

RESOLUTION 2016-17R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING AN INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY AND THE SAN MARCOS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT FOR SHARED DATA CONNECTIVITY; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE AGREEMENT; AND DECLARING EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:


PART 1. The attached Interlocal Cooperation Agreement (the "Agreement") between the City of San Marcos and the San Marcos Consolidated Independent School District for shared data connectivity is approved.

PART 2. The City enters into this Interlocal Cooperation Agreement pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended.

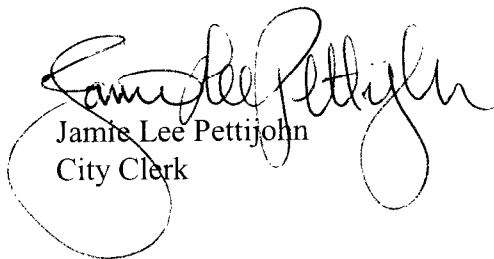
PART 3. The City Manager or his designee is authorized to execute this contract on behalf of the City.

PART 4. This Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED this the 16th day of February, 2016.


Daniel Guerrero
Mayor

Attest:


Jamie Lee Pettijohn
City Clerk

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE SAN MARCOS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT AND
THE CITY OF SAN MARCOS
FOR SHARED DATA CONNECTIVITY**

**STATE OF TEXAS §
§
§
COUNTY OF HAYS §**

This Interlocal Cooperation Agreement (the “Agreement”) is between the City of San Marcos, Texas (the “City”), a municipal corporation located in Hays County, Texas and San Marcos Consolidated Independent School District, (the “SMCISD”) (collectively the City and the SMCISD, referred to as the “Parties”, or singularly as a “Party”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the SMCISD, in partnership with parents and community, provides a quality education for all students, empowering them to pursue productive and fulfilling lives in an ever-changing, interdependent world;

WHEREAS, Chapter 791 of the Texas Government Code authorizes all local governments to contract with each other to perform governmental functions or services including administrative functions normally associated with the operation of government such as purchasing of necessary equipment, supplies and services and the Parties enter into this Agreement in accordance with Chapter 791;

WHEREAS, the City and SMCISD currently possess dedicated network infrastructures that may provide joint network connectivity to be utilized for activities outlined in the terms of this agreement;

NOW, THEREFORE, upon and for the mutual consideration stated herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I – DEFINITIONS

For purposes of this Agreement, each of the following terms has the meaning set forth herein unless the context clearly indicates otherwise:

- 1.1** Network is a group of two or more computer systems linked together into a unified infrastructure, as in the City Network and the SMCISD Network.
- 1.2** Network Connectivity describes, among other things, the process of connecting one network to another network.

- 1.3 Firewall is a physical device through which network connectivity can be configured to block unwanted access while permitting outward communication.
- 1.4 Shared Use means the shared use of the Network Connection between the City and SMCISD.
- 1.5 Commencement Date means the date by which both the San Marcos City Council and the SMCISD School Board approve of this Agreement.
- 1.6 Effective Date means the last date of execution of this Agreement by either Party hereof.
- 1.7 Force Majeure means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omission of the Party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.
- 1.8 Technology Refresh means the repair, installation or replacement of hardware or equipment necessary to maintain the shared network connection.
- 1.9 Port Number is a way to identify a specific process to which an Internet or other network message is to be forwarded when it arrives at a server.
- 1.10 IP Address is a unique string of numbers separated by periods that identifies each computer using the Internet Protocol to communicate over a network.
- 1.11 Video Surveillance is any live or recorded video provided by video cameras and associated audio/video monitoring and recording software applications installed and provided by SMCISD.

ARTICLE II – TERM; TERMINATION

- 2.1 The term of this Agreement will commence on the Effective Date and will remain in full force and effect for one year from that date. This Agreement will automatically renew for successive one (1) year terms unless terminated by either Party in accordance with the provisions in Subsection 2.2 below. The conditions set forth below will apply to the initial term and all renewals.
- 2.2 Either Party may terminate this Agreement for convenience and without cause, by providing ninety (90) calendar days prior written notice thereof to the other Party.

ARTICLE III – TERMS

- 3.1 The City agrees to maintain the Firewall residing within the City's Network such that a connection can be shared between the City and SMCISD. Likewise, SMCISD will maintain the Firewall residing within the SMCISD Network to allow for the same shared connection.

- 3.2 The Shared Data Connection will be secured against all network traffic except for approved IP addresses and Port Numbers as determined and agreed upon by the directors of each respective IT Department.
- 3.3 The City and SMCISD agree to jointly maintain the shared connection only for approved activities outlined in this agreement.
1. SMPD access to SMCISD video surveillance
 - a. The San Marcos Police Department (SMPD) may only utilize the shared connection to access SMCISD video surveillance in situations that the SMPD believes to be urgent or life-threatening.
 - b. Non-urgent matters including, but not limited to enforcing the Student Code of Conduct do not justify remote video surveillance access. Such matters must be addressed by district administration and may be aided by School Resource Officers.
 - c. Routine video surveillance access by district administrators and School Resource Officers using on-premise resources and methods not facilitated by the shared connection are not governed by this agreement.
 - d. Live or pre-recorded video remains the sole property of SMCISD, and may not be stored, duplicated, or used for any purpose without the express written consent of SMCISD.
- 3.4 The City and SMCISD agree that access to the shared connection may be monitored for compliance with the intent of this agreement.
- 3.5 Maintenance and Repairs. Each Party will provide five (5) calendar days prior written notice to the other Party when either network will be inaccessible, except in cases of an emergency in which case each Party will attempt to provide verbal notice as soon as reasonably practical to the other Party. In addition, the City and SMCISD agree that the intent of the shared connection is to enable advanced services, and will be jointly maintained with no Service Level Agreement expectations. Both parties will be held harmless in the event that the shared connection is unavailable.

ARTICLE IV INDEMNIFICATION / IMMUNITY / INSURANCE

- 4.1 *To the extent authorized by Texas law each Party agrees to release, defend, indemnify, and hold harmless the other Party (and its officers, agents, and employees) from and against all claims, losses, damages, cause or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgments, and costs in any way arising out of, related to, or resulting from the indemnifying Party's breach or default in the performance of any of its obligations under this Agreement, or caused by the negligent acts or omissions of its respective officers, agents, employees, or any other third Parties for whom it is legally responsible in connection with performing this Agreement. This Agreement and the indemnity provided herein is not intended to and will not create any cause of action for the benefit of third parties or any person not a Party to this Agreement. This indemnity will survive the termination or expiration of this Agreement.*

- 4.2 It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor will be deemed hereby to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement will not create any rights in third Parties not signatories hereto.

ARTICLE V MISCELLANEOUS

- 5.1 Applicable Law. This Agreement is governed by the laws of the State of Texas.
- 5.2 Place of Performance. Performance and exclusive venue for any dispute arising under this Agreement is in Hays County, Texas.
- 5.3 Entire Agreement. This Agreement, including any appendices and attachments, recitals and exhibits represents the entire and integrated Agreement between the Parties and supersedes all prior proposals, negotiations, representations, agreements, arrangements or understandings either written or oral between the Parties. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement will affect or modify any of the terms or obligations hereunder. The terms and conditions of this Agreement may only be amended or modified by written amendment executed by all of the parties.
- 5.4 Waiver. Failure of any Party, at any time, to enforce a provision of this Agreement, will in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of any Party thereafter to enforce each and every provision hereof. No term of this Agreement will be deemed waived or breach excused unless the waiver is in writing and is signed by the Party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.
- 5.5 Legal Construction. In the event any one or more of the provisions contained in this Agreement are for any reason deemed invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, in any respect, this Agreement will be construed as not containing the provision and all other provisions of this Agreement which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared severable. The Parties will use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the Parties as necessary.
- 5.6 Compliance with Applicable Laws. Each Party agrees to comply with all applicable local, state and federal laws, ordinances rules and regulations.
- 5.7 Interlocal Cooperation. The Parties agree to cooperate with each other in good faith at all times during the term of this Agreement in order to achieve the purposes and intent of this Agreement. Each Party to this Agreement acknowledges and represents that this Agreement has been executed by its duly authorized representative.

- 5.8** Notice. Unless otherwise specified, any notice required or permitted to be delivered hereunder will be deemed received three days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered to the following addresses:

City of San Marcos:

City Manager
City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666

San Marcos CISD:

Superintendent
San Marcos CISD
501 South LBJ Drive
San Marcos, Texas 78666

- 5.9** Multiple Originals. It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which will be deemed an original for all purpose, but all of the counterparts will constitute one and the same instrument.
- 5.10** Public Information Act. The Parties understand that the City is governed by the Texas Public Information Act, Chapter 552 of the Texas Government Code. This Agreement and all written and or digital information generated under this Agreement may be subject to release under the Act. It is agreed by all Parties to this agreement that the custodian of a record will be the Party that entered the data into the City's Network, if applicable.
- 5.11** Funding. The Parties acknowledge that each shall be responsible for funding related to their part of the shared connection and that there shall be no cost shared between Parties. In addition, the Parties acknowledge that funds for the payment for work performed by any of the Parties under the Agreement have been provided through the budget approved by the individual governing bodies for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The Parties cannot guarantee the availability of funds, and enter into the Agreement only to the extent such funds are made available. The Parties acknowledge and agree that they will have no recourse against another for its failure to appropriate funds for the purposes of the Agreement in any fiscal year other than the year in which the Agreement was executed.
- 5.12** Consent and Approval. Unless otherwise expressly stated in this Agreement, whenever the consent or approval of a Party is required prior to the action to be taken by the other Party, such consent or approval will not be unreasonably withheld, denied, or delayed.
- 5.13** Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement will survive termination.

5.14 Binding Effect. The Parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement. This Agreement will take effect immediately upon execution by both Parties hereof and will inure to the benefit and be binding upon the administrators, successors and assigns of the Parties hereto. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

SAN MARCOS CISD

By: Mark E Eads 2/2/2016
Date

Mark E. Eads / Superintendent of Schools
Printed Name / Title

CITY OF SAN MARCOS

By: Jared Miller 02/26/2016
Date

Jared Miller / City Manager
Printed Name / Title

ATTEST:

By: Samie Lee Pettisohn 2/29/16
Date

Samie Lee Pettisohn
Printed Name / Title