AGREEMENT BETWEEN THE CITY OF BLOOMINGTON
AND THE MONROE COUNTY COMMUNITY SCHOOL CORPORATION
FOR PERMISSION TO USE DIGITAL UNDERGROUND FIBER

WHEREAS, the City of Bloomington (“City”), through its Information and Technology Services Department (“ITS”), has adopted a policy of placing fiber optic cable in buried conduit throughout the City and refers to this network as the Bloomington Digital Underground (“BDU”); and,

WHEREAS, Indiana Code § 36-1-7-2 authorizes governmental entities to enter into contracts to buy, sell, or exchanges services, supplies or equipment between or among themselves; and,

WHEREAS, the Monroe County Community School Corporation (“MCCSC”) is a governmental entity and seeks to obtain the services of the City in the form of connection to and use of strands of fiber of the BDU; and,

WHEREAS, the City wishes to provide said services to MCCSC upon certain terms and conditions;

NOW, THEREFORE, the City and MCCSC agree as follows:

**Section 1: Term.** This Agreement shall be in full force from the date this Agreement is fully executed and shall end on December 31, 2008.

**Section 2: Permission.** This Agreement grants MCCSC permission to use twelve (12) strands of dark fiber optic cable located in the City’s BDU network.

**Section 3: Payment.** MCCSC shall not be required to make payment to the City for the use of these fiber optic strands, however, the City reserves the right to enact legislation which could impose payment obligations. In the event that the City enacts legislation which would impose payment obligations, MCCSC shall have the right to terminate its obligations under this Agreement. Any payment obligation which may be imposed shall be due and payable in advance on an annual basis.

**Section 4: Use.** MCCSC shall be responsible for lighting the fibers. The City shall be responsible for patching over to MCCSC’s ISP(s) within the Telecom Hotel.

**Section 5: Connection:** MCCSC shall be responsible for securing any easements necessary for connection to the BDU and for construction of lateral connections in compliance with standards and specifications established by ITS. Line-locate wires must be installed in any lateral which connects to the BDU. Splicing and connection to the BDU must be performed by a certified technician, and all costs associated with connecting to the BDU shall be borne by MCCSC. Upon completion of its connection to the BDU, MCCSC shall provide the City with “as built” drawings in both print and digital form of MCCSC’s connections and laterals. MCCSC shall be
responsible for any repairs to the connections and laterals which must be performed during the
term of this Agreement. MCCSC shall notify the City forty-five (45) days in advance of any
construction projects pertaining or connecting to the BDU.

**Section 6. Responsibility for Maintenance and Repairs.** The City shall be responsible for
maintenance and repair of the BDU core network. MCCSC shall be responsible for maintenance
and repair of its lateral connections from the splice point to their facility. MCCSC shall notify
the City forty-eight (48) hours in advance of any maintenance hole or hand-hole entrance to the
BDU.

**Section 7. Restoration and Line Location Services.** The City shall retain an Emergency
Restoration Agreement (“ERA”) on the BDU core network with a certified contractor. The City
will provide line locate services for the BDU core network. MCCSC shall be responsible for
their own ERA of fiber optics from the splice point to their facility along with line location
services unless the City has extended the BDU along the lateral pursuant to Section 9 below.

**Section 8. Call Out Requirements.** MCCSC will provide a call out list to the City in case of
emergency work. The list should include the order in which the City is to call out, the cell
phone, pager, and home phone numbers, as well as e-mail addresses for each person on the list.

**Section 9. Right to Co-locate.** MCCSC agrees to permit the City to install BDU conduit within
any new MCCSC lateral extension, with the City bearing the marginal additional cost of
installation of said conduit. The City may, at its discretion, install conduit in all, part or none of
the lateral extension.

**Section 10. Rights Reserved.** The City shall not be liable for any interruption of services in the
event of damage, destruction, condemnation or closure of the Telecom Hotel which renders it
unusable or inoperable. The City also reserves the right to terminate its obligations under this
Agreement at its sole discretion upon 120 days written notice to MCCSC.

**Section 11. Waiver of Claims.** The City and its agents shall have no liability to MCCSC for
any damage to the property of MCCSC located in or about the BDU core network. MCCSC
hereby waives all claims for recovery from the City of any loss or damage incurred due to
defects in, or damage to, the fiber optic cable system.

**Section 12. Waiver of Warranties.** The City expressly disclaims all express and implied
warranties, including but not limited to the implied warranties of merchantability and fitness for
a particular purpose. Except as otherwise provided in this Agreement, no information, oral or
written, provided or disseminated by the City shall create any express or implied warranties,
guaranty of performance, or contractual obligations.

**Section 13. Assignment of Rights.** The rights granted to MCCSC shall not be assigned in
whole or in part without the City’s prior written consent. In the event said consent is granted, the
provisions of this Agreement shall be binding upon and inure to the benefit of any successors and
assigns.
**Section 14. Indemnification.** MCCSC shall defend, indemnify, and hold harmless the City from and against all liabilities, judgments, claims, damages, settlements, expenses and costs, including reasonable attorneys’ fees and litigation expenses arising out of or relating to MCCSC’s execution and undertaking of this Agreement. MCCSC shall promptly notify the City of any third party claim or legal action arising out of or related to this Agreement.

**Section 15. Third Party Rights.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and MCCSC.

**Section 16. Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

**Section 17. Costs and Expense of Enforcement.** If MCCSC shall default in the performance of any of its obligations under this Agreement, it shall be responsible for the reimbursement of any attorneys’ fees and expenses which the City may incur in enforcing any obligations herein.

**Section 18. Waiver.** No waiver by either party of any default or breach of the other party’s performance of any term, condition or covenant of this Agreement shall be deemed to be a waiver or any subsequent default or breach of the same or any other term, condition or covenant contained in this Agreement.

**Section 19. Notices.** All notices required to be given by either party hereunder shall be in writing and delivered by hand, courier, overnight delivery service or registered or certified mail return receipt requested. Any notice or other communication under this Agreement shall be deemed given when received or refused and shall be directed to the following address:

**CITY**
Information and Technology Services Dept.
City of Bloomington
401 N. Morton Street, Suite 150
Bloomington, IN 47404
Attn: Director

**MCCSC**
Monroe County Community School Corp.
315 E North Drive
Bloomington, IN 47401
Attn: Director

**Section 20. Severability.** Should any part of the Agreement be found in Violation of any federal, state, or local law or ordinance, all unaffected parts shall remain in effect and enforceable provided that the intent of the Agreement is still served.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of ______, 2008.

City of Bloomington
Board of Public Works
By:

Monroe County Community School
Corporation Board of Trustees
By:
Beth Hollingsworth, President

Mark Kruzan, Mayor