



# Dallas Independent School District

September 27, 2005

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## REQUEST FOR REVIEW

Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 02-6  
Request for review of SLD Decision  
SLD Funding Year 2004  
SLD Letter Dated July 29, 2005

Applicant Name: Dallas Independent School District  
Billed Entity Number: 140542  
Form 471 Application Number: 400939

To The Honorable Federal Communications Commission:

This is a request for Review submitted by the Dallas Independent School District (the "District"). The District seeks review of the decision of the Schools and Libraries Division of the Universal Service Administrative Company ("SLD") dated July 29, 2005. In support of this Request for Review the District submits certain documents attached hereto as Exhibits A-H, which are incorporated herein by reference. In the July 29, 2005 decision the SLD denied the District's appeal of SLD's Funding Year 2004 Funding Commitment Decision Letter for the Form 471 Application number 400939. The SLD decision related to the following Funding Request Numbers: 1097137, 1097144, 1097154, 1133719, 1133817, 1133860, 1134300, 1134340, 1134370, 1140978, 1141044, 1145809, 1145840, 1145869, 1159350, 1159382, 1159407. A true and correct copy of the July 29, 2005 decision appears as Exhibit A.

In the July 29, 2005 letter the SLD wrote: "SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariffed or month-to-month services."

The SLD based this conclusion on the following reasoning:

"Program rules for funding Year 2004 require applicants seeking contracted services to sign a contract with their service provider prior to submitting the completed (certified) Form 471. Your response to the Selective Review Information Request (SRIR) included a copy of the Master services Agreement with the Consortium team of vendors. This agreement was for 1 year, with an optional renewal of 2 additional years. .... The SLD website instructs applicants that contracts featuring voluntary extensions expire at the end of their original term. Further guidance states that applicants must be able to demonstrate that they had a signed contract in place before or at the time they submitted their completed Form 471."

Michael Hinojosa, Ed.D. • General Superintendent  
3700 Ross Avenue • Dallas, Texas 75204-5491 • Telephone (972) 925-3700

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## Dallas Independent School District

We believe that this conclusion is erroneous and should be rejected. We respectfully submit that the SLD has misinterpreted the documentation timely provided and has erred in both factual and legal conclusions. A brief chronology is important to the District's argument.

On January 30, 2003, the governing body of the District, the Board of Trustees, awarded a contract to the Consortium team lead by MSE. This contract award was made as a result of an RFP process that began in December 2002 that specified that the District sought to enter a contract for one year with two option years. This action by the Board of Trustees constituted a legally binding commitment under Texas law and governing District policies. On or about December 18, 2003, the Master Agreement for products and services Between Dallas Independent School District and the Consortium was executed. A true and correct copy of the contract appears as Exhibit C. On January 29, 2004, the Board of Trustees ratified the agreement for e-rate years 6, 7, and 8. A true and correct copy of the document reflecting the Board's exercise of the option to extend the Contract appears as Exhibit D. On or about February 3, 2004, the District submitted Form 471 for Funding Year 2004 (e-rate year 7).

On the SLD website section relating to "Multi-Year Contracts and Contracts Featuring Voluntary Extensions SLD states: "A contract featuring voluntary extensions means that the contract expires at the end of its original term and may be voluntarily extended for one or more years pursuant to the provisions in the contract." That is precisely what occurred with regard to the District's contract with the Consortium and MSE. See Exhibit C, page 2 of 28, section 3. That contract contained no specific requirements as to how the two one-year options to extend should be exercised other than a notice requirement. The notice requirement (not later than 60 days prior to the end of the current e-rate year) was satisfied since the option was exercised well prior to the end of e-rate year 6. The law of the State of Texas governs the contract and the only requirement imposed by State law was that the exercise must be accomplished by authorized action. In this case that authorized action was action by the Board of Trustees, which occurred (see Exhibit D).

Under Texas law and DISD Board policy only the Board of Trustees can legally commit the District to expenditure of funds. *Texas Education Code* section 11.151. The Board of Trustees of the district may adopt rules and procedures for the acquisition of goods and services. *Id.* section 44.031(d). The DISD Board of Trustees, pursuant to this authority, has adopted several relevant local policies regarding the purchase of goods and services. These official Board policies are legally binding on DISD. Official DISD policy CH(Local) states: "The Board must approve of all contracts greater than or equal to \$50,000." The same policy also states: "All purchases of \$50,000 shall be awarded by the Board." Official DISD policy CE(Local) states: "... any expenditure or financial transaction of \$50,000 or more shall require Board approval."

Governing authorities of school districts and other representative bodies may express themselves and bind the institution which they represent only by acting together in a meeting duly assembled. *La Villa Indep. Sch. Dist. v. Gomez Garza Design*, 79 S.W.3d 217, 221 (Tex. App.- Corpus Christi 2002, pet. denied). The school board is the governing body of the district and the minutes of the Board meeting can show that the district authorized the agreement. *Id.* at 220. See also *New Caney Indep. Sch. Dist. V. Burnham*, 960 S.W.2d 957, 958 (Tex. App.-Texarkana 1998, pet. denied) (school districts are local public corporations that have the same general character as municipal corporations) (citing *Love v. City of Dallas*, 120 Tex. 351, 40 S.W.2d 20, 26 (1931)).



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This chronology and outline of governing policies and law demonstrate that prior to the time the District filed its Form 471 for e-rate year 7 it did in, fact, have a legally binding and signed contract with its service provider. The SLD's conclusion to the contrary is clearly erroneous and not supported by the record, and reason number one outlined above should be rejected. The terms of the written agreement executed in December 2003 (and authorized in January 2003) (Exhibit C) authorize an extension of the contract for two years at the District's discretion. Further action by the Board of Trustees was required to extend the contract by exercising the option and the action of the Board on January 29, 2004 (Exhibit D) did exactly that. Thus, reason number one is incorrect.

The SLD also based its conclusion on the following reasons:

"You were contacted by SLD and asked to provide a copy of the contract addendum for 2004, or a document verifying that the contract had been extended. Your response stated that the District would finalize a contract with the Consortium upon receipt of the funding commitment. On appeal you have argued that the District had a signed contract in place at the proper time. However, you have failed to provide evidence of this on appeal."

Thus, the SLD asserts that (1) The District provided no evidence in response to an SRIR of the extension of the contract and indeed provided a statement to the contrary; and (2) The District provided no evidence on appeal of a contract being in place at the time the Form 471 was submitted for Funding Year 2004. Both of these reasons are also incorrect.

The SLD directed a number of SRIR's to the District with regard to the application for funding year 2004. In a response dated August 31, 2004, the District replied to the following request: "Please provide a copy of the contract, and any applicable contract extensions." The District's response stated: "Please see Attachment 1-Contract between DISD and the Consortium. Please see Attachment 2-DISD Board Document." A true and correct copy of the District's letter appears as Exhibit B. The Board Document included and referenced was the document reflecting the action of the Trustees on January 29, 2004, exercising the extension option (Exhibit D). On at least one other occasion prior to the funding decision and appeal, see letter dated May 10, 2004, which appears as Exhibit E, the District sent a copy of a letter dated May 4, 2004 transmitting the January 29, 2004, Board action. A copy of the May 2, 2004 letter appears as Exhibit F. The attachment was the same document as Exhibit D.

Moreover, the language quoted by the SLD in the July 29, 2004 letter does not contradict the existence of a binding contract extension prior to the submission of the Form 471 for funding year 2004. The District was merely indicating that until the exact funding commitment was finalized and clarified the precise outline of the funding scope with the service provider could not be known. Indeed, carried to its logical conclusion the SLD's position on this point would mean no binding agreement could ever be in place at the time of submission the Form 471 application because the service provider and the applicant do not know the funding until the SLD grants the application. The Dallas Independent School District had a binding commitment to the service provider to use that provider for whatever scope of work and funding would be approved by the SLD; the details of that scope and funding could not be filled in until after the SLD made its



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decision. *See Foreca v. GRD Development Co.*, 758 S.W.2d 744, 746 (Tex. 1988) ("parties may agree upon some of the terms of a contract, and understand them to be an agreement, and yet leave other portions of an agreement to be made later," quoting from *Scott v. Ingle Bros. Pacific*, 489 S.W.2d 554, 555 (Tex. 1972)). Obviously, items such as dollar amounts, contract milestones, performance details dependent on award of the E-rate funding would have to be added later. The fact that the precise details could not be added until later does not negate the binding nature of the contract extension.

The second of these reasons is also incorrect and indeed is puzzling given other reasons stated by the SLD. In its Letter of Appeal dated March 10, 2005, which appears as Exhibit G, the District transmitted a copy of the Master Agreement with the service provider, a copy of the January 29, 2004, Board document exercising the option to extend the term of the contract to cover e-rate years 7 and 8, an opinion letter from District's legal counsel regarding the agreement for e-rate year 6 (not included here), and a copy of a letter dated January 22, 2004, from the District to MSE on behalf of the Consortium indicating the District's desire to extend the contract. The January 22, 2004, letter appears here as Exhibit H. As indicated above, only the Board could legally extend the contract, which it did on January 29, 2004. If the SLD could not consider any evidence on appeal that had not been provided in response to an SRIR, then it seems pointless to base its decision on a failure to provide new information on appeal. In any case, the District did provide compelling evidence on appeal that it had a binding contract extension with its service provider at the time it submitted its Form 471 for Funding year 2004.

The SLD also based its July 29, 2005 decision on the reason that the statements of work submitted by the District as part of the evidence of an existing contract were unsigned and therefore no contract existed. According to the SLD:

"Further, your appeal included a copy of the Master Services Agreement and related Statements of Work from the Consortium team. The Statements of Work state that the complete agreement consists of the Statements of Work and the Consortium Customer Agreement. The Statements of Work are unsigned."

This reason is incorrect and should be rejected as a basis for the SLD's conclusion. As indicated above, the Master Agreement was signed on December 18, 2003. At the time the District exercised the extension of the Master Agreement (January 29, 2004) the contract continued in effect and was legally binding on the parties. The SLD argues that statements of work attached to the Contract were not signed and contain language integrating the statements of work into the contract between the parties. According to the SLD this means there was no binding agreement extending the contract prior to the submission of the Form 471. The SLD is simply wrong. Exhibit B of the Contract (page 17 of 28) states: "Upon signing of this Agreement, Consortium agrees to perform the Statements of Work as detailed in the following Exhibits ...." The agreement referred to was the Master Agreement and it was signed prior to the submission of the 471. The District was bound to those scopes of work unless modified. The signature page that appeared at the end of each of the statements of work included as exhibits were surplus and signature on those pages was not necessary. Under Texas law signature on the Master Agreement was sufficient. The language seized on by the SLD regarding the complete contract was simply intended to reflect that the statements of work did not stand alone, but rather were



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part of the main contract. That language cannot be read to suggest the absence of a legally binding document at the time the Form 471 was submitted.

Finally, the SLD reasoned: In any case, SLD rules prevent considering information submitted for the first time on appeal; and, the District's letter to Micro Systems Enterprises, Inc. ("MSE") confirming the extension of the contract to Funding Year 2004 (funding year 7) could not be considered, and in the alternative was not a contract.

The SLD stated:

"You have also provided a letter to Mr. Frankie Wong of Micro Systems Enterprises, Inc. indicating the District's desire to extend the original contract to Funding year 7. However, program rules do not allow SLD to accept new information on appeal that was not made available during application review. Further, this document does not constitute the contract required by program rules."

These reasons should also be rejected as a basis of support for the July 29, 2005, decision letter. The evidence submitted on appeal except for the January 22, 2004, letter to MSE, had been provided to the SLD prior to the appeal in response to requests for information. The chronology of these responses is outlined above. Reason number 6 is really beside the point. The District does not argue that the January 22, 2004, letter is a contract. It is merely evidence of the fact that the District communicated to MSE its intention to extend the contract. The action required under Texas law and District policies to exercise the contract extension in a legally binding manner was the Board action documented in the January 29, 2004 Board document.

We respectfully submit that the evidence and the law lead to only one conclusion: the decision of the SLD in the July 29, 2005 letter is without support. The District did have a legally binding contract and contract extension in place with the service provider prior to the date the District submitted the Form 471 for Funding year 2004. We ask that this Request for review be granted and that the SLD's decision denying the funding requesting be reversed.

The person who can most readily discuss this appeal with you is Arnold Viramontes. His communication information is:

Address: 3701 South Lamar, Suite 337, Dallas, Texas 75215

Telephone number: 972-925-5615

Fax number: 972-925-5701



## Dallas Independent School District

E-mail address: [aviramontes@dallasisd.org](mailto:aviramontes@dallasisd.org).

We hope that you will not hesitate to contact Mr. Viramontes or anyone else at the District should you need any further information or documentation regarding this Request for Review. This funding is critically important to the children of our district. We appreciate your consideration and look forward to your favorable reply. I am the General Superintendent of the Dallas Independent School District and am authorized to sign this Request for Review.

Respectfully,

Michael Hinojosa, Ed.D.

LMS/lms

Enclosures

# EXHIBITS





Administrator's Decision on Appeal – Funding Year 2004-2005

July 29, 2005

Ruben Bohuchot  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, TX 75204-5491

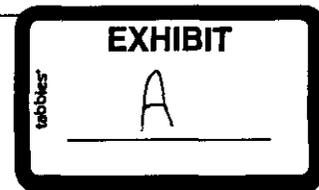
Re: Applicant Name: DALLAS INDEP SCHOOL DISTRICT  
Billed Entity Number: 140542  
Form 471 Application Number: 400939  
Funding Request Number(s): 1097137, 1097144, 1097154, 1133719, 1133817,  
1133860, 1134300, 1134340, 1134370, 1140978,  
1141044, 1145809, 1145840, 1145869, 1159350,  
1159382, 1159407  
Your Correspondence Dated: March 10, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2004 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1097137, 1097144, 1097154, 1133719, 1133817,  
1133860, 1134300, 1134340, 1134370, 1140978,  
1141044, 1145809, 1145840, 1145869, 1159350,  
1159382, 1159407

Decision on Appeal: **Denied**  
Explanation:

- On appeal, you dispute the SLD's denial of the above mentioned funding requests because the Dallas Independent School District did not have a contract for the products/services requested that was signed by both parties prior to the District's Form 471 submission. You argue that the District did have a legally binding contract at the proper time. You state that this issue was raised in Funding Year 2003 when the District was asked to provide documentation and a legal opinion



explaining how the District had a legally binding agreement with the Consortium team of vendors at the time of filing the Funding Year 2003 Form 471. You further state that this information was reviewed by SLD and the application was subsequently approved. As referenced in this opinion, you assert that the contract between the District and the Consortium also covers Funding Years 2004 and 2005. In support of your appeal you have provided a copy of the Consortium contract, a legal opinion of the contract's validity, and a contract extension letter for Funding Year 2004. Based on this information, you ask SLD to approve these funding requests.

- Upon thorough review of the appeal and its relevant documentation, it was determined that the district requested funding for contracted services on its Funding Year 2004 Form 471 application. Program rules for Funding Year 2004 require applicants seeking contracted services to sign a contract with their service provider prior to submitting the completed (certified) Form 471. Your response to the Selective Review Information Request (SRIR) included a copy of the Master Services Agreement with the Consortium team of vendors. This agreement was for 1 year, with an optional renewal of 2 additional years. You were contacted by SLD and asked to provide a copy of the contract addendum for 2004, or a document verifying that the contract had been extended. Your response stated that the District would finalize a contract with the Consortium upon receipt of the funding commitment. On appeal you have argued that the district had a signed contract in place at the proper time. However, you have failed to provide evidence of this on appeal. Further, your appeal included a copy of the Master Services Agreement and the related Statements of Work from the Consortium team. The Statements of Work state that the complete agreement consists of the Statement of Work and The Consortium Customer Agreement. The Statements of Work are unsigned. The SLD website instructs applicants that contracts featuring voluntary extensions expire at the end of their original term. Further guidance states that applicants must be able to demonstrate that they had a signed contract in place before or at the time they submitted their completed Form 471. You have also provided a letter to Mr. Frankie Wong of Micro Systems Enterprises, Inc. indicating the District's desire to extend the original contract to Funding Year 7. However, program rules do not allow SLD to accept new information on appeal that was not made available during application review. Further, this document does not constitute the contract required by program rules.
- SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The FCC has consistently upheld SLD's denial of Funding Request Number(s) when there is no contract in place for the funding requested.<sup>1</sup> The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your

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<sup>1</sup> Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism, File No. SLD-256981, CC Docket Nos. 02-6, Order, 18 FCC Rcd. 22,994, DA 03-3526 (2003).

Form 471 except tariffed services and month-to-month services.<sup>2</sup> You did not provide evidence with your appeal that, at the time you signed your Form 471, you had signed a contract for eligible services. Consequently, SLD denies your appeal.

*If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.*

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

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<sup>2</sup> See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2003) at page 20.





# Dallas Independent School District

August 31, 2004

Michael Maciej  
Schools and Libraries Division  
Program Integrity Assurance  
80 South Jefferson Road  
Whippany, NJ 07981

Dear Michael,

The Dallas Independent School District (DISD) is submitting this response to the Schools and Libraries' request for additional information regarding Funding Year 2004 Application 400939. Per the questions put forth in the fax are as follows:

Based upon review of your Form 471 application, it appears that the following FRNs have the same contract number as Funding Year 2003 FRNs, and the Contract Expiration Date submitted in Block 5, Item 20, has changed from 6/30/2004 to 6/30/2005.

2004 FRN	2003 Application & FRN
1097137	360931 / 1016865
1097144	360412 / 1017129
1097154	360412 / 1017129
1133817	369205 / 1016639
1134300	360904 / 1016407
1134340	360904 / 1016407
1134370	369537 / 1016173
1140978	360412 / 1017129
1145809	371659 / 1015197
1145840	371681 / 1015471
1159350	360412 / 1017129
1159382	360412 / 1017129
1159407	360412 / 1017129

The rules of this support mechanism require that a new Form 470 be posted for 28-Days prior to extending the existing contract, unless the establishing Form 470 for the original contract made all potential bidders aware of your ability to extend the contract beyond its initial term. Please answer the following question, and provide the requested documentation as indicated:

- Please provide a copy of the contract, and any applicable contract extensions.

*Please see Attachment 1-Contract between DISD and the Consortium  
Please see Attachment 2-DISD Board Document*

- Did the Contract Expiration Date change from what was reported on the FRNs on Funding Year 2003 Form 471 application numbers referenced in the above table?



*Yes, the Contract Expiration Date changed due to the fact that 2003 E-Rate funding was received after March 1, 2004.*

**If so, please provide the 15-digit Form 470 that established the bidding for the contract extension. The establishing Form 470 is the specific Form 470, which was posted for that particular service for 28 days, and pursuant to which a contract was signed, extended, or an agreement was entered into. The establishing 470 could have been posted by the State, if the requested services are being purchased off of a State Master Contract. If your contract extension was not posted for 28-Days to a new Form 470, please indicate such.**

*The original Form 470s which coincided with the 2003 RFP Process were:  
830710000446061 (cabling), 992450000446060 (servers), 959920000446059 (e-mail), and  
222970000446058 (network electronics).*

*The establishing 15-digit Form 470 number for 2004 extension of the agreement is  
723290000482856.*

**If the contract extension was not posted to a new Form 470 for 28-Days, please provide any relevant bid information, such as a copy of the request for proposals (RFP), that was relied upon when the original contract was competitively bid and signed.**

**For FRNs 1134300, 1145809, and 1159350**

- **In my previous request dated August 4, 2004 I requested a list of the locations that would receive services under these FRNs, however, it was not included in your response dated August 17, 2004.**
  - **Please provide a list of schools that will be receiving services under these FRNs**
  - **If the schools to receive services is the same as listed on FRN 1097137, please certify this.**

*The schools receiving services under FRNs 1134300, 1145809, and 1159350 are those listed on Block 4 worksheet number 565597. It is the same listing of schools for FRN 1097137.*

**For FRNs 1134340, 1145840, and 1159382**

- **In my previous request dated August 4, 2004 I requested a list of the locations that would receive services under these FRNs, however, it was not included in your response dated August 17, 2004.**
  - **Please provide a list of schools that will be receiving services under these FRNs**
  - **If the schools to receive services is the same as listed on FRN 1097137, please certify this.**

*The schools receiving services under FRNs 1134340, 1145840, and 1159382 are those listed on Block 4 worksheet number 564953. It is not the same listing of schools for FRN 1097137.*

**For FRN 1140978, 1159350, 1159382, and 1159407**

- **In my previous request dated August 4, 2004 I requested that you identify the equipment to be used with the SmartUPS for MDFs and IDFs. The description that you provided in your response dated August 17, 2004 is not sufficient.**
  - **If the equipment you identified is for new equipment for which discounts are being requested under this application, please identify the applicable FRNs on this application where this equipment is listed.**

*The Smart UPS equipment requested will provide backup power to Cisco 4500 and 3500 Series switches installed with Year 6 funds. The number of units requested in Year 6 was not sufficient to properly protect all the Network Equipment to be purchased with Year 6 funds. Our answer from the August 17 response pertaining to Hewlett Packard Servers were actually pointing to FRNs 1097137, 1133817, and 1133860.*

If we can provide further information, please do not hesitate to let us know.

Sincerely,



Ruben Bohuchot  
Chief Technology Officer  
Associate Superintendent  
rbohuchot@swbell.net



MASTER AGREEMENT FOR PRODUCTS AND SERVICES  
BETWEEN DALLAS INDEPENDENT SCHOOL DISTRICT  
AND  
THE CONSORTIUM

This Master Agreement for Products and Services ("Agreement") is between The Consortium, a group of Companies set forth on Exhibit G ("Contractor" or "Consortium") and the Dallas Independent School District (hereinafter "DISD" or "District") and is dated for convenience, January 31, 2003. Micro System Enterprises, Inc. will be designated to execute this agreement or other related documents on behalf of The Consortium. This Agreement consists of the terms and conditions on pages 1 through 28 and such Customized Supplemental Agreements as may hereinafter be agreed between the parties. The parties agree that the terms and conditions of this Agreement shall govern any Customized Supplemental Agreements unless specifically modified as provided herein. The parties further agree that the District shall have no obligation to enter any Customized Supplemental Agreement nor to agree to any particular level of expenditure.

RECITALS

WHEREAS, The Contractor has experience and expertise in providing products and services in the areas of network cabling; network servers; email; network electronics and video teleconferencing; and.

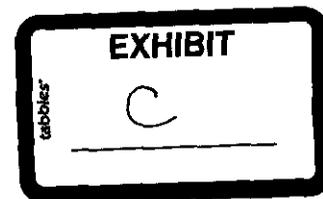
WHEREAS, DISD and the Contractor in response to DISD RFPs RT2491-02; RT2492-02; RT2493-03; RT2494-03; desire to enter into an exclusive arrangement for implementation and management of the Erate Year 6 program; and

WHEREAS, Contractor represents itself able and, for consideration, willing to provide the services and products at the price and terms set forth in the Scope of Work and perform the services required by the DISD;

NOW, THEREFORE, for and in consideration of the promises hereinafter contained, the parties agree as follows:

1. RELATIONSHIP AND AUTHORITY.

a. Contractual Relationship. The Board of Trustees ("Board") as the governing body of DISD and Contractor hereby agree that the Board is charged under state law with the duty to provide adequate public schools and the authority to supervise all matters pertaining to the public schools, and that the Board will retain all such authority under this Agreement. The Board as the governing body of DISD and Contractor further agree that Contractor is accountable to and subject to the supervision of the Board and its designated administrative officers under this Agreement. In addition, the Board and Contractor agree that Contractor shall be subject to all policies, rules and regulations of the Board, the Texas Education Agency, and the Texas State Board of Education to the extent as applicable to Contractor's performance under this Agreement or to like contractors generally. Contractor also agrees that Contractor in the provision of goods or the administration of services pursuant to any grant or contract awarded to the DISD shall be considered a sub grantee or subcontractor of the DISD subject to the same conditions, assurances, and approvals as the DISD pursuant to the applicable grant or contract.



b. Authority. The laws of the State of Texas and any federal laws applicable to DISD govern this Agreement. Contractor specifically agrees to also be bound by these laws and any court orders imposed upon DISD in like manner as DISD insofar as those court orders apply to DISD students and services provided by Contractor pursuant to this Agreement. Contractor shall have the power and authority, consistent with the limitations herein, to take such actions as may be necessary or desirable to properly and efficiently provide the goods and services provided for herein.

c. Micro System Enterprises, Inc. represents and warrants that it has been duly authorized by each member of The Consortium to execute this agreement and other related documents on behalf of The Consortium. See Exhibit A attached hereto and fully incorporated into this agreement.

2. AVAILABILITY OF FUNDS AND BUDGET AND FISCAL PROVISION AND TERMINATION IN THE EVENT OF NON-APPROPRIATION.

a. This Agreement is subject to the budget and fiscal policies, regulations and practices of the DISD. Any financial commitment on the part of DISD contained in this Agreement is subject to annual appropriation by the Board and the parties agree that DISD has no financial obligations under this Agreement other than for the current fiscal year at any point during the Term and that the DISD has not irrevocably pledged and held for payment sufficient cash reserves for funding Contractor or for providing the services described herein for the entire Term of this Agreement; provided however, that nothing in this section shall excuse DISD from payment for products shipped or services rendered prior to such termination for non-appropriation.

b. The amount of the DISD's obligation hereunder shall not at any time exceed the amount herein stated.

c. DISD has no obligation to renew this Agreement after expiration of its term. If funds are appropriated for a portion of a fiscal year, this Agreement will terminate, without penalty, at the end of the term for which funds are appropriated.

d. This section controls against any and all other provisions of this Agreement.

3. TERM OF THE AGREEMENT

The Agreement is effective, January 31, 2003, and shall continue for the period of Erate Year 6; and, may be renewed at the option of the District for Erate Year 7 and Erate Year 8, provided that the District shall give written notice of its intention to renew not later than sixty (60) days prior to the end of the then current Erate year. For purposes of this agreement, the Erate Year is derived from the Schools and Libraries Division's issuance of funding for the Erate Program.

4. SCOPE OF SERVICES

The Contractor shall deliver services as described in Exhibit B – Scope of Services. The parties agree that a Customized Supplemental Agreement will be produced for each individual school or project which qualifies for Erate funding, for which Erate funding has been applied, or for which Erate funding is approved. A Customized Supplemental Agreement is attached hereto as Exhibit C. From time to time hereafter the District may agree to

additional products and services to be delivered by Contractor as may be reflected in one or more of any such Customized Supplemental Agreement as approved by the designated parties. The District will then issue a purchase order for each Customized Supplemental Agreement ("Purchase Order") Contractor specifically agrees that the opportunity to present such Customized Supplemental Agreements constitutes adequate consideration for this Agreement.

5. SOFTWARE LICENSES

Refer to Exhibit D.

6. COMPENSATION

The Contractor shall be paid in accordance with Exhibit E attached hereto. Requests for compensation shall be invoiced complete with a breakdown of charges and receipts as applicable. DISD shall make payments by check within 30 days of receipt of invoice. The total amount of money to be paid to the Contractor annually under this Agreement shall not exceed the total amount budgeted by DISD. Any goods delivered or work performed in excess of said amount shall not be compensated unless authorized by the General Superintendent of DISD in writing. Interest, if any, to be paid on past due sums shall be governed by and paid in accordance with the Texas Education Code. DISD's tax exemption certificate, attached as Exhibit F, shall apply to all orders placed by and for the DISD pursuant to this Agreement.

7. REPRESENTATIONS AND WARRANTIES

Contractor represents and covenants that it has the ability to perform the services required under this Agreement and that it will provide suitable and adequate resources to perform the work according to the description of the services set forth on the Statements of Work attached as Exhibits B-1 - B-5. Contractor represents and covenants that it shall furnish its professional skill and judgment with due care in accordance with the accepted standards of performance for those engaged in similar work in the State of Texas. The Contractor does not limit or exclude the implied warranty of merchantability.

8. TERMINATION

a. Either party may terminate this Agreement without cause at any time by giving thirty (30) days written notice of such termination. In such an instance, the Contractor shall be entitled to compensation for goods delivered or services performed up to the effective date of termination.

b. The District shall retain the continuing right to terminate this Agreement without penalty at the end of each fiscal year.

c. Upon receipt of written notice that this Agreement is terminated, the Contractor will submit an invoice to the DISD for an amount that represents the value of goods delivered and services actually performed up to the date of termination for which the Contractor has not previously been compensated as per paragraph 6 above. For goods or services for which the DISD agreed to pay on a payment schedule, invoices for payments due shall be submitted at

the agreed upon time. Upon approval and payment of this/these invoice(s) by DISD, DISD shall be under no further obligation to the Contractor, monetarily or otherwise.

9. INDEPENDENT CONTRACTOR

The Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. The Contractor shall be liable for any act or acts of its own, or its agents or employees, and nothing contained herein shall be construed as creating the relationship of employer and employee between the DISD and the Contractor or its agents and employees.

10. MODIFICATION OF AGREEMENT

The parties may amend this Agreement in writing by mutual consent. Changes, including any increase or decrease in the amount of the Contractor's compensation, shall only be effective upon the execution of a duly authorized written amendment to this Agreement.

11. ASSIGNMENT AND SUBCONTRACTING

The Contractor is prohibited from assigning this Agreement or any services provided pursuant to this Agreement to any party other than the members of the Consortium set forth on Exhibit G, unless such assignment is agreed to in writing by DISD, such agreement not to be unreasonably withheld, at the sole discretion of the District, and executed in the same manner as this Agreement. In the event Contractor elects to subcontract a portion of the services provided under this Agreement, Contractor shall request approval of the subcontractor from the District and the District shall approve or reject such request within thirty (30) days. If the District does not approve such request within thirty (30) days, Contractor's request to utilize the applicable subcontractor shall be denied. No party on the basis of this Agreement shall in any way contract on behalf of or in the name of the other party of this Agreement, and violation of this provision shall confer no rights on any party and shall be void.

12. ADMINISTRATIVE REMEDY FOR AGREEMENT INTERPRETATION

In consideration of this Agreement, Contractor agrees that, prior to pursuing any other remedy, it will first obtain a determination by the General Superintendent of DISD as to the DISD'S understanding and intent of the Agreement. Such determination by the General Superintendent shall not be binding on Contractor.

13. BANKRUPTCY

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party,

this Agreement shall terminate and be of no further force and effect, and any property or rights of such other party, tangible or intangible, shall forthwith be returned to it.

14. CONFLICT OF INTEREST AND COMMUNICATIONS

Contractor understands and certifies that it does not know of any facts relating to the award of this Agreement that would constitute a violation of Texas Local Government Code Section 171.004.

In accordance with Board Policy CHE (Local) and any successor policy, Contractor also hereby certifies to the best of its knowledge and belief that no current Board member or employee of DISD, and no one who has been a Board member within the last five (5) years or an employee of the DISD within the last two (2) years, has participated in bidding, selling or promoting this Agreement. Furthermore, Contractor certifies to the best of its knowledge and belief that no such current or former Board member or employee will derive any pecuniary interest, compensation or services, directly or indirectly, from this Agreement. Contractor understands that notwithstanding any provision of law to the contrary any violation of this provision of the Agreement shall make the Agreement void able by the DISD.

During the term of this Agreement Contractor shall not communicate with individual members of District's Board of Trustees with regard to this Agreement. Should Contractor deem it necessary to communicate with the Board with regard to this Agreement, such communication shall be in writing to all members of the Board, with a contemporaneous copy to the General Superintendent.

15. INDEMNIFICATION

**CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS THE DISD AND ITS TRUSTEES, MEMBERS, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF THE DISD, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON DISD DIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONTRACTOR'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONTRACTOR OR SUBCONTRACTOR OF CONTRACTOR AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT. THIS OBLIGATION SHALL NOT APPLY IN THOSE INSTANCES WHERE SUCH CLAIMS, COSTS, DAMAGES OR LOSSES ARE CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE DISD OR ITS EMPLOYEES. SUCH INDEMNITY IS LIMITED BY THE TERMS OF PARAGRAPH 21 BELOW. CONTRACTOR SHALL PROMPTLY ADVISE THE DISD IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE DISD OR CONTRACTOR KNOWN TO CONTRACTOR RELATED TO OR ARISING OUT OF CONTRACTOR'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION OF AND DEFENSE OF SUCH CLAIM OR DEMAND AT**

**CONTRACTOR'S COST. THE DISD SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONTRACTOR OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

16. INSURANCE

Contractor will not be issued a Purchase Order and / or this Agreement shall not be in effect until evidence of the required insurance is provided. All payments and certificates of insurance must be submitted with this Agreement.

**Classes of Risk**

**Class D – High limits – large construction or service contracts above \$100,000**

Agreement and insurance requirement:

Hold Harmless Agreement  
Contractual Coverage  
Products and Completed Operations Coverage  
Waiver of Subrogation  
Owners and Contractors Protective Policy  
District named as additional insured on coverages, with the exception of the Professional Errors and Omissions policy.

Workers' Compensation Statutory Limits  
Employer's Liability \$500,000 per accident/\$500,000 per person

General Liability  
Bodily injury & \$1,000,000 combined single limits/  
Property damage \$2,000,000 aggregate

Automobile Liability  
Bodily injury & \$250,000 per person/\$500,000 per accident  
Property damage \$250,000

Professional Error & Omissions \$1,000,000 per occurrence

Umbrella Policy \$2,000,000 per occurrence/\$2,000,000 aggregate

Payment Bond Equal to value of Agreement as required by statute

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specification, and shall be maintained in compliance with these general specifications throughout the duration of the Agreement, or longer, if so noted:

- ◆ Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A-
- ◆ Liability policies shall be endorsed to provide the following:
  1. Except for the Professional Errors and Omission policy, name as additional insured the District, its Officials, Agents, and Employees.
  2. That such insurance is primary to any other insurance available to the additional insured.
  3. All policies shall be endorsed to provide thirty (30) days prior written notice or cancellation, non-renewal or reduction in coverage.

4. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and without lapse, for a period of three years beyond the Agreement expiration, to the extent that it is commercially and reasonably available, such that occurrences arising during the Agreement term which give rise to claims made after expiration of the Agreement shall be covered.

The District reserves the right to review the insurance requirements of this section during the effective period of the Agreement.

The District shall be entitled, upon request and without expense, to view copies of the policies and all endorsements thereto as they apply to the limits required by the District at Contractor's corporate offices, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies) subject to a reasonableness test and upon mutual agreement by Contractor. Upon such request by the District and Contractor's agreement, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

Contractor agrees that with respect to the above-required insurance, all insurance Contracts and Certificate(s) of Insurance will contain the following required provisions.

- Except for the Professional Errors and Omission policy, name Dallas Independent School District and its officers, employees and elected representatives as additional insured (as the interests of each insured may appear), as to all applicable coverage;
- Provide for 30 days notice to the District for cancellation, non-renewal, or material change;
- Provide for an endorsement that the "other insurance" clause shall not apply to the Dallas Independent School District where the District is an additional insured shown on the policy;
- Provide for notice to the District at the address shown below by Certified Mail, Return Receipt Requested;
- Contractor agrees to waive subrogation against the District, its officers and employees for injuries, including death, property damage or any other loss to the extent same may be covered by the proceeds of insurance;
- Provide that all provisions of this Agreement concerning liability, duty, and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

Contractor shall notify the District in the event of any change in coverage and shall give such notices not less than 30 days prior to the change, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the District at the following address:

Dallas Independent School District  
Director of Risk Management  
3700 Ross Ave., Box 91  
Dallas, TX 75204

#### 17. LIABILITY POLICIES

The form of all insurance policies required by Section 16 shall be subject to the approval of the District's Risk Manager who shall complete Exhibit I. The Contractor shall notify the DISD in writing at least thirty (30) days

in advance of any cancellation, non-renewal or reduction of any of its insurance policies required under this Agreement.

18. NON-DISCRIMINATION

Contractor shall at all times provide the services hereunder in compliance with all laws with respect to discrimination. No person shall be subjected to discrimination on the grounds of race, color, religion, national origin, sex, sexual orientation, age, marital status and/or mental disability, physical handicap, matriculation or political affiliation. Contractor shall post notice of such non-discrimination in a conspicuous place.

19. PROPRIETARY INFORMATION OF DISD

The Contractor understands and agrees that, in its performance under this Agreement or in contemplation thereof, the Contractor may have access to private or confidential information that may be owned or controlled by the DISD and that such information may contain proprietary details, the disclosure of which to third parties will be damaging to DISD, its employees or students. The Contractor also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Contractor to civil liability. Consequently, Contractor agrees that all information disclosed by the District to the Contractor shall be held in confidence and used only in performance of the Agreement. The Contractor shall exercise the same standard of care to protect such information as is used to protect its own proprietary data.

20. THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

DISD warrants that it will not present to Contractor orders which involve the reproduction of materials protected under copyright, patent and/or trademark law unless DISD owns such rights, is an authorized agent of the owner of such rights or has permission to reproduce the materials. In addition, DISD represents and warrants that it will not use the provision of services by Contractor to DISD to violate any law, infringe or violate any intellectual property rights or other rights of third parties including, without limitation, committing any fraud, violating any rights of publicity, rights of privacy, copyrights, trademarks, trade secrets and/or licenses, or patents. DISD grants Contractor permission allowing authorized representatives designated by DISD to reproduce DISD's copyright and trademark-protected materials without restriction for the term of this Agreement. Unless specified otherwise by DISD in writing, DISD designates all of its employees as DISD's authorized representatives for purposes of this provision.

21. LIMITATION OF LIABILITY

In no event will either party be liable to the other for lost profits, special, incidental, punitive, consequential or indirect damages (including lost profits) arising under this Agreement, whether based in contract, tort (including negligence), intentional conduct or otherwise, even if that party has been advised of the possibility of such damages. The aggregate amount of any liability of Contractor for any claim(s) arising from or relating to this Agreement will