

**INTERGOVERNMENTAL AGREEMENT FOR
FIBER OPTIC INSTITUTIONAL NETWORK BY AND BETWEEN
COMMUNITY UNIT SCHOOL DISTRICT NO. 304,
KANE COUNTY, ILLINOIS,
AND THE CITY OF GENEVA,
KANE COUNTY, ILLINOIS**

WHEREAS, the **COMMUNITY UNIT SCHOOL DISTRICT NO. 304** is a special district of the State of Illinois, whose principal offices are located at Kane County, Illinois, (hereinafter referred to as “District”) and the **CITY OF GENEVA**, is a municipal corporation of the State of Illinois, whose principal offices are located at Kane County, Illinois (hereinafter referred to as “City”); and

WHEREAS, the District and City are “units of local government” as defined by Article VII, Section 1, of the Constitution of the State of Illinois of 1970, and the City is a “non-home rule unit” as defined by the Constitution of the State of Illinois of 1970; and,

WHEREAS, units of local government are enabled by Article VII, Section 10 of the Constitution of the State of Illinois of 1970 to enter into agreements among themselves to obtain or share services and to exercise, combine or transfer any power or function in any manner not prohibited by law or ordinance; and,

WHEREAS, the Illinois Intergovernmental Cooperation Act, (5 ILCS 220/1 et seq.), authorizes municipalities to exercise jointly with any public agency of the State, including other units of local government, any power, privilege, or authority which may be exercised by a unit of local government individually, and to enter into contracts for the performance of governmental services, activities and undertakings; and,

WHEREAS, the City has prepared and designed plans for the installation and operation of institutional fiber optic network (hereinafter sometimes referred to as “I-Net”) to support a variety of voice, video, and data applications for the governmental use of the City and other local governmental entities; and

WHEREAS, the District desires to renew its lease for a portion of the available space on the City’s Institutional Network:

NOW, THEREFORE, IN CONSIDERATION of the mutual promises contained herein and the recitals of fact herein above made, it is hereby agreed by and between the Community Unit School District No. 304, and the City of Geneva, as follows:

1. The recitals of facts set forth above are incorporated herein by reference as if fully set forth.
2. The City has constructed within the public rights-of-way and dedicated easements to the City and the City shall operate, solely within the corporate limits of the City of

Geneva, an Intergovernmental Institutional Metropolitan-Area Network (hereinafter referred to as "I-Net"). The I-Net system layout is depicted in Figure 1, which is attached hereto and made a part hereof.

3. The City shall be the sole owner of the I-Net, with the authority to lease, license, regulate, control and apportion its use and network capacity to any user thereof.
4. Upon signing of this agreement, the City shall lease to the District, upon the terms and conditions set forth herein, provide a managed 1 GbE /10 GbE (Gigabit Ethernet) backbone network for the purposes of transmission of video, telephone, or data upon the I- Net system. The District shall use the I-Net system only for purposes of providing data, telephone, and video services pursuant to its statutory mandates for educational purposes, and in no case, shall the District resell, lease, license or otherwise transfer to any other person, partnership, corporation or entity any rights or interests in and to the I-Net system. The District's use of the I-Net system shall be non-exclusive.
5. The Geneva School District sites covered under this Agreement shall include the following:
 - a. Fourth Street Administrative Offices
 - b. Geneva Middle Schools (Geneva Middle School North & South)
 - c. Western Avenue School
 - d. Harrison Street School
 - e. Coultrap School
 - f. Geneva High School
 - g. Mill Creek School
 - h. Heartland School
 - i. Geneva School District Bus Barn
 - j. Fabyan School
 - k. Williamsburg School
6. The City anticipates upgrade of the I-Net system prior to the beginning of the 2012-2013 School year, provided, however, the District acknowledges and agrees that the completion date is subject to events of *force majeure*, including but not limited to Acts of God, labor strikes, material shortages, and issuance of governmental approvals.
7. The District shall pay to the City for its lease payment, the sum of Two Hundred Fifty Thousand (\$250,000) Dollars. The payment shall be divided into two separate installments. The District shall pay to the City on or before July 1, 2012 for its first installment, the sum of One Hundred Fifty Thousand (\$150,000) Dollars. The District shall pay to the City on or before July 1, 2013 for its second installment, the sum of One Hundred Thousand (\$100,000) Dollars.
8. The District shall pay to the City beginning on July 1, 2013 a recurring charge for each year remaining as in this agreement, Three Thousand Seven Hundred Fifty

(\$3,750) Dollars for the City's delivery of network services as outlined in this agreement. Beginning on January 1, 2014 and for each year remaining in the agreement, the City will review the actual maintenance required for the previous year and may revise this fee up to a limit of 105% of the prior year's fee, if needed, due to increases in costs, such as labor rates or inflation. Additional cost revisions beyond 105% may also be added to reflect changes in the number and type of connections due to changes in operation, equipment, or other cost impact issues. All such additional cost revisions will be identified prior to the initiation of any changes in operation or installation of equipment.

9. The District will make arrangements for the City's field engineering personnel or City hired consultants to enter affected facilities and right-of-way as necessary for the City to provide services in a timely and efficient manner.
10. The District will provide to the City any site and floor plans that may exist for project facilities for use by the City's engineering staff or City hired consultants.
11. The parties acknowledge and agree that in order for the District to access the use of the I-Net system, certain interconnection equipment (hereinafter referred to as "gateway equipment") between the fiber optic layout and District's building locations is required. The City shall provide the gateway equipment, on a one-time basis at the inception of the lease term, to provide one fiber based connection from each elementary, middle school, high school, bus barn, and administration building. In the event that a school site has more than one building, the City will provide only one piece of gateway equipment. The City will be responsible for the maintenance and repair of the fiber optic network, including the gateway equipment. The District shall be responsible for the acquisition, repair, maintenance and renewal of all network equipment and service lines from the point of installation of the gateway equipment to the District's individual computer systems.
12. The term of this lease shall commence on the date set forth above (the "Effective Date") and shall continue for an initial term of 10 years. Thereafter, unless either party provides 180 days written notice of non-renewal, the term of this Agreement shall be automatically extended for addition period of one (1) year until terminated.
13. The District shall be responsible for providing its own security for its equipment and all data received by or generated by the District from the I-Net.
14. The City shall not be liable for any loss or damage claimed by the District to have resulted from the use of the I-Net, gateway equipment or any other transmission or service line, software or hardware owned or leased by the City, regardless of the form of action, except for loss or damage resulting from the intentional malfeasance or gross negligence of the City. In no event shall the city be liable to the District for any special, indirect, incidental or consequential damages.

15. The District shall indemnify and hold the City harmless from and defend it against, any and all claims, expenses, demands, liabilities and debts by or to all persons or entities arising from or relating to the operation of the District's use of the I-Net; the District's possession, operation or use of the I-Net and any component parts thereof; any delays in performing maintenance or repair, the breakdown of the I-Net or the failure of the I-Net to operate for any reason; any theft or destruction of the District's property related to the I-Net system; and injury to any of its employees, agents or students.
16. In the event District shall default in making any payment due or in performing any other obligation required to be performed by District and if such default remains uncured for a period of 60 days after written notice from the City, then the City shall have, among its other rights, the right to terminate this Agreement and deny the District access to the I-Net system.
17. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the parties nor to authorize either party to act as a general agent for the other party.
18. Nothing contained in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties hereby and their respective permitted successors and assigns, nor is anything in this Agreement intended to receive or discharge the obligation or liability of any third person to any party to this Agreement nor shall any provision give any third person any right to subrogation or action over or against any party to this Agreement.
19. This Agreement represents the entire understanding between the parties and may be modified only by a written document signed by both parties.
20. Neither of the parties may assign its rights and privileges nor its duties and obligations under this Agreement without the written consent of the other party. This Agreement shall inure to the benefit of each party and their respective successors and assigns.
21. The laws of the State of Illinois shall govern this Agreement and the application of the terms contained herein.
22. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law; but if any provision of this Agreement shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of the prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions to this agreement.
23. This Agreement may be executed in multiple, identical counterparts, and all said counterparts shall, taken together, constitute this integrated Agreement.

24. The District and the City have authorized, by Resolution, the execution of this Agreement as an exercise of their respective intergovernmental cooperation authority under the Constitution of the State of Illinois.

| IN WITNESS WHEREOF, on this day of , 2012 the parties hereto have fixed their seals.

COMMUNITY UNIT SCHOOL DISTRICT NO. 304

BY:

ATTEST:

BY:

CITY OF GENEVA, ILLINOIS

BY:

MAYOR

ATTEST

BY:

CITY CLERK