

MAINTENANCE AND LOCATES AGREEMENT

THIS AGREEMENT ("Agreement") is made as of this _____ day of _____, 20____, between THE DENTON INDEPENDENT SCHOOL DISTRICT ("DISD"), whose address is 1212 North Elm Street, Denton, Texas 76201 ("Owner"), and Henkels & McCoy, Inc. ("H&M") whose address is 985 Jolly Road, Blue Bell, Pennsylvania 19422 ("Contractor").

SECTION 1. AGREEMENT TO PROVIDE MAINTENANCE SERVICES. Contractor agrees to maintain for Owner, on the terms set forth in this Agreement and in the Terms and Condition attached hereto as Attachment A, the fiber optic network maintenance described in Attachment A.

SECTION 2. MAINTENANCE OBLIGATIONS.

2.1 It is mandatory for the Contractor to perform coordination with all applicable Governmental Authorities (Federal, State, Local, and City powers that be), to ensure that public safety and security are not jeopardized by action of this contract. During provision of Maintenance Services, Contractor shall have full control of and responsibility for the work. Coordination with proper authorities is required on all maintenance issues.

2.2 Except as otherwise provided in this Agreement, Contractor shall (a) determine the method, manner and sequence of maintenance (b) select all laborers and subcontractors, (c) utilize all major materials items from Owners reserve materials, (d) select and provide all minor materials, (e) provide all equipment and tools, (f) coordinate all aspects of the work, and (g) take all necessary precautions for the safety of persons and property during the progress of maintenance.

2.3 Except as otherwise provided in this Agreement, Contractor shall pay all costs of maintenance, including but not limited to, costs of labor, minor materials, equipment, tools, supplies, subcontractors, utilities, maintenance permits, building permits, connection fees, tap-in charges, inspection fees, taxes (other than real estate taxes), transportation, and all other facilities and services necessary for the maintenance.

2.4 Contractors work is intended to include all maintenance work to provide for outside plant cable maintenance of the Owner's fiber optic network.

SECTION 3. COMMENCEMENT AND COMPLETION OF THE WORK.

3.1 Contractor shall begin maintenance of the fiber optic network immediately upon approval of this agreement. It is expressly agreed that Contractor will retain total construction and maintenance

liability of the current construction contract until such time as this maintenance agreement is approved and in-place.

3.2 This agreement shall be valid until ____ of _____, 20_____. Pricing will be valid for one year and is subject to negotiation on a yearly basis.

SECTION 4. PRICE AND PAYMENT.

4.1 Owner agrees to pay Contractor for the maintenance of the fiber optic network at the unit rates included in Attachment A of this contract. For work not included on the Maintenance Rate Sheet, Contractor agrees to apply the unit rates for labor and equipment identified in Attachment A.

4.2 Contractor shall render a monthly invoice on the first day of each month for all maintenance services provided with the exception of cable locates. Invoices for cable locates will be rendered on a quarter or four (4) times per year based on the Owners fiscal year ending dates.

4.3 Payments will be made on a monthly basis on or about thirty (30) days after the submittal of an invoice, and Owners inspection and approval of such invoice.

4.4 Contractor's invoice for services shall be completed with sufficient breakdown data to permit checking and approval, and in a form acceptable to Owner.

4.5 Contractor shall pay for all minor materials and equipment, unless otherwise purchased by Owner; machinery, equipment, and labor used in, or in connection with, the performance of this Agreement through the period covered by previous payments received from Owner. Owner may choose to require that Contractor furnish release of lien documentation from any subcontractors retained by Contractor.

4.6 Without limitation of Owner's other remedies, payment otherwise due, either payments for individual invoices or the final payment, may be withheld by Owner on account of defective work not remedied, claims filed, reasonable evidence indicating probability of filing of claims, failure of Contractor to make payments properly to its subcontractors or for minor materials, machinery, fuel or labor, or applicable taxes, fees and fringe benefits.

SECTION 5. SCOPE ADJUSTMENT. During the course of maintenance Owner shall have the right to *request* changes in the Maintenance. Any change in the Maintenance, or any amendments or modifications of this Agreement, shall be effective only if contained in a Scope Adjustment signed by both parties, which provides for (a) the adjustment, if any, in the maintenance price (b) the method of payment of any increase in the maintenance price, and (c) the extension, if any, of time for completion of the Maintenance.

SECTION 6. TAXES AND PERMITS. Owner shall pay all real property taxes and assessment due by Law affecting the Site and Maintenance. Contractor shall pay, all sales, consumer, use and other similar taxes required by law and shall secure and pay for all permits, fees and licenses necessary for the maintenance of the fiber optic cable network. The parties agree that the Maintenance includes only real property and none of the maintenance relates to personal property. Owner will provide Contractor with sales tax affidavits when Owner is exempt from payment of State of Texas sales taxes.

SECTION 7. COMPLIANCE WITH LAWS, ETC. With respect to its obligations under this Agreement, Contractor shall be responsible for compliance with all regulatory requirements necessary to achieve Completion (other than those applicable to Owner as a school district), building and zoning codes and other local requirements including any covenants or restrictions affecting title to the Site. Contractor shall provide the Maintenance Services free from encroachment upon building lines, easements and property lines.

SECTION 8. SUBCONTRACTORS. Owner shall have the right to approve all major subcontractors selected by Contractor (a "major" subcontractor being any subcontractor entitled to receive at least \$10,000 for the performance of work and/or the supply of minor materials to Contractor pursuant to the subcontract). Any Owners approval of a major subcontractor shall not be unreasonably withheld or delayed. Contractor shall accept responsibility for all work of any subcontractor and for any acts or omissions of any subcontractor or any employee, agent, subcontractor or other person for whom the subcontractor may be liable. Each subcontract shall be consistent with this Agreement shall require performance in accordance with this Agreement, and shall preserve all rights of Owner under this Agreement. Nothing contained in this Agreement shall create a contractual relationship between Owner and any third party; however, it is understood and agreed that Owner is an intended third-party beneficiary of all contracts for engineering services, all subcontracts, purchase orders and other agreements between Contractor and third parties. Contractor shall incorporate the obligations of this Agreement into its respective subcontracts supply agreements and purchase orders.

SECTION 9. PROPERTY INSURANCE. Throughout the maintenance services under this Agreement, Owner, at Owners cost, shall keep the Improvements located on the Owners property, insured against loss by fire and all of the risks and perils usually covered by an "all risk" policy of fire insurance, in an amount equal to not less than the full insurable value of the Improvements. This insurance shall include the interests of Contractor, Owner, subcontractors and sub-subcontractors in the Improvements. Any insured loss shall be adjusted with Owner and made payable to Owner and such other parties as their interests may appear, subject to the requirements of any mortgagee or bond clause. Contractor and Owner, on behalf of themselves and their insurers, waive all rights of subrogation against each other for damages resulting from perils required to be covered by insurance under this Section. Contractor shall require similar waivers by subcontractors and sub-subcontractors.

SECTION 10. WARRANTIES AND CORRECTION OF WORK. Contractor warrants to Owner that all minor materials and equipment incorporated in the Maintenance will be new unless otherwise specified, and that the Improvements will be of good and workmanlike quality, free from faults and defects and in conformity with the Plans and Specifications of the original construction project. All work not so conforming to these standards will, at Owner's option, be considered defective. This standard of quality of workmanship shall include all work of any kind whether or not subcontracted. Without limiting the preceding warranties, Contractor shall correct any work that fails to conform to the requirements of this Agreement or the Plans and Specifications where such failure to conform are defects due to faulty materials, equipment, or workmanship that appear within a period of two (2) years from date of Completion.

SECTION 11. VALIDITY OF PROVISIONS. In the event any provision of this Agreement is determined to be invalid, void, or otherwise unenforceable, that determination shall not affect the remaining part or portions of that provision, or any other provision, of this Agreement.

SECTION 12. ASSIGNMENT. Contractor's rights and obligations under this Agreement, including, but not limited to, its right to any moneys, shall not be assigned without the written consent of Owner. Any assignment without Owners consent shall be void. No such assignment with Owners consent shall relieve Contractor from its liability under this Agreement for the performance and Completion of the Maintenance by the time and in the manner herein contracted for.

SECTION 13. TIME OF ESSENCE AND BINDING CONTRACT. Time is of the essence of this Agreement. Both parties understand that this Agreement is a legally binding contract and have read and understood all of its provisions prior to signing.

SECTION 14. POSSESSION AND INSPECTION AND OWNERS DEFAULT. Owner may enter the Site at any time to inspect the Maintenance and the progress of the work or to provide and maintenance separately contracted for by Owner.

SECTION 15. NOTICES. Any notice required or permitted to be given to a party under the provisions of this Agreement shall be deemed given if mailed by certified or registered United States mail, postage prepaid as follows:

Owner:

The Denton Independent School District
1212 North Elm Street
Denton, Texas 76201
Attn: Mr. Ernie Stripling
Phone: 940.369.0123
Fax: 940.369.4989

Contractor:

Henkels & McCoy, Inc.
515 Huffines Boulevard
Lewisville, Texas 75056
Attn: Mr. Wesley Lee
Phone: 972.512.2900
Fax: 972.512.2957

If the notice is from Owner to Contractor, Owner may also serve notice by personal delivery by Owner to a person on the Site designated by Contractor.

SECTION 16. BINDING EFFECT. This Agreement shall be binding upon and insure to the benefit of the heirs, executors, administrators successors and assigns of the respective parties.

SECTION 17. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered to be an original document and all of which taken together be deemed to constitute one and the same document.

WITNESS the execution hereof as of the date first written above.

Signed and acknowledged
in the presence of:

The DENTON INDEPENDENT SCHOOL DISTRICT
First Signatory

Witness Signature

By: _____

Printed Witness Name

Title; _____

The DENTON INDEPENDENT SCHOOL DISTRICT
Second Signatory

Witness Signature

By: _____

Printed Witness Name

Title; _____

Contractor: Henkels & McCoy, Inc.
First Signatory

Witness Signature

By: _____

Printed Witness Name

Title; _____

ATTACHMENT A
SCOPE AND PRICING OF SERVICES AND PERFORMANCE

CABLE LOCATE SERVICES

Under this contract, H&M will provide the following cable locate services for DISD:

1. H&M will receive a map shot from DISD with cable locates ranges identified.
2. H&M to dispatch a cable locator to site within forty (40) hours of notification.
3. H&M to open handhole covers and place locate tone or other positive locating equipment on the DISD cable locate wire.
4. H&M will mark the location of the DISD fiber optic cable by using standard orange spray pain for telecommunication facilities.
5. H&M will report back to DISD with the date and time that the locate work was completed.

EMERGENCY ALERT RESPONSE AND RESTORATION:

H&M will maintain an emergency on call system twenty-four (24) hours a day, and seven (7) days a week. The emergency number will be provided to DISD to be used should a dig-up or tear-down occur. Once H&M is alerted to a problem, H&M will make telephone contract within sixty (60) minutes of receiving the page or telephone call and, if necessary, be on site within two (2) hours. On site, H&M will secure the Cable Plant to see what the extent further damage is prevented. Restoration will be accomplished according to the following priority schedule:

Priority A: Core Sites- Restoration of damage required to re-establish service (eight (8) hours after arrival on scene).

Priority B: School Nodes- Restoration of damage required to re-establish service (twenty-four (24) hours after arrival on scene). Permanent restoration of "non-service affecting" work will be acceptable after initial restoration within a maximum of five (5) days.

SITE RESTORATION PRIORITY LIST

Reporting: Inspection and current inventory reports will be provided to DISD on a monthly basis for all damage claims. H&M will be responsible for gathering, documenting, and reporting all information related to cable damage occurrences. The data gathered shall be adequate for DISD to submit an invoice for payment of damaged cable. At a minimum the following information must be provided:

1. Date and time of damage and repair.
2. Physical address of damage site.
3. Cable reference of DISD's cable system, when and if possible.

4. Summary of number of fiber optic strands damaged and out-of-service.
5. Name of company responsible for damage, when and if possible.
6. Name and address of responsible contract party, when and if possible.
7. Copy of responsible company liability insurance certificate, when and if possible.
8. Total charges for restoration.
9. Summary of all materials required for restoration.

SCHEDULED MAINTENANCE SERVICE

Based on detailed scopes of work, H&M will provide scheduled maintenance services as may be agreed upon from time to time between DISD and H&M. Work will normally include inquiries from other governmental bodies inquiring about the potential need to relocate a portion of DISD facilities due to fixture road work. These services must be provided promptly when dispatched and a complete report provided to DISD:

Equipment and Materials: To be responsive under this contract, H&M will maintain one bucket truck, one backhoe, one trencher, one directional boring rig, two splicing units, one hydraulic cable reel trailer, one fusion splicer, two optical time domain reflectometers (OTDR) and power meters at all times within four (4) hours arrival time at any DISD location.

Material provisions will be accomplished by dividing the materials between major and minor. DISD will stock and provide major materials. H&M will stock and provide minor materials. H&M will stock a fixed amount of maintenance and repair materials as follows:

Minor Materials:

1. All splice materials required for temporary mechanical splices or permanent fusion splices to include one Preformed Coyote Splice Closure.
2. _____ feet of HDPE SDR 9 conduit as used on the existing construction project.
3. Muletape and rodding materials for pulling cable into vacant ducts.
4. Cable lubrication materials.

Major Materials:

DISD will maintain a stock of the following materials at its Service Center yard off Mayhill Road.

1. One (2,500') reel of single mode 96-fiber duct cable suitable for replacement in underground.
2. One (2,500') reel of single mode 48-fiber duct cable suitable for replacement in underground.

3. One 24-port ADC fiber optic patch panel.
4. Two 28" diameter fiber optic handholes.
5. Warning signs and markers.

GENERAL

Any work performed under this proposal will be warranted for labor and materials for the period of two (2) years after work is completed. The warranty will provide for the replacement or repair of any materials or labor which failed due to defects or workmanship except for those failures caused by vandalism, fire, accidents, or Acts of God.

PRICING

Normal (Routine Maintenance) Costs:

(Note- Materials not include)

Cable Locates	\$40,000.00 per year
Place Overhead Cable	\$4.75 per foot
Move Overhead Cable	\$102.00 per pole
Place Underground Cable	\$15.60 per foot (dirt)
Splice Fiber Optic Cable	\$65.00 per fiber splice
Place SDR 1½" HDPE	\$1.50 per foot
Dispatch and Mobilization	\$125.00 per incident
Repair Crew Overhead	\$225.00 per hour
Repair Crew Underground\$325.00 per hour

Dispatch and Mobilization will include the minimum charge for Contractor to appear at the scene of a maintenance emergency. This charge includes the price of two (2) vehicles, one (1) fiber optic foreman, and one (1) communications technician.

Repair Crew Overhead hourly rate will include the price of one (1) fiber optic foreman, one (1) communications technician or fiber optic splicing technician, one (1) bucket truck, one (1) hydraulic cable reel trailer, one (1) fusion splicer, and one (1) OTDR and two (2) power meters.

Repair Crew Underground hourly rate will include the price of one (1) fiber optic foreman, one (1) communications technician or fiber optic splicing technician, one (1) truck and trailer, one (1) backhoe or trencher or directional boring rig, one (1) hydraulic cable reel trailer, one (1) fusion splicer, and one (1) OTDR and two (2) power meters.

Any additional labor or equipment requirements not included in Overhead or Underground Repair Crews will be billed at the hourly rates included in this Attachment.

Common Hourly Labor Rate Schedule

Description	Straight Time	Overtime	Weekend/Holiday
Assistant Crew Leader	\$26.00	\$39.00	\$52.00
Boring Machine Operator	\$30.00	\$45.00	\$60.00
Communications Technician	\$26.00	\$39.00	\$52.00
Crew Leader	\$30.00	\$45.00	\$60.00
Digging Machine Operator	\$24.00	\$36.00	\$48.00
Electric Serviceman	\$24.00	\$36.00	\$48.00
Equipment Operator	\$26.00	\$39.00	\$52.00
Fiber Optic Foreman	\$97.50	\$146.00	\$195.00
Fiber Optic Splicing Helper	\$58.50	\$87.75	\$117.00
Fiber Optic Splicing Technician	\$84.30	\$126.75	\$169.00
Flagger	\$14.00	\$21.00	\$28.00
Heavy Line Crew Foreman	\$32.00	\$48.00	\$64.00
Heavy Truck Drive	\$26.00	\$39.00	\$52.00
Journeyman Lineman	\$28.00	\$42.00	\$56.00
Laborer- Common	\$14.00	\$21.00	\$28.00
Laborer- Utility	\$32.00	\$48.00	\$64.00
Light Line Crew Foreman	\$28.00	\$42.00	\$56.00
Truck Driver- Single Axle Light	\$22.00	\$33.00	\$44.00
Truck Driver- Single Axle Heavy	\$24.00	\$36.00	\$48.00
Truck Driver- Tandem Axle Semi-Trailer	\$26.00	\$39.00	\$52.00
Truck Driver- Lowboy/Flat	\$24.00	\$36.00	\$48.00
Truck Driver- Transit Mix	\$24.00	\$36.00	\$48.00

Note: The hourly rates above shall include all costs for labor, supervision, transportation, mobilization, demobilization, and per diem required to perform the services specified in this Agreement. The hourly rates shall begin when the actual work begins.

Description	Hourly	Minimum No. of Hours	Daily
Aerial Basket (50')	\$175.00	8 hours	\$1,400.00
Backhoe (¾ CY Wheel Type)	\$85.00	4 hours	\$680.00
Directional Drill- Standard	\$315.00	4 hours	\$2,520.00
Directional Drill- Heavy Duty	\$385.00	4 hours	\$3,080.00
Cable Lashing Machine	\$45.00	2 hours	\$360.00
Cable Reel Trailer (2+ Ton)	\$91.00	4 hours	\$728.00
Crane (Truck Mounted 6+ Ton)	N/A	N/A	\$728.00
Dump Truck (5 yard 2½ Ton)	\$95.20	4 hours	\$761.00
Electronic Service Truck (½ to 1 Ton)	N/A	N/A	\$761.00
Flat Bed Truck (2½ Ton)	\$95.20	N/A	N/A
Pickup Truck	\$84.00	4 hours	\$627.00
Rock Saw (8' Diameter by 6" Wide)	\$252.00	8 hours	\$2,016.00
Trencher (Chain Boom 4' Deep by 8" Wide)	\$210.00	8 hours	\$1,680.00

Note: The hourly and daily rates above shall be for bare equipment and machinery only. These rates shall also include transportation, mobilization, and demobilization costs to operate the equipment and

machinery. These rates shall begin when the actual work begins.
Operating labor shall be billed separately in accordance with Common
Hourly Labor Rate Schedule.