

Bill of Sale and Fiber-Optic Cable Use Contract

This Bill of Sale and Use Contract, referred to herein as the Contract, is by and between Carroll University, Inc., 100 North east Avenue, Waukesha, Wisconsin 53186, referred to herein as Carroll; and the City of Waukesha, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to herein as the City. Together, Carroll and the City are referred to as the Parties.

Recitals

Carroll installed a 36-strand fiber-optic cable between its Education Hall and Ganfield Gym, using aerial mounting on WE Energies poles. Carroll was notified that it does not have WE Energies' permission to maintain the cable on its poles. The City does have permission to maintain fiber-optic cables on WE Energies poles, and is willing to take ownership of Carroll's cable in order to allow it to remain in place on WE Energies' poles.

Now, therefore, in consideration of the mutual promises made herein, the Parties agree and contract as follows:

1. Carroll conveys all of its right, title, and interest in and to the 36-strand fiber-optic cable running between Carroll's Education Hall at 316 North Barstow Street, and the Ganfield Gymnasium at 221 North Barstow Street, between the termination points at each of those buildings and running across WE Energies poles numbered 68-25598, 07-00527, 07-00526, and E61-12119, referred to herein as the Cable. Carroll warrants that it has good and marketable title to the Cable, and that no third parties have any right, title, or interest in or to the cable.
2. In consideration of the conveyance of the Cable to the City, the City grants Carroll an exclusive, indefeasible right to use the Cable in perpetuity.
3. Carroll shall be solely responsible, at Carroll's sole expense, for maintenance and repair of the Cable. If the Cable requires replacement, in Carroll's sole discretion, then Carroll shall be responsible for replacement at Carroll's sole expense, and upon replacement, title to the replacement Cable shall be in the City, subject to a continuing indefeasible right to use, as described in section 2.
4. The City shall not be responsible to Carroll for any interruption of service, and Carroll waives any claim for, and releases the City from, any and all direct, indirect, incidental, or consequential damages arising from the condition of the Cable, specifically including business interruption and loss of profits.
5. Both Carroll's and the City's right to maintain the Cable on WE Energies' poles is subject to the permissions granted and limitations placed by WE Energies, and the City shall not be liable to Carroll for any loss or interruption of service caused by any actions taken by WE Energies. If Carroll wishes to challenge the lawfulness of any action taken by WE Energies with respect to the Cable, then it shall be Carroll's sole responsibility, at Carroll's sole expense, to do so.

Dated the _____ day of October, 2019.

City of Waukesha

By Shawn N. Reilly, Mayor

Gina L. Kozlik, City Clerk-Treasurer

Carroll University, Inc.

(sign above)
Print name: _____
Title: _____

(sign above)
Print name: _____
Title: _____