

INTERLOCAL COOPERATION AGREEMENT
BETWEEN
DENTON INDEPENDENT SCHOOL DISTRICT
AND
THE COUNTY OF DENTON, TEXAS
FIBER OPTIC SHARING

THIS AGREEMENT is made and entered into by and between the DENTON INDEPENDENT SCHOOL DISTRICT (hereinafter "DISD") and the COUNTY OF DENTON, TEXAS (hereinafter "DENTON COUNTY"), acting by, through, and under the authority of their respective governing bodies; and

WHEREAS, DENTON COUNTY is a political subdivision of the State of Texas engaged in the administration of county government and related services for the benefit of the citizens of Denton County, Texas; and

WHEREAS, DISD is a political subdivision of the State of Texas, located in Denton County, and a legally constituted independent school district, engaged in the provision of education and related services for the benefit of the citizens located within its district; and

WHEREAS, DISD and DENTON COUNTY, being political subdivisions of the State of Texas, have the authority to individually perform the services set forth in this Agreement and mutually desire to enter into this interlocal agreement as provided for in Chapter 791 of the Texas Government Code (Vernon 1994) in order to maximize the benefits derived from each taxpayer dollar through their collective and cooperative efforts; and

WHEREAS, DISD and DENTON COUNTY entered into an interlocal agreement in January 2005 for the installation and operation of certain components of fiber optic systems within shared rights-of-way; and

WHEREAS, DISD and DENTON COUNTY have previously cooperated in the installation, maintenance and repair of fiber optic systems; and

WHEREAS, DISD and DENTON COUNTY jointly own approximately twenty (20) miles of 2 conduits and 196 pair fiber optic cable along the Denton County Transportation Authority rail line; and

WHEREAS, DISD and DENTON COUNTY have found this cooperation to be mutually beneficial and desire to expand the scope of their cooperation to include fiber optic sharing; and

WHEREAS, DISD and DENTON COUNTY 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 the payments received are adequate and fairly compensate the parties for the services performed.

NOW THEREFORE, DISD and DENTON COUNTY, for and inconsideration of the premises and the mutual covenants set forth herein do hereby AGREE as follows:

**I
RECITALS AND PREAMBLE**

1.1 All matters and recitations stated in the preamble of this Agreement are true and correct and are hereby incorporated by reference into the provisions of this Agreement for all purposes.

**II
TERM OF AGREEMENT**

2.1 The term of this Agreement shall be for one (1) year commencing on October 1, 2012 and ending on September 30, 2013 but shall not be effective until the governing bodies of each party have approved and ratified this Agreement. This Agreement shall continue to be automatically renewed for additional one (1) year terms, unless terminated as provided in section 9.2 of this agreement. Each party reserves the right to revisit the agreement for purposes of amendment or revision on an annual basis or any time as a result of changes or revisions relating to DISD's agreements for Texas 811 One-Call Law Services, or the Fiber Locate Contractor and or the Fiber Engineering, Construction and Maintenance Contractor.

**III
PURPOSE**

3.1 The purpose of this Agreement is, as described in the preamble, to expand the parties' cooperative effort; to acquire the ability to monitor the continuing integrity of the fiber optics systems and for the identification and location of the systems for the benefit of third parties whose activities may inadvertently interfere or disrupt the systems; and to provide for the acquisition of the means by which the purposes are to be achieved.

**IV
DEFINITIONS**

4.1 Definitions:

- a. DISD and DENTON COUNTY are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

b. "Fiber Optic System" means any communications conduit (whether occupied or vacant) and any installed fiber optic cable.

c. "Fiber Locate Contractor" means the contractor selected and engaged by DISD to provide fiber optic locating services. At the time of this contract's beginning, the Fiber Locate Contractor engaged by the DISD is Fulcrum Consulting.

d. "Fiber Engineering, Construction and Maintenance Contractor" means the contractor engaged by DISD to provide new and existing engineering on the fiber optic cable service. This also includes all emergency fiber optic cable repair and maintenance that is damaged due to a contractor digging in or around DISD fiber optic cable services. At this time DISD has engaged Henkels and McCoy, Inc.

V

DISD REPRESENTATIONS

5.1 DISD has entered into an agreement with Texas Excavation Safety System, Inc. ("Texas 811") for the provision of services incidental to identifying and locating the parties' fiber optics systems (whether jointly or individually owned) for the benefit of third parties whose construction, excavation or other activities may potentially interfere or disrupt the fiber optic systems. DISD represents that Texas Excavation Safety System, Inc. provides services required by and in accordance with the Texas Utilities Code, Chapter 251, Underground Facility Damage Prevention and Safety Act. DISD may revise its agreement with Texas 811 or select a new Underground Facility Damage Prevention and Safety Act provider as necessary. DENTON COUNTY will be notified in advance of any proposed revisions or changes to the agreement with the entity engaged for identifying and locating the parties' fiber optics systems. The current agreement provides compensation to Texas 811 for their services at a cost of \$0.95 per notification.

5.2 DISD has entered into an agreement with a Fiber Locate Contractor, for actual, under-the-ground, location of the fiber optics system (whether jointly or individually owned). The current agreement provides compensation to the Fiber Locate Contractor for their services at a cost of Forty Thousand Dollars (\$40,000.00) annually. A true and correct copy of the current costs for location services is attached hereto, labeled Exhibit "A". DISD shall annually review its agreement with the fiber locate contractor. DISD may revise its agreement with the Fiber Locate Contractor or select a new Fiber Locate Contractor as necessary. DENTON COUNTY will be notified in advance of any proposed revisions or changes to the agreement with the fiber maintenance contractor.

5.3 DISD has entered into an agreement with Fiber Engineering, Construction and Maintenance Contractor, Henkels and McCoy, for all new engineering, construction and maintenance where the parties' fiber is damaged due to negligence of a city permitted contractor

in excavation.

VI DISD OBLIGATIONS

6.1 DISD will administer the agreement with Texas 811 by responding to all requests for identification of the underground fiber optics system; contacting the Fiber Maintenance Contractor for actual on site physical location of the system, and for receipt of invoices from the third party contractors and submission of payment for same.

6.2 DISD on a quarterly basis shall submit to DENTON COUNTY for payment legible copies of all invoices from Texas 811. DISD shall remit full payment to the respective entities.

6.3 DISD shall, at any other time, on request by DENTON COUNTY, provide to DENTON COUNTY an accounting of any and all invoices and funds paid for the services incidental to this Agreement.

6.4 DISD shall promptly notify DENTON COUNTY of any fiber optic locate requests that may affect any portions of the fiber optic networks that are utilized by or owned by DENTON COUNTY.

6.5 DISD shall promptly notify DENTON COUNTY of any maintenance or other work that may affect fiber optic systems jointly owned with DENTON COUNTY or individually owned by DENTON COUNTY. All appropriate precautions shall be made to not interfere with DENTON COUNTY's use of the fiber optic system. In the event DISD or its agents damage any portions of the Fiber Optic System while performing maintenance or other work, DISD shall be responsible for the cost of repairs. DENTON COUNTY and DISD agree to work together to determine the most cost effective method of repair to the fiber optic system. All such work shall be performed by the DISD Fiber Engineering, Construction and Maintenance Contractor.

VII DENTON COUNTY OBLIGATIONS

7.1 DENTON COUNTY shall reimburse DISD for one-half (1/2) the cost of "locate tickets" received from Texas 811.

7.2 DENTON COUNTY shall reimburse DISD Four Thousand Five Hundred Dollars (\$4,500.00) per quarter for the cost of the services of the Fiber Locate Contractor.

7.3 All payments to be made by DENTON COUNTY in reimbursement to DISD shall be due and payable within thirty (30) days of the date of receipt of the invoice from DISD.

7.4 DENTON COUNTY shall maintain a GIS map of the fiber optic network and provide copies to DISD upon request.

7.5 DENTON COUNTY shall notify DISD of any DENTON COUNTY owned fiber optic systems that need to be added to the On-Call and fiber optic maintenance contracts.

7.6 DENTON COUNTY shall promptly notify DISD of any maintenance or other work that may affect fiber optic systems jointly owned with DISD or individually owned by DISD. All appropriate precautions shall be made to not interfere with DISD's use of the fiber optic system. In the event DENTON COUNTY or its agents damage any portions of the Fiber Optic System while performing maintenance or other work, DENTON COUNTY shall be responsible for the cost of repairs. DENTON COUNTY and DISD agree to work together to determine the most cost effective method of repair to the fiber optic system. All such work shall be performed by the DISD Fiber Engineering, Construction and Maintenance Contractor.

VIII JOINT OBLIGATIONS

8.1 DENTON COUNTY and DISD agree to share the costs and work together to determine the most cost effective method of repair or relocation of the fiber optic system not caused by DENTON COUNTY, DISD, or their agents.

8.2 Both parties shall own and provide all of the materials and electronic equipment needed to implement its portions of the fiber optic system.

IX DEFAULT AND TERMINATION

9.1 If either party shall default in the performance of any of the terms or conditions of this Agreement, that party shall have ten (10) days after delivery of written notice of such default within which to cure such default. If the defaulting party fails to cure its default in such period of time, then the non-defaulting party shall have the right without further notice to terminate this agreement.

9.2 This agreement may be terminated by either party, at its sole decision, with or without cause, and without prejudice to any other remedy to which it may be entitled at law or in equity, by giving written notice no less than ninety (90) days prior to the end of any term to the other party of its intention to terminate.

X
MISCELLEANOUS PROVISIONS

10.1 Amendment. This Agreement may be amended only by written instrument signed by both DISD and DENTON COUNTY.

10.2 Alternate Dispute Resolution. Any dispute arising from the failure of either DISD or DENTON COUNTY to perform shall be submitted to mediation prior to institution of legal proceedings. It is further agreed and understood that the scope of matters to be submitted to dispute mediation is limited to disputes concerning sufficiency of performance. Any other disputes or conflicts involving damages or claimed remedies outside the scope of sufficiency of performance shall be referred to a court of competent jurisdiction in Denton County, Texas.

10.3 Assignability. This agreement is between DISD and DENTON COUNTY and may not be assigned.

10.4 Confidentiality. All data exchanged between DISD and DENTON COUNTY in connection with this Agreement, which is identified as proprietary information, shall be protected by DISD and DENTON COUNTY to the same extent as other proprietary information is treated within. If however such data publicly available under the Public Information Act or other applicable laws or was rightfully obtained prior to this agreement, neither party shall bear responsibility for its disclosure.

10.5 Duplicate Originals. This Agreement has been executed in duplicate originals each of which shall be regarded as an original, with the same effect as if the signatures thereto and hereto were upon the same document, and all of which shall constitute one and the same document.

10.6 Governing Law and Partial Invalidity. The validity of this Agreement and/or any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. Further, this Agreement shall be performed in Denton County, Texas. Venue in any dispute shall be Denton County, Texas. In the event that any portion of this Agreement shall be found to be contrary to law, it is the intent of the parties hereto that the remaining portions shall remain valid and in full force and effect to the extent possible.

10.7 Integration. There are no understandings or agreements between the parties, or representations made by the parties, oral or written, which are not specified herein. This drafting of this Agreement has been the joint effort of the parties, and neither party contends the interpretation of the Agreement should be in their favor, as the other party was the scrivener.

10.8 No Third Party Beneficiaries. This Agreement is not intended to create any liability for the benefit of third parties.

10.9 Notice. All notices, demands or other writings may be delivered by either party by U.S. First Class Mail at the following addresses:

DENTON COUNTY ADDRESS:

Kevin Carr
Director of Technology Services
Denton County
401 W. Hickory St, Suite 637
Denton, Texas 76201-9026

DISD ADDRESS:

Ernie Stripling
Technology Information Officer
Denton Independent School District
1212 North Elm
Denton, Texas 76201

With a copy to:

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

With a copy to:

Debbie Monschke
Executive Director of Budget and Finance
Denton Independent School District
1307 North Locust
Denton, TX 76201

10.10 Waiver. The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise or enforce any right herein conferred, or the waiver of a breach of any provision of this Agreement by either party, shall not be construed as a waiver or relinquishment to any extent of either party's right to assert or rely upon any such term or right, or future breach of such provision, on any future occasion.

WITNESS THE ACTS OF THE GOVERNMENTS:

DENTON INDEPENDENT SCHOOL DISTRICT

The foregoing Interlocal Cooperation Agreement between Denton Independent School District and the County of Denton was offered for approval on motion made by _____ seconded by _____, and after discussion was adopted by the Board of Trustees of the Denton Independent School District at a regularly scheduled meeting called, posted, and held in Denton, Denton County, Texas, on _____, at which _____ Trustees were present, by the following vote: _____ For, _____ Against, and _____ Abstaining.

Mia Price, President
Board of Trustees
Denton Independent School District
1307 North Locust
Denton, Texas 76201
(940) 369-0001

ATTEST:

Dr. Rudy Rodriguez, Secretary
Board of Trustees

Approved as to form:

By: _____
R. W. Stout, DISD Attorney

THE COUNTY OF DENTON, TEXAS

The foregoing Interlocal Cooperation Agreement between Denton Independent School District and the County of Denton was offered for approval on motion made by _____ seconded by _____, and after discussion was adopted by the members of the Commissioners Court of Denton County, Texas at a regularly scheduled meeting called, posted, and held in Denton, Denton County, Texas, on _____, at which the County Judge and ____ Commissioners were present, by the following vote: ____ For, ____ Against, and ____ Abstaining.

DENTON COUNTY, TEXAS

Mary Horn, County Judge
Denton County Commissioners Court
110 West Hickory, Room #207
Denton, Texas 76201
(940)349-2820

ATTEST:
DENTON COUNTY CLERK

By: _____

Approved as to form:

By: _____
John Feldt
Assistant District Attorney