



## **ALEDO ISD BOARD MEETING TEMPLATE**

**MEETING DATE:** August 27, 2012

**AGENDA ITEM:** Consider Approval of Amendment to the Interlocal Agreement to Provide Services Between Texserve and Aledo ISD

**PRESENTER:** Earl Husfeld

**ALIGNS TO BOARD GOAL(S):** Financial/Facilities – The District shall exhibit excellence in financial and facility planning, management, and stewardship.

**BACKGROUND INFORMATION:**

- Since 2008 the District has contracted with Dallas County Schools to operate a technology and information systems department for the District.
- During 2012, Dallas County Schools began doing business by the name of Texserve outside of Dallas County.

**ADMINISTRATIVE CONSIDERATIONS:**

- When additional products and/or services are purchased from Dallas County Schools, an amendment to the Interlocal Agreement must be approved.
- The additional products being purchased are noted on Attachment A of the following Interlocal Agreement. These products will provide additional instructional resources to the students and staff of Aledo ISD.
- To comply with this requirement, the following Amendment to the Interlocal Agreement to Provide Services Between Texserve and Aledo ISD is presented to you for review and consideration.

**FISCAL NOTE:**

Costs contained in this Amendment are provided for in the 2011-2012 and 2012-2013 budgets.

**ADMINISTRATIVE RECOMMENDATION:**

The Administration recommends the Board of Trustees approve the Amendment to the Interlocal Agreement to Provide Services Between Texserve and Aledo ISD as presented.

**INTERLOCAL AGREEMENT TO PROVIDE SERVICES  
BETWEEN TEXSERVE AND  
ALEDO INDEPENDENT SCHOOL DISTRICT**

**WHEREAS**, Dallas County Schools d/b/a Texserve ("Texserve") and Aledo Independent School District (the "District") are each political subdivisions of the State of Texas; and

**WHEREAS**, Texserve has entered into agreements with vendors (the "Vendors") to provide Texserve with various technology services and instructional media resources (the "Vendor Services"); and

**WHEREAS**, Texserve, pursuant to such agreements with the Vendors, desires to provide the District with the Vendor Services and support services by Texserve (collectively the "Services") set forth in Attachment A hereto; and

**WHEREAS**, the District desires to accept and purchase the selected Services from Texserve pursuant to the terms and conditions of this agreement (the "Agreement").

**NOW, THEREFORE**, Texserve and the District enter into this Agreement pursuant to the authority of the Texas Government Code, Chapter 791, the Interlocal Cooperation Act, as amended, for the provision of the Services by Texserve to the District for the mutual consideration stated herein:

**1. TERM**

This Agreement shall be effective July 1, 2012 (the "Effective Date") for a three (3 ) year period through June 30, 2015 (the "Initial Term"). Prior to the expiration of the Initial Term, either party may notify the other in writing of its desire to renew this Agreement or renegotiate the terms as required. Any renewal is to be executed in the form of an amendment to the Agreement extending the term of the Agreement.

**2. RELATIONSHIP OF THE PARTIES**

Each party is acting independently of the other, and neither is an agent, servant, employee, or joint venture partner of the other. Texserve represents and warrants that it has, or will secure at its own expense, all personnel, consultants, and/or vendors required to provide the Services under this Agreement. No officer and/or member of the governing body of Texserve or the District shall participate in any decision relating to this Agreement that affects his or her personal interest, nor shall any such officer or member of Texserve or the District have a pecuniary interest in this Agreement or any part thereof.

### **3. SCOPE OF WORK/RESPONSIBILITIES OF THE PARTIES**

#### **A. RESPONSIBILITIES OF TEXSERVE. Texserve agrees to:**

1. Provide, or cause the Vendors to provide, the Services to the District as set forth in Attachment A;
2. Provide the District with technical support for applicable managed technology Services through the Texserve network management team, which may be reached at (214) 944-4557 or (817) 925-7911;
3. Interface with Vendors to resolve District support issues for applicable managed technology Services that cannot be resolved directly by Texserve;
4. Invoice the District for the Services as set forth in Attachment A, which pricing is subject to change after the Initial Term; and
5. Apply for any applicable Universal Service Fund (E-Rate Program) funding to be applied to any eligible portions of the fees for the Services at the then current Schools and Libraries Division of the Universal Service Fund approved reimbursement rate.

#### **B. RESPONSIBILITIES OF THE DISTRICT. The District agrees to:**

1. Pay Texserve for the Services as set forth in Attachment A, no later than thirty (30) days after receipt of an invoice from Texserve;
2. Allow access to its facilities and equipment to Texserve and any Vendors upon reasonable notice for all purposes related to the installation, deployment, maintenance, service, repair, and support of the Services;
3. Ensure that its internal systems are compatible with the requirements of the Services;
4. Provide, install, maintain, and insure against loss or damage to its own data, servers, hardware, cabling, software, and equipment necessary for the Services;
5. Comply with any terms and conditions required by the Vendor(s), as applicable; and
6. Comply with the Children's Internet Protection Act ("CIPA"), 47 U.S.C. §254(l) and the Protecting Children in the 21st Century Act, Pub. L. No. 110-385, Title II, 122 Stat. 4096 (2008), and all Federal Communications Commission rules regarding these acts, including but not limited to

maintaining required policies and annually filing required forms to certify compliance, as applicable.

#### **4. TERMINATION**

Either party may terminate this Agreement, with or without cause, by giving sixty (60) days prior written notice to the other party. Texserve shall have the right to terminate this Agreement for cause upon breach by the District that has not been cured within thirty (30) days after receipt of notice from Texserve as to such breach..

#### **5. NOTICE**

Any notice, demand or request required or permitted to be given under this Agreement shall be deemed given if reduced to writing and delivered in person, shipped by overnight delivery by a recognized carrier such as UPS or FedEx, or deposited with the United States Post Office in the form of certified mail, postage pre-paid return receipt requested, to the party who is to receive any such notice, demand or request, at the respective address set forth below. Such notice, demand, or request shall be deemed to have been received upon actual receipt.

**If to Texserve, to:**

Rick D. Sorrells, Ed. D.  
Superintendent  
Dallas County Schools  
612 North Zang Boulevard  
Dallas, Texas 75208

**If to District, to:**

Dan Manning  
Superintendent  
Aledo Independent School District  
1008 Bailey Ranch  
Aledo, Texas 76008

#### **6. LIABILITY**

- A. It is understood and agreed between the parties that each party hereto shall be responsible for its own acts of negligence in connection with this Agreement. Where injury or property damage results from the joint or concurrent negligence of both parties, liability, if any, shall be shared by each party on the basis of comparative responsibility in accordance with the applicable laws of the State of Texas, subject to all defenses available to them, including governmental immunity. Neither party shall be responsible to

the other party for any negligent act or omission in connection with this Agreement. These provisions are solely for the benefit of the parties hereto and not for the benefit of any person or entity not a party hereto; nor shall any provision hereof be deemed a waiver of any defense available by law.

- B. THE SERVICES TO BE PROVIDED BY THE VENDORS, DALLAS COUNTY SCHOOLS, AND TEXSERVE HEREUNDER ARE OFFERED "AS IS." TEXSERVE HAS NO RESPONSIBILITY NOR BEARS ANY LIABILITY FOR THE SERVICES, INCLUDING BUT NOT LIMITED TO, THE FAILURE OF THE HARDWARE OR SOFTWARE INCLUDED THEREIN OR ANY LOSS OF DATA ASSOCIATED WITH SUCH FAILURE.
- C. TEXSERVE'S ENTIRE LIABILITY AND RESPONSIBILITY FOR ANY AND ALL CLAIMS, DAMAGES OR LOSSES ARISING FROM USE OF THE SERVICES BY THE DISTRICT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF FEES PAID BY THE DISTRICT THUS FAR. TEXSERVE SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR CONTINGENT DAMAGES OR EXPENSES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS AGREEMENT, THE SERVICES OR TEXSERVE'S PERFORMANCE OR LACK THEREOF UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LOSS OF REVENUES OR PROFIT OR LOSS OF DATA SUFFERED BY THE DISTRICT.

## **7. CHOICE OF LAWS AND VENUE**

In providing the Services pursuant to this Agreement, Texserve must observe and comply with all applicable federal, state, and local statutes, ordinances, rules, and regulations. This Agreement shall be governed by the laws of the State of Texas. In the event of any dispute that arises pursuant to or in connection with this Agreement, exclusive venue for the adjudication of such dispute shall lie in Dallas County, Texas. All statutes and laws applicable to this Agreement shall apply as amended from time to time.

## **8. AMENDMENTS AND CHANGES IN THE LAW**

This Agreement may not be amended, modified, or supplemented unless such amendment, supplement, or modification is agreed to in writing and signed by each of Texserve and the District. Should the District desire to add, delete, or change any Services to be provided under this Agreement, such change shall be done in the form of an amendment to Attachment A. Any alteration, addition, or deletion to the terms of this Agreement that is required by any change in federal or state law shall automatically be deemed incorporated herein without written amendment to this Agreement, and any such alteration, addition, or deletion to this Agreement shall be effective on the date such law is effective.

## **9. SEVERABILITY**

In the event that any part of this Agreement is held by a court of competent jurisdiction to be unenforceable, the unenforceable portion shall be deemed modified to the extent necessary to make it enforceable under applicable law, and the remainder of the provisions in the Agreement shall remain in full force and effect in accordance with their respective terms.

## **10. ENTIRE AGREEMENT**

This Agreement represents the entire agreement between Texserve and the District with respect to the subject matter set forth in Attachment A, and supersedes any prior or contemporaneous agreements, whether written or oral, with respect to such subject matter.

## **11. BINDING EFFECT**

This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

## **12. DEFAULT/CUMULATIVE RIGHTS/MITIGATION**

It shall not be deemed a waiver or default under this Agreement if the non-defaulting party fails to immediately declare a default, or either party delays in asserting any right hereunder. The rights and remedies provided under this Agreement are cumulative and in addition to the rights and remedies either party may have pursuant to law, statute, ordinance, or otherwise, and either party's use of any right or remedy provided for hereunder will not preclude or be deemed to waive such party's right to use any other remedy, whether hereunder or at law or equity. Both parties hereto have a duty to mitigate damages incurred pursuant to this Agreement and performance thereunder.

## **13. ASSIGNMENT**

Neither party may transfer or assign its interest in this Agreement, nor delegate its duties hereunder, except as specifically provided for or as contemplated herein, without the prior written consent of the other party. Each party understands that in the event that all or substantially all of its assets are acquired by another entity, that party or its successor in interest will remain obligated to fulfill the terms and conditions of this Agreement.

## **14. COUNTERPARTS, NUMBER/GENDER, AND HEADINGS**

This Agreement may be executed in multiple counterparts, including without limitation facsimile or emailed counterparts, each of which shall be deemed an original and all of

which together shall constitute one and the same agreement. Words of any gender used in this Agreement shall be held and construed to include any other gender, and any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings used herein are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

## **15. GOVERNMENTAL IMMUNITY**

This Agreement is expressly made subject to Texserve's and the District's governmental immunity under the Texas Civil Practice and Remedies Code and all applicable state and federal law. The parties hereto expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the parties have by operation of law.

## **16. PREVENTION OF FRAUD AND ABUSE**

The parties shall establish, maintain, and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Agreement. Any known or suspected incident of fraud or abuse involving Texserve or District employees or agents that involve funds or activities under this Agreement shall be reported immediately by the party that becomes aware of the incident to Texserve's or the District's Board of Trustees for appropriate action.

## **17. FISCAL FUNDING CLAUSE**

Notwithstanding any provision contained herein to the contrary, the obligations of the parties under this Agreement are expressly contingent upon the availability of funding for each item and obligation contained herein. A party shall have no right of action against the other party in the event the other party is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding to pay for its obligations hereunder from any source utilized to fund this Agreement or from failure of the party to budget or authorize for this Agreement during the current or any future fiscal year. In the event a party is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, that party, at its sole discretion, may provide funds from a separate source or may otherwise terminate this Agreement by written notice to the other party at the earliest possible time prior to the end of the fiscal year; provided, however, the terminating party shall be required to pay for Services already received or return fees for any Services not yet received, as the case may be, as of the time the party provides such notice. In the event a party is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, the other party may immediately terminate this Agreement.

## **18. CONFIDENTIALITY AND RECORDS**

- A. Both parties shall safeguard and adhere to all confidentiality, privacy, security, and copyright requirements under applicable federal, state, and local laws, rules, and regulations regarding the privacy, security, and ownership of all

information obtained by either party from the other in connection with this Agreement and each respective party's performance thereunder.

- B. All records created by Texserve or the District pursuant to this Agreement shall belong to Texserve or the District, as the case may be.

## **19. PROMPT PAYMENT ACT**

Texserve agrees that a temporary delay by the District in paying an invoice due to the Districts' accounting disbursement procedures shall not place the District in default of this Agreement and shall not render the District liable for interest or penalties, provided such delay in payment does not exceed thirty (30) days after receipt of the invoice. Any amount not paid by the District to Texserve within thirty (30) days after receipt of an invoice shall bear interest in accordance with Chapter 2251 of the Texas Government Code, as amended.

## **20. FORCE MAJEURE**

Neither Texserve nor the District shall be deemed to be in violation of this Agreement if either party is prevented from performing any of its obligations hereunder by reason of a strike; stoppage of labor; riot; fire; flood; storm; invasion; insurrection; terrorist act; accident; government regulation; order of court, judge, or civil authority; act of God; or any other cause reasonably beyond the nonperforming party's control and that is not attributable to such nonperforming party's dereliction of duty or negligence hereunder. In the event of any such occurrence, the time for performance of the nonperforming party's obligations or duties shall be suspended until such time as the nonperforming party's inability to perform, provided that the nonperforming party is not responsible for such inability to perform, is removed. The party claiming the suspension of performance shall give notice of such impediment or delay in performance to the other party within ten (10) days of its knowledge of the occurrence of the event or events causing such nonperformance. The nonperforming party shall make all reasonable efforts to mitigate the effects of any suspension of its performance.

## **21. SIGNATORY WARRANTY**

The person or persons signing and executing this Agreement on behalf of Texserve or the District, or representing themselves as signing and executing this Agreement on behalf of Texserve or the District, do hereby warrant and guarantee that he, she, or they have been duly authorized by Texserve or the District to execute this Agreement on behalf of Texserve or the District and to validly and legally bind Texserve or the District to all terms, conditions, performances, and provisions set forth herein.

[SIGNATURE PAGE TO FOLLOW]



**IN WITNESS WHEREOF**, the parties hereto have executed this Interlocal Agreement to Provide Services Between Texserve and Aledo Independent School District, effective as of the Effective Date.

**TEXSERVE:**

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Wesley Scott  
Assistant Superintendent/CFO  
Dallas County Schools d/b/a Texserve

**ALEDO INDEPENDENT SCHOOL DISTRICT**

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Dan Manning  
Superintendent  
Aledo Independent School District

## **ATTACHMENT A**

### **SERVICES**

Texserve will provide to the District the following Services, as requested by the District. The District will only be invoiced for the services selected by the District. Pricing is subject to change after the Initial Term.

**Please state desired service(s) by indicating Yes/No and provide quantity needed (if applicable), for each numbered item below**

1.     No     Circuit – Opteman - 250M CIR, 1G Multi mode fiber

Location A: 416 FM 1187 S. Aledo 76008.

Location B: 117 Vernon Rd. Aledo. 76008

Price @\$711 per month.

2.     No     Internet Access - Annual Cost (Erate included):

                    Same as last year                     Bandwidth

<u>Bandwidth (Mbps)</u>	<u>IN-County</u>	<u>OUT-County</u>
100	\$7,200.00	\$9,000.00
200	\$14,400.00	\$18,000.00
300	\$21,600.00	\$27,000.00
400	\$28,800.00	\$36,000.00
500	\$36,000.00	\$45,000.00
600	\$43,200.00	\$54,000.00
Note: Price subject to change per quote for transport/circuit if needed.		

3.     Yes     Microsoft Premier Service: @ \$7750 per unit (50 hours per unit)

    1     Number of Units

4.     No     Virtual Desktop License – VMware: @ \$144.10 each license\*

    0     Number of Licenses

\*VMware support services expires on April 12, 2015.

(Optional) – The District may extend the support services after the Initial Term at \$16.95 per license for the fourth year.

5. Yes **Virtual Server Solutions:**

- a. 5 HyVE-100-N Solution - \$20,625  
Supports 100 concurrent users and ideal for academic, call centers and general office profiles
- b. 0 HyVE-100-P Solution - \$29,700  
Supports 100 concurrent power users and ideal for engineering, business analytics and performance office profiles
- c. 0 HyVE-200-N Solution - \$37,400  
Supports 200 concurrent users and ideal for academic, call centers and general office profiles

6. No **Annual Maintenance Cost (Virtual Server Solutions):**

Basic Maintenance Cost			
TYPE	Year 1	Year 2	Year 3
100-N	Included	\$ 2,057.0	\$ 2,057.0
100-D	Included	\$ 2,970.0	\$ 2,970.0
200-N	Included	\$ 3,740.0	\$ 3,740.0

- a. No

Advanced Maintenance Cost			
TYPE	Year 1	Year 2	Year 3
100-N	\$ 2,068	\$ 4,125.0	\$ 4,125.0
100-D	\$ 2,970	\$ 5,940.0	\$ 5,940.0
200-N	\$ 3,740	\$ 7,480.0	\$ 7,480.0

- b. No

7. No **Managed Virtual Technology Services:**

For each virtual environment deployment:

- a. 0 120 hours at \$125.00 per hour for initial virtual node.
- b. 0 60 hours at \$125.00 per hour for each additional virtual node.

8. No **Web Hosting Services:**

0 Number of Campuses

Initial setup cost @\$500 per campus

Annual license fee @ \$1200 per campus

9. Yes **Instructional Media Services:**

Resources by Vendor	Price (per ADA – Average Daily Attendance)	Selection
a. PowerVideos (PV)	\$ 0.50 (out of Dallas County)	<u>0</u>
b. PowerVideos (PV)	\$ 0.25 (in Dallas County)	<u>0</u>
c. NBC Learn	\$ 0.35	<u>0</u>
d. Grolier Online	\$ 0.25	<u>0</u>

**OR**

e. IS Package (PV, NBC, Grolier)	\$0.98 (out of Dallas County)	<u>1</u>
f. IS Package (PV, NBC, Grolier)	\$0.85 (in Dallas County)	<u>0</u>

District Student Population (ADA): 4,460