

THE STATE OF TEXAS §
COUNTY OF DENTON §
CITY OF DENTON §

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE DENTON INDEPENDENT SCHOOL DISTRICT
AND UNIVERSITY OF NORTH TEXAS SYSTEM REGARDING
FIBER OPTIC CABLE
IN THE VICINITY OF EVERS ELEMENTARY AND DISCOVERY PARK**

THIS AGREEMENT (“Agreement”) is made and entered into by and between **UNIVERSITY OF NORTH TEXAS SYSTEM, on behalf of itself and its component institution the University of North Texas** (hereinafter collectively referred to as “UNTS” or the University of North Texas shall be referred to in the singular as “UNT”), and the **DENTON INDEPENDENT SCHOOL DISTRICT** (hereinafter “DISD”), organized and existing under the laws of the state of Texas, acting by and through, and under the authority of their respective governing bodies;

WHEREAS, UNTS and DISD have the authority to perform the services set forth in this Agreement individually and mutually desire to enter into an interlocal agreement, as provided for in Chapter 791 of the Texas Government Code;

WHEREAS, DISD operates a fiber optics system, which consists of four underground conduits carrying fiber optic cables used for data communication purposes (“DISD Fiber Optic System”). DISD desires to extend the DISD Fiber Optics System for the purpose of interconnecting DISD’s schools, that are or will be located north of Highway Loop 288, other DISD’s schools and support and administrative facilities;

WHEREAS, UNTS desires to have a fiber optic system constructed that will connect the main UNT campus with the Discovery Park campus, because such connection will provide UNTS with necessary data communications capability for use in the provision of data and network services (“UNTS Fiber Optic System”);

WHEREAS, UNTS and DISD desire to pool their resources, avoid unnecessary or duplicative expense, and take advantage of maximizing economies of scale, resulting in cost savings by allowing the construction of new underground conduits carrying fiber optic cables on UNTS property and the

utilization of current DISD lines to create a fiber optic system capable of serving the needs of both UNTS and DISD and merging a portion of the DISD Fiber Optic System with the UNTS Fiber Optic System (“UNTS/DISD Fiber Optic System”) in accordance with the terms and conditions set forth herein;

WHEREAS, there is a valid educational purpose served by this Agreement for DISD because the establishment of technology communications capability that better connects DISD’s schools and administrative facilities will enhance services provided to DISD students;

WHEREAS, there is a valid educational purpose served by this Agreement for UNTS because the establishment of technology communications capability that better connects the Discovery Park campus with the main UNT campus will enhance services provided to UNT students; and

WHEREAS, DISD awarded RFP#061005-FIBER and CSP070419-T to Henkels & McCoy (“Installation Contractor”) and contracted with Henkels & McCoy for engineering and construction services of a fiber optic system in the vicinity of EVERS ELEMENTARY and DISCOVERY PARK, city of Denton, Denton County, Texas, which allows for the construction of the UNTS/DISD Fiber Optic System;

NOW THEREFORE, UNTS and DISD, for and in consideration of the mutual covenants set forth in this Agreement do hereby agree as follows:

**ARTICLE I
ADOPTION OF PREAMBLE**

All of the matters stated in the preamble of this Agreement are true and correct and are hereby incorporated into the body of this Agreement as though fully set forth in their entirety herein.

ARTICLE II
SCOPE OF, RIGHTS TO AND RESPONSIBILITIES FOR
THE UNTS/DISD FIBER OPTIC SYSTEM

- A. The UNTS/DISD Fiber Optic System will consist of six logically separate but physically connected segments and will be configured as described in Exhibit A, attached hereto and incorporated by reference for all purposes.
- B. During the term of this Agreement, installation, control, right to use, and “break fix” repair and maintenance responsibility for each segment of the UNTS/DISD Fiber Optic System shown in Exhibit A shall be as follows:
1. Installation. In accordance with the specifications provided in Exhibit A and the terms of the temporary easement attached hereto as Exhibit D and incorporated by reference for all purposes (“Exhibit D”), DISD shall be responsible for having the Installation Contractor install fiber strands and new conduit as necessary in order to create and/or connect all segments and the entire UNTS/DISD Fiber Optic System. For installations on UNTS property, the conduit and fiber shall be installed at least eighty four (84) inches underground. DISD shall be responsible for the performance of the Installation Contractor, but any party hereto shall have the right to reject work performed by the Installation Contractor on the UNTS/DISD Fiber Optic System. In the case of disagreement between UNTS and DISD regarding the work performed by the Installation Contractor, the parties agree to work together amicably to find a mutually acceptable solution.
 2. Segment A. The conduit identified as Segment A shall be under the control of DISD. DISD shall be responsible for any required “break fix” repairs or maintenance of the conduit identified as Segment A. DISD shall control the use of and shall be responsible for the cost of “break fix” repair or maintenance of fiber in Segment A that already exists as of the execution of this Agreement. UNTS shall control the use of and shall be responsible for the cost of any “break fix” repairs or maintenance of fiber installed under this Agreement in Segment A.
 3. Segment B. DISD shall control the conduit identified as Segment B and shall be responsible for any required “break fix” repairs or maintenance of this conduit. DISD shall control the use of and shall be responsible for the cost of “break fix” repair or maintenance of 192 fiber strands that are installed under this Agreement in Segment B.

- UNTS shall control the use of and shall be responsible for the cost of any “break fix” repairs or maintenance of 96 fiber strands installed under this Agreement in Segment B.
4. Segment C. In accordance with the terms of Exhibit D, DISD shall control the conduit identified as Segment C and shall be responsible for any required “break fix” repairs or maintenance of this conduit. DISD shall control the use of and shall be responsible for the cost of “break fix” repair or maintenance of the fiber strands that are installed under this Agreement in Segment C.
 5. Segment D. UNTS shall control the conduit identified as Segment D and shall be responsible for any required “break fix” repairs or maintenance of this conduit. UNTS shall control the use of and shall be responsible for the cost of “break fix” repair or maintenance of the fiber strands that are installed in Segment D.
 6. Segment E. UNTS shall control the conduit identified as Segment E and shall be responsible for any required “break fix” repairs or maintenance of this conduit. UNTS shall control the use of and shall be responsible for the cost of “break fix” repair or maintenance of the fiber strands that are installed under this Agreement in Segment E.
 7. Segment F. UNTS shall control the conduit identified as Segment F and shall be responsible for any required “break fix” repairs or maintenance of this conduit. UNTS shall control the use of and shall be responsible for the cost of “break fix” repair or maintenance of the fiber strands that are installed in Segment F.
 8. “Break Fix” Repairs or Maintenance. UNTS shall give DISD notice when there is a need for “break fix” repairs or maintenance for fiber or conduit under the control of UNTS in the UNTS/DISD Fiber Optic System. DISD shall arrange for its then current contractor to perform such repairs or maintenance in a timely manner and at the standard rate paid by DISD for such repairs. Upon request, DISD shall inform UNTS in writing of the standard rates charged by its then current contractor and shall provide UNTS with an estimate of the cost of proposed “break fix” repair or maintenance. DISD shall be responsible for the performance of its contractor, but any party hereto shall have the right to reject work performed by such contractor on the UNTS/DISD Fiber Optic System. In the case of disagreement between UNTS and DISD regarding the work performed by a contractor, the parties agree to work together amicably to find a mutually acceptable solution. Alternatively, UNTS shall have the right to arrange for its own “break fix” repairs or maintenance for UNTS-controlled conduit or fibers on

UNTS property. In the event that fiber strands with fibers under the control of both DISD and UNTS and running through the same conduit are in need of “break fix” repair or maintenance, then the parties shall assume a pro-rata share of the costs of repairs based on the total number of fiber strands..

- C. The UNTS/DISD Fiber Optic System must follow the specifications for Fiber Splicing, Terminations, Testing and Documentation as set forth in Exhibit B, which is attached hereto and incorporated by reference for all purposes.
- D. DISD shall provide UNTS with a complete set of “as-built” plans and specifications for the complete UNTS/DISD Fiber Optic System that shall include all segments identified in Exhibit A, upon DISD’s determination that installation of all segments is substantially complete.
- E. UNTS shall retain the right to relocate any conduit and fiber located on UNTS property at its own expense at any time. Any relocations by UNTS shall adhere to the same technical specifications shown in Exhibit B and shall be coordinated with DISD to minimize disruptions to DISD’s use of the UNTS/DISD Fiber Optic System.
- F. DISD shall require Installation Contractor to provide a one-year warranty on all labor and materials used to install any portion of fiber or conduit that will be the responsibility of UNTS upon completion of installation. In the event of a warranty claim by UNTS, DISD shall enforce the warranty with the Installation Contractor. For future contracts entered into with contractors to perform repairs or maintenance on the UNTS/DISD Fiber Optic System, DISD shall include reference UNTS and UNT as an express intended third party beneficiaries in the contract with the contractor and UNTS and UNT shall be granted the same right as DISD to enforce warranties provided therein that are related to the UNTS/DISD Fiber Optic System.
- G. Any use of the UNTS/DISD Fiber Optic System by a third party shall be by separate agreement entered into by all parties hereto, unless such use is part of a project that involves UNTS or UNT or is otherwise allowed hereunder. DISD shall not offer access to the UNTS/DISD Fiber Optic System to the public. UNTS shall not offer ~~public~~ any individual or entity who is not a party to this agreement access to the DISD portion of the UNTS/DISD Fiber Optic System without the prior written consent of DISD. UNTS shall not offer public access to the UNTS/DISD Fiber Optic System, except when such access helps to fulfill the mission of UNTS or as otherwise allowed herein. The parties hereto agree that the mission of UNTS includes, but is not limited to, public use of UNT computers in UNT libraries and providing access to the UNTS/DISD Fiber Optic

System to third parties who have entered into a tenant agreement for space or grounds in the Discovery Park or on the UNT main campus.

- H. Notwithstanding anything to the contrary herein contained, if a party to this Agreement or its agents damages any portion of the UNTS/DISD Fiber Optic System while performing maintenance or other work, then the party causing the damage shall be wholly responsible for the cost of repairs. Both parties agree to take reasonable care to avoid damage to the other party's fiber optic system and to instruct its employees, contractors, and agents to do so as well.
- I. All repairs and maintenance on the UNTS/DISD Fiber Optic System shall be performed in a timely manner. Neither party shall be liable for any delay or interruption in service to the UNTS/DISD Fiber Optic System as long as the delay or interruption in service is repaired in a reasonably timely manner.
- J. All construction and operation of conduit and fiber as described by this Agreement shall be subject to the ability of the parties to obtain all required permits and any other approvals required by law.

ARTICLE III
WIDE AREA TRANSPORT

- A. Unless cancelled as permitted hereunder, UNTS shall provide DISD with wide area transport of up to 300 Mbps of data communications traffic from its data communications facility located at the UNT Information Science Building to the LEARN/North Texas Gigapop location on the University of Texas at Dallas campus in Richardson, TX. The traffic will be provided over the UNTS wide area network that provides alternate routes to carry network traffic. In consideration of the transport provided hereunder, DISD shall waive UNTS' portion of the cost of annual maintenance (non break-fix maintenance) and conduit rental related to the UNTS/DISD Fiber Optic System and DISD agrees to be responsible for all such costs. DISD shall pay UNTS a fee, as specified in Exhibit C, for data communications traffic on UNTS circuits that are in excess of 300 Mbps, measured as the 5-minute peak average of traffic over each calendar day. Such service will be provided on a best effort basis using the same level of care that UNTS provides for its own transport.
- B. UNTS reserves the right to change providers or locations for the UNTS wide area network. In the event UNTS obtains data communications traffic facilitation from another provider other than LEARN/North Texas Gigapop, or relocates the data communication facility from the University of

Texas at Dallas campus to another facility, UNTS shall continue to provide DISD with the same data communications traffic facilitation through its new provider or location.

- C. UNTS shall not be liable for any delay or interruption in service in regard to the wide area transport provided to DISD hereunder, except that DISD shall have the right to cancel this service with written notice to UNTS if a delay or disruption lasts for more than thirty days.
- D. On an annual basis at the end of each calendar year, the parties hereto agree to review the costs and payment terms associated with the provision of wide area transport services and the costs and payment terms of annual maintenance (non break-fix maintenance and may modify those terms based on mutual agreement in order to achieve fair cost allocation, with any new terms to be set forth in a written addendum executed by the parties hereto. In the event that mutually agreeable terms cannot be reached or if the provision of wide area transport services is no longer desirable for any other reason, then either party may cancel the provision of wide area transport services within thirty days following the end of the calendar year with written notice to the other party.
- E. In the event of cancellation of the wide area transport services as provided hereunder, then UNTS shall no longer be obligated to provide wide area transport to DISD and DISD shall no longer be obligated to waive the UNTS portion of annual, non “break fix” maintenance, and conduit rental fees related to the UNTS/DISD Fiber Optic System. UNTS shall be responsible for ~~\$31,200~~ \$33,200 annually for conduit rental paid to DISD for the UNTS/DISD Fiber Optic System and for UNTS’s share of the annual maintenance fee paid by DISD for the UNTS/DISD Fiber Optic System, prorated based on usage of conduit and fiber strands. In the event that cancellation of wide area transport services occurs at some time other than the first day of the calendar year, then the amount to be paid by UNTS for annual maintenance and conduit rental as specified in this Article III (E) shall be prorated and only that portion shall be paid that is owed for the remaining calendar year and the entire amount shall be paid for each year thereafter that this Agreement is in effect.

ARTICLE IV

TEMPORARY EASEMENT

At the time of execution of this Agreement, appropriate representatives for UNTS and DISD also shall execute a Temporary Easement, a copy of which is attached hereto as Exhibit D. The Temporary Easement shall be granted to DISD for the purpose of installing the new segments of the UNTS/DISD Fiber Optic System as identified in Exhibit A that are located on UNTS property and for the operation

and maintenance of the conduit and fiber that is part of the UNTS/DISD Fiber Optic System and is located on UNTS property while this Agreement is in effect. ~~The Temporary Easement shall automatically terminate upon the termination of this Agreement.~~ DISD's use of and access to that portion of the UNTS/DISD Fiber Optic System located on UNTS property shall be limited to the terms of this Agreement and the terms of the Exhibit D.

ARTICLE V FISCAL PROVISIONS

- A. Within 30 days of execution of this Agreement by both parties and receipt of a written estimate, UNT shall compensate DISD for the estimated cost of preconstruction, construction and installation costs charged by the Installation Contractor for the UNTS/DISD Fiber Optic System, not to exceed Three Hundred Fifty Thousand Dollars (\$350,000). DISD shall provide a written estimate from its Installation Contractor to UNTS. Preconstruction costs will include those incurred for the engineering and design of the conduit construction and the installation and termination of the fiber strands as described in Article II of this Agreement and in Exhibit A. Upon determination of actual cost incurred by DISD for the preconstruction, construction and installation costs charged by the Installation Contractor for the UNTS/DISD Fiber Optic System, the difference between the actual cost and the estimated cost paid by UNTS will be repaid to UNTS if the actual cost is less than the estimated amount paid by UNTS to DISD. If the actual cost exceeds the estimated cost paid by UNTS, UNTS shall reimburse DISD for that portion of the actual cost that exceeds the estimated cost paid as long as the total amount paid by UNTS to reimburse DISD for preconstruction, construction and installation costs charged by the Installation Contractor for the UNTS/DISD Fiber Optic System shall not exceed \$350,000. DISD agrees to provide UNTS with verification of the actual costs incurred related to the preconstruction, construction and installation costs charged by the Installation Contractor for the UNTS/DISD Fiber Optic System. All payments under this Article V (A) shall be paid within thirty days of receipt of requisite notice of the amount due.
- B. In the event that the UNTS/DISD Fiber Optic System as described herein is not constructed by DISD for any reason, DISD shall reimburse UNTS for the estimated amount paid by UNTS under Article V (A) of this Agreement within 60 days of DISD's determination not to continue construction.

- C. During the term of this Agreement, UNTS agrees to reimburse DISD for the actual cost incurred by DISD for “break fix” repairs or maintenance that are the responsibility of UNTS in accordance with Article II of this Agreement and that are incurred by DISD in accordance with the terms of this Agreement. Such reimbursement shall be made by UNTS within thirty days of receipt of written notice from DISD of the amount owed and receipt of verification from DISD of the actual cost incurred.
- D. During the term of this Agreement, DISD agrees to reimburse UNTS for any amount owed by DISD under Article III of this Agreement and Exhibit C for wide area transport in excess of 300 Mbps of bandwidth. Such reimbursement shall be made by DISD on a monthly basis, within thirty days of receipt of a written invoice from UNTS of the amount owed for the preceding month.
- E. In the event that the provision of wide area transport service is cancelled as provided in Article III of this Agreement, UNTS agrees to pay the amount that it owes to DISD for conduit rental and annual, non break fix, maintenance as provided in Article III (E) of this Agreement on an annual basis. The amount shall be paid at the beginning of each UNTS fiscal year, or as soon as the wide area transport service is cancelled and such payments become owed during the course of a year, within thirty days of receipt of invoice from DISD. Upon request, DISD shall provide UNTS with verification of its calculation of the cost of conduit rental and annual, non break fix, maintenance related to the UNTS/DISD Fiber Optic System.
- F. Invoices from DISD to UNTS under the terms of this agreement shall be mailed to the following address and shall reference the Purchase Order Number that is assigned by UNTS to the agreement upon its execution:

Mail invoices to:

Purchasing and Payment Services
University of North Texas
1155 Union Circle #310499
Denton Texas 76203-5017

**ARTICLE VI
TERM AND TERMINATION OF AGREEMENT**

- A. This Agreement becomes effective when signed by the last party whose signing makes the respective Agreement fully executed. UNTS and DISD agree that the term of this Agreement shall be ten (10) years, unless extended by the mutual written agreement of the parties.
- B. Either party may terminate this Agreement for cause by reason of the other party's material breach or default in the performance of this Agreement. The party seeking to terminate this Agreement for breach shall provide the defaulting party with written notice, specifically identifying the breach or default. This notice shall provide the defaulting party a period of not less than thirty (30) days in which to cure such breach or default. In the event that the defaulting party fails to cure the breach or default within the time specified, this Agreement shall be terminated and the party terminating this Agreement may seek appropriate legal relief. In the event of termination due to breach by DISD that occurs during the first five years of this Agreement, DISD shall be obligated to reimburse UNTS the actual costs paid by UNTS to reimburse DISD for pre-construction, construction and installation costs of the UNTS/DISD Fiber Optic System. This reimbursement shall be in addition to such other relief UNTS may be entitled to by law.
- C. The easement granted to DISD shall not terminate until all fiber optics and supporting structures installed and constructed by DISD shall have been completely abandoned and no future use of the same is contemplated by DISD and in that event such easement shall cease and all rights herein granted shall terminate and revert to Grantor. At the termination of this Agreement, DISD shall remove, relocate or render inoperable by DISD that portion of the UNTS/DISD Fiber Optic System located on UNTS property as requested in writing by UNTS. UNTS shall provide a minimum of 90 (ninety) days written notice of such intention to have DISD remove, relocate or render inoperable by DISD any segment of the UNTS/DISD Fiber Optic System. All costs associated with the removal, relocation or inoperability of that portion of the UNTS/DISD Fiber Optic System shall be the sole responsibility of DISD. Any use of conduit or fiber located on UNTS property by DISD after the termination of this Agreement must be permitted and set forth in a separate Agreement agreed to by the parties hereto.

**ARTICLE VII
USE OF PROPRIETARY INFORMATION**

- A. All information exchanged between the parties in connection with this Agreement or in utilization of the UNTS/DISD Fiber Optic Network, shall be safeguarded by the parties to the

same extent that the parties safeguard their own information. If, however, such information is publicly available under the Public Information Act (Chapter 552 of the Texas Government Code) or other applicable laws, or exists in the public domain, then UNTS and DISD shall not bear any responsibility for its disclosure, inadvertent or otherwise.

- B. UNTS and DISD acknowledge that certain data peculiar to UNTS and DISD contains personally identifiable information, as that term is defined by the Family Educational Rights and Privacy Act, concerning students. UNTS and DISD agree that in the event that such data comes into either party's possession that both parties will not disclose to any third party any personally identifiable information concerning students of UNTS or DISD, unless required by law.

ARTICLE VIII INDEMNITY

- A. To the extent allowed by the Constitution and statutes of the State of Texas, and without waiving any immunity or limitation to liability, UNTS agrees to and shall release, indemnify and hold harmless DISD, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, which arise out of this Agreement. UNTS assumes no liability for the sole negligent acts of DISD, its officers, agents, or employees. UNTS or its insurers will have control over all litigation or claims that may arise against UNTS, but UNTS may not settle any claim related to the UNTS/DISD Fiber Optic System without including DISD as a released party.**
- B. To the extent allowed by the Constitution and laws of the State of Texas, and without waiving any immunity or limitation to liability, DISD agrees to and shall release, indemnify and hold harmless UNTS and UNT and their officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, which arise out of this Agreement. DISD assumes no liability for the sole negligent acts of UNTS, its officers, agents, or employees. DISD or its insurers will have control of all litigation or claims that may arise against DISD, but DISD may not settle any claim related to the UNTS/DISD Fiber Optic System without including the University of North Texas System and the University of North Texas as released parties.**

**ARTICLE IX
ALTERNATE DISPUTE RESOLUTION**

Chapter 2260 of the Texas Government Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against UNTS or UNT that cannot be resolved in the ordinary course of business.

**ARTICLE X
ASSIGNABILITY**

UNTS shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment, novation or otherwise) without the prior written consent of DISD, which consent shall not be unreasonably withheld. DISD shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment, novation or otherwise) without the prior written consent of UNTS, which consent shall not be unreasonably withheld.

**ARTICLE XI
ADDRESSES AND NOTICE**

- A. Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be by personal delivery, sent by registered mail or certified mail, return receipt requested, postage prepaid, or by facsimile transmission actually received, to:

UNTS: Richard Escalante
 Vice Chancellor for Administrative Services
 University of North Texas System
 1155 Union Circle, #305118
 Denton, TX 76203-5017

UNT: Andrew Harris
 Vice President for Finance & Administration
 University of North Texas

1155 Union Circle #310500 Denton, TX 76203
Copy To:
Maurice Leatherbury
Vice President for Information Technology and CIO
University of North Texas
1155 Union Circle #305398
Denton, TX 76203

DISD: Superintendent
Dr. Ray Braswell
Denton Independent School District
1307 N. Locust
Denton, Texas 76201

Copy To:
Ernie Stripling
Technology Information Officer
1212 N. Elm St.
Denton, TX 76201-2941

- B. Notices shall be deemed to have been received on the date of receipt as shown on the return receipt or other written evidence of receipt. A party may change the address and/or person to receive notice on its behalf by providing written notice to the other parties.

**ARTICLE XII
MODIFICATION**

No waiver or modification of this Agreement or of any covenant, condition, limitation herein contained shall be valid unless in writing and duly executed by authorized representatives of all of the parties hereto. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing and duly executed.

**ARTICLE XIII
SEVERABILITY**

In the event one or more of the provisions of this Agreement conflicts with applicable law so that it is invalid or unenforceable, that invalidity or unenforceability shall not affect the other provisions hereof, and the invalid or unenforceable provision shall be modified so as to be valid and enforceable and so that it shall conform to the greatest extent possible to the original intent of such provision, and this Agreement shall be construed and enforced in all respects as modified.

**ARTICLE XIV
GOVERNING AND VENUE**

This Agreement shall be construed under and governed by, and in accordance with the laws of the State of Texas, and all obligations of the parties hereto, created by this Agreement are performable in Denton County, Texas. Venue of any suit or cause of action under this Agreement shall lie exclusively in Denton County, Texas.

**ARTICLE XV
ENTIRE AGREEMENT**

This Agreement and the exhibits attached thereto constitute the entire agreement among the parties hereto with respect to the subject matter hereof, and supersede any prior understandings or written or oral agreements between the parties with respect to the subject matter of this Agreement. No amendment, modification, cancellation or alteration of the terms of this Agreement shall be binding on any party hereto unless the same is in writing, dated subsequent to the date hereof, and is duly executed by the parties hereto.

**ARTICLE XVI
WAIVER OF TERMS AND CONDITIONS**

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

**ARTICLE XVII
BINDING AUTHORITY**

This Agreement is entered into by the duly authorized officials of each respective governmental entity.

**ARTICLE XVIII
CAPTIONS**

The captions contained in this Agreement are for informational purposes only and shall not in any way affect the substantive terms and conditions of this Agreement.

EXECUTED in triplicate originals this, the _____ day of _____, 2009.

UNIVERSITY OF NORTH TEXAS SYSTEM

By: _____
Lee F. Jackson
Chancellor

UNIVERSITY OF NORTH TEXAS

By: _____
Andrew Harris,
Vice President for Finance and Administration

APPROVED AS TO FORM AND LEGALITY:

University of North Texas System Attorney

EXECUTED in triplicate originals this, the _____ day of _____, 2009.

DENTON INDEPENDENT SCHOOL DISTRICT

By: _____

Dr. Jim Alexander, President, Board of Trustees

ATTEST:

Mia Price, Secretary, Board of Trustees

APPROVED AS TO FORM AND LEGALITY:

R.W. Stout, DISD Attorney

Exhibit A – Fiber Route

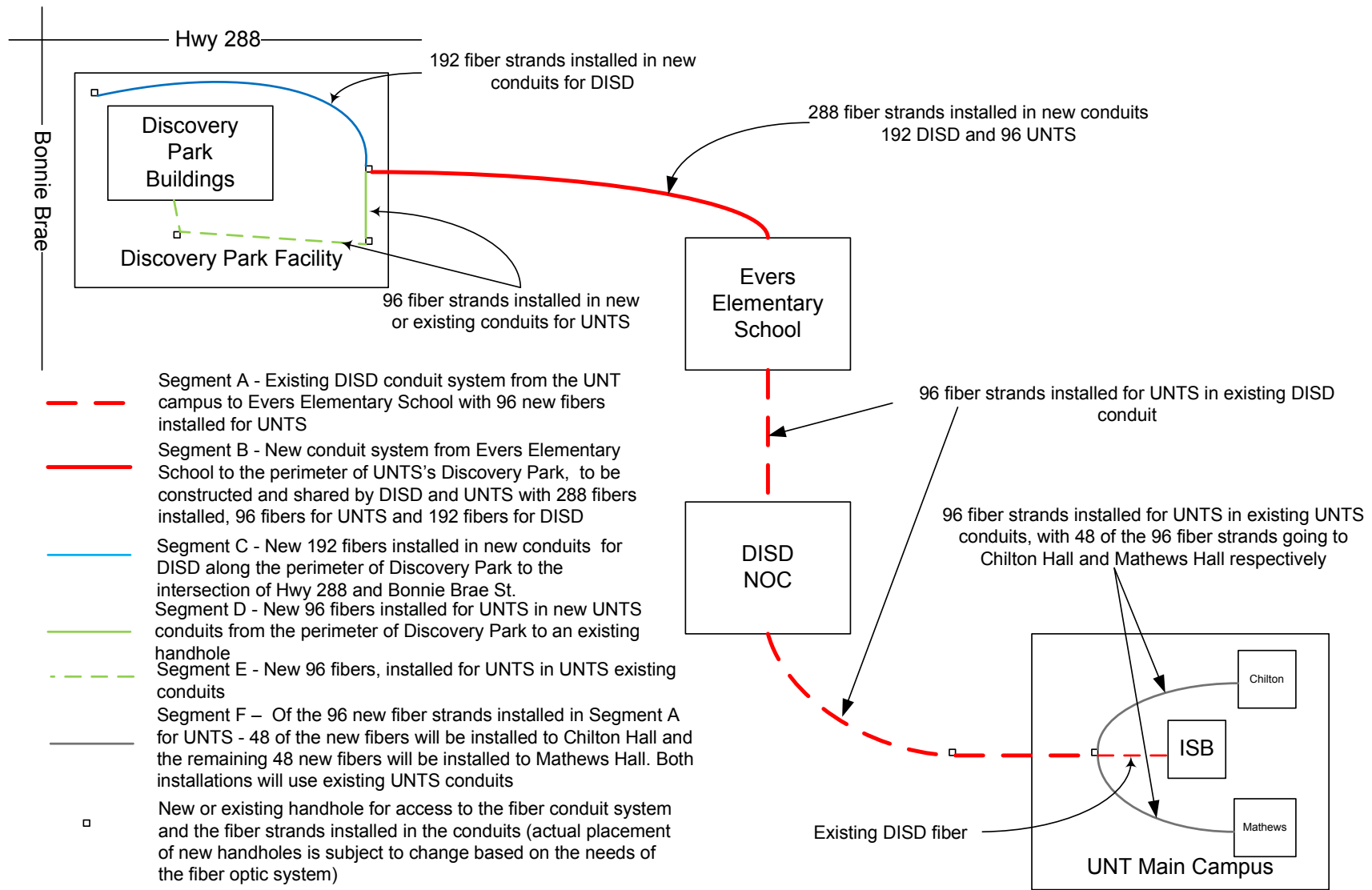


Exhibit B – Fiber Splicing, Terminations, Testing and Documentation

E1 - Cable Splicing and Termination

Contractor shall minimize the number of splices along the path from UNT Main Campus to Discovery park campus and only utilize high precision fusion splice where necessary. The splice loss characteristics must meet or exceed the test specifications noted below.

Contractor shall terminate all single-mode fibers at each end in rack mount patch panels with ST-fiber connectors. Rack mount patch panel must be mounted in standard 19" wide enclosed equipment rack. The termination loss characteristics must meet or exceed the test specifications noted below.

E2 - Cable Testing:

- A. Contractor shall test each individual single-mode fiber end at 1310 and 1550 nm respectively of all cables with power meter and OTDR after termination and installation of each fiber for conformance with the manufacturer's optical characteristics.
- B. The end-to-end cable attenuation for each fiber end shall not exceed the manufacturer's optical specifications:

<u>Item</u>	<u>Attenuation in db</u>	
	<u>Typical</u>	<u>Maximum</u>
One fusion splice	0.1	0.2
One termination	0.2	0.4

E3 - Cable Documentation:

- A. A soft / hardcopy of the final document consisting of the labeling convention for each individual fiber end and patch panel and a complete set of end-to-end power attenuation and OTDR readings for each single-mode fiber end at 1310 & 1550 nm shall be provided to UNT.
- B. Contractor shall document the total footage of each fiber segment starting from the Denton main campus patch panel and provide the actual cable lengths along its route to the patch panel in Discovery Park.

Exhibit C – Transport Fees for Bandwidth in Excess of 300 Mbps

If DISD elects to obtain more than 300 Mbps of bandwidth from UNTS between the UNT campus and the LEARN POP, DISD agrees to pay to UNTS the amount of \$1,350 per month for each 100 Mbps of bandwidth acquired.

The additional increments of bandwidth that may be provided to DISD by UNTS may only be purchased in quantities of 100Mbps. A maximum of 500Mbps of bandwidth may be purchased by DISD under this agreement: if DISD desires to acquire amounts in excess of that limit a separate agreement will be required between UNTS and DISD.

The fee charged by UNTS for the bandwidth may be adjusted on an annual basis on the anniversary date of this Agreement. Such fees shall not exceed the costs to UNTS for the provision of the bandwidth to DISD.

EXHIBIT D
TEMPORARY EASEMENT

THE STATE OF TEXAS

§

§

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF DENTON

§

That the University of North Texas System (hereinafter called “Grantor”), for and in consideration of the sum of One and 00/100 (\$1.00) Dollars and the benefits described in the Interlocal Cooperation Agreement Regarding Fiber Optic Cable (Agreement) entered into this same day by Grantor and the **Denton Independent School District**, (hereinafter called “DISD”), does hereby grant, sell and convey unto DISD, its successors and assigns, a temporary construction easement (“Temporary Construction Easement”) and a temporary access easement (“Temporary Access Easement”) as herein described. The Temporary Construction Easement and Temporary Access Easement granted, sold and conveyed to the City hereunder are limited in accordance with the requirements set forth below and shall be used solely for the purposes set forth below:

1. For a period of six (6) months from the date of execution of this Temporary Easement, DISD is acquiring the Temporary Construction Easement for the purpose of having installed the UNTS/DISD Fiber Optic System as described in the Agreement and as further described herein. Except for underground conduit and fiber, DISD shall not install any permanent structures, fences or other surface improvements on the property of Grantor. DISD shall have a temporary twenty five foot (25’) wide construction right-of-way (“Temporary Construction Easement”) over, along, across, and under the property of Grantor on top of and extending adjacent to the route of the UNTS/DISD Fiber Optic System. In the Discovery Park, the Temporary Construction Easement shall be as identified in Exhibit “D-1” as “Blue,” for use in connection with the installation of the conduit and fiber strands. Upon the earlier of (i) the completion of installation or (ii) the passage of six (6) months from the date of execution of this Agreement, the Temporary Construction Easement shall expire, and only the ten foot (10’) wide Temporary Access Easement described herein shall remain.

2. For as long as the Agreement shall remain in effect, DISD is acquiring a Temporary Access Easement for the purpose of operating, maintaining, inspecting, repairing, altering, replacing, changing the size of and removing underground conduit and fiber strands that make up the UNTS/DISD Fiber Optic System. Notwithstanding the foregoing, DISD shall not use the Temporary Access Easement granted herein to make any repair, alteration, replacement, change or removal of conduit or fiber that is controlled by UNTS as provided in the Agreement, unless prior written notification is given to UNTS and UNTS agrees in writing to same. DISD shall have a temporary ten foot (10’) wide right of way (the “Temporary Access Easement”) over, along, across and under the property of Grantor that is on top of and extending adjacent to the UNTS/DISD Fiber Optic System. In the Discovery Park, the Temporary Access Easement shall be as described in Exhibit “D-1”, attached hereto and made a part hereof by reference for all purposes. The Temporary Access Easement granted hereunder shall terminate and expire upon DISD completely abandoning all lines and supporting structures installed and constructed by DISD, and DISD having no future use of the same as contemplated by DISD and in accordance with the provisions of termination of Agreement between Grantor and DISD. Upon termination of this Temporary Access Easement, all rights, title and interest conveyed under this Temporary Easement shall automatically revert to Grantor.

3. The Temporary Construction Easement and Temporary Access Easement granted herein is exclusive to the DISD, but DISD shall have the right to allow its contractors to have access under the Temporary Access Easement as necessary in order to accomplish the requirements of this Temporary Easement and the Agreement.
4. Grantor grants to DISD the right of vehicular and pedestrian ingress and egress to and from the Temporary Construction Easement and Temporary Access Easement over and across any existing roadways located on the lands of Grantor adjacent to the Temporary Construction Easement and the Temporary Access Easement. The rights granted herein shall include such rights and privileges as are reasonably necessary for the use of the privileges herein conveyed.
5. In its exercise of the Temporary Construction Easement and the Temporary Access Easement, DISD agrees to comply and to have its employees, contractors and agents comply with all requests and instructions from Grantor related to security and safety while on the property of Grantor. DISD's employees, contractors and agents shall coordinate the schedule of work on Grantor's property with Grantor in order to minimize any possible disturbance caused to Grantor.
6. Prior to being installed, the exact route and location of the UNTS/DISD Fiber Optic System shall be mutually agreed to in writing by the UNT Facilities Department and DISD and shall in no event conflict with any other easement or utility line currently existing on Grantor's property. Further, Grantor shall have opportunity to obtain a survey to determine the exact location of the UNTS/DISD Fiber Optic System to be installed to ensure that the System does not conflict with existing easements and utilities and the survey shall become an addendum to this Temporary Easement and shall be adhered to by DISD and DISD's contractors. DISD covenants and agrees that it shall not have the UNTS/DISD Fiber Optic System installed in Discovery Park until Grantor issues a notice to proceed.
7. In installing the UNTS/DISD Fiber Optic System, DISD agrees that it shall comply and shall have its contractors comply with applicable laws related to trench safety and all other safety regulations and laws. Further, Grantor shall retain the right to monitor construction and DISD agrees that it shall comply and have its contractors comply with any reasonable recommendation of Grantor related to construction work. DISD covenants and agrees that the conduit and fiber installed hereunder will be buried to a minimum depth of eighty four inches (84") below grade. Furthermore, DISD covenants and agrees that (i) if any of Grantor's property is damaged as a result of DISD's construction, inspection, maintenance, repair, alteration, replacement or removal of conduit or fiber, or by DISD's use of the Temporary Construction Easement or Temporary Access Easement, DISD shall repair such damage so as to return Grantor's property to a condition that is as close as possible to the condition that existed immediately prior to the commencement of the activity that caused such damage, and (ii) upon completion by DISD of any construction, maintenance, inspection, repair, alteration, replacement, or removal of the conduit, DISD shall return the grade of the land over the Temporary Construction Easement or Temporary Access Easement to as level a condition as possible.
8. Grantor reserves the right to use the surface of the Temporary Access Easement in any manner that does not unreasonably interfere with DISD's rights and privileges granted by this Agreement, provided that Grantor shall not construct, nor permit to be constructed, any house, structure, reservoir, impoundment of water, or other obstruction in, on, or over the Temporary Access Easement during the time it is in effect.

9. Grantor reserves the right to move the UNTS/DISD Fiber Optic System as permitted under the Agreement. In the event that the UNTS/DISD Fiber Optic System is moved, then the Temporary Access Easement granted hereunder shall automatically move to the same location.

It shall be conclusively presumed that the person signing on behalf of Grantor has been duly and legally authorized to so sign and there shall be no necessity for a seal or attestation.

TO HAVE AND TO HOLD the above described Temporary Easement, together with all and singular the rights and appurtenances thereto in anywise belonging unto DISD, its successors and assigns for as long as this Temporary Easement is in effect.

EXECUTED this _____ day of _____, _____.

The University of North Texas System:

By: _____
Title: _____
Name Printed: _____

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STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on _____ by _____ of the University of North Texas System on behalf of said the University of North Texas System.

Notary Public, State of Texas

Accepted this _____ day of _____ 20__ for the Denton Independent School District.

By: _____

* * * * *

Exhibit D-1 DISD/UNT Fiber Rout at Discovery Park – Denton, Texas



Legend:

YELLOW = DISD Temporary Access Easement – 10 feet inside fence line
BLUE = DISD Temporary Construction Easement – 25 feet inside fence line

NOT TO SCALE