

**STATE OF TEXAS** §  
§ **INTERLOCAL COOPERATION AGREEMENT**  
**COUNTY OF DENTON** §

This Interlocal Agreement (the “Agreement”) is made and entered into by and between Denton County Transportation Authority (“DCTA”), Denton Independent School District (“DISD”), and Denton County, Texas (“County”), (collectively referred to as the “Parties”) acting by and through their authorized representatives.

**RECITALS**

**WHEREAS**, the DCTA plans call for the relocation of an existing Verizon fiber line and the addition of a fiber backbone for DCTA communications and signals from Frankford Road in Carrollton, Denton County, Texas, to Sycamore Street in Denton, Denton County, Texas (hereinafter defined as the “DCTA Fiber”); and

**WHEREAS**, the DCTA has agreed to cause a design for additional Fiber for the DISD and the County to parallel the DCTA Fiber from Sycamore Street to Frankford Road to be prepared, and through its contractor(s) to construct the parallel fiber from Sycamore Street to Frankford Road (hereinafter defined as the “DISD Fiber”); and

**WHEREAS**, the DISD and the County will own and pay one hundred percent (100%) of the costs of the DISD Fiber; and

**WHEREAS**, DISD and County have or intend to enter into an interlocal cooperation agreement for the ownership, maintenance, and funding of the costs of the DISD Fiber; and

**WHEREAS**, the Parties agree that any financial obligations of the Parties under this Agreement shall be paid from current revenue or other lawful available funds; and

**WHEREAS**, the DISD and the County have agreed to pay the DCTA fifty percent each of the costs of the DISD Fiber; and

**WHEREAS**, the Parties are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act (“Act”), Chapter 791, Texas Government Code; and

**NOW THEREFORE**, for and in consideration of the promises and the mutual covenants set forth in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**Article I**  
**Purpose**

The purpose of this Agreement is to evidence the Parties agreement regarding the construction of, and allocation of costs of construction for the DISD Fiber.

## **Article II Definitions**

For purposes of this Agreement, the following terms, phrases and words shall have the meanings given herein unless the context clearly indicates otherwise:

“DISD” shall mean the Denton Independent School District.

"Completion of Construction" shall mean that: (i) substantial completion of the respective portion of the Project has occurred; and (ii) the DISD and County have accepted the DISD Fiber, and DCTA has accepted the fiber backbone.

“County” shall mean Denton County, Texas.

“DISD Fiber” shall mean the design and construction of the DISD fiber from Sycamore Street in Denton, Denton County, Texas to Frankford Road in Carrollton, Denton County, Texas.

“DCTA” shall mean the Denton County Transportation Authority, acting by and through its President.

“DCTA Fiber” shall mean the relocation of an existing Verizon fiber line and the addition of a fiber backbone for DCTA communications and signals from Frankford Road in Carrollton, Denton County, Texas to Sycamore Street in Denton, Denton County, Texas.

“Effective Date” shall mean the last date of execution hereof.

“Expiration Date” shall mean the date the Parties have fully satisfied their respective obligations hereunder.

“Events of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by acts or omissions of the party), fires, explosions, rain or other weather delays floods, strikes, slowdowns or work stoppages.

“Project” shall collectively mean the DCTA Fiber backbone and DISD Fiber.

## **Article III Term**

3.1 The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”), and shall continue on an annual basis until the Expiration Date, unless sooner terminated as provided herein.

3.2 This Agreement may be terminated by any Party hereto in the event the any other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof.

#### **Article IV Project Construction**

4.1 **DISD Fiber.** The DCTA agrees to cause plans to be prepared for the construction of the DISD Fiber. The DCTA agrees, subject to events of Force Majeure to cause Completion of Construction thereof to occur on or before six (6) months after the Effective Date.

4.2 **DISD Fiber Costs.** DISD and the County shall each reimburse DCTA for fifty percent (50%) of the costs associated with the design, installation and construction of District Fiber at the rate of \$2.90 per linear foot from Frankford Road in Carrollton, Texas to Sycamore Street in Denton, Texas of approximately twenty (20) miles of 2 conduits, 192 strands or approximately 214,157 linear feet of conduit and fiber, for a total reimbursable cost of Six Hundred Twenty-One Thousand Twenty-Nine and 88/100 Dollars (\$621,029.88). DISD and the County shall each pay to the DCTA Three Hundred Ten Thousand Five Hundred Fourteen and 94/100 Dollars (\$310,514.94) for a total project cost of Six Hundred Twenty-One Thousand Twenty-Nine and 88/100 Dollars (\$621,029.88), within thirty (30) days after the Effective Date of this Agreement.

4.3 **Operating Procedures for DISD Fiber.** To provide for mutual security and to assure reliable operations, DCTA, DISD, and County agree to provide for coordination of operating procedures by executing a separate operating protocol. Said operating protocol shall be developed and agreed upon by the Parties within 180 days from the Effective Date of this Agreement.

4.4 **Ownership, Use and Access.** DCTA grants to DISD and County permanent ownership, use, and access for maintenance, subject to the protocol to be developed as provided above. This provision shall survive and continue past the Expiration Date as defined by this Agreement.

#### **Article V Miscellaneous**

5.1 **Entire Agreement.** This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.

5.2 **Assignment.** This Agreement may not be assigned by any Party without the prior written consent of all other Parties.

5.3 **Successors and Assigns.** Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

5.4 **Governing Law.** The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall exclusively be in the State District Court of Denton County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

5.5 **Amendments.** This Agreement may be amended by the mutual written agreement of the parties.

5.6 **Severability.** In the event 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 provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

5.7 **Notice.** Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for DCTA:

Attn: President  
Denton County Transportation Authority  
1660 South Stemmons, Suite 250  
Lewisville, Texas 75067  
972-221-4600 Telephone  
972-221-4601 Facsimile

With copy to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

If intended for DISD:

Attn: Dr. Ray Braswell, Superintendent  
Denton Independent School District  
1307 N. Locust Street  
Denton, Texas 76201

If intended for County:

Attn: Director of Technology Services  
Denton County, Texas  
401 W. Hickory St, Suite 637  
Denton, TX 76201

5.8 **Indemnification.** TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMANDS, SUITS, JUDGMENTS, AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT. THIS AGREEMENT AND THE INDEMNITY PROVIDED HEREIN IS NOT INTENDED TO AND SHALL NOT CREATE ANY CAUSE OF ACTION FOR THE BENEFIT OF THIRD PARTIES OR ANY PERSON NOT A PARTY TO THIS AGREEMENT. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT, IN THE EXECUTION OF THIS AGREEMENT, NO PARTY WAIVES, NOR SHALL BE DEEMED HEREBY TO HAVE WAIVED ANY IMMUNITY OR DEFENSE THAT WOULD OTHERWISE BE AVAILABLE TO IT AGAINST CLAIMS ARISING IN THE EXERCISE OF GOVERNMENTAL POWERS AND FUNCTIONS. BY ENTERING INTO THIS AGREEMENT, THE PARTIES DO NOT CREATE ANY OBLIGATIONS, EXPRESS OR IMPLIED, OTHER THAN THOSE SET FORTH HEREIN, AND THIS AGREEMENT SHALL NOT CREATE ANY RIGHTS IN PARTIES NOT SIGNATORIES HERETO.

5.9 **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

5.10 **Exhibits.** The Exhibits attached hereto are incorporated herein.

5.11 **Recitals.** The recitals to this Agreement are incorporated herein.

5.12 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

5.13 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination hereof.

5.14 **Approval of Parties.** Whenever this Agreement requires or permits the approval or consent to be given by a party, the parties agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**DENTON COUNTY TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
James C. Cline, President

Approved as to Form:

By: \_\_\_\_\_  
Peter G. Smith, General Counsel

**DENTON COUNTY, TEXAS**

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

By: \_\_\_\_\_  
Name: Mary Horn  
Title: County Judge

Approved as to Form:

By: \_\_\_\_\_  
Assistant District Attorney,  
Denton County, Texas

**DENTON INDEPENDENT SCHOOL DISTRICT**

The foregoing Interlocal Cooperation Agreement between Denton County Transportation Authority, Denton County, and Denton Independent School District 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 June 22, 2010, at which \_\_\_\_\_ Trustees were present, by the following vote: \_\_\_\_ For, \_\_\_\_ Against, and \_\_\_\_ Abstaining.

\_\_\_\_\_  
Jim Alexander, Ph.D., President  
Board of Trustees

ATTEST:

\_\_\_\_\_  
Glenna Harris, M.D., Secretary

Approved as to Form:

By: \_\_\_\_\_  
Randolph W. Stout,  
Legal Counsel for the Board of Trustees