

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE DENTON INDEPENDENT SCHOOL DISTRICT
AND DENTON COUNTY, TEXAS REGARDING FIBER OPTIC CABLE
IN THE VICINITY OF THE TOWN OF CROSS ROADS AND CROSS OAKS RANCH**

THIS AGREEMENT is made and entered into by and between **DENTON COUNTY**, a County Government pursuant to the Constitution of The State of Texas (hereinafter “County”), 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; and

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

WHEREAS, DISD desires to extend a fiber optics system operated by DISD in order to interconnect all of DISD’s facilities for use in its computer network, for the purpose of interconnecting all of DISD’s schools, support and administrative facilities on a fiber optic system which DISD believes will provide for a vast integration of educational materials and exchange of data; and

WHEREAS, the County desires to construct a fiber optic system network to be operated by the County in order to interconnect certain County facilities for use in County Data services and Communications; and

WHEREAS, the County and DISD desire to pool their resources, avoid unnecessary or duplicative expense, and take advantage of maximizing economies of scale, resulting in cost savings; and

WHEREAS, the County and DISD desire to enter into a reciprocal agreement to allow joint use of facilities or rights-of-way owned or controlled by either party on reasonable terms; and

WHEREAS, there is a valid governmental purpose served by this Agreement by DISD to use County 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; and

WHEREAS, the County and DISD wish to emphasize the reciprocal nature of this Agreement and further agree in principle that County may use DISD's fiber optic rights-of-way on similar terms as contained in this Agreement, which use may be determined on a case-by-case basis; and

WHEREAS, DISD awarded RFP#061005-FIBER and CSP070419-T to Henkels & McCoy and contracted with Henkels & McCoy for engineering and construction services of a fiber optic system in the vicinity of the Town of Cross Roads and Cross Oaks Ranch in Denton County, Texas.

WHEREAS, the County and DISD agree that any 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 DISD for the engineering and construction of the fiber optics system; and

NOW THEREFORE, the County and DISD, for and in consideration of the mutual covenants set forth in this Interlocal 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 AGREEMENT**

- A. DISD shall administer, oversee, and enforce the fiber optic engineering and construction contract with Henkels & McCoy (see Exhibit A). The contract includes installation of underground conduit and fiber optic cable from the Steven Everett Copeland Government Center to the Upper Trinity Regional Water District Peninsula Water Reclamation Plant to the DISD Cross Oaks Elementary School.

- B. The County shall own and provide all of the materials and electronics equipment needed to implement the portions of County's Fiber Optic System that will be located in DISD conduit.
- C. DISD shall own and provide all of the materials and electronics equipment needed to implement the portions of DISD's Fiber Optic System that will be located in County right of way.
- D. County shall be responsible for maintenance and operation of those portions of its Fiber Optic System located within DISD conduit. County agrees to give notice to DISD before performing maintenance on those portions of its Fiber Optic System located within District's conduit.
- E. DISD shall, and County may, inspect the construction of the portions of County Fiber Optic System located within DISD conduit. Either shall have the right to reject work performed by the DISD installation contractor. In case of a disagreement between County and DISD concerning acceptability of installation contractor's work, the parties agree to work together amicably to find a mutually acceptable solution.
- F. DISD shall require construction contractor to provide a one-year warranty on all labor and materials used to install the portion of County Fiber Optic System located within DISD Conduit. In the event of a warranty claim by County, DISD shall cooperate with the County in enforcing the warranty with the construction contractor.
- G. DISD shall provide County with a complete set of "as-built" plans and specifications for the portions of County Fiber Optic System upon DISD's determination that construction of the Fiber Optic System are substantially complete.
- H. County and DISD agree that County Fiber Optic System is limited to a point-to-point, unswitched, private service. County and DISD further agree that DISD's use of the County right of way for its Fiber Optic System shall be limited to DISD operations. Any use of the DISD Fiber Optic System by other governmental or educational users shall be by separate agreement. County and DISD will not offer access to the system to the public.
- I. In the event County or its agents damage the portions of the Fiber Optic System operated by DISD while performing maintenance or other work, County shall be responsible for the cost of repairs. County and DISD agree to work together to determine the most cost effective method of repair to the Fiber Optic System. County agrees to take reasonable care to avoid damage to DISD's Fiber Optic System and to instruct its agents to do so as well.

**ARTICLE III
TERM OF AGREEMENT**

This Agreement becomes effective when signed by the last party whose signing makes the respective agreement fully executed. The County and DISD agree that the term of this agreement shall be perpetual. In the event that §791.001 (f), or any other provision of Chapter 791 of the Texas Government Code requires an annual or other period of renewal of this Agreement, then the parties shall be deemed to have elected to renew this Agreement annually on the anniversary of the effective date of this Agreement unless the parties each elect to terminate this Agreement.

**ARTICLE IV
FISCAL PROVISIONS**

- A. Within 30 days of execution of this agreement by both parties, County shall compensate DISD in the amount of \$123,291.37 for the portion of DISD's contract with Henkels & McCoy that includes engineering and construction of a fiber optic system from Denton County's Steven Everett Copeland Government Center to DISD Cross Oaks Elementary School.
- B. In the event that the Fiber Optic System to be used by County is not constructed by DISD for any reason, DISD shall repay to County the funds mentioned above within 60 days of DISD's determination not to construct them.
- C. DISD shall provide to County periodic and a final accounting of the cost and payments to contractor for the installation of the portion of County's Fiber Optic System.
- D. This Interlocal Agreement is based on the cable routes indicated on the map in Exhibit B, attached hereto and made part hereto by reference. Cable routes indicated in Exhibit B shall not be approved unless all necessary permits for installation are obtained.

**ARTICLE V
TERMINATION OF AGREEMENT**

- A. Either party may voluntarily terminate this Agreement at any time upon giving to the other party one hundred eighty (180) days written notice of such intention to terminate.
- 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 under this provision shall provide the defaulting party written notice, specifically identifying the breach or default complained of, which 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 such breach or default is not fully cured within the time period specified, then the party seeking to terminate this Agreement shall provide the defaulting party with further written notice expressly specifying that this Agreement will be terminated if the breach or default is not wholly cured within ten (10) days after the receipt of the written notice by the alleged defaulting party. In the event that the defaulting party fails to cure the breach or default complained of, within the time specified, then this Agreement shall be terminated, and the party terminating this Agreement may seek appropriate legal relief.

- C. In the event that this agreement is terminated prior to substantial completion of construction, DISD shall repay to County the funds paid in Article IV less any expenses already incurred or committed by DISD. DISD may continue to utilize Denton County rights-of-way for its fiber optic network as long as Denton County continues to utilize conduit provided by DISD.

ARTICLE VI USE OF PROPRIETARY INFORMATION

All data exchanged between County and DISD in connection with this Agreement or in utilization of the Fiber Optic Network, which is identified as proprietary information, shall be safeguarded by County and DISD to the same extent as District or DISD safeguards like information relating to County or DISD's own business. If, however, such data is publicly available under the Public Information Act (Chapter 552 of the Texas Government Code) or other applicable laws, is already in either party's possession or known to either party, or was rightfully obtained by either party from third parties, neither County nor DISD shall bear any responsibility for its disclosure, inadvertent or otherwise.

County acknowledges that certain data peculiar to DISD contains personally identifiable information, as that term is defined by the Family Educational Rights and Privacy Act, concerning students, County agrees that in the event that such data comes into the County possession that the County will not disclose to any individual or entity any personally identifiable information concerning students of DISD, unless the County is required to disclose this information as a result of an Order issued by a Court of competent jurisdiction.

**ARTICLE VII
INDEMNITY**

To the extent allowed by the Constitution and statutes of the State of Texas, and without waiving any immunity or limitation to liability, County agrees to and shall release, defend, 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, including all expenses of litigation, court costs, and attorney's fees, which arise out of County's operations or control of or use of the portion of County's Fiber Optic System that is located within DISD's conduit, except that County assumes no liability for the sole negligent acts of DISD, its officers, agents, or employees. County or its insurers will have control over all litigation or claims that may arise against County, but County may not settle any claim without including DISD as a released party.

To the extent allowed by the Constitution and statutes of the State of Texas, and without waiving any immunity or limitation to liability, DISD agrees to and shall release, defend, indemnify and hold harmless the County, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, which arise out of DISD's operations or control of or use of the portion of DISD's Fiber Optic System that is located within the County's conduit or County's rights-of-way, except that DISD assumes no liability for the sole negligent acts of the County, its officers, agents, or employees. DISD or its insurers will have control over all litigation or claims that may arise against DISD, but DISD may not settle any claim without including the County as a released party.

**ARTICLE VIII
ALTERNATE DISPUTE RESOLUTION**

The parties may agree to settle any disputes under this Agreement by submitting their dispute to non-binding mediation. No alternate dispute resolution arising out of or relating to this Agreement involving one party's disagreement may include the other party to the disagreement without the other's approval.

**ARTICLE IX
ASSIGNABILITY**

County 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 the

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 the County, which consent shall not be unreasonably withheld.

**ARTICLE X
ADDRESSES AND NOTICE**

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:

COUNTY: County Judge Mary Horn
Denton County
110 W. Hickory St.
Denton, Texas 76201

Copy To:
District Attorney's Office/Civil Division
1450 East McKinney, Suite 3100
P.O. Box 2850
Denton, Texas 76202

DISD: Superintendent
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

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.

**ARTICLE XI
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 the party to be charged therewith. 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, duly executed. The parties further agree that the provisions of this section will not be waived unless as herein set forth.

ARTICLE XII SEVERABILITY

The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses or words of this Agreement or the application of such sections, subsections, provisions, clauses or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America or in contravention of any such laws or constitutions, such invalidity, unconstitutionality or contravention shall not affect any other sections, subsections, provisions, clauses or words of this Agreement or the application of such sections, subsections, provisions, clauses or words to any other situation or circumstance, and it is intended that this Agreement shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause or word has not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

ARTICLE XIII 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 XIV 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 XV
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 XVI
BINDING AUTHORITY**

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

**ARTICLE XVII
CAPTIONS**

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

EXECUTED in triplicate originals this, the _____ day of _____, 2008.

DENTON COUNTY

By: _____
Mary Horn, County Judge

ATTEST:

County Clerk

APPROVED AS TO FORM AND LEGALITY:

Assistant District Attorney

EXECUTED in triplicate originals this, the _____ day of _____, 2008.

DENTON INDEPENDENT SCHOOL DISTRICT

By: _____
Charles Stafford, President, Board of Trustees

ATTEST:

Dr. Jeanetta Smith, Secretary, Board of Trustees

APPROVED AS TO FORM AND LEGALITY:

R.W. Stout, DISD Attorney

STATE OF TEXAS §
 §
COUNTY OF DENTON §

SERVICES AGREEMENT

This agreement ("the Agreement") is dated this 30th day of November 2006 by and between Denton Independent School District (hereinafter referred to as "Purchaser" or "DISD"), a independent school district organized and existing pursuant to the laws of the State of Texas whose principal office is located at 1307 North Locust Street, Denton, TX 76201 , and HENKELS & McCOY, INC. ("H&M"), a Pennsylvania Corporation, with offices located at Jolly Road, Blue Bell, Pennsylvania 19422;

WHEREAS, Purchaser wishes H&M to perform certain services for Purchaser as agreed upon by the parties during the term of this Agreement; and

WHEREAS, H&M is able and willing to perform such services;

NOW THEREFORE, the parties hereto, in consideration of the mutual promises and covenants herein contained, and intending to be legally bound hereby; mutually agree as follows:

I. REQUESTS FOR WORK

1. Subject to the provisions set forth herein, H&M agrees to furnish services to Purchaser (together with all tools and equipment incidental thereto), when and as requested by Purchaser. Purchaser may provide H&M with a written request for work or a series of such requests, issued from time to time during the term of this Agreement. Such requests, which may be transmitted by fax or by mail in accordance with Article XIII hereof, shall contain a detailed description of the work, schedule requirements including any required completion date(s), and the required location for performance of work (the "Work"). Within fourteen (14) calendar days following the receipt of such a request, H&M shall fax a written response (the "Response") to Purchaser's request stating whether H&M desires to perform the requested Work, and, if so, the Response shall set forth: (i) a price(s) for the Work in accordance with Article II below; and (ii) the projected starting and completion dates based upon Purchaser's stated requirements. If Purchaser accepts the terms contained in the Response, Purchaser shall promptly fax a copy of the Response to H&M indicating acceptance.
2. Any modification to the Work, including the time for completion or the means, methods or techniques to be used, or the presence of concealed conditions or hazardous substances, may result in an adjustment by H&M in the price of the Work. H&M shall proceed with the modification, provided the Purchaser has faxed H&M Purchaser's agreement to the price.

II. PRICING AND PAYMENT TERMS

1. Prices charged by H&M shall be on a time and material basis (at agreed man-hour or man-day rates), unit prices, cost-plus rates, and/or lump sum prices as may be agreed upon. Where

- applicable, charges for premium time, holidays, travel, per-diem allowances for food and lodging and out-of-pocket costs will be billed separately. (Reference H&M document(s) to be incorporated into this agreement.)
2. Purchaser shall verify completion and quality of work and shall make payment to H&M within sixty (60) days from the date of invoice. The Parties agree DISD has thirty (30) days after the invoice date for notification by DISD to Contractor that the work is not in compliance with the contract. If no objections are made within thirty (30) days after invoice date, payment is due thirty (30) days thereafter. Invoices unpaid within sixty (60) days will bear interest at the rate of one and one-half percent (1-1/2%) per month or any fraction thereof, provided that the interest rate shall not exceed the maximum rate allowed by law.
 3. In the event Purchaser fails to timely remit payment pursuant to paragraph 2 above because of an alleged disputed charge on any invoice, Purchaser must give written notice to H&M setting forth in specific detail the reason for the nonpayment within the time specified in paragraph 2 above and if notice is not so given, the charge shall be deemed accepted and the invoice amount correct and this shall be a waiver of any and all rights of Purchaser in this regard.
 4. In the event Purchaser fails to pay any charges when due, including any additional charges, H&M shall have the right to suspend its performance upon providing written notice thereof to Purchaser and/or to terminate this Agreement if Purchaser has not paid to H&M all amounts due H&M within fifteen (15) days of H&M's written notice thereof. In event of termination or suspension of work by H&M because of Purchaser's non-payment of undisputed charges, H&M shall not be liable for any damages, direct, indirect, or consequential, as a result of such suspension or termination.

III. INSURANCE

1. At all times during this Agreement, H&M shall maintain in full force and effect, at its sole expense, the following insurance with responsible insurance companies:
 - A. Comprehensive general liability insurance providing coverage for operations, completed operations and contractual liability with respect to liability assumed by H&M hereunder. The limits of coverage for such insurance shall be \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury and \$1,000,000 for property damage.
 - B. Comprehensive automobile liability insurance covering the use and maintenance of owned, non-owned, hired and rented vehicles with a combined single limit of \$2,000,000 for bodily injury and property damage.
 - C. Evidence of Worker's Compensation insurance with statutory limits of coverage including employer's liability limits of \$1,000,000 each accident/ \$1,000,000 bodily injury by disease each employee/ \$1,000,000 bodily injury by disease policy aggregate.
 - D. Other Insurance:

Prior to the commencement of any Work hereunder, H&M, upon written request, shall furnish proof of all such insurance.

IV. TERM OF AGREEMENT

1. Notwithstanding any other provision herein, this Agreement may be terminated without cause by either party upon thirty (30) days written notice to the other.
2. In event of such termination by Purchaser, Purchaser shall pay any amounts due for Work completed and material furnished hereunder, including materials delivered to Purchaser which were ordered for Work and not subject to cancellation by H&M.
3. Termination of this Agreement by H&M shall not constitute a waiver by H&M of any amounts due H&M for Work or any other additional charges.

V. LIMITATION OF LIABILITY AND LIMITED WARRANTY

1. H&M agrees to perform services in a good and workmanlike manner and in accordance with standard business practices applicable to the Work.
2. In no event shall H&M's liability for any Work, services or materials furnished exceed Purchaser's actual damages. Parties agree to define actual damages to include reasonable cost to repair. Parties agree that down time consequential damages will not be included. The Work shall be considered to have been accepted after the last day such services were performed by H&M unless written notice to the contrary is received by H&M within thirty (30) days following the last day such services were performed.
3. H&M shall not be liable for any damages caused by delay in rendering performances hereunder arising from any cause beyond the reasonable control of H&M, or as a result of strike, or work stoppages, civil disobedience, death, or Acts of God, and, in such event or events, H&M shall be excused from its performance on a day-to-day basis to the extent of the duration of such interference.
4. THE PARTIES AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARE EXCLUDED FROM THIS AGREEMENT AND SHALL NOT APPLY TO THE EQUIPMENT OR REPLACEMENTS PROVIDED UNDER THIS AGREEMENT WHETHER PROVIDED BY H&M PURSUANT TO ITS OBLIGATIONS TO PROVIDE WORK OR ADDITIONAL WORK OR TO ANY WORK OR ADDITIONAL SERVICES PERFORMED UNDER THIS AGREEMENT. H&M'S OBLIGATION AND PURCHASER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT H&M PROVIDES MALFUNCTIONING EQUIPMENT OR REPLACEMENTS IS FOR H&M TO PERFORM SERVICE ON SUCH MALFUNCTIONING EQUIPMENT OR REPLACEMENTS, H&M SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER ARISING FROM ANY BREACH OF THIS AGREEMENT OR PERFORMANCE OF THE WORK UNDER THIS AGREEMENT.

VI. COMPLIANCE WITH LAWS

1. H&M agrees that its services rendered in connection herewith shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act (Public Law 91-956) and its regulations in effect as of the date hereof, and as of the date of performance of any Work hereunder.
2. H&M agrees that, where applicable, this Agreement will be performed in compliance with all applicable equal opportunity requirements including, but not limited to, Executive Order 11246 (41 CFR 60-1 and 60-2), relating to equal employment opportunity and non-segregated facilities; Executive Order 11625 (41 CFR 1-1.13), relating to the utilization of minority business enterprises; the Vietnam Era Readjustment Assistance Act of 1974 and Executive Order 11701 (41 CFR 60-250), relating to the employment of veterans; the Rehabilitation Act of 1973 and Executive Order 11758 (41 CFR 60-741), relating to the employment of handicapped persons and all amendments thereto and all regulations, rules and orders issued there under.

VII. PROPRIETARY INFORMATION

1. Notwithstanding any termination of this Agreement, any information exchanged between the parties which is designated confidential or proprietary (hereinafter the "Data") shall be held in confidence. Information exchanged in tangible form which is not marked "confidential" or "proprietary" shall not be protected under this Article. Information exchanged in intangible form shall not be protected under this Article unless, within ten (10) days of the exchange, the disclosing party prepared a signed writing describing the information, designating it confidential or proprietary and sends it to the other party for signature.
2. Each party shall mark all copies of the Data with the same legends and notices found on the original thereof.
3. The recipient of the Data shall be relieved of its obligation under this Article with respect to any of the Data which other than by breach of this Agreement, is or becomes publicly available or is obtained from a third party or is independently known or developed by the recipient.

VIII. MODIFICATION

No amendment or modification hereof shall be valid unless the same shall be set forth in writing signed by the duly authorized representatives of the parties hereto.

IX. NONWAIVER

Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereof or to claim a breach with respect thereto.

X. HEADINGS

Section headings are inserted for convenience only and shall not be used in any way to construe the terms of this Agreement.

XI. INTERPRETATION

The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of Texas.

XII. DISPUTE RESOLUTION

Any dispute between the parties hereto, arising out of or related to this Agreement, shall be resolved as follows:

1. The dispute shall be reduced to writing and submitted to the President of each party. The President of each party may designate a representative for purposes of resolving the dispute. Within 30 days of receipt of the written dispute, the Presidents (or their representatives) shall meet in order to resolve the dispute by agreement. The Presidents (or their representatives) shall, within three days after the conclusion of the meeting, issue a written statement either resolving the dispute or stating that they cannot achieve a resolution by agreement. Within 30 days of receipt of the written dispute, H&M shall direct, by written notice to Purchaser that the dispute, if not resolved by agreement in accordance with this paragraph, shall be subject to either arbitration or to suit in court.
2. All deliberations of the parties shall be conducted in good faith, with the intent to resolve the dispute amicably. The resolution by agreement shall be final and binding on the parties.
3. If no resolution is achieved in accordance with the procedure set forth in (1) and (2) above, the dispute may be resolved by mediation or by suit in court, in accordance with H&M's direction pursuant to (1) above. If H&M elects suit in court, suit must be instituted in, and the parties consent to the jurisdiction of, the State of Texas.

XIII. NOTICE

All notices and other communications (except fax communications pursuant to Article I) shall be transmitted in writing by certified mail, postage prepaid, return receipt requested, addressed to the parties as follows:

H&M: Henkels & McCoy Inc.

Attention:

Address:

Fax No.:

Denton Independent School District

Attention: Ernie Stripling

Address: 1212 N. ELM

DENTON TX - 76201

Fax No.: 940-369-4194

XIV. CONTRACTUAL RELATIONSHIP

The parties intend that H&M be an independent contractor and not an agent or employee of Purchaser. Neither party shall have authority to act for the other in any manner to create obligations or debts that would be binding on the other.

XV. ASSIGNMENT

Purchaser shall not assign any right or interest under this Agreement without the prior written consent of H&M. Any attempted assignment in contravention of this clause shall be null and void.

XVI. HIRE AWAY

It is understood and agreed that Purchaser will not hire, directly or indirectly, any employee or employees of H&M working on or who has/have worked on Work subject to this Agreement, for at least six (6) months after the termination or expiration of this Agreement.

XVII. SUCCESSION

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, such parties acting by their representatives being thereunto duly authorized.

HENKELS & McCOY, INC.

By: Nancy Shuck Pasarel

Name: Nancy Shuck Pasarel
Title: Regional Contracts Mgr.

Date: 1/24/07

Denton Independent School District

By: Mia B. Price

Name: Mia Price
Title: President, Board of Trustees
Date: January 9, 2007

Fee Structure

	Wayne Ryan Stuart Elementary 2 Miles	Wayne Ryan Stuart Elementary 2 Miles (Hours)	New DISD Site 2,000'	New DISD Site 2,000' (Hours)	New Site Cross Oaks Ranch 4,000'	New Site Cross Oaks Ranch 4,000' (Hours)	Hourly Rate
Field Technician	\$4,369.66	79	\$827.59	15	\$1,655.17	30	\$55.00
Cable Designer							
Design Network	\$4,369.66	79	\$827.59	15	\$1,655.17	30	\$55.00
Permits	\$6,554.48	119	\$1,241.38	23	\$2,482.76	45	\$55.00
Micro Station Operator Input- Premits & Prints	\$5,704.83	152	\$1,080.46	29	\$2,160.92	57	\$37.65
As-Built Input	\$1,456.32	39	\$275.86	7	\$551.72	15	\$37.65
Project Manager	\$4,490.99	56	\$850.57	11	\$1,701.15	21	\$79.50
Totals	\$26,945.93	525	\$5,103.45	99	\$10,206.90	199	