

**Fiber-Optic Network Use Contract**  
**City of Waukesha – Carroll University, Inc.**

This Contract is entered into by and between City of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to as City; and between Carroll University, Inc., 100 North East Avenue, Waukesha, Wisconsin 53186, referred to herein as Carroll. Together, Carroll and the City are referred to as the Parties.

**Recitals**

City has fiber-optic communications facilities that connect to the Kettle Moraine School District fiber-optic communication facilities, and Carroll has need to connect to those facilities. City's fiber-optic communications facilities are referred to herein as the Network. Carroll wishes to access and share the use of portions of the Network; the Network has sufficient excess capacity; and City is willing to permit Carroll to access and share use of portions of the Network subject to the terms and conditions of this Contract.

Now, therefore, City and Carroll agree and contract as follows:

- 1. Access to Network.** During the Term of this Contract, Carroll shall be allowed to connect its own fiber-optic cables with the Network at a point specified by the City on Madison street near the Retzer Nature Center, referred to herein as the Connection Point. Also during the Term of this Contract, Carroll shall be permitted the exclusive use of a single pair of fiber-optic cables in the Network, from Connection point to Brandybrook Community Center, S11W29980 Summit Avenue, Waukesha, Wisconsin 53188, referred to herein as Brandybrook. The pair dedicated to Carroll's use is referred to herein as the Network Cables. Carroll will be responsible, at its sole expense, for construction of fiber-optic cables from its existing system to the Connection point, including all costs of acquiring right-of-way, licenses, permits, and costs of connection to the System. City shall grant to Carroll easements as necessary for Carroll's cables to enter the connection point made to the Network. The installation, connection, and maintenance of Carroll's cables to the Connection Point shall be at Carroll's sole expense.
- 2. Connection to Brandybrook.** City shall ensure that the Network Cables are connected to Brandybrook, 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. City shall be responsible only for the physical connection of the cables and ensuring that data may be transmitted through the cables, but shall not be responsible for the provision of any data transmitted over the cables. Carroll shall be responsible, at its sole expense, for contracting with the Kettle Moraine School District, and other service providers for provision of data services over the Network Cables.
- 3. Ownership of Cables.** Carroll acknowledges and agrees that by this Contract, Carroll 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 City at all times.
- 4. Repair and Maintenance of Network Cables.** City 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. City shall give Carroll at least 15 days' notice of scheduled maintenance work that might result in service interruption. Carroll shall be responsible, at its sole expense, for the repair and maintenance of all cables installed by it to connect Carroll's facilities with the Connection Point.
- 5. Annual Service Fee.** Carroll shall pay City an annual Service Fee during the Term of this Contract, in advance, beginning on the date of connection of Carroll's cable to the Connection Point and on each anniversary of that

date. City shall invoice Carroll, and all invoices shall be payable within 30 days after invoice date. The Service Fee shall be \$3240.00.

6. **Additional Cable Pairs.** If additional cables within the City Network are dedicated to Carroll in the future by the mutual agreement of the Parties, then the annual Service Fee shall be increased by \$3240.00 per pair of cables added:
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.** City provides, and Carroll accepts, the Network Cables as-is. City expressly disclaims all warranties, whether expressed or implied, with respect to the Network Cables, including, but not limited to, their suitability and fitness for Carroll's intended purposes, or the quality, availability or reliability of data transmission through the Cables. City's sole responsibility for the Network Cables is the contractual maintenance and repair as described in Section 4, and Carroll waives all claims, demands and causes of action against City for any direct, incidental or consequential damages arising from Carroll's use of the Cables, or the Cables' performance, including loss of data or loss of service, except for such damages which arise from City's intentional or reckless acts or omissions.
9. **Insurance and Casualty Loss.** City shall maintain casualty loss insurance coverage for its fiber-optic facilities, including the Network Cables, at City's sole expense, with limits sufficient to cover all reasonably-anticipated losses to the Network. City shall provide proof of coverage to Carroll upon request. After any casualty loss, City shall immediately make claim under its property casualty policy, if necessary, and shall promptly repair and restore the Network Cables to the condition required by this Contract.
10. **Remedies upon Breach.** Upon breach of the payment obligations contained in Section 5, City may, at its option, terminate this Contract and disconnect the Network Cables at the Connection Point, provided City shall give Carroll written notice of breach, and shall allow Carroll 20 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-Treasurer  
Date: \_\_\_\_\_

**Carroll University, Inc.**

\_\_\_\_\_  
By (print name) \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
(print name) \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_