

STATE OF TEXAS     )  
                                  )  
COUNTY OF EL PASO )

INTERLOCAL AGREEMENT

CITY CLERK DEPT.  
06 DEC 18 AM 9:10

**THIS INTERLOCAL AGREEMENT** ("Agreement") is made effective and entered into as of the date written below by and between the COUNTY OF EL PASO (hereafter referred to as "County"), CITY OF EL PASO (hereafter referred to as "City"), the EL PASO INDEPENDENT SCHOOL DISTRICT (hereafter referred to as "District"), and the HOUSING AUTHORITY OF THE CITY OF EL PASO (hereafter referred to as "Housing Authority").

WITNESSETH:

WHEREAS, the City, County, District, and Housing Authority each now separately undertake efforts to improve internet access relevant to their governmental missions;

WHEREAS, the parties hereto wish to create a digital WiFi wireless internet system (hereafter referred to as the "System") for the downtown El Paso 79901 zip code area (See Attachment A for map of area);

WHEREAS, the parties wish, on occasion, and as appropriate, to share information via the System; and

WHEREAS, the parties desire to increase their efficiency and effectiveness through sharing of certain costs and equipment relating to their respective wireless internet systems.

NOW, THEREFORE, for and in consideration of the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1.     Interlocal Status. This Agreement constitutes an "interlocal contract" within the meaning of, and as authorized by, the Texas Interlocal Cooperation Act, Section 791.001 et seq. of the Texas Government Code (the "Act"). The purpose of this Agreement is to provide "governmental functions or services", within the meaning of the Act.

2.     Term. The primary term of this Agreement shall begin when executed by all parties and will continue for one year, at which time it shall expire; provided, however, that this Agreement shall be automatically renewed for successive one-year terms except with respect to parties providing written notice to the other parties of its intent not to renew this Agreement at least sixty (60) days prior to the end of the then-current primary or renewal term.

3. Financial Arrangement.

A. The City hereby agrees to contribute Fifty Thousand Dollars (\$50,000.00) and the County, District, and Housing Authority each agree to contribute Twenty-five Thousand Dollars (\$25,000.00) to this project.

B. The One Hundred Twenty-five Thousand Dollars (\$125,000.00) will be used to purchase and install the Thirty-six (36) antennas/transmitters needed for this system.

C. As required by the Act, each party paying for performance of governmental functions or services hereunder must make those payments from current revenues available to such Party.

4. Scope of Agreement; Mutual Cooperation.

A. All Parties agree to designate sites owned by them in the designated area where antennas may be installed. Further, all parties agree to allow access to these sites by appropriate personnel for purposes of installing the antennas and maintaining the antennas.

B. Once the antennas are installed and operational, the County will maintain the System. This maintenance will include granting access to the System and maintaining a list of individuals granted access, as well as maintaining the access points.

C. Access shall be granted free of charge and will be made available to the general public that live and/or work within the designated area.

5. Reservation of Rights. Nothing herein shall be construed to be a waiver of sovereign immunity by any of the parties hereto, except to the limited extent required by law to enforce the parties' respective obligations to each other hereunder. The parties expressly agree that, in all things relating to this Agreement, they are performing governmental functions, as defined by the Texas Tort Claims Act, and that every act or omission of the parties which, in any way, pertains to or arises out of this Agreement falls within the definitions of governmental function. Furthermore, no party shall be required hereunder to incur any monetary obligations or expend any funds that are not appropriated and budgeted by it; payment of any amounts in excess of budgeted figures by each party is conditioned upon it being able to obtain and appropriate funds for such payment.

6. Limitation of Liability; Damages; Acknowledgement.

A. No party shall have the right to seek indemnification or contribution from any other parties for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement. No party shall be liable to the other parties or to any person claiming rights derived from such party's rights, for incidental, consequential, special, punitive, or exemplary damages of any kind [including lost profits, loss of business, or other economic damage, and further including injury without limitation to property, mental anguish and emotional distress] as a result of breach of any term of this Agreement, regardless of whether the

party was advised, had other reason to know, or in fact knew of the possibility thereof. Each party hereto shall not be liable to the other parties or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other parties regardless of whether the party receiving said information from the other party was advised, had other reason to know, or in fact knew thereof.

B. In no event shall any party's aggregate liability to the other party [including, without limitation, liability to any person or persons whose claim or claims are based on or derived from a right or rights claimed by the other parties], with respect to any and all claims at any and all times arising from or related to the subject matter of this agreement, in contract, tort, or otherwise, exceed the lesser of: (a) the amount of consideration actually paid by the other parties to such party under this agreement; or (b) the maximum amount, if any, recoverable by any party under the Texas Tort Claims Act, if and as applicable.

C. The parties each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks [both known and unknown] associated with the actions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

7. No Separate Entity. Notwithstanding the formal or informal use by the parties or others of "collaborative", "consortium", or similar terms in referring to the parties' arrangement under this Agreement, the parties do not intend to create, and have not created, a separate, legal entity.

8. Independent Contractor Relationship. Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture, or the relationship of principal and agent or employer and employee between the parties. The relationship between the parties shall be that of independent contractors, and nothing contained in this Agreement shall create the relationship of principal and agent or otherwise permit either party to incur any debts or liabilities or obligations on behalf of the other party (except as specifically provided herein).

9. Assignment. Without the prior written consent of the other party, no party shall have right or power to assign this Agreement in whole or in part, or to delegate or sub-contract any duties hereunder in whole or part.

10. Termination. Any party may terminate this Agreement at any time for any reason by giving written notice to the other party at least ninety (90) days prior to the date stated for termination in the notice. Each party also reserves the right to terminate this Agreement at the end of any budget period of such party, with reasonable prior notice given, to the extent practical.

11. Notices. Any notices to be given hereunder shall be in writing, and shall be deemed to have been given: (i) upon delivery, if delivered by hand; (ii) three (3) days after being mailed first class, certified mail, return receipt requested, postage and registry fees prepaid; or (iii) one (1) business day after being delivered to a reputable overnight courier service, excluding the U.S. Postal Service, prepaid, marked for next day delivery, if the courier service obtains a signature acknowledging receipt, in each case addressed or sent to such party as follows:

Notices to the County:

El Paso County Judge  
500 East San Antonio, Ste 301  
El Paso, Texas 79901

Peter Cooper, Director  
Information Technology Department  
500 East San Antonio, Ste 403  
El Paso, Texas 79901

Notices to the City:

Joyce A. Wilson  
City Manager  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901

Gerald Gordier, Director  
Information Technology  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901

Notices to the District:

Superintendent, El Paso Independent School District  
6531 Boeing Drive  
El Paso, Texas 79925

Director, Information Technology  
El Paso Independent School District  
6531 Boeing Drive  
El Paso, Texas 79925

Notices to the Housing Authority:

Director, Housing Authority of the City of El Paso  
5300 East Paisano  
El Paso, Texas 79905

Director, Information Technology  
Housing Authority of the City of El Paso  
5300 East Paisano  
El Paso, Texas 79905

12. Dispute Resolution. The parties hereto agree that reasonable efforts will be made to aid and assist the other in accomplishing the objectives of this Agreement. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or any breach thereof, the parties shall use their best efforts to meet regularly and resolve the dispute, claim, question, or disagreement. To this effect, the parties hereby agree to consult and negotiate with each other in good faith. The parties further agree that should their efforts to resolve a dispute, claim, questions, or disagreement arising from this Agreement fail, that before any party files suit against the other(s) to enforce, or otherwise relating to, the terms of this Agreement, it shall notify the other parties of its intent to sue. Upon delivery and receipt of such notice, the parties agree to submit the matter to be litigated to mediation before a mutually-agreed upon mediator and to diligently pursue a mediated settlement until such time as the parties mutually agree to terminate such mediation or the mediator declares an impasse. No lawsuit under this Agreement by one party against the other(s) may be filed until mediation of the issue has ended in accordance with the terms hereof.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

14. Binding Effect. This Agreement and every provision hereof shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

15. Interpretation. Wherever the context shall require, the singular shall include the plural and the male gender shall include the female gender and the neuter, and vice versa.

16. Expense Reimbursement. In the event any party brings an action to enforce or interpret any provision of this Agreement, the prevailing party, will be entitled to recover its costs and expenses if so awarded by a court of competent jurisdiction including, without limitation, reasonable attorney's fees, costs, and necessary disbursements, in addition to any other relief which the prevailing party shall be entitled to receive under such award by the court.

17. Waiver. No consent or waiver, express or implied, by a party to or for any breach of any provision hereunder by the other parties shall be deemed a consent or waiver to or for any other breach of the same provision or any other provision hereunder.

18. Execution and Counterparts. This Agreement may be executed in any number of counterparts; each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts in making such proof.

19. Severability. Any provision, or part thereof, of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision, or part thereof, so held to be invalid or unenforceable.

20. No Third Party Benefit. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any person who is not a party to this Agreement.

21. Headings. The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

22. Entire Agreement. This Agreement is the final, complete, and entire agreement between the parties with respect to the subject matter herein and supersedes all prior communications oral or written, between the parties. Changes to this agreement may only be made by mutual written agreement of the parties.

*(Signature page to follow)*

EXECUTED BY THE CITY the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**THE CITY OF EL PASO, TEXAS**

By: Joyce A. Wilson  
Joyce A. Wilson  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Jorge Villegas  
Jorge Villegas  
Assistant City Attorney

Gerald Gordier  
Gerald Gordier, Director  
Information Technology Department

EXECUTED BY THE COUNTY the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

ATTEST:

**THE COUNTY OF EL PASO, TEXAS**

By: \_\_\_\_\_  
Waldo Alarcon  
County Clerk

By: \_\_\_\_\_  
Dolores Briones  
County Judge

EXECUTED BY THE DISTRICT the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**THE EL PASO INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
Lorenzo Garcia, Ed.D.  
Superintendent

EXECUTED BY THE HOUSING AUTHORITY the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**THE HOUSING AUTHORITY OF THE CITY OF EL PASO**

By: \_\_\_\_\_  
Vince Dodds  
Interim Director