

**INTERLOCAL AGREEMENT BY AND BETWEEN
THE CITY OF PLANO, TEXAS AND COLLIN COUNTY COMMUNITY COLLEGE
FOR UTILIZING FIBER OPTIC CABLING INFRASTRUCTURE**

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered by and between the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, hereinafter referred to as "City", and **COLLIN COUNTY COMMUNITY COLLEGE DISTRICT**, a Texas public junior college, hereinafter referred to as "College." City and College shall collectively be referred to as the "Parties" or individually as the "Party."

WITNESSETH:

WHEREAS, the City and College are local governments as defined by the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the "Act"); and

WHEREAS, the Act authorizes any local government to contract with one or more local governments to perform governmental functions and services as set forth in the Act; and

WHEREAS, the City has invested in the purchase, design, installation, operations, and maintenance of a fiber optic wide area network to meet its needs; and

WHEREAS, the College has also invested in the purchase, design, installation, operations, and maintenance of a fiber optic wide area network to meet its needs; and

WHEREAS, the Parties have determined that use of each Party's fiber optic wide area network ("Network") and physical fiber paths will provide high-speed communications to the other Party and will be mutually beneficial to the Parties; and

WHEREAS, the mutual cooperation of the Parties will have the benefit of saving tax dollars which, otherwise, would be required to be spent by each Party separately; and

WHEREAS, the Parties will further receive a benefit by being able to reach geographically separated facilities, the benefits of which include, but are not limited: (1) reduction of permitting, trenching, directional boring, and pole rental fees where fiber is permitted and possible; (2) shared cost for future expansion of fiber optic network routes and future fiber optic cabling installations; and (3) the ability to logically extend data networks to geographically separated facilities (no dependences on public network); and

NOW, THEREFORE, the Parties, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

**I.
TERM**

This Agreement shall begin upon the last day executed by all authorized Parties (“Execution Date”) and shall continue in full force and effect for a period of one year (the “Initial Term”). After the initial Term, this Agreement shall automatically renew for five (5) one-year periods (each a “Renewal Term”) unless sooner terminated in accordance with the provisions set forth in this Agreement.

**II.
GOVERNMENTAL FUNCTIONS AND SERVICES**

The Parties agree to make available to the other Party its Network and physical fiber paths. The location of each Party’s Network and physical fiber paths that may be used by the other Party are shown in **Exhibit "A"** attached hereto and incorporated herein by reference.

The Parties understand and agree that the location of the Network and physical fiber paths may be changed or modified by the Party owning the Network and physical fiber paths, in its sole discretion. If there are any changes or modifications, the Party owning the Network and physical fiber paths shall notify the other Party. An amendment to this Agreement will be required to memorialize any changes and modifications to the location of the Network and physical fiber paths. All amendment must be agreed to and executed by the Parties.

**III.
ROLES AND GENERAL RESPONSIBILITIES OF THE PARTIES**

The College, at its own expense, will provide equipment and facilitate as defined below:

- The College will provide and maintain its fiber and equipment at the College’s facilities.
- The College will notify the City at least two (2) weeks before any scheduled maintenance on the College’s Network and/or communications equipment that will render any part of Network out of service.
- The College will notify City as soon as reasonably practicable for any unscheduled downtime that will render any part of the College’s Network out of service.
- The City shall have no requirement to install, operate, or maintain any equipment on the premises of the College.
- The College will provide the City with access to the College’s Network on a good faith effort basis.

The City, at its own expense, will provide equipment and facilities as defined below:

- The City will provide and maintain its fiber and equipment at the City’s facilities.

- The City will notify the College at least two (2) weeks before any scheduled maintenance on the City's Network and/or communications equipment that will render any part of the Network out of service.
- The City will notify the College as soon as reasonably practicable for any unscheduled downtime that will render any part of the City's Network out of service.
- The College shall have no requirement to install, operate, or maintain any equipment on the premise of the City.
- The City will provide the College with access to the City's Network on a good faith effort basis.

Neither Party makes any warranties, express nor implied (including those regarding merchantability or fitness for a particular purpose), respecting any duties or obligations of the other under this Agreement. Each Party waives any and all warranties, express or implied.

IV. CONSIDERATION / FEES

The exchange of access to each Party's Network shall be provided to the other Party at no cost to either Party. If, at any point, a Party determines that a cost must be charged for the access to the Network, written notice must be submitted to the other Party one hundred eighty (180) days in advance.

V. TERMINATION

Either party may terminate this Agreement at any time without cause or penalty by giving at least one hundred eighty (180) days advance written notice. Should either Party determine it is in the Party's best interest to terminate this Agreement, the Parties will work in good faith to determine a mutually agreeable timeframe in which to relocate, modify, or remove any existing equipment or services.

VI. RELEASE AND HOLD HARMLESS

To the extent authorized by the constitution and laws of the State of Texas, both Parties agree to be responsible for its own acts of negligence which may arise in connection with any and all claims for damages, cost, and expenses to person or persons and property that may arise out of or be occasioned by this Agreement for any of its activities or from any act or omission of any employee or invitee of the Parties, to the extent allowed by law and without waiving any rights or protections provided therein.

In the event of joint and concurrent negligence, the Parties agree that responsibility shall be apportioned comparatively. This obligation shall be construed for the benefit of the Parties hereto, and not for the benefit of any third parties, nor to create liability for the benefit of any third parties, nor to deprive the Parties hereto of any defenses each may have as against third parties under the laws and court decisions of the State of Texas.

**VII.
NOTICE**

Any notice provided under this Agreement shall be delivered by mail or personal service to the Parties named below:

COLLEGE:

Collin County Community College District
Attn: _____
Address: _____
City/State/Zip: _____

CITY:

City of Plano, Texas
Technology Solutions Department
Attn:
P.O. Box 860358
Plano, TX 75086-0358

**VIII.
AUTHORITY TO SIGN/GOVERNING BODY AUTHORIZATION**

The undersigned officer and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto. The City has executed this Agreement pursuant to duly authorized action of the Plano City Council. The College has executed this Agreement pursuant to the authority granted by its Board of Trustees. Each of the Parties shall provide written documentation evidencing the grant of approval by its respective governing body.

**IX.
SEVERABILITY**

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, either Party may terminate this Agreement by giving the other Party thirty (30) days written notice.

**X.
VENUE**

This Agreement and 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. The Parties agree that this Agreement shall be enforceable in Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

**XI.
INTERPRETATION OF AGREEMENT**

Although this Agreement is drafted by the City, this is a negotiated document. Should any part of this Agreement be in dispute, the Parties agree that the Agreement shall not be construed more favorably for either Party.

**XII.
REMEDIES**

No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the Parties. It is further agreed that one (1) or more instances of forbearance by either Party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

**XIII.
SUCCESSORS AND ASSIGNS**

The Parties each bind themselves, their respective successors, executors, administrators and assigns to the other Party to this Agreement. Neither Party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other Party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of both Parties.

[INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement by signing below.

**COLLIN COUNTY COMMUNITY COLLEGE
DISTRICT**

Date: _____

By: _____

Name: _____

TITLE: _____

CITY OF PLANO, TEXAS

Date: _____

By: _____

Mark D. Israelson
CITY MANAGER

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

