

AMENDMENT NO. 1 TO INTERLOCAL COOPERATION AGREEMENT
USE OF STREET RIGHT-OF-WAY FOR
DISD FIBER OPTIC SYSTEM

This Amendment to Interlocal Cooperation Agreement Use of Street Right-of-Way for DISD Fiber Optic System (“Amendment No. 1”), is made and entered into between the City of Denton, Texas, a Texas home rule municipal corporation (the “City”) and the Denton Independent School District, an independent school district of the State of Texas (“DISD”), organized and existing under the laws of the State of Texas, each acting by and through, and under the authority of their respective governing bodies.

WHEREAS, the City and DISD, on or about July 20, 2004, entered into that certain Interlocal Cooperation Agreement Use of Street Right-of-Way for DISD Fiber Optic System (the “Original Agreement”), providing for the right to DISD to locate certain fiber optic facilities within City street right-of-way, upon the terms and conditions set forth therein;

WHEREAS, the Original Agreement provided for the cable routes as indicated in the map attached as Exhibit “C”, attached thereto and incorporated therein by reference;

WHEREAS, DISD desires to add certain cable routes to that provided in Exhibit “C” to the Original Amendment, and the City is amenable to same;

WHEREAS, DISD and City further desire to amend the Original Agreement as concerns the requirements of performance bonds and other matters, to which the parties are amenable to such amendments;

WHEREAS, the CITY and DISD are local governmental entities, both of whom have the authority to perform the services set forth in this Agreement individually and who mutually desire to enter into an interlocal cooperation agreement, as provided for in Chapter 791 of the Texas Government Code (Vernon 2004) in order to maximize the benefits to the citizens of Denton, Texas derived from public funds;

WHEREAS, there is a valid governmental purpose served by this Agreement by DISD to use City right-of-way to provide high technology communications capability and connectivity for the DISD in order that DISD may interconnect its facilities to provide enhanced services to the students of DISD, as well as to DISD's support and administrative functions;

WHEREAS, the CITY and DISD agree that all payments made in connection with the governmental functions provided for by this Agreement shall be made from current revenues available to the paying party and that the payments received are adequate and fairly compensate the parties for the use of the street right-of-way; and

WHEREAS, the Interlocal Cooperation Act, as set forth in Chapter 791 of the Texas Government Code (Vernon 1994), authorizes the CITY and DISD to enter into this Agreement for the purpose of achieving the governmental functions and providing the services represented by this collective, cooperative undertaking.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of such being acknowledged by the City and DISD, the City and DISD hereby agree to amend the Original Agreement as follows:

1. Paragraph D. of Article IV, CONSIDERATION TO BE PAID BY DISD TO THE CITY, is deleted in its entirety and replaced with the following:

D. This Interlocal Cooperation Agreement is based on the cable routes indicated on the map in Exhibit "C", attached to this Agreement, and made a part hereof by reference, and Exhibit "C-1", attached to Amendment No. 1 hereof and made a part by reference. Cable routes indicated on Exhibit "C" and Exhibit "C-1" shall not be approved unless a permit for installation is obtained from the City Engineer pursuant to Article VI of the Original Agreement, as amended hereof. Future expansion of DISD cable routes, beyond those indicated on Exhibit "C" and Exhibit "C-1" hereof, shall be administered by supplemental amendments to the Original Agreement, on a case by case basis, inclusive of potential adjustments to payment considerations commensurate with such system expansions.

2. Paragraph A. of Article V, TERMINATION OF AGREEMENT, is deleted in its entirety and replaced with the following:

A. DISD may voluntarily terminate this Agreement at any time upon giving to the CITY one hundred eighty (180) days written notice of such intention to terminate;

provided, however, that CITY and DISD agree that if DISD terminates this Agreement prior to the five (5) year extended term set forth in ARTICLE III, above, DISD will pay CITY a termination fee as specifically set forth below:

Termination Fee will be 25% of the then in effect annual payment.

3. Article XII, PERFORMANCE BOND shall be deleted in its entirety and replaced with the following:

ARTICLE XII

PERFORMANCE BOND

DISD shall comply with the provisions of Chapter 2253 of the Texas Government Code, including without limitation, Section 2253.021, regarding the requirement of payment and performance bonds. DISD shall file a copy of the payment and performance bonds with the City.

4. Exhibit "C-1", as attached hereto and made a part hereof, is hereby added to, and made a part of, the Original Agreement.

5. Except as expressly amended hereby, all terms and provisions of the Original Agreement shall remain valid and subsisting as originally provided.

CITY OF DENTON, TEXAS
A Texas Municipal Corporation

BY: _____
MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: _____

DENTON INDEPENDENT SCHOOL DISTRICT

BY: _____

ATTEST:

BY: _____

APPROVED AS TO LEGAL FORM:

BY: _____