Parties warrant and represent that they are duly authorized to bind the Parties to this Agreement. The Parties warrant and represent that the execution of this Agreement is not prohibited by their respective articles of incorporation, by-laws, operating agreement, other internal operating orders, restrictive covenant, or by any applicable law, regulation or court order.

- 14. **Severability.** If any term of this Agreement is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be so severed, and the remainder of this Agreement will remain in effect and enforceable.
- 15. **Governing Law and Jurisdiction.** This Agreement will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Agreement, it shall 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.
- 16. **Confidentiality; Public Records.** All documents created pursuant to this Agreement, and all documents delivered to the City, are public records and will be subject to disclosure to the public under Wisconsin's Open Records law.
- 17. **Effective Date.** This Agreement shall be effective as of the latest date of execution shown below.

City of Waukesha

 By Shawn N. Reilly, Mayor
 Date: _____

 Attested by _____, City Clerk
 Date: _____

Franklin Public School District

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

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