

**INTERLOCAL GOVERNMENTAL AGREEMENT FOR THE PROVISION OF
CONNECTIVITY TO THE EDUCATION SERVICE CENTER, Region 2
PRIVATE WIDE AREA NETWORK
BETWEEN
EDUCATION SERVICE CENTER, REGION 2,
AND _____**

Education Service Center, Region 2 ("Region 2") and _____ ("Local Agency") enter into the following agreement regarding the provision of connectivity to the Education Service Center, Region 2 Private Wide Area Network ("CoBeNet"):

Witnesseth

WHEREAS, Local Agency is an independent school district located in _____ County, Texas;

WHEREAS, Region 2 is an educational service center, located in Nueces County, Texas and established pursuant to Texas. Education. Code. § 8.001;

WHEREAS CoBeNet is a private telecommunications wide area network designed to assist Local Agencies in improving student performance and increasing the efficiency and effectiveness of school operations;

WHEREAS, Region 2 is given authority to sell its CoBeNet services to Local Agency pursuant to Texas Education Code § 8.051 and 8.053;

WHEREAS, Local Agency is authorized to purchase core and additional services from Region 2 pursuant to Texas Education Code § 8.051 and 8.053;

WHEREAS, Region 2 and Local Agency are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Texas Gov't. Code § 791.001 et. seq. which authorizes local governments to contract with each other to perform governmental functions and services under the terms of the Act.

NOW, THEREFORE, Region 2 and Local Agency agree as follows:

1. Region 2 will provide Local Agency with access to CoBeNet. CoBeNet is a telecommunications wide area network.
2. Local Agency will accept the CoBeNet services provided by Region 2 pursuant to all the terms of this agreement and the CoBeNet Policies set forth by Region 2.
3. Local Agency will pay an annual fee to Region 2 for the provision of CoBeNet services, as set forth in Exhibit "A" (fee schedule).
4. Said payment is to be made within thirty days of receipt of billing, at Region 2 Service Center, whose address is:
209 North Water Street
Corpus Christi, Texas 78401

5. If payment is not tendered at the time and under the conditions noted above, the amount due shall bear interest after the due date at the rate of ten percent (10%) per annum.
6. If payment is not tendered at the time and under the conditions noted above, Local Agency will pay on demand all costs of collection, legal expenses, and attorney's fees incurred or paid by Region 2 in collecting or enforcing this contract.
7. Local Agency agrees not to resell, transfer, assign, provide, or otherwise distribute CoBeNet connectivity, or services without written authorization from Region 2.
8. Either party may terminate this agreement by providing the other party with at least thirty (30) days written notice.
9. In the event this agreement is discontinued, any prepayment of any annual and special fees shall be refunded to the Local agency on a prorated monthly basis.
10. This undertaking may expose the parties to some risk of financial or other loss resulting from harms that could happen to (i) third parties such as students who access the Internet through the equipment provided by Region 2; (ii) either party to this agreement due to security breaches; or (iii) either party to this agreement arising from disruption of services due to network outages caused by events such as scheduled or unscheduled maintenance, accidents which sever network connectivity, or deliberate sabotage of the network connection by entities outside Region 2.

Local Agency agrees, therefore, to be responsible for, and to the extent authorized by the Constitution and laws of the State of Texas, and the Constitution and laws of the U.S. Government, to indemnify Region 2 against, any harms that may happen to third parties or to Local Agency resulting from Region 2's faithful (non-tortious) performance of its agreements hereunder. If harms result to third parties or to Local Agency from some negligent act or omission, or otherwise tortious conduct, whether negligent, or grossly negligent or from copyright infringement on the part of Region 2, Region 2 will be responsible, and will Indemnify Local Agency, to the extent it is authorized to do so under the Constitution and laws of the State of Texas.

11. The Parties agree that Region 2 shall not be held responsible or liable for situations where the security, stability, or availability of CoBeNet Services is compromised by the Local Agency directly, by software or programs provided to Region 2 by the Local Agency, or by actions Region 2 undertakes at the request of the Local Agency.
12. The parties agree that Region 2 shall not be held responsible or liable for situations where data or transmissions are accessed by third parties through illegal or illicit means, including situations where the data or transmissions are accessed through the exploitation of security gaps, weaknesses or flaws (whether known or unknown to Region 2 at the time) which may exist in any software, including software or programs provided to Region 2 by the Local Agency and any other software utilized by the Local Agency in connection with CoBeNet, beyond the exclusive control of Region 2.
13. Region 2 may provide the Local Agency with Equipment or Software to be used by the Local Agency in accessing CoBeNet. The Local Agency shall properly use the Equipment or Software provided by Region 2, and the Local Agency will provide facilities and security for proper

operation and maintenance of equipment and software. The Local Agency will not alter, move, connect, or disconnect this Equipment or Software without first obtaining oral approval from Region 2. The Local Agency shall be solely liable for any loss or damage to the Equipment or Software caused by the negligence or willful acts of the Local Agency or its officers, employees, agents, or contractors, or for loss or damage of the Equipment or Software through theft or vandalism on the Local Agency's premises. In the event of any alteration, movement, connection or disconnection of or any other tampering or adjustments to the Equipment or Software by the Local Agency without the prior approval of Region 2, Region 2 shall be completely released from any liability or obligation (including any warranty or indemnity obligation) to the Local Agency arising from or relating to the Equipment or Software that was affected, and the Local Agency shall be liable to Region 2 for costs or damages incurred by Region 2.

14. Region 2 shall not be responsible for the installation, operation, or maintenance of equipment or software not provided by Region 2; nor shall Region 2 be responsible for the transmission or reception of information by equipment or software not provided by Region 2.
15. The Local Agency shall be responsible for the use and compatibility of equipment or software not provided by Region 2. In the event that the Local Agency uses equipment, software, or supplies not provided by Region 2 which impair its use of CoBeNet, the Local Agency shall nonetheless be liable for payment for CoBeNet service or maintenance needed as a result of equipment failure or performance problems caused by the Local Agency's use of equipment, software, or supplies not provided by Region 2. Upon notice from Region 2 that the equipment or software not provided by Region 2 is causing or is likely to cause hazard or interference, the Local Agency shall eliminate the likelihood of hazard or interference. The Local Agency shall be liable for all costs incurred by Region 2 to troubleshoot difficulties caused by equipment or software not provided by Region 2.
16. The Local Agency agrees its use of CoBeNet will be in a manner consistent with this Agreement, the Operating Rules, the Policies, and with all applicable laws and regulations, including without limitation, copyright, trademark, and export control laws. The Local Agency acknowledges that Region 2 is not responsible for any use or misuse of CoBeNet by the Local Agency or its Authorized Users. In particular, the Local Agency shall not permit or assist others to abuse or fraudulently use CoBeNet, including but not limited to the following:
 - (a) to attempt to or to obtain Network Services by any fraudulent means or device with intent to avoid payments;
 - (b) to attempt to or to access, alter, or destroy any information of another CoBeNet Member by any fraudulent means or device;
 - (c) to use CoBeNet in a manner calculated to interfere with the use of CoBeNet by another Local Agency or other authorized users.
17. Region 2 warrants it will use reasonable care in providing Network Services under this Agreement. Except for maintenance and periods of shut-down caused by equipment, system or power failure, or other causes beyond the reasonable control of Region 2 (including shut-downs caused by software or programs provided to Region 2 by the Local Agency) the system will be operational twenty-four (24) hours a day, seven (7) days a week.
18. Region 2 makes no express or implied warranty or condition with respect to the programs or

goods or services to be supplied to the district, including without limitation any implied warranty or merchant ability or fitness for a particular purpose. CoBeNet services are performed and distributed on an "As Is" basis without warranties or any kind, either express or implied. Neither Region 2 nor any of its subsidiaries make any warranty or condition respecting the results of any program or services or that all errors in the program or services will be corrected, or that the functionality contained in the program will meet the Local Agency's requirements.

19. In the event that data furnished by the Local Agency or any client, whether transmitted via CoBeNet or otherwise, is lost or destroyed or damaged due to the negligence of Region 2, Region 2's agents or employees, the Local Agency's sole remedy shall be the repair or replacement by Region 2 of such lost, destroyed or damaged data, provided such repair or restoration can reasonably be performed by Region 2 and that the Local Agency furnishes Region 2 with all source data, in machine readable form, necessary for such repair or restoration. The parties acknowledge that the Local Agency may provide to Region 2 software or programs to be used by Region 2 in its performance under this agreement. Region 2 makes no warranty regarding such software. Region 2 will not be liable for, nor will any indemnification rights against Region 2 arise out of, or in connection with, the provision of such software by the Local Agency.
20. Renewal of the contract will be in accordance with Local Government Code 271.903 concerning non-appropriation of funds for multi-year contracts. The Board of Trustees of the Region 2 Education Service Center reserves the right to rescind the contract at the end of each fiscal year if it is determined that there are insufficient funds to extend the contract.
21. This contract may be renewed for two (2) additional years if CoBeNet along with Region 2 Education Service Center network cooperative mutually agree.
22. Expenditures must be paid from current year revenues.
23. This agreement, shall be governed by laws of the State of Texas. The obligations and undertakings of each of the parties to this agreement shall be performed at Corpus Christi, Nueces County, Texas.

EXECUTED at Corpus Christi, Texas on the _____ day of _____, 2002.

Contract start date July 1, 2002 end date June 30, 2003 _____

Region Two Education Service Center

Signature and Title

Date

(Local Agency) _____

Signature and Title

Date