



SHADY SHORES TOWN COUNCIL
SPECIAL CALLED SESSION
JULY 5, 2023; 5:30 PM
101 S.SHADY SHORES ROAD
SHADY SHORES, TX 76208

TO VIEW THE MEETING LIVE
<https://shadyshorestx.civicclerk.com/>

CALL TO ORDER

ROLL CALL

Establish a quorum.

REGULAR AGENDA

1. Oath of Office- Deliver the Oath of Office to Councilmember Mike Nowels. Councilmember Mike Nowels to assume the duties of office.
2. Interlocal Agreement Denton County- Consider and act on approval of an interlocal agreement with Denton County for the lease of dark fiber strands. **(Goal 6 Research and Discover New or Additional Revenue Generation Opportunities)**

ADJOURN

The Town Council reserves the right to adjourn into closed session at any time during the course of this meeting to discuss any of the matters listed on this agenda, as authorized by Texas Government Code Section 551.071 (Consultation with Attorney), 551.072 (Deliberation about Real Property), 551.073 (Deliberation about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.087 (Economic Development).

I, Wendy Withers, Town Administrator of the Town of Shady Shores do hereby certify that the above notice of the Regular Town Council Meeting was posted on the bulletin board at the Community Center, 101 S. Shady Shores Road, Shady Shores, Texas on 29th Day of June 2023, at 11:30 A.M.

Wendy Withers
Wendy Withers, Town Administrator



AGENDA MEMORANDUM

DATE: July 5, 2023
TO: Town Council
FROM: Wendy withers, Town Administrator
SUBJECT: **Interlocal Agreement Denton County- Consider and act on approval of an interlocal agreement with Denton County for the lease of dark fiber strands. (Goal 6 Research and Discover New or Additional Revenue Generation Opportunities)**

BACKGROUND/INFORMATION:

The municipalities of Hickory Creek, Corinth and Shady Shores entered into an agreement with Pavlov Media Inc. for the construction and design of a dark fiber ring and the lease of a cumulative total of 46 dark fiber strands. The fiber ring will connect the local governments and government facilities of Hickory Creek, Shady Shores and Corinth. Denton County desires to lease (4 strands) in order to improve the county's data and information services and desires to have infrastructure access for future programs, which would include connection of dark fiber to the Denton County fiber ring. The following are the planned and existing locations where the Lake Cities will provide access to dark fiber to the County.

- **Southeast corner of W. Hundley Drive and the DCTA Rail Line.**
- **Southwest corner of Shady Shores Road and Lakeview Blvd.**

The Agreement shall become effective on August 1, 2023 ("Effective Date"), and shall continue in full force and effect for as long as The Dark Fiber Lease and Network Operation Agreement between Lake Cities and Pavlov is in effect. The Dark Fiber Lease contains two (2) ten (10) year options to renew upon expiration of the initial thirty (30) year lease term. This Interlocal Cooperation Agreement will automatically be renewed beyond the initial thirty (30) year term for each ten (10) year renewal if the Lake Cities choose to exercise their renewal with Pavlov. If any facility not listed in Article II is added during the term of this Agreement, it is expressly understood that the term of this Agreement shall apply

The exact point of demarcation or placement of the connectivity panel at each of the locations shall be mutually determined by the parties.

FINANCIAL IMPLICATIONS:

The COUNTY, beginning on the Effective Date of this Agreement, as identified in this Agreement, will pay LAKE CITIES a total of \$343,750.03 in exchange for two dark fiber connection locations consisting of a minimum of four (4) strands as described herein. This expenditure shall be funded by the American Rescue Plan Act (ARPA). The exact amount to each municipality shall be based on the population of each entity, as shall be as follows:

- CORINTH shall receive \$258,383.91.
- HICKORY CREEK shall receive \$53,825.22.
- SHADY SHORES shall receive \$31,540.89

RECOMMENDATION/ACTION DESIRED:

Approve the interlocal as Presented

ATTACHMENTS/SUPPORTING DOCUMENTATION:

1. ICA Lake Cities broadband (002)

REVIEWED BY:

STATE OF TEXAS §
 §
COUNTY OF DENTON §

INTERLOCAL COOPERATION AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into on the _____ day of _____, 2023, by and between **Denton County, Texas** (hereinafter the "**County**"), and each of the following municipalities: the **City of Corinth** ("**Corinth**"), a Texas home rule municipality, the **Town of Shady Shores** ("**Shady Shores**"), a Texas Type A General Law City, and the **Town of Hickory Creek** ("**Hickory Creek**"), a Texas Type A General Law City. Corinth, Shady Shores, and Hickory Creek are sometimes referred to herein collectively as "**the Lake Cities**" and separately as a "**Lake City**" and the County and the Lake Cities are sometimes referred to herein collectively as the "**Parties**". Each entity is organized and exist under the laws of the State of Texas, acting by and through and under the authority of their respective governing bodies and officials; and

WHEREAS, the Parties are local governmental entities organized under the laws of the State of Texas, and all of whom have the authority to perform the services set forth in this Agreement individually, and who mutually desire to enter into an interlocal cooperation agreement for the purposes herein stated, as provided for in Chapter 791 of the Texas Government Code, in order to maximize the benefits to the citizens of the LAKE CITIES and of the COUNTY to be derived from each taxpayer dollar expended; and

WHEREAS, the Parties have a desire to provide better infrastructure and services to residents and businesses, and to facilitate economic growth within their respective jurisdictions; and

WHEREAS, the LAKE CITIES will deploy a ¹¹new fiber for high-speed broadband to the premises (FTTP) network throughout the LAKE CITIES area structured in a manner that effectively enables the provision of high-capacity broadband and other services and capabilities in a competitive and open environment to their residents and businesses ("the Network"); and

WHEREAS, the LAKE CITIES have identified and selected Pavlov as the best candidate to provide such services and have negotiated and executed a Dark Fiber Lease and Network Operation Agreement ("Dark Fiber Lease") with

Pavlov; and

WHEREAS, the COUNTY, in order to improve the COUNTY'S data and information services, desires to have infrastructure access for future programs which would include connection of dark fiber to the Denton County fiber ring; and

WHEREAS, due to the cost of constructing a broadband system, the ability of the COUNTY to interconnect with the LAKE CITIES fiber network will result in improved efficient exchange of data benefiting the citizens of the COUNTY; and

WHEREAS, both Parties desire to pool their respective resources, avoid unnecessary or duplicitous expense, resulting in cost savings to their respective taxpayers; and

WHEREAS, the COUNTY is willing to pay the LAKE CITIES \$343,750.03 to be paid from the COUNTY'S American Rescue Plan Act (ARPA) funds for two connection points for dark fiber connectivity and data access subject to the terms of this Agreement; and

WHEREAS, the Interlocal Cooperation Act, in Chapter 791 of the Texas Government Code, authorizes the LAKE CITIES and the COUNTY to enter into this Agreement for the purpose of achieving the governmental functions and providing the services represented by this collective, cooperative undertaking; and

NOW THEREFORE, both Parties, for and in consideration of the premises and the mutual covenants set forth in this Agreement, and pursuant to the authority granted by the governing bodies of each of the parties hereto, in accordance with §791.011(c)(2) of the Texas Government Code, do hereby AGREE as follows:

ARTICLE I INCORPORATION OF PREAMBLE

The preamble to this Agreement is wholly incorporated into this Agreement and the recitations contained therein are found and determined to be true and correct.

ARTICLE II
SCOPE OF AGREEMENT

A. The LAKE CITIES intend to provide access to the dark fiber optic cable owned or leased by the Lake Cities in accordance with the terms of this Agreement and as provided in Exhibit A & B attached hereto and incorporated herein for all purposes.

The following are the planned and existing locations where the Lake Cities will provide access to dark fiber to the County.

- Southeast corner of W. Hundley Drive and the DCTA Rail Line.
- Southwest corner of Shady Shores Road and Lakeview Blvd.

B. The exact point of demarcation or placement of the connectivity panel at each of the locations sites shall be mutually determined by the parties.

ARTICLE III
TERM OF AGREEMENT

This Agreement shall become effective on August 1, 2023 (“Effective Date”), and shall continue in full force and effect for as long as The Dark Fiber Lease and Network Operation Agreement between Lake Cities and Pavlov is in effect. The Dark Fiber Lease contains two (2) ten (10) year options to renew upon expiration of the initial thirty (30) year lease term. This Interlocal Cooperation Agreement will automatically be renewed beyond the initial thirty (30) year term for each ten (10) year renewal if the Lake Cities choose to exercise their renewal with Pavlov. If any facility not listed in Article II is added during the term of this Agreement, it is expressly understood that the term of this Agreement shall apply.

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ARTICLE IV
TERMINATION OF AGREEMENT

A. Unless otherwise provided in this Agreement, both Parties agree that neither may terminate this Agreement during the term thereof unless it is determined by either that the terms of this Agreement is prohibited by law.

B. Either party hereto may terminate this Agreement for cause by reason of the other party's material breach or default in the performance of this Agreement. The

party seeking to terminate this Agreement under this provision shall provide the defaulting party written notice, specifically identifying the breach or default complained of, which notice shall provide the defaulting party a period of not less than thirty (30) days from the date of receipt of such notice in which to cure such breach or default. In the event such breach or default is not fully cured within the time period specified, then the party seeking to terminate this Agreement shall provide the defaulting party with further written notice expressly specifying that this Agreement will be terminated if the breach or default is not wholly cured within not less than ten (10) days after the receipt of the further written notice by the alleged defaulting party. In the event that the defaulting party fails to cure the breach or default complained of, within the time specified, then this Agreement shall be terminated, and the party terminating this Agreement may seek appropriate legal relief.

C. At the time of expiration or termination of this Agreement, both parties may choose to extend or modify the relationship between both parties regarding the terms of this Agreement.

ARTICLE V CONSIDERATION TO BE PAID

A. The COUNTY, beginning on the Effective Date of this Agreement, as identified in this Agreement, will pay the LAKE CITIES at total of \$343,750.03 in exchange for two dark fiber connection locations consisting of a minimum of four (4) strands as described herein. This expenditure shall be funded by the American Rescue Plan Act (ARPA). The exact amount to each municipality shall be based on the population of each entity, as shall be as follows:

- CORINTH shall receive \$258,383.91.
- HICKORY CREEK shall receive \$53,825.22.
- SHADY SHORES shall receive \$31,540.89

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ARTICLE VI OWNERSHIP AND CONTROL OF PROPERTY

A. Both parties shall own and maintain their electronic or passive equipment at each site.

ARTICLE VII
RESPONSIBILITY OF MAINTENANCE

Denton County is not responsible for the maintenance, repairs, and locates for fiber optic cables and connections owned by Pavlov or the Lake Cities.

ARTICLE VIII
HOLD HARMLESS

To the extent allowed by the Constitution and statutes of the State of Texas, and without waiving any immunity or limitation as to liability, both parties agree to and shall hold harmless each other, its officials, officers, agents, employees, or attorneys from and against any and all claims, losses, damages, causes of action, suits, and liabilities of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury or death of any person, or for damages to any property; real, personal, or intellectual, arising out of or in connection with the use, but not the installation or maintenance, of the fiber pair, the subject of this Agreement, where the injury or death or damage is caused by the negligence of either party, its officials, officers, agents, employees, or attorneys.

ARTICLE IV
MEDIATION AND ALTERNATE DISPUTE RESOLUTION

The parties hereto may agree to settle any disputes under this Agreement by submitting their dispute to mediation or other means of alternate dispute resolution. No mediation or other alternate dispute resolution arising out of or relating to, this Agreement involving one party's disagreement may include the other party to the disagreement without the other's approval.

ARTICLE X
ASSIGNABILITY

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Both parties shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement to another governmental entity (whether by assignment, novation or otherwise) without the prior written consent of both parties, which consent shall not be unreasonably withheld. Both parties may not assign any interest in this Agreement to any other entity, other than a Texas governmental entity. Both parties shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment, novation or otherwise) without the prior written consent of the other, which

consent shall not be unreasonably withheld. Both parties, likewise, may only transfer any interest in this Agreement to another Texas governmental entity.

ARTICLE XI
NOTICE

Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be by personal delivery; sent by registered mail or certified mail; or by U.S. Mail, return receipt requested, postage prepaid; or by facsimile transmission actually received, to:

CORINTH: Mayor
City of Corinth, Texas
3300 Corinth Parkway
Corinth, Texas 76208

HICKORY
CREEK: Mayor
Town of Hickory Creek
1075 Ronald Reagan Avenue
Hickory Creek, Texas 75065

SHADY
SHORES: Mayor
Town of Shady Shores
101 S. Shady Shores Road
Shady Shores, Texas 76208

COUNTY: County Judge
Denton County, Texas
1 Courthouse Drive
Denton, Texas 76208

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Chief Information Officer
Denton County Technology Services
701 Kimberly Drive Suite 285
Denton Texas 76208

Notice shall be deemed to have been received on the date of receipt as shown

on the return receipt or other written evidence of receipt.

ARTICLE XII MODIFICATION

No waiver or modification of this Agreement or of any covenant, condition, limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing, duly executed. The parties further agree that the provisions of this Article will not be waived unless as herein set forth.

ARTICLE XIII SAVINGS

If any one or more of the provisions hereof concerning the subject matter of this Agreement should be held by a court or administrative agency of competent jurisdiction to be illegal, invalid or unenforceable in any respect, the parties agree to make a good faith effort to renegotiate another agreed provision to fulfill the purpose and intent of the present Agreement.

ARTICLE XIV GOVERNING LAW AND VENUE

This Agreement shall be construed under and governed by, and in accordance with the laws of the State of Texas, and all obligations of the parties hereto, created by this Agreement are performable in Denton County, Texas. Venue of any suit or cause of action under this Agreement shall lie exclusively in Denton County, Texas.

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ARTICLE XV ENTIRE AGREEMENT

This Agreement and the exhibits attached thereto, constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter of this Agreement. No amendment, modification, cancellation or alteration of the terms of this Agreement shall be binding on any

party hereto unless the same is in writing, dated after the date hereof, and is duly authorized and executed by the parties hereto.

**ARTICLE XVI
WAIVER OF TERMS AND CONDITIONS**

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain always in full force and effect.

**ARTICLE VII
CAPTIONS**

The captions contained in this Agreement are for informational purposes only and shall not in any way affect the substantive terms or conditions of this Agreement.

IN WITNESS WHEREOF, the City of Corinth, Texas has caused this Interlocal Cooperation Agreement to be executed by its duly-authorized and empowered Mayor; and the Town of Hickory Creek has caused this Interlocal Cooperation Agreement to be executed by its duly-authorized and empowered Mayor, and the Town of Shady Shores, Texas has caused this Interlocal Cooperation Agreement to be executed by its duly-authorized and empowered Mayor, and Denton County, Texas has caused this Interlocal Cooperation Agreement to be executed by its duly-authorized and empowered County Judge.

SIGNATURE PAGES TO FOLLOW

Denton County Signature Page

DENTON COUNTY, TEXAS

By: _____
Andy Eads, Denton County Judge

Date

ATTEST:

By: _____
Juli Luke, County Clerk

AUDITOR'S CERTIFICATE:

I hereby certify that funds are available in the amount of \$ to accomplish and pay the obligation of Denton County under this contract/agreement.

Jeff May, Denton County Auditor

CITY OF CORINTH, TEXAS

By: _____
Bill Heidemann, Mayor

Date

By: _____
Lee Ann Bunsemeyer, Interim City Manager

Date

ATTEST:

Lana Wylie, City Secretary

APPROVED AS TO FORM:

City Attorney

Town of Hickory Creek Signature Page

TOWN OF HICKORY CREEK, TEXAS

By: _____
Lynn Clark, Mayor

Date

By: _____
John Smith, Town Manager

Date

ATTEST:

Kristi Rogers, Town Secretary

APPROVED AS TO FORM:

Town Attorney

Town of Shady Shores Signature Page

TOWN OF SHADY SHORES, TEXAS

By: _____
Cindy Aughinbaugh, Mayor

Date

By: _____
Wendy Withers, Town Administrator

Date

ATTEST:

Wendy Withers, Town Secretary

APPROVED AS TO FORM:

Town Attorney