

REDACTED – FOR PUBLIC INSPECTION

# EXHIBIT 5

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October 15, 2010

**VIA OVERNIGHT COURIER & EMAIL**

Douglas May  
Universal Service Administrative Company  
Schools and Libraries Division – Consortium Review  
100 South Jefferson Road  
P.O. Box 902  
Whippany, New Jersey 07981

**RE: Northeast Texas Regional Education Telecommunications Network  
FY 2010 FCC Form 471 Application No. 752417  
FY 2010 FCC Form 471 Application No. 756191**

Dear Mr. May:

On behalf of the Northeast Texas Regional Education Telecommunications Network (“NTRETN”), I am writing in response to your September 23, 2010 letter (“September 23rd Letter”) to Karen Whitaker, Deputy Executive Director for Administrative Services of the Region VIII Educational Service Center (“Region VIII ESC”).<sup>1</sup> In your letter, you state that the Universal Service Administrative Company (USAC) is “in the process of reviewing [NTRETN’s] Funding Year 2010 Form 471 Application(s) 752417 & 756191” (collectively, “FY 2010 Applications”).<sup>2</sup>

<sup>1</sup> Letter from Douglas May, Universal Service Administrative Company, Schools and Libraries Division – Consortium Review, to Karen Whitaker, Deputy Executive Director for Administrative Services, Region VIII ESC (dated Sept. 23, 2010). Earlier correspondence relating to these FRNs were exchanged on May 7, 2010 and May 12, 2010. The information previously supplied by NTRETN is incorporated herein by reference.

<sup>2</sup> *Id.*

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More specifically, your September 23rd Letter requests information on: (1) whether Form 470 Application 752417, Item 21, is for telecommunications or internet access service; (2) whether NTRETN accepts a proposed reduction in discounts for WAN A contracts from 75% to 74%<sup>3</sup>; (3) whether NTRETN accepts a new worksheet for WAN B contracts<sup>4</sup>; and (4) whether Form 470 Application 756191, Item 21, is for telecommunications or internet access service. However, before I address these specific inquiries, I would like to address a statement in your September 23, 2010 letter asserting that the letters of agency (LOAs) provided by NTRETN's consortium members did not request telecommunications service and that program rules prevent you from "correcting this oversight."

**I. NTRETN's Letters of Agency**

The Federal Communications Commission ("FCC" or "Commission") requires E-rate applicants to produce evidence from each of its members expressly authorizing the consortium leader to submit an application on its behalf. This requirement is intended to ensure that consortium members were *actually aware* of the funding application.<sup>5</sup> However, the Commission has held that LOAs are not the only way that applicants can demonstrate such authority. In lieu of an LOA, "other documentation may be accepted as proof of authorization."<sup>6</sup> USAC's guidelines implementing this standard provide that regardless of the form of the authorization, it must contain five elements: (1) the name of the person filing the application; (2) the name of the person authorizing the filing of the application (the entity that will receive E-rate discounted services); (3) the specific time frame covered; (4) the signature date, and title of an official who is an employee of the entity authorizing the filing of the application; and (5) the type of services covered.<sup>7</sup> NTRETN has sufficient documentation that satisfies the FCC's standard and the five elements in USAC's guidelines.

<sup>3</sup> FCC Form 470 Application Number 756191, Funding Request Number (FRN) 2046646.

<sup>4</sup> FCC Form 470 Application Number 756191, FRN 2046663.

<sup>5</sup> Request for Review of the Decision of the Universal Service Administrator by Project Interconnect, Brooklyn Park, Minnesota Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., *Order*, DA 01-1620, 16 FCC Rcd 13655, 13658-13659 ¶¶ 8, 11 (2001) ("*Project Interconnect*").

<sup>6</sup> "Letter of Agency," USAC Website, *available at* [www.universalservice.org/sl/tools/reference/letters-of-agency.aspx](http://www.universalservice.org/sl/tools/reference/letters-of-agency.aspx) (last visited Oct. 14, 2010); *see also* Requests for Review of Decisions of the Universal Service Administrator by Advanced Education Services, et al. Schools and Libraries Universal Service Support Mechanism, *Order*, DA 07-4973, 22 FCC Rcd 21513, 21514 ¶ 3 (2007) ("*Advanced Education Services*").

<sup>7</sup> *See* "Letter of Agency," USAC Website, *available at* [www.universalservice.org/sl/tools/reference/letters-of-agency.aspx](http://www.universalservice.org/sl/tools/reference/letters-of-agency.aspx) (last visited Oct. 14, 2010); *see also* *Advanced Education Services*, 22 FCC Rcd at 21516-21517 ¶ 8.

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Previously, NTRETN submitted LOAs from member school districts for its FY 2010 applications. As you noted in previous correspondence, these LOAs inadvertently omitted explicit reference to “telecommunications services” as among the E-rate eligible services covered by the application.<sup>8</sup> NTRETN responded that the omission was inadvertent, and that consortium members did authorize NTRETN to submit e-rate applications on their behalf for telecommunications services in addition to other supported services. As evidence of this authorization, NTRETN submitted letters from each member school clarifying that its previously submitted LOA “included telecommunications services.”<sup>9</sup>

NTRETN believes that the previous submissions are sufficient to demonstrate actual authority under the FCC’s standard. Nevertheless, in further support of such authorization NTRETN hereby submits additional documentation that demonstrates proof of authorization to submit applications for telecommunications services support. Specifically, in attachments to this letter, NTRETN submits the following additional documentation:

- The Texas Interlocal Cooperation Act, authorizing consortia such as NTRETN;<sup>10</sup>
- The Interlocal Contract establishing NTRETN;<sup>11</sup>
- The Services Agreement between Trillion Partners, Inc. and NTRETN providing for voice-over-the-Internet (VoIP) services;<sup>12</sup> and
- Service Request Orders on behalf of the local school districts ordering Trillion Partners, Inc.’s VoIP services.<sup>13</sup>

Collectively, this documentation shows that each school district selecting VoIP services has authorized NTRETN to submit E-rate funding requests on its behalf for FY 2010.

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<sup>8</sup> Letter from Douglas May, Universal Service Administrative Company, Schools and Libraries Division – Consortium Review, to Karen Whitaker, Deputy Executive Director for Administrative Services, Region VIII ESC (dated May 7, 2010).

<sup>9</sup> Letter from Karen Whitaker, Deputy Executive Director for Administrative Services, Region VIII ESC, to Douglas May, Universal Service Administrative Company, Schools and Libraries Division – Consortium Review (dated May 14, 2010), attached hereto as **Exhibit A**.

<sup>10</sup> 7 TEX. GOV’T CODE ANN. § 791.001, *et seq.*, attached hereto as **Exhibit B**.

<sup>11</sup> Northeast Texas Regional Education Telecommunications Network, Interlocal Contract (effective April 9, 1997), attached hereto as **Exhibit C** (“Interlocal Contract”).

<sup>12</sup> Attached hereto as **Exhibit D**.

<sup>13</sup> Attached hereto as **Exhibit E**.

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Below, NTRETN explains how this documentation satisfies the five elements established by USAC's guidelines.

*The Person Authorized to File the Applications.* NTRETN filed the FY 2010 Applications on behalf of its member school districts. On April 9, 1997, pursuant to the Texas Interlocal Cooperation Act, public independent school districts in northeast Texas and the Region VIII ESC<sup>14</sup> (collectively, "the Parties") entered into an Interlocal Contract agreement establishing the NTRETN consortium as an administrative agency.<sup>15</sup> The Interlocal Contract coupled with the Services Order Requests to the Services Agreement provides the names of the entities filing and authorized to file the FY 2010 E-rate Applications. Specifically, Section 5.2 of the Services Agreement between NTRETN and the service providers requires NTRETN to submit E-rate funding requests and all applicable USAC forms to USAC.<sup>16</sup> By signing Service Orders explicitly made subject to the Services Agreement, individual school districts not only elect to receive VoIP services, but also incorporate the provision that designates NTRETN as the entity required to submit an E-rate application for the service.

NTRETN's authority is also inherent in the Texas Interlocal Cooperation Act. Interlocal Contracts are authorized by Texas state law to increase efficiency and effectiveness of local governments, including school district and education service centers<sup>17</sup>, by authorizing them to contract with one another.<sup>18</sup> Interlocal Contracts must be authorized by the governing body of each party to the contract, state the duties of the contracting parties, and stipulate that each party to the contract pay for the performance of governmental functions.<sup>19</sup> The Interlocal Contract entered between the Parties grants the NTRETN consortium the power to "[a]pply for and receive grants and other funding from governmental and private sources..."<sup>20</sup> The Interlocal Contract also establishes a Board of Directors to manage the consortium, which has the *duty to* "seek sources of funding for Network activities, apply for grants available to [NTRETN] by virtue of its management of the Network, or otherwise, and coordinate any grant applications

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<sup>14</sup> Education Service Centers, like the Region 8 ESC, were created pursuant to Texas state law to efficiently serve the needs of school districts. *See* 2 TEX. EDUC. CODE ANN. § 8.001, *et seq.* (describing the purpose and role of Education Service Centers as set forth in Texas state law).

<sup>15</sup> Interlocal Contract § 1.01, attached hereto as **Exhibit C**.

<sup>16</sup> Trillion Partners, Inc. Services Agreement § 5.2 (effective Feb. 16, 2006) ("Services Agreement"), attached hereto as **Exhibit D**.

<sup>17</sup> *See supra* note 14 (regarding Education Service Centers).

<sup>18</sup> *See* 7 TEX. GOV'T CODE ANN. § 791.001, *et seq.*, attached hereto as **Exhibit B**.

<sup>19</sup> *Id.* § 791.011(d).

<sup>20</sup> Interlocal Contract § 1.05(c), attached hereto as **Exhibit C**.

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made by the Members...”<sup>21</sup> Indeed, the very purpose of the consortium is to take coordinated actions on behalf of the member school districts. By entering the Interlocal Contract, the Parties grant the NTRETN consortium the authority to file E-rate applications on their behalf.

*Entity Authorizing Applications.* The attached Service Order Requests to the Services Agreement establish that the named school districts agree to order the services as outlined in the Service Order Requests submitted to the service providers. The attached Service Order Requests provide the names of the persons authorizing the filing of the FY 2010 Applications – the NTRETN consortium Board President. The Interlocal Contract grants the NTRETN consortium president the authority to sign the Service Order requests on behalf of the Parties to the contract – the consortium member school districts.

*Specific Timeline Covered by the Authorization.* The Interlocal Contract provides the specific timeline covered by the agreement and authorization, satisfying USAC’s requirements. The Interlocal Contract provides that the agreement will continue for a period of ten years from the date of the agreement, and for successive five year terms thereafter. The Interlocal Contract was renewed in 2007 and therefore is in effect for a finite five year term, set to expire in 2012. The authorization, therefore, is not an “open ended” commitment such as “until cancelled by either party.” Additionally, the Services Agreement between NTRETN and the service provider also provides for a specific term – 5 years from the commencement date.<sup>22</sup> NTRETN is specifically authorized for a specific period of time – five years in this instance.

Finally, we note that the Commission held that the lack of a specified timeframe on an LOA is not a “fatal mistake” when consortia members clearly know that the consortium is applying for funding on their behalf.<sup>23</sup> Thus, even if USAC concludes (incorrectly, we assert) that the Interlocal Contract does not contain a specific time period, the contract shows that the consortium members clearly know that NTRETN applies for funding on their behalf.<sup>24</sup> This “other evidence” overcomes any reservations about the duration of the designation.

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<sup>21</sup> Interlocal Contract § 3.02(k), attached hereto as **Exhibit C**.

<sup>22</sup> Services Agreement § 1.6, attached hereto as **Exhibit D**.

<sup>23</sup> *Advanced Education Services*, 22 FCC Rcd at 21518 ¶ 10.

<sup>24</sup> *See Advanced Education Services*, 22 FCC Rcd at 21518 ¶ 10. In accepting an LOA without a date, the Commission stated that had LOAs been signed several years prior to an E-rate funding application it would have been concerned that consortium members were unaware of the funding requests in years after the LOAs were signed, *absent other evidence*. *See Id.* at 21518, n. 38. Such a concern would not be present here. The Service Request Orders (executed annually and explicitly quoting E-rate discount amounts) provide the *other evidence* to establish that consortium members actually were aware that the consortium was applying for FY 2010 funding on their behalf, satisfying the Commission’s concerns in *Advanced Education Services*. *See Id.* at 21518, n. 38.

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*Consortium Official Signature, Date, and Title.* The Services Order Request contains the signature, date, and title of an official who is an employee of the entity authorizing the filing of the FY 2010 Applications. The Service Order Requests agreeing to purchase services from the service providers are signed by Tommy Long, his title as NTRETN's Board of Directors President, with the signature date. Mr. Long had the authority to sign on behalf of the individual consortium member school districts by virtue of the Interlocal Contract, which grants NTRETN this authority.

*Types of Services Covered.* In your September 23, 2010 letter you allege that NTRETN did not include telecommunications services in the LOA. In this case, the Services Agreement entered between NTRETN and the service provider provides a "Description of Services," which provides evidence of the types of services covered under agreement of consortium members. Included in the Description of Services is Voice-over-the-Internet ("VoIP") services, referred to as "WAN Voice Service" under the Services Agreement.<sup>25</sup> Clearly, the specific service at issue – VoIP services – is referenced in the contracts between the service provider and the Parties.

Furthermore, in response to a May 7, 2010 USAC inquiry,<sup>26</sup> NTRETN provided letters from consortium members attesting to the fact that NTRETN had authority to request telecommunications services and that its omission in the original LOA was an oversight. These letters do not serve as a replacement to the original LOA, but merely demonstrate the understanding of the consortium school districts that telecommunications services were understood as inclusive in the LOA. These letters from consortium school districts provide other documentation to support *actual* authorization of NTRETN to request telecommunications services.

Finally, we note that the VoIP services requested in the FY 2010 Applications are included in the initial LOA submitted by NTRETN. The Commission has not yet classified interconnected VoIP service as telecommunications service or an information service.<sup>27</sup> USAC in its *Eligible Services List Schools and Libraries Support Mechanism for Funding Year 2010* notes that interconnected VoIP could be classified as either telecommunications services or

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<sup>25</sup> Services Agreement, "WAN – Voice – Service Level Agreement," attached hereto as **Exhibit D**.

<sup>26</sup> Letter from Douglas May, Universal Service Administrative Company, Schools and Libraries Division – Consortium Review, to Karen Whitaker, Deputy Executive Director for Administrative Services, Region VIII ESC (dated May 7, 2010).

<sup>27</sup> In the Matter of Schools and Libraries Universal Support Mechanism, *Report & Order & Further Notice of Proposed Rulemaking*, FCC 09-105, 24 FCC Red 6562, 6567-6568 ¶12 (2009) ("*Universal Service R&O & NPRM*").

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Internet access.<sup>28</sup> The Commission concluded, as USAC proposed in its Eligible Services List submission, that interconnected VoIP service should be listed in both telecommunications and Internet access categories.<sup>29</sup> Therefore, USAC can approve the VoIP services portion of the FRNs as “Internet Access,” relying on NTRETN’s initial LOAs as evidence of authorization for these requests, or as telecommunications services, relying on the other evidence discussed herein.

## II. Specific Questions Concerning FY 2010 Applications

*Question Concerning Application 762417.* In response your September 23rd letter, Application 762417’s description of “Suddenlink Digital Transmission Service to NTRETN main branch...100 Mb over Ethernet to POP at Mt. Pleasant” refers to services used to provide connections between school districts. These connections are used for Internet access purposes. Therefore, NTRETN recommends that the Application 76417, Item 21, services be classified as “Internet Access.” As stated above, to the extent that the connections would also support VoIP, USAC may still approve the funding request based on established Commission rules. In lieu of a letter from the vendor, please refer to the attached a copy of the Service Order Requests, which provides other documentation describing the services requested for Internet access.

*Question Concerning Application 756191, FRN 2046646.* In your September 23rd letter, you propose creating a new worksheet C containing the WAN A entities<sup>30</sup> listed in your letter and modify the Form 471, Block 4, Entity Number to this new worksheet, resulting in a shared discount reduction from 75% to 74%. NTRETN agrees with the list of school districts requesting services and agrees with the 74% discount rate calculated by USAC. As noted above, NTRETN notes that this application can be approved as “Internet Access” or as “telecommunications service.”

*Question Concerning Application 756191, FRN 2046663.* In your September 23rd letter, you propose creating a new worksheet C containing the WAN B entities<sup>31</sup> listed in your

<sup>28</sup> *Universal Service R&O & NPRM*, 24 FCC Red at 6606.

<sup>29</sup> *Universal Service R&O & NPRM*, 24 FCC Red at 6568-6569 ¶14.

<sup>30</sup> Avery Independent School District (ISD), Clarksville ISD, Como-Pickton ISD, Cumby ISD, De Kalb ISD, Detroit ISD, Education Service Center – Region 8, Hooks ISD, Leary ISD, Libery-Eylau ISD, Malta ISD, Mt. Vernon ISD, New Boston ISD, North Hopkins ISD, North Lamar ISD, Paris ISD, Pittsburg ISD, Pleasant Grove ISD, Prairiland ISD, Red Lick ISD, Redwater ISD, Rivercrest ISD, Saltillo ISD, Sulphur Springs ISD, and Winfield ISD.

<sup>31</sup> Atlanta ISD, Avinger ISD, Bloomburg ISD, Chapel Hill ISD, Chisum ISD, Cooper ISD, Daingerfield Lone Star ISD, Dodd City ISD, Fannindel ISD, Harts Bluff SD, Honey Grove ISD, Hubbard SD, Hughes Springs SD, Linden-Kildare Cons SD, Lone Oak ISD,

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letter and modify the Form 471, Block 4, Entity Number to this new worksheet, maintaining a 75% discount. In response to your letter, NTRETN hereby approves these changes as specified in your September 23rd letter. NTRETN agrees with the list of school districts requesting the services and agrees with the 75% discount rate calculated by USAC. As noted above, NTRETN notes that this application can be approved as "Internet Access" or as "telecommunications service."

*Question Concerning Application 756191, FRN 2046730.* In response to your September 23rd Letter, Item 21 on FCC Form 471 Application 756191, FRN 2046730, for "50 Mbps WAN Bandwidth Upgrade" services is for Internet access. Please find attached to this letter a copy of the Service Request Order to the Services Agreement, which provides evidence that the services requested were for Internet access. This application is supported by the LOAs previously provided by NTRETN.

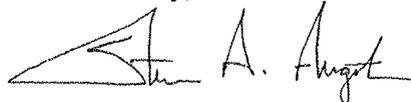
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NTRETN believes that the above fully responds to your inquiries concerning NTRETN's FY 2010 Applications. Based on the above information, and information previously provided, NTRETN respectfully submits that FY 2010 Application Numbers 752417 and 756191 should be approved in full. Please feel free to contact the undersigned if you have any further questions or concerns regarding these applications.

Sincerely,



Steven A. Augustino  
*Counsel to the Northeast Texas Regional  
Education Telecommunications Network  
(NTRETN)*

CC: Karen Whitaker, NTRETN  
Blake Powell, Powell & Leon LLP

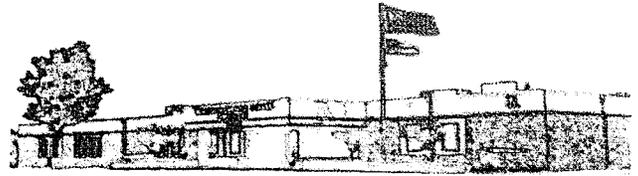
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Maud ISD, McLeod ISD, Miller Grove SD, Mt. Pleasant ISD, Pewitt CISD, Queen City ISD, Roxton ISD, Sam Rayburn ISD, Simms ISD, and Sulphur Bluff SD.

# EXHIBIT A



# Region VIII Education Service Center



Tel: (903) 572-8551 • P.O. Box 1894 • Mount Pleasant, TX 75456-1894 • Fax: (903) 575-2611 • Web Site: [www.reg8.net](http://www.reg8.net)

Douglas May  
Schools and Libraries Division – Consortium Review  
Phone 973-581-5112  
FAX: 973-599-6576  
E-Mail: [dmay@sl.universalservice.org](mailto:dmay@sl.universalservice.org)

May 14, 2010

Dear Mr. May,

Regarding your questions dated May 7, 2010, here are my responses.

I.

Some of your documentation/LOAs did not match the Block 4 Entities **exactly**; please provide a cross reference to explain/eliminate any discrepancies. For Example:

- Schools A & B are listed on Block 4 and are related to School District Z for which for you are submitting an LOA.
- Block 4 lists the Main Street Library and your LOA is for the George Washington Library.

The following names did not match exactly; please provide an explanation.

**Response:**

**In Texas, school districts were named as either “Independent” or “Consolidated” depending upon whether smaller districts remained independent or joined as one. All of these school districts are “Independent” School Districts, abbreviated I.S.D.**

**When each school district’s Billed Entity Number was assigned long ago by Schools and Libraries Division, some of the names were shortened to fit required form-fields.**

**See the correct school district names highlighted, as follows:**

ENTITY #	BLOCK 4 NAME	LOA NAME
140597	HARTS BLUFF SCHOOL DISTRICT	HARTS BLUFF INDEPENDENT SCHOOL DISTRICT
140690	HUGHES SPRINGS SCHOOL DISTRICT	HUGHES SPRINGS INDEPENDENT SCHOOL DISTRICT
140579	MILLER GROVE INDEPENDENT SCHOOL DISTRICT	MILLER GROVE SCHOOL DISTRICT
140618	SULPHUR BLUFF INDEPENDENT SCHOOL DISTRICT	SULPHUR BLUFF SCHOOL DISTRICT
140619	SULPHUR SPRINGS SCHOOL DIST	SULPHUR SPRINGS INDEPENDENT SCHOOL DIST

*It is the vision of Region VIII Education Service Center to create a partnership between school districts, teachers, school board members, universities and community colleges, community members, and business leaders to provide quality services for school improvement that will prepare students to cope with the challenges of the future.*

II.

When you submitted your Letters of Agency (LOAs) or other documentation, you did not include LOAs for the following entities included on Block 4 Worksheet C of the FY2010 Form 471 application(s) 752417 & 756191. **If you neglected to include them with the other LOAs you submitted, please provide them at this time.**

Entity #	Entity Name
225949	EDUCATION SERVICE CENTER - REGION 8

If the LOAs or other documentation is not available this entity will be removed from the application;

**Response:**

**See the enclosed LOA for ESC 8 - Education Service Center Region 8.**

III.

The LOAs you have provided did not request Telecommunications Service.

Please provide supporting documentation, such as a project agreement, RFP, contract, letter of agreement or other similar documentation that can demonstrate that the missing or correctable element(s) was in place prior to or on the Form 471 certification postmark date (CPD), to resolve the error and/or to fulfill the required LOA element(s).

**Response:**

**See the enclosed LOA clarification letters from the NTRETN member school districts that they are receiving Telecommunications Services from NTRETN via their connection to the leased WAN. Also see the NTRETN Contracts "Trillion NTRETN Services Agreement – WAN A" and "Trillion NTRETN Services Agreement – WAN B" indicating Telecommunications Services delivered to each NTRETN school-district member entity. These agreements clearly state "Digital Transmission" services and connection to Internet via WAN (Telecommunications Services).**

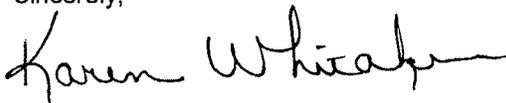
IV.

If the LOAs or other documentation is not available the applications will be denied based on documentation that you have provided (LOAs).

**Response:**

**The requested documentation has been provided therefore no cost allocation is necessary.**

Sincerely,



Karen Whitaker  
Director or Leadership Support  
Region 8 ESC  
kwhitaker@reg8.net

# EXHIBIT B

GOVERNMENT CODE

TITLE 7. INTERGOVERNMENTAL RELATIONS

CHAPTER 791. INTERLOCAL COOPERATION CONTRACTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 791.001. PURPOSE. The purpose of this chapter is to increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the state.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.002. SHORT TITLE. This chapter may be cited as the Interlocal Cooperation Act.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.003. DEFINITIONS. In this chapter:

(1) "Administrative functions" means functions normally associated with the routine operation of government, including tax assessment and collection, personnel services, purchasing, records management services, data processing, warehousing, equipment repair, and printing.

(2) "Interlocal contract" means a contract or agreement made under this chapter.

(3) "Governmental functions and services" means all or part of a function or service in any of the following areas:

- (A) police protection and detention services;
- (B) fire protection;
- (C) streets, roads, and drainage;
- (D) public health and welfare;
- (E) parks and recreation;
- (F) library and museum services;
- (G) records center services;

- (H) waste disposal;
- (I) planning;
- (J) engineering;
- (K) administrative functions;
- (L) public funds investment;
- (M) comprehensive health care and hospital services;

or

(N) other governmental functions in which the contracting parties are mutually interested.

(4) "Local government" means a:

(A) county, municipality, special district, junior college district, or other political subdivision of this state or another state;

(B) local government corporation created under Subchapter D, Chapter 431, Transportation Code;

(C) political subdivision corporation created under Chapter 304, Local Government Code;

(D) local workforce development board created under Section 2308.253; or

(E) combination of two or more entities described by Paragraph (A), (B), (C), or (D).

(5) "Political subdivision" includes any corporate and political entity organized under state law.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 823, Sec. 1, eff. Sept. 1, 1993;

Acts 2001, 77th Leg., ch. 98, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 301, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1317, Sec. 1, eff. June 18, 2005.

Sec. 791.004. INTERLOCAL CONTRACT; DUAL OFFICE HOLDING. A person acting under an interlocal contract does not, because of that action, hold more than one civil office of emolument or more than one office of honor, trust, or profit.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.005. EFFECT OF CHAPTER. This chapter does not affect an act done or a right, duty, or penalty existing before May 31, 1971.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.006. LIABILITY IN FIRE PROTECTION CONTRACT OR PROVISION OF LAW ENFORCEMENT SERVICES. (a) If governmental units contract under this chapter to furnish or obtain services of a fire department, such as training, fire suppression, fire fighting, ambulance services, hazardous materials response services, fire and rescue services, or paramedic services, the governmental unit that would have been responsible for furnishing the services in the absence of the contract is responsible for any civil liability that arises from the furnishing of those services.

(a-1) Notwithstanding Subsection (a), if a municipality, county, rural fire prevention district, emergency services district, fire protection agency, regional planning commission, or joint board enters into a contract with a governmental unit under this chapter to furnish or obtain fire or emergency services, the parties to the contract may agree to assign responsibility for civil liability that arises from the furnishing or obtaining of services under the contract in any manner agreed to by the parties. To assign responsibility for civil liability under this subsection, the parties to the contract must assign responsibility in a written provision of the contract that specifically references this subsection and states that the assignment of liability is intended to be different than liability otherwise assigned under Subsection (a).

(b) In the absence of a contract, if a municipality or county furnishes law enforcement services to another municipality or county, the governmental unit that requests and obtains the services is responsible for any civil liability that arises from the furnishing of those services.

(c) Nothing in this section adds to or changes the liability limits and immunities for a governmental unit provided by the Texas Tort Claims Act, Chapter 101, Civil Practice and Remedies Code, or other law.

(d) Notwithstanding any other provision of this chapter, a contract under this chapter is not a joint enterprise for the purpose of assigning or determining liability.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 811, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1337, Sec. 16, eff. June 18, 2005.

#### SUBCHAPTER B. GENERAL INTERLOCAL CONTRACTING AUTHORITY

Sec. 791.011. CONTRACTING AUTHORITY; TERMS. (a) A local government may contract or agree with another local government or a federally recognized Indian tribe, as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1, whose reservation is located within the boundaries of this state to perform governmental functions and services in accordance with this chapter.

(b) A party to an interlocal contract may contract with a:

(1) state agency, as that term is defined by Section 771.002; or

(2) similar agency of another state.

(b-1) A local government that is authorized to enter into an interlocal contract under this section may not contract with an Indian tribe that is not federally recognized or whose reservation is not located within the boundaries of this state.

(c) An interlocal contract may be to:

(1) study the feasibility of the performance of a governmental function or service by an interlocal contract; or

(2) provide a governmental function or service that each party to the contract is authorized to perform individually.

(d) An interlocal contract must:

(1) be authorized by the governing body of each party to the contract unless a party to the contract is a municipally owned electric utility, in which event the governing body may establish procedures for entering into interlocal contracts that do not exceed \$100,000 without requiring the approval of the governing body;

(2) state the purpose, terms, rights, and duties of the contracting parties; and

(3) specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

(e) An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract.

(f) An interlocal contract may be renewed annually.

(g) A governmental entity of this state or another state that makes purchases or provides purchasing services under an interlocal contract for a state agency, as that term is defined by Section 771.002, must comply with Chapter 2161 in making the purchases or providing the services.

(h) An interlocal contract between a governmental entity and a purchasing cooperative may not be used to purchase engineering or architectural services.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1999, 76th Leg., ch. 405, Sec. 47, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 98, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 257, Sec. 1, eff. May 30, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1213, Sec. 12, eff. September 1, 2007.

Sec. 791.012. LAW APPLICABLE TO CONTRACTING PARTIES. Local governments that are parties to an interlocal contract for the performance of a service may, in performing the service, apply the law applicable to a party as agreed by the parties.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 176, Sec. 1, eff. May 21, 1997.

Sec. 791.013. CONTRACT SUPERVISION AND ADMINISTRATION. (a) To supervise the performance of an interlocal contract, the parties to the contract may:

- (1) create an administrative agency;
- (2) designate an existing local government; or

(3) contract with an organization that qualifies for exemption from federal income tax under Section 501(c), Internal Revenue Code of 1986, as amended, that provides services on behalf of political subdivisions or combinations of political subdivisions and derives more than 50 percent of its gross revenues from grants, funding, or other income from political subdivisions or combinations of subdivisions.

(b) The agency, designated local government, or organization described by Subsection (a)(3) may employ personnel, perform administrative activities, and provide administrative services necessary to perform the interlocal contract.

(c) All property that is held and used for a public purpose by the administrative agency or designated local government is exempt from or subject to taxation in the same manner as if the property were held and used by the participating political subdivisions.

(d) An administrative agency created under this section may acquire, apply for, register, secure, hold, protect, and renew under the laws of this state, another state, the United States, or any other nation:

(1) a patent for the invention or discovery of:

(A) any new and useful process, machine, manufacture, composition of matter, art, or method;

(B) any new use of a known process, machine, manufacture, composition of matter, art, or method; or

(C) any new and useful improvement on a known process, machine, manufacture, composition of matter, art, or method;

(2) a copyright of an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which the work may be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device;

(3) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan that the agency uses to identify and distinguish the agency's goods and services from other goods and services; and

(4) other evidence of protection of exclusivity issued for intellectual property.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 481, Sec. 1, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 301, Sec. 3, eff. Sept. 1, 2003.

Sec. 791.014. APPROVAL REQUIREMENT FOR COUNTIES. (a) Before beginning a project to construct, improve, or repair a building, road, or other facility under an interlocal contract, the commissioners court of a county must give specific written approval for the project.

(b) The approval must:

- (1) be given in a document other than the interlocal contract;
- (2) describe the type of project to be undertaken; and
- (3) identify the project's location.

(c) The county may not accept and another local government may not offer payment for a project undertaken without approval required by this section.

(d) A county is liable to another local government for the amount paid by the local government to the county for a project requiring approval under this section if:

- (1) the county begins the project without the approval required by this section; and
- (2) the local government makes the payment before the project is begun by the county.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.015. SUBMISSION OF DISPUTES TO ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. Local governments that are parties to an interlocal contract may provide in the contract for the submission of disputes arising under the contract to the alternative dispute resolution procedures authorized by Chapter 2009.

Added by Acts 2001, 77th Leg., ch. 666, Sec. 1, eff. Sept. 1, 2001.

#### SUBCHAPTER C. SPECIFIC INTERLOCAL CONTRACTING AUTHORITY

Sec. 791.021. CONTRACTS FOR REGIONAL CORRECTIONAL

FACILITIES. The parties to an interlocal contract may contract with the Texas Department of Criminal Justice for the construction, operation, and maintenance of a regional correctional facility if:

- (1) title to the land on which the facility is to be constructed is deeded to the department; and
- (2) the parties execute a contract relating to the payment of costs for housing, maintenance, and rehabilitative treatment of persons held in jails who cannot otherwise be transferred under authority of existing statutes to the direct responsibility of the department.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 25.080, eff. September 1, 2009.

Sec. 791.022. CONTRACTS FOR REGIONAL JAIL FACILITIES. (a) In this section:

(1) "Facility" means a regional jail facility constructed or acquired under this section.

(2) "Jailer" means a person with authority to supervise the operation and maintenance of a facility as provided by this section.

(b) A political subdivision of the state, by resolution of its governing body, may contract with one or more political subdivisions of the state to participate in the ownership, construction, and operation of a regional jail facility.

(c) The facility must be located within the geographic boundaries of one of the participating political subdivisions. The facility is not required to be located in a county seat.

(d) Before acquiring and constructing the facility, the participating political subdivisions shall issue bonds to finance the facility's acquisition and construction. The bonds must be issued in the manner prescribed by law for issuance of permanent improvement bonds.

(e) To supervise the operation and maintenance of a facility, the participating political subdivisions may agree to:

(1) appoint as jailer of the facility the police chief or sheriff of the political subdivision in which the facility is located;

(2) form a committee composed of the sheriff or police chief of each participating political subdivision to appoint a jailer of the facility; or

(3) authorize the police chief or sheriff of each participating political subdivision to continue to supervise and manage those prisoners incarcerated in the facility under the authority of that officer.

(f) If participating political subdivisions provide for facility supervision under Subsection (e), the person designated to supervise operation and maintenance of the facility shall supervise the prisoners incarcerated in the facility.

(g) When a prisoner is transferred from the facility to the originating political subdivision, the appropriate law enforcement officer of the originating political subdivision shall assume supervision and responsibility for the prisoner.

(h) While a prisoner is incarcerated in a facility, a police chief or sheriff not assigned to supervise the facility is not liable for the escape of the prisoner or for any injury or damage caused by or to the prisoner unless the escape, injury, or damage is directly caused by the police chief or sheriff.

(i) The political subdivisions may employ or authorize the jailer of the facility to employ personnel necessary to operate and maintain the facility.

(j) The jailer of the facility and any assistant jailers must be commissioned peace officers.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.023. CONTRACTS FOR STATE CRIMINAL JUSTICE FACILITIES. The state or an agency of the state may contract with one or more entities to finance, construct, operate, maintain, or manage a criminal justice facility provided, in the exercise of the governmental power, for the benefit of the state in accordance with this chapter and:

- (1) Subchapter A, Chapter 494, Government Code;
- (2) Subchapter D, Chapter 361, Local Government Code; or
- (3) the Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271, Local Government Code).

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.024. CONTRACTS FOR COMMUNITY CORRECTIONS FACILITIES. A community supervision and corrections department established under Section 76.002 may agree with the state, an agency of the state, or a local government to finance, construct, operate, maintain, or manage a community corrections facility under Section 76.010(b) or a county correctional center under Subchapter H, Chapter 351, Local Government Code.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 7.18, eff. Sept. 1, 1995.

Sec. 791.025. CONTRACTS FOR PURCHASES. (a) A local government, including a council of governments, may agree with another local government or with the state or a state agency, including the comptroller, to purchase goods and services.

(b) A local government, including a council of governments, may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and any services reasonably required for the installation, operation, or maintenance of the goods. This subsection does not apply to services provided by firefighters, police officers, or emergency medical personnel.

(c) A local government that purchases goods and services under this section satisfies the requirement of the local government to seek competitive bids for the purchase of the goods and services.

(d) In this section, "council of governments" means a regional planning commission created under Chapter 391, Local Government Code.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 28, Sec. 1, eff. April 27, 1995;  
Acts 1997, 75th Leg., ch. 826, Sec. 1, eff. June 18, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937, Sec. 1.62, eff. September 1, 2007.

Sec. 791.026. CONTRACTS FOR WATER SUPPLY AND WASTEWATER TREATMENT FACILITIES. (a) A municipality, district, or river authority of this state may contract with another municipality, district, or river authority of this state to obtain or provide part or all of:

(1) water supply or wastewater treatment facilities; or  
(2) a lease or operation of water supply facilities or wastewater treatment facilities.

(b) The contract may provide that the municipality, district, or river authority obtaining one of the services may not obtain those services from a source other than a contracting party, except as provided by the contract.

(c) If a contract includes a term described by Subsection (b), payments made under the contract are the paying party's operating expenses for its water supply system, wastewater treatment facilities, or both.

(d) The contract may:

(1) contain terms and extend for any period on which the parties agree;

(2) require the purchaser to develop alternative or replacement supplies prior to the expiration date of the contract and may provide for enforcement of such terms by court order; and

(3) provide that it will continue in effect until bonds specified by the contract and any refunding bonds issued to pay those bonds are paid.

(e) Where a contract sets forth explicit expiration provisions, no continuation of the service obligation will be implied.

(f) Tax revenue may not be pledged to the payment of amounts agreed to be paid under the contract.

(g) The powers granted by this section prevail over a

limitation contained in another law.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 2.01, eff. Sept. 1, 1997.

Sec. 791.027. EMERGENCY ASSISTANCE. (a) A local government may provide emergency assistance to another local government, whether or not the local governments have previously agreed or contracted to provide that kind of assistance, if:

(1) in the opinion of the presiding officer of the governing body of the local government desiring emergency assistance, a state of civil emergency exists in the local government that requires assistance from another local government and the presiding officer requests the assistance; and

(2) before the emergency assistance is provided, the governing body of the local government that is to provide the assistance authorizes that local government to provide the assistance by resolution or other official action.

(b) This section does not apply to emergency assistance provided by law enforcement officers under Chapter 362, Local Government Code.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.028. CONTRACTS FOR JOINT PAYMENT OF ROAD CONSTRUCTION AND IMPROVEMENTS. (a) In this section:

(1) "Highway project" means the acquisition, design, construction, improvement, or beautification of a state or local highway, turnpike, or road project.

(2) "Transportation corporation" means a corporation created under Chapter 431, Transportation Code.

(b) A local government may contract with another local government, a state agency, or a transportation corporation to pay jointly all or part of the costs of a highway project, including the cost of an easement or interest in land required for or beneficial to the project.

(c) A local government and a transportation corporation, in accordance with a contract executed under this section, may:

- (1) jointly undertake a highway project;
- (2) acquire an easement, land, or an interest in land, in or outside a right-of-way of a highway project, as necessary for or beneficial to a highway project; or
- (3) adjust utilities for the project.

(d) If a contract under this section provides for payments over a term of years, a local government may levy ad valorem taxes in an amount necessary to make the payments required by the contract as they become due.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.196, eff. Sept. 1, 1997.

Sec. 791.029. CONTRACTS FOR REGIONAL RECORDS CENTERS. (a) By resolution of its governing body, a political subdivision of the state may contract with another political subdivision of the state to participate in the ownership, construction, and operation of a regional records center.

(b) Before acquiring or constructing the records center, a participating political subdivision may issue bonds to finance the acquisition and construction of the records center in the manner prescribed by law for the issuance of permanent improvement bonds.

(c) The records center may not be used to store a record whose retention period is listed as permanent on a records retention schedule issued by the Texas State Library and Archives Commission under Section 441.158, unless the center meets standards for the care and storage of records of permanent value established by rules adopted by the commission under Section 203.048, Local Government Code.

(d) The Texas State Library and Archives Commission shall provide assistance and advice to local governments in the establishment and design of regional records centers.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.030. HEALTH CARE AND HOSPITAL SERVICES. A local government may contract with another local government authorized to provide health care and hospital services to provide those services for the local government's officers and employees and their dependents.

Added by Acts 1993, 73rd Leg., ch. 823, Sec. 2, eff. Sept. 1, 1993.

Sec. 791.031. TRANSPORTATION INFRASTRUCTURE. (a) This section applies only to a local government, other than a school district, that is authorized to impose ad valorem taxes on real property.

(b) The Texas Department of Transportation may enter into an interlocal contract with a local government for the financing of transportation infrastructure that is constructed or that is to be constructed in the territory of the local government by the department in a corridor of land on which no existing state or federal highway is located.

(c) The agreement must include:

(1) the duration of the agreement, which may not exceed 12 years;

(2) a description of each transportation infrastructure project or proposed project;

(3) a map showing the location of each project and property included in the contract; and

(4) an estimate of the cost of each project.

(d) The agreement may establish one or more transportation infrastructure zones. The Texas Department of Transportation and the local government may agree that at one or more specified times, the local government will pay to the Texas Department of Transportation an amount that is calculated on the basis of increased ad valorem tax collections in a zone that are attributable to increased values of property located in the zone resulting from an infrastructure project. The amount may not exceed an amount that is equal to 30 percent of the increase in ad valorem tax collections for the specified period.

(e) Money received by the Texas Department of Transportation under this section may be used:

(1) to provide a local match for the acquisition of right-of-way in the territory of the local government; or

(2) for design, construction, operation, or maintenance of transportation facilities in the territory of the local government.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.33, eff. Sept. 1, 1997.

Sec. 791.032. CONSTRUCTION, IMPROVEMENT, AND REPAIR OF STREETS IN MUNICIPALITIES. With the approval of the governing body of a municipality, a local government may enter into an interlocal contract with the municipality to finance the construction, improvement, maintenance, or repair of streets or alleys in the municipality, including portions of the municipality's streets or alleys that are not an integral part of or a connecting link to other roads or highways.

Added by Acts 1999, 76th Leg., ch. 671, Sec. 1, eff. Sept. 1, 1999.

Sec. 791.033. CONTRACTS TO CONSTRUCT, MAINTAIN, OR OPERATE FACILITIES ON STATE HIGHWAY SYSTEM. (a) In this section, "state highway system" means the highways in this state included in the plan providing for a system of state highways prepared under Section 201.103, Transportation Code.

(b) A local government may enter into and make payments under an agreement with another local government for the design, development, financing, construction, maintenance, operation, extension, expansion, or improvement of a toll or nontoll project or facility on the state highway system located within the boundaries of the local government or, as a continuation of the project or facility, within the boundaries of an adjacent local government.

(c) An agreement under this section must be approved by the Texas Department of Transportation.

(d) Notwithstanding Section 791.011(d), to make payments under an agreement under this section, a local government may:

(1) pledge revenue from any available source, including payments received under an agreement with the Texas Department of

Transportation under Section 222.104, Transportation Code;

(2) pledge, levy, and collect taxes to the extent permitted by law; or

(3) provide for a combination of Subdivisions (1) and (2).

(e) The term of an agreement under this section may not exceed 40 years.

(f) Any election required to permit action under this section must be held in conformance with the Election Code or other law applicable to the local government.

(g) In connection with an agreement under this section, a county or municipality may exercise any of the rights and powers granted to the governing body of an issuer under Chapter 1371.

(h) This section is wholly sufficient authority for the execution of agreements, the pledge of revenues, taxes, or any combination of revenues and taxes, and the performance of other acts and procedures authorized by this section by a local government without reference to any other provision of law or any restriction or limitation contained in those provisions, except as specifically provided by this section. To the extent of any conflict or inconsistency between this section and any other law, this section shall prevail and control. A local government may use any law not in conflict with this section to the extent convenient or necessary to carry out any power or authority, expressed or implied, granted by this section.

Added by Acts 2005, 79th Leg., Ch. 281, Sec. 2.89, eff. June 14, 2005.

Sec. 791.034. INTERLOCAL CONTRACT FOR RELIEF HIGHWAY ROUTE AROUND CERTAIN MUNICIPALITIES. (a) The governing body of a municipality located in a county in which is located a facility licensed to dispose of low-level radioactive waste under Chapter 401, Health and Safety Code, may enter into an interlocal contract with the county for the construction and maintenance of a relief highway route around and outside the boundaries of the municipality that the governing body determines will serve a public purpose of the municipality.

(b) The municipality may expend municipal funds and may issue certificates of obligation or bonds to pay for expenses associated with a relief highway route under Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 357, Sec. 1, eff. June 19, 2009.

# EXHIBIT C

**NORTHEAST TEXAS REGIONAL  
EDUCATION TELECOMMUNICATIONS NETWORK**

**INTERLOCAL CONTRACT**

Effective as of the 9th day of April, 1997, the undersigned Public Independent School Districts (the "ISDs"), Public Community College Districts and Universities ("Higher Education"), and Region VIII Education Service Center ("Region VIII") all collectively referred to as the "Parties," entered into the following Agreement:

**ARTICLE ONE**

**ORGANIZATION, POWERS AND DUTIES**

**1.01 NAME:** The name of the administrative agency created by this Agreement is the "Regional Education Telecommunications Network," referred to in this Agreement as "RETN."

**1.02 MISSION:** The administrative agency, RETN, is a consortium of public nonprofit education institutions formed to plan, coordinate and facilitate the cooperative development and operation of a regional integrated telecommunications network (the "Network"), to enable members to better serve the population of the Northeast area of the State of Texas, to further the mission of its respective members, and to contribute to improved student learning and the overall educational development of the region (the "Mission").

**1.03 AUTHORITY:** The Parties enter into this Agreement pursuant to the Interlocal Cooperation Act, Government Code, Section 791.001, et seq, of the Texas Revised Civil Statutes, as amended (the "Gov. Code" or the "Act"). The Act authorizes, and the Parties agree, that they can cooperatively provide and achieve governmental functions and services by coordinating their efforts through this Interlocal Contract, thereby avoiding duplication of expenses, conserving and coordinating the use of public funds, and making the Network available to the entire Northeast area of the State of Texas.

**1.04 GOVERNMENTAL NEEDS:** The governmental entities which are Parties to this Agreement and their public constituents need high quality telecommunications transmission capability to interconnect their facilities to provide enhanced services to their employees, students and to the public for education, video conferencing, information and data access and transfer, and other services that may be available through the Network. The Parties agree that there are valid governmental purposes served by implementing and operating the Network.

**1.05 POWERS OF THE AGENCY:** In addition to, and not in derogation of any other power granted by statute, or otherwise, RETN shall have the following powers to:

- a. Employ personnel, perform administrative and fiscal activities, enter into and enforce contracts in its own name, purchase goods and services and provide administrative services, all as necessary or appropriate to perform the Mission of RETN;
- b. Designate, contract with or otherwise secure the services of, one or more local governments to perform any or all of the services which RETN could perform or which are necessary or appropriate to further the Mission of RETN;

- c. Apply for and receive grants and other funding from governmental and private sources on the same basis as other "local governmental entities" as defined in Government Code Subsections 791.003.(4), (A) and (B);
- d. Oversee implementation of, and manage, the Network; and
- e. Perform such other duties and exercise such other powers as may be necessary or appropriate to further the Mission of RETN.
- f. Region VIII ESC is designated as fiscal agent.

**ARTICLE TWO  
MEMBERS**

**2.01 MEMBERS:** RETN will have Members, which will initially be those Parties signatory to this Agreement. Members must be local governmental entities as defined in Gov. Code Subsections 791.003.(4), (A) or (B). Additional Members may be added, on such terms and conditions as the Board of Directors may deem appropriate. New Members shall become parties to this Agreement by execution of an Addendum to this Agreement.

**2.02 CLASSES OF MEMBERS:**

- a. Members shall be divided into Classes, determined by which group of governmental entity a Member belongs. The Classes of Membership shall initially consist of the following:
  - o ISDs
  - o ~~Higher Education-Other~~
- b. Subject to Member approval, the Board of Directors may add additional Classes of Members as it may deem appropriate and may add a Class of Affiliate Members composed of Network users that are not eligible for Full Membership. Affiliate Members shall be entitled to voice, but not entitled to vote, on any matter.
- c. A Member may belong to only one Class of Membership at any time; provided however, that counties and municipalities may join as "Local Governments" or as "Public Libraries", or both, upon payment of dues and assessments applicable to each Class of Membership, and shall be entitled to exercise full powers of the Class or Classes of Membership joined. Upon acceptance of an entity's request for admission to Membership, if the applicant has not requested Membership in a particular Class, the Board of Directors shall assign that entity to the Class of Membership that it determines appropriate. With the approval of the Board of Directors, and in extraordinary circumstances, a Member may change from one Class of Membership to another.
- d. Membership interests are transferable only with the prior written consent of, and upon the terms and conditions set by the Board of Directors.

**2.03 VOTING BY MEMBERS:**

- a. Members shall be entitled to one vote on each matter submitted by the Board of Directors to a vote of the Members, and of those matters requiring approval of the Member, as set out in Article Three, Section 3.01 of this Agreement. A Member's one vote shall be cast by the person serving in the highest executive and administrative position in a particular governmental entity (i.e., the superintendent in an ISD, the president of a college or university or the executive director of an organization such as ESC VIII), collectively referred to as the "Chief Administrative Officer" in this Agreement. The Chief Administrative Officer of a Member may vote by proxy.

- b. Members shall vote by Classes. Each Class of Membership shall determine how decisions are made as to that Class of Membership. Initially, and until the members determine a different method, a majority of the Members of each Class shall represent a quorum and a majority of those Members present at a meeting at which a quorum is present shall be the act of the Members voting in each Class to determine the outcome of any matter on which a vote is taken, as to that Class of Membership. If a Class decides to use a different method of taking action, it will notify the Board of Directors and all the Members of that Class.
- c. Action may be taken by the Members of all Classes as a whole, upon approval by the ISD Class of Membership, plus any two of the other Classes of Membership.
- d. Meetings of any Class of Members may be called by any of the Directors representing that Class or by ten percent (10%) of the Members of that Class.
- e. Subject to the provisions required or permitted by this Agreement for notice of meetings, Members may participate in and hold meetings of Members by means of conference telephone, video conference or other electronic means by which all persons participating in a meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence of a person at such meeting.

#### **2.04 ENTITLEMENT TO FUNDING AND PREFERENCE:**

- a. Status as a Member shall not by itself entitle a governmental entity to share, pro-rata or otherwise, in any equipment, grants or other funding secured by RETN. The Parties recognize that some equipment, grants or funding may be specific to a particular area or group of entities, and that other entities outside that area, or not otherwise included in the group of entities specified, may not participate in or otherwise receive any portion of the equipment or funding, even though the applicant for the funding is RETN. The Members recognize that RETN's Board of Directors will be bound by the terms of particular grants, and that Members may receive funds received by grant only in compliance with the terms and conditions of the particular grant.
- b. Subject to subsection 2.04 (a), distributions of equipment and funds will be at the discretion of the Board of Directors provided, however, that Members will, except in extraordinary circumstances, be preferred over Affiliate Members and Non-Members in any distribution of equipment or funds, and in provision of, or access to, Network services.

#### **2.05 DUES, ASSESSMENTS AND FEES:**

- a. The Members shall pay annual dues, which annual dues shall initially be \$25.00 per Member for the fiscal year beginning September 1, 1997. In its discretion, the Board of Directors may vary the amounts of dues to be paid, both as among Members and among Classes of Members, with such variances being based on various factors, including, but not limited to, relative size of a particular Member, geographic locations, ability to pay and other factors that may cause the Board to vary the amounts of dues.
- b. The Members shall pay assessments as the Board of Directors, subject to Member approval, may from time-to-time levy for fixed and variable operating and capital costs of the Network.

- c. The fees paid by Members for use of the Network shall be lower than the fees paid by Affiliate Members and Non-Members, taking into consideration that Members are paying dues and any assessments.

**2.06 TERMINATION OF MEMBERSHIP:** Membership privileges may be terminated in three ways:

- a. non-payment of dues or assessments, which will automatically terminate an entity's status as Member ninety (90) days after the date on which the dues or assessments are payable unless the Board of Directors decide to delay the effective date of termination for compelling reasons;
- b. a decision by not less than an 80% vote of the Board of Directors that a particular entity's continued Membership is not in the best interests of RETN; and
- c. an affirmative action by a Member to withdraw, which withdrawal shall be effective six months subsequent to the date of the notice of termination.

**2.07 EFFECT OF TERMINATION OF MEMBERSHIP:** Upon termination of an entity's Membership in RETN, the Member shall within thirty (30) days after the effective date of termination, either return the equipment, hardware and software (the "Equipment") acquired from or through RETN, or pay RETN the reasonable replacement value of such Equipment on such terms and subject to such conditions as may be contained in any contract by which the Member received the Equipment. Member agrees to grant reasonable access to RETN personnel to remove Equipment, or to disconnect Member from the Network. Upon termination of Membership, all connections with RETN shall, at the discretion of the Board of Directors of RETN, be severed. Termination shall not relieve the Member or RETN of any liability to the other which arose or was incurred prior to the effective date of the termination of Membership.

**2.08 LOCAL CONTROL:** Notwithstanding any other provision of this Agreement, each Member shall retain sole control of buildings owned by it and the Member shall be the final decision-maker with respect to:

- a. scheduling and content of programs accessed through the Network in its buildings;
- b. which entities and persons may use its buildings and when they or any of them will have access;
- c. which entities or persons will have access and when they or any of them will have access to the Network through facilities located in the Member's buildings; provided, however, that for purposes of carrying out the Mission of RETN, such as hardware and software installation, maintenance and repair to assure performance of the Network, or to remove or disconnect Equipment upon termination of Membership, RETN personnel shall, upon reasonable notice, have access at reasonable times, for reasonable periods, to the buildings owned by Members.

### ARTICLE THREE

#### DIRECTORS

**3.01 GOVERNANCE:** The affairs of RETN shall be managed by its Board of Directors; provided, however, that the affirmative action of the Classes of Membership as a whole shall be necessary to effectuate each of the following matters:

- a. creating of a new Class of Membership or Affiliate Membership;

- b. increasing or decreasing the size of the Board of Directors;
- c. increasing the dues of Members or Classes of Members by more than twenty percent (20%) in any fiscal year;
- d. levying any financial assessment against Members;
- e. amending this Agreement or any Bylaws of RETN; and
- f. dissolving RETN.

**3.02 DUTIES:** The Board of Directors shall have the duty to establish and implement the Network, which shall include, but not be limited to the following duties:

- a. Promote the exchange of services and information within the Network area;
- b. To the extent practicable, provide equitable access to the Network for communities in the Network area;
- c. Provide expertise to the Network Members;
- d. Assure Network reliability and ease of use;
- e. Facilitate cooperative resource sharing;
- f. Facilitate the development of programs and services responsive to the needs of the Network area;
- g. Assure the design of a Network which complies with current and projected industry standards and set specifications for both hardware and software that Members may use on, or in connection with, the Network;
- h. Provide end-user training and support and Network coordination and management;
- i. Maintain reasonable, quality service which is, to the extent practicable, economically sustainable for all Members;
- j. Promote regular communications and cooperation among Members;
- k. Seek sources of funding for Network activities, apply for grants available to RETN by virtue of its management of the Network, or otherwise, and coordinate any grant applications made by the Members;
- l. Allocate any financial support and equipment obtained, including any grants obtained through RETN in accordance with the terms of the grants;
- m. Identify common needs and problems and define innovative solutions;
- n. Establish procedures regarding maintenance projects so as to minimize disruption of use of the Network;
- o. Establish reasonable Network policies and procedures to ensure secure, efficient and continuous service to the Members and set standards against which such services may be measured;
- p. Determine fees for use of the Network by Members, Affiliate Members and Non-Members;

- q. Determine when, whether and the amounts of any assessments of Members (keeping in mind that assessments need not be uniform, pro-rata, or even cover all Members but can take into account various factors including, but not limited to, relative sizes of Members and the need for matching funds at particular locations);
- r. Prepare annual operating and capital budgets for the upcoming three years period; and
- s. Perform such other duties, and exercise such other powers as may be deemed by the Board to be necessary or appropriate to carry out the governmental and proprietary uses of the Network which might appropriately be performed by RETN as a governmental entity.

**3.03 NUMBER:** The number of Directors shall be not less than three (3) no more than thirty (30). Within this range of numbers, the Board of Directors shall establish by resolution, from time to time, the number of persons who will compose the Board of Directors.

**3.04 ELECTION OF DIRECTORS:**

- a. Those Directors representing the respective Classes of Membership shall be elected by the Members of each Class of Membership. Unexpired terms shall be filled by board appointment. ~~as terms expire or vacancies occur within that Class.~~
- b. In addition to the Directors representing the various Classes of Members, the Board of Directors may elect up to three members of the public (the "Public" Directors).
- c. Notwithstanding any other provision of this Agreement, the Directors representing the ISD Class of Members shall always represent no less than fifty-one percent (51%) of the total Board of Directors. In determining this fifty percent (50%) Board representation, Region VIII Education Service Center shall be counted as representing the ISD Class of Members. The Board of Directors shall declare vacancies and new Directors shall be elected or the Board shall seek the resignation or removal of Directors as necessary with respect to the representatives of any Class of Membership required to attain and maintain this fifty percent (51%) level of representation.
- d. Notwithstanding any other provisions of this Agreement, Region VIII ESC, shall have a representative Director on the Board of Directors for so long as ESC VIII is a Member of RETN, current in payment of its dues and any assessments.
- e. The initial Board of Directors shall be composed of the following number of Directors as set-forth below:

Number of Directors	
ISDs	12
Greater Than 1,200	3
Greater Than 700	3
Greater Than 300	3
Less Than 300	3

~~Higher Education ..... (maximum) 5  
 (Each Higher Institution member will be entitled to one vote)~~

Region VIII 1

Total Directors ..... 16 13

**3.05 QUALIFICATIONS OF DIRECTORS:** Except for the Directors chosen from the Public, who will not be Members or representatives of Members, all Directors shall be the Chief Administrative Officer (or the Chief Administrative Officer's designated proxy) of Members of RFTN which are current with respect to payment of dues and any assessments. Termination of Membership for any reason will constitute an automatic resignation by any Director or Directors representing that Member.

**3.06 TERMS OF DIRECTORS:**

- a. The Members of the Board of Directors shall be elected to serve staggered terms of three (3) years, unless elected to fill the remaining term of a vacant position on the Board, and except as to the initial Directors.
- b. The initial Directors shall draw lots to determine which Directors will serve one (1) year terms, which Directors will serve two (2) terms, and which Directors will serve three (3) year terms.

**3.07 ACTION BY DIRECTORS:**

- a. A ~~majority of the~~ total number of at least four Directors then qualified and acting shall constitute a quorum for any meeting of the Board of Directors. Once a quorum is present at any meeting of the Board, each Director shall be entitled to one vote upon each matter upon which the Directors vote. The vote of the majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board unless a greater number is required by this Agreement.
- b. At any meeting of the Board, Directors may be present by proxy and may vote on any question, or may vote by any electronic or telephonic means approved by the Board.

**3.08 MEETINGS:** The Board of Directors shall meet at least quarterly, or more often as needed, at such time and place as the Board may, from time-to-time decide. The Board Chair or any six (6) or more Directors may call special meetings of the Board of Directors.

**3.09 ELECTRONIC OR TELEPHONIC MEETINGS:** Subject to the provisions required or permitted by this Agreement for notice of meetings, members of the Board or members of any committee designated by the Board may participate in and hold meetings of the Board or any committee by means of conference telephone, video conference or other electronic means by which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence of a person at such meeting.

**ARTICLE FOUR**

**DUES, ASSESSMENTS AND PAYMENTS**

**4.01 CURRENT REVENUES AND DEBT:** Notwithstanding anything to the contrary that may be contained in this Agreement, all dues, assessments and payments by a Member under this Agreement must be made from current revenues available to that Member. All payments under this Agreement must be in amounts that fairly compensate the performing party for the services or functions performed under this Agreement.

**ARTICLE FIVE****TERM**

**5.01 TERM:** This Agreement shall continue in force and effect for a period of 10 years from the date of this Agreement and for successive five (5) year terms thereafter, unless sooner terminated; provided, however, that in the event Gov. Code Section 791.001 (f) requires an annual renewal of this Agreement, the Members shall be deemed to have elected to renew the Agreement annually on the anniversary date of the Agreement unless the Members decide to terminate the Agreement by not less than an 80% vote of two Classes of Membership, one of which must be the ISD Class of Membership.

**5.02 WITHDRAWAL:** Notwithstanding Section 5.01 of this Agreement, any Member may withdraw at any time from this Agreement pursuant to Section 2.06 of this Agreement.

**ARTICLE SIX****GENERAL PROVISIONS**

**6.01 CONSTRUCTION:** This Agreement shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the Members and RETN created by this Agreement are performable in Titus County, Texas.

**6.02 AUTHORIZATION:** Each Member, by becoming a party-signatory to this Agreement, represents and warrants to the other Members that its respective governing body has authorized and approved the inter-local contract represented by this Agreement, that all required approvals have been obtained, and all prerequisites to the execution, delivery and performance of this Agreement have been obtained by or on behalf of the Member.

**6.03 FISCAL YEAR:** The fiscal year of RETN shall be September 1 through August 31.

**6.04 AUDIT:** The Board of Directors shall cause an annual audit of the books and records of RETN to be conducted. A copy of the audit shall be made available to each Member.

**6.05 STAFF:** Any person employed or retained by RETN who remains employed by a Member or other organization shall be subject to the personnel rules that apply to other employees of that Member or other organization.

**6.06 SEVERABILITY:** In the event any provision of this Agreement is held to be illegal, invalid or otherwise unenforceable, that holding shall not affect any other provision of this Agreement, and this Agreement shall be construed as if the unenforceable provision had never been included in this Agreement.

**6.07 PROXIES:** At any meeting of the Members, the Chief Administrative Officer, or at any Board Meeting or meeting of any committee designated by the Board, a Director, may be present by proxy and may vote by proxy on any question, provided that the instrument authorizing the proxy is in writing and executed by the Chief Administrative officer, or the Director, as the case may be and furnished to the person in charge of the meeting. Each

designation of proxy shall be revocable, either by personal appearance by the person granting the proxy or in writing.

**6.08 NOTICES:**

- a. Meetings of the Board of Directors of RETN shall be subject to the same notice and posting provisions as are the meetings of Region VIII and copies of notices of meetings of Members and Directors of RETN shall be sent to the office of the Secretary of State of the State of Texas, and to the Directors and Members of RETN.
- b. Meetings of a Class of Members shall be held only after at least three (3) days prior notice to the Members of that Class, except in the case of an emergency meeting, which may be held upon three (3) hours prior notice to Members. Any Member may waive notice prior to, during or after any meeting of Members.
- c. Each Member shall give the Board of Directors, or the person designated by the Board, the Member's correct mailing address, telephone number, FAX number and contact person, and notices shall be deemed delivered when properly addressed (i) three days after the deposit of the notice into the United States Mail, or (ii) immediately upon confirmation of receipt of a FAX transmission. Each Member shall be responsible for conveying any changes in the information with respect to the Member's mailing, telephone, FAX, or contact person.

This Agreement constitutes the entire agreement between and among the Members with respect to the Network, and supersedes any prior understandings, whether written or oral, with respect to the Network.

REDACTED – FOR PUBLIC INSPECTION

# EXHIBIT D

**REDACTED – FOR PUBLIC INSPECTION**

REDACTED – FOR PUBLIC INSPECTION

# EXHIBIT E

**REDACTED – FOR PUBLIC INSPECTION**

**REDACTED – FOR PUBLIC INSPECTION**