

INTERLOCAL AGREEMENT FOR FIBER OPTIC CABLE BY AND BETWEEN THE CITY OF CELINA, TEXAS AND  
THE CELINA INDEPENDENT SCHOOL DISTRICT

This Interlocal Agreement for Fiber Optic Cable ("Agreement") by and between the City of Celina, Texas, a municipal corporation ("Celina"), and the Celina Independent School District, a political subdivision of the State of Texas ("CISD"), is entered into as of the date of last signature below ("Effective Date").

WHEREAS, the Interlocal Corporation Act, Chapter 791 of the Texas Government Code (the "Act") provides authority for political subdivisions to contract by and between each other to purchase goods and services and facilitate governmental functions of said political subdivisions under the terms of the Act; and

WHEREAS, Celina and CISD have a shared interest in the use and maintenance of underground and aerial fiber optic cable of a minimum of ninety-six (96) strands ("Fiber") throughout Celina for various Celina and CISD facilities, and each party, has, or will install Fiber cable lines; and

WHEREAS, Celina has, or will, contract with a fiber optic cable maintenance provider for the maintenance of existing and future Fiber optic cable lines ("Fiber Maintenance Contractor"); and

WHEREAS, the parties desire to provide for on-going co-location of Fiber, extension of Fiber to their respective buildings, and provide for maintenance and repair of Fiber that has been and will be installed, by entering into this Agreement; and

WHEREAS, the parties have investigated and determined that it would be advantageous and beneficial to each and their employees, students, staff, citizens, and inhabitants to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein, Celina and CISD agree as follows:

1. Term. The initial term of this Agreement shall commence on the date of the last signature identified below and shall end on October 1, 2027. This Agreement can be extended by written mutual agreement of the parties for additional five-year renewal terms.

2. Shared Fiber. The parties agree to co-locate and share the maintenance, Dig-Tess, and franchise utility pole attachment costs for Fiber that both parties use, whether individually or jointly, with the sharing of costs to be calculated as described in Attachment A, attached hereto and incorporated herein for all purposes. The current and future locations of the Fiber installed by either party shall be as mutually agreed to by the parties in writing as addendums to this Agreement, which addendums may be approved by the City Manager and Superintendent without action of the governing bodies. For as long as this Agreement is in effect and at those locations that the parties have mutually agreed to share Fiber, each party shall have exclusive use of at least forty-eight (48) strands out of the minimum of 96 total strands installed by either party. Notwithstanding the foregoing, either party, upon the mutual written consent of the other party, may allow the use of its portion of the shared Fiber by another third party governmental entity. If such additional use is allowed, each party to this Agreement remains responsible for the costs described herein for maintenance of the Fiber, and may not assign reimbursement or cost sharing obligations to such third party. Each party expressly acknowledges and agrees to accept and use the installed Fiber lines shared under this Agreement as-is, however all installation work shall be performed in compliance with applicable law, regulations, codes, and standards applicable at the time of the installation.

3. Maintenance. Celina shall hire a Fiber Maintenance Contractor to maintain the Fiber used by both parties under this Agreement, including shared conduits and trenches. **CISD AGREES TO HOLD HARMLESS CELINA FROM ANY CLAIMS OR DAMAGES ARISING FROM THE FIBER MAINTENANCE CONTRACTOR'S WORK ON CISD-OWNED FIBER LINES.** In the event that the Fiber Maintenance Contractor modifies the terms and conditions of its agreement with Celina, including costs, CISD is not obligated to pay for the new maintenance costs without its written consent, and Celina is not obligated to continue to provide such services to CISD if it determines that serving CISD is no longer feasible under such modifications.

4. Compensation. CISD agrees to pay Celina a sum annually in proportion to its use of Fiber for costs of (i) maintenance of Fiber as invoiced by the Fiber Maintenance Contractor, (ii) Dig-Tess annual invoices, and (iii) franchise utility pole attachment fees. Such compensation shall be in accordance with the Texas Government Code Chapter 2251 and determined using the methodology and data in Attachment A of this Agreement, subject to annual review by both parties. Costs of the Fiber Maintenance Contractor's work will include labor, overtime, equipment, materials, and all other expenses included in its invoice. Celina will present an invoice to CISD in October of each fiscal year which shall be paid by CISD within thirty (30) days. The amount invoiced by Celina to CISD will be the sum of three (3) separate cost determination methods as described in Attachment A. Prior to Celina's creation of an annual invoice, a member or members of the CISD Technology Department will meet with a member or members of the City of Celina Information Technology Department to review the data and methodologies used to ensure fairness and agreement of the amounts to be invoiced. If such meeting results in a recommendation of changing any portion of the compensation methodology and data prescribed in Attachment A, this Agreement must be amended by the governing bodies of the parties in writing to reflect such changes. Notwithstanding the foregoing, should there be an expense invoiced by the Fiber Maintenance Contractor outside of the customary costs for maintenance, for emergency repairs, immediate relocation, or any other immediate cost of more than \$50,000 (in the aggregate, e.g., one emergency or immediate event causes multiple repairs totaling more than \$50,000) to continue the Fiber's functionality, then CISD shall reimburse Celina for its proportionate share for such emergency or immediate costs within sixty (60) days notice from Celina. All compensation paid under this Agreement shall be paid from current revenues available to the paying party.

5. Fiber at Each Facility. The Fiber will be taken to the main data facility at each CISD or Celina facility it serves ("Main Data Facility"), where it will be terminated in a fiber patch panel and tested by Optical Time Domain Reflector Meter ("OTDR"). All necessary Main Data Facility access, including easements, rights-of-way, or right-of-entry, whether underground or aerial, onto each Main Data Facility and into each equipment room, will be provided to the Fiber Maintenance Contractor at each Main Data Facility served. Each party shall be responsible for the operation, maintenance, and repair of Fiber, insurance and permits, and the costs thereof, beyond the termination point in that party's respective Main Data Facility that is being served.

6. Test Results. Each party will obtain the OTDR testing results, as needed, from the Fiber Installation Contractor in a form acceptable to such party.

7. Warranty. CELINA MAKES NO WARRANTY TO CISD OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY FACILITIES OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.

8. Limitation of Liability. Each party's liability to the other party for any loss relating to, or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall not exceed the total amount that either party has or would have charged the other party for the affected services or functions for the time period during which the services or functions were not performed or otherwise were improperly performed.

9. Miscellaneous Provisions.

a) Assignment. This Agreement is not assignable.

b) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto. The only parties to this Agreement are Celina and CISD.

c) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas. All payments due under this Agreement will be payable in Collin County, Texas.

d) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

e) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

f) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for who the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

g) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

h) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

i) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

j) Pursuit of a Governmental Function. Both Celina and CISD have determined by their execution of this Agreement that this Agreement and the obligations of the parties contained herein are in discharge of a governmental function as set forth in the Interlocal Cooperation, Chapter 791, Texas Government Code, and the participation by either party in the terms of this Agreement shall not make such party an agent or representative of the other party.

k) Notification. All notices required or contemplated by this Agreement (or otherwise given in connection with this Agreement) (a "Notice") shall be in writing, shall be signed by or on behalf of the party

giving the Notice, and shall be effective on the earlier of (a) on the third (3<sup>rd</sup>) day after being deposited with the United States mail service, Certified Mail, Return Receipt Requested with a confirming copy sent by facsimile or email, (b) on the day delivered by a private delivery or private messenger service (such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the Notice is addressed), or (c) on the day actually received by the person to whom the Notice is addressed, including, but not limited to, delivery in person, delivery by regular mail, delivery by facsimile (with a confirmation copy sent by regular mail), or delivery by email (with a confirming copy sent by one of the other methods set forth herein). Notices given pursuant to this Section shall be addressed as follows:

To Celina: City of Celina  
Attention: City Manager  
142 North Ohio Street  
Celina, Texas 75009  
Telephone: (972) 283-2682  
Facsimile: (972) 382-3736  
Email: [jlaumer@celina-tx.gov](mailto:jlaumer@celina-tx.gov)

With a copy to: Julie Fort  
Messer, Fort & McDonald, PLLC  
6371 Preston Road, Suite 200  
Frisco, Texas 75034  
Telephone: (972) 668-6400  
Facsimile: (972) 668-6414  
Email: [julie@txmunicipallaw.com](mailto:julie@txmunicipallaw.com)

To the District: Celina Independent School District  
Attention: Superintendent  
205 S. Colorado Street  
Celina, Texas 75009  
Email: [thomasmaglisceau@celinaisd.com](mailto:thomasmaglisceau@celinaisd.com)

The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least ten (10) days written notice to the other party. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

*Execution Page Follows*

**CITY OF CELINA, TEXAS**

By: \_\_\_\_\_  
Jason Laumer, City Manager

Date: \_\_\_\_\_

STATE OF TEXAS

COUNTY OF COLLIN

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the duly authorized representative for the City of Celina, and he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_

Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

**CELINA INDEPENDENT SCHOOL DISTRICT**

\_\_\_\_\_  
Dr. Tom Maglisceau, Superintendent

Date: \_\_\_\_\_

STATE OF TEXAS

COUNTY OF COLLIN

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the duly authorized representative for the Celina Independent School District, and he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My Commission Expires: \_\_\_\_\_

## ATTACHMENT A

### Compensation Methodology and Data

For the purposes of these calculations, the following meanings shall apply:

“/” shall mean “divided by”

“\*” shall mean “multiplied by”

“=” shall mean “equals”

#### Method 1: Annual Maintenance Costs

Fiber Maintenance Contractor invoices Celina each year for maintenance covering total amount of Fiber. CISD’s share of that maintenance amount shall be a percentage based on the Fiber used by CISD, included in the Fiber Maintenance Contractor invoice. This shall include any costs in Fiber Maintenance Contractor’s invoice for work that serves CISD under this Agreement. The formula will be:

**((amount of Fiber shared by CISD \* 50%) + amount of Fiber exclusively used by CISD) / total amount of Fiber in Fiber Maintenance Contractor annual invoice) \* total amount of Fiber Maintenance Contractor annual invoice = Total for Method 1**

#### Method 2: Annual Dig-Tess Costs

Celina is billed throughout the year for Dig-Tess requests. CISD will be invoiced an amount equal to its percentage share of Fiber used multiplied by the Dig-Tess amount that Celina is invoiced annually. The formula will be:

**((amount of Fiber shared by CISD \* 50%) + amount of Fiber exclusively used by CISD) / total amount of Fiber in Fiber Maintenance Contractor annual invoice) \* total amount of Dig-Tess annual invoices = Total for Method 2**

#### Method 3: Annual Pole Attachment Fee Costs

Celina pays pole attachment fees to franchise utility providers each year for use by Fiber lines. CISD's share of those fees will include an amount of attachment fees for poles carrying CISD-shared Fiber, and Fiber used exclusively by CISD. The formula will be:

**((amount of poles carrying shared Fiber \* 50%) + amount of Fiber exclusively used by CISD) / total amount of poles) \* total pole attachment fee invoice amount = Total for Method 3**

**The sum total of Methods 1, 2, and 3 shall comprise the *annual* compensation to be paid by CISD to Celina for the services provided under this Agreement unless otherwise agreed to by the parties, and which does not include any emergency or immediate costs as described in Section 4.**

**Example:**

Note: units of measurement used in this Attachment are used as examples and may not be used in actual calculations.

<b><u>Method 1:</u></b>	
Total amount of Fiber included in Fiber Maintenance Contractor invoice	16.3
Total amount of Fiber shared by CISD	4.5
Total amount of Fiber exclusively used by CISD	2.1
Total amount of Fiber exclusively used by Celina	9.7
CISD percentage of Fiber shared (= (4.5 / 16.3) * 100)	27.61%
Half of CISD percentage of Fiber shared	13.81%
CISD percentage of exclusive fiber (= (2.1 / 16.3) * 100)	12.88%
CISD total percentage (= 13.81% + 12.88%)	26.69%
Annual Maintenance Invoice from contractor	\$45,000
<b>Total Due #1: (26.69% of \$45,000)</b>	<b>\$12,010.50</b>
<b><u>Method 2:</u></b>	
Total Annual invoice from Dig-Tess to Celina	\$5,966.95
CISD percentage of Fiber (calculated above)	26.69%
<b>Total Due #2: (26.69% of \$5,966.95)</b>	<b>\$ 1,592.58</b>
<b><u>Method 3</u></b>	
Total CoServ poles carrying Fiber	455
Total OnCor poles carrying Fiber	262
Total GCEC poles carrying Fiber	113
<b>Total number of poles carrying Fiber for Celina</b>	<b>830</b>
<b>Total poles carrying Shared Fiber</b>	<b>600</b>
<b>Total poles carrying CISD exclusive</b>	<b>75</b>
<b>Total poles carrying Celina exclusive</b>	<b>155</b>
Percentage of poles shared (= (600 shared poles / 830 total poles) * 100)	72.29%
Half of percentage of poles shared (= 72.29% / 2)	36.15%
CISD percentage of poles exclusive (= (75 shared poles / 830 total poles) * 100%)	9.03%
CISD percentage of poles used (= 36.15% + 9.03%)	45.18%
Celina percentage of poles (155 / 830)	18.67%
Total for pole attachment fees CoServ	\$6,996.04
Total for pole attachment fees OnCor	\$4,028.49
Total for pole attachment fees GCEC	\$1,737.48
<b>Total for pole attachment fees</b>	<b>\$12,762.01</b>
<b>Total Due #3 (45.18% of \$12,762.01)</b>	<b>\$ 5,765.87</b>
<b>TOTAL INVOICE TO CISD (#1 + #2 + #3)</b> <b>(\$12,010.50 + \$1,592.58 + \$5,765.87)</b>	<b>\$19,367.58</b>