

**RESOLUTION 2018-131 PASSED: SEPTEMBER 24, 2018**

**AUTHORIZING A MODIFIED INTERGOVERNMENTAL AGREEMENT WITH NORTHERN ILLINOIS UNIVERSITY FOR SHARED IMPLEMENTATION OF A DOWNTOWN WIRELESS NETWORK.**

**WHEREAS**, the City of DeKalb, DeKalb County, Illinois is a home rule community with those powers granted under the provisions of the Illinois Constitution and the Illinois Municipal Code, 65 ILCS 5/1-1-1, *et. seq.*; and

**WHEREAS**, the City has negotiated the provisions of an Intergovernmental Agreement (IGA) with Northern Illinois University (NIU) wherein NIU has agreed to reimburse the City in the amount of \$13,631.06 as a contribution towards the costs of establishing a downtown wireless project;

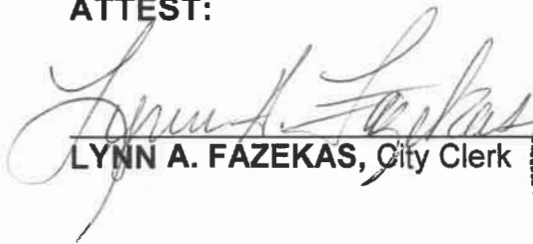
**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:**

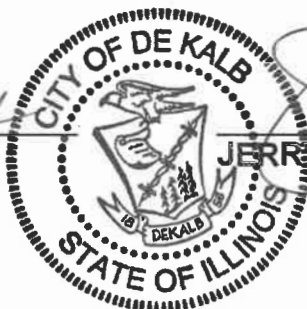
**Section 1:** That the City Council authorizes the Mayor to enter into an agreement in the format attached hereto as Exhibit A, subject to any changes acceptable to him with the recommendation of City staff, with NIU and to thereafter receive a subsequent reimbursement from NIU in the amount of \$13,631.06.

**Section 2:** That the City Clerk of the City of DeKalb, Illinois be authorized and directed to attest the Mayor's Signature and shall be effective thereupon.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois at a Regular meeting thereof held on the 24<sup>th</sup> day of September, 2018, and approved by me as Mayor on the same day. Passed on by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None.

**ATTEST:**

  
LYNN A. FAZEKAS, City Clerk



  
JERRY SMITH, Mayor

**Intergovernmental Agreement for  
Shared Implementation of Downtown Wireless Network.**

This Intergovernmental Agreement for Shared Utilization of Wireless Local Area Network ("WLAN") ("Agreement") is entered into as of the 30<sup>th</sup> day of August 2018 ("Effective Date"), by and between Northern Illinois University ("the University") and the City of DeKalb ("City"). Each party is referred to individually as "Party" and the parties collectively are referred to as the "Parties").

"Representatives" of the Parties:

University Representative: Matt Parks  
815-753-2720  
mparks2@niu.edu

University Emergency / 24 Hour Contact:  
Northern Illinois Monitoring Center (NIMC)  
877-753-8100

City Representative: Marc Thorson  
815-762-4181  
marc.thorson@cityofdekalb.com

City Emergency / 24 Hour Contact:

The University and the City both agree and acknowledge that each of the Parties would benefit from the construction and maintenance of a WLAN within certain areas of the City commonly referred as the Central Business District ("CBD"). Through this Agreement, the Parties endeavor to cooperate in the construction, implementation and maintenance of a WLAN for public access.

Under the terms of this Agreement, the Parties agree to undertake certain additional obligations and responsibilities, in exchange for the performance of the mutual covenants contained herein, the adequacy and receipt of which are hereby acknowledged.

**1) General Configuration of Hardware:** The Parties agree and acknowledge that the proposed Technology ("Technology") is generally anticipated to be configured in the fashion described in the attached Exhibit A, Description of Technology System ("System") covered in this project. The Parties delegate to their respective Representatives the authority to jointly utilize fiber optic cables, copper network cables, connection points, electrical cables and connections, internet connections and similar hardware or services available to either of the Parties for use in servicing the System, and grant access to their respective information technology infrastructure (in a fashion acceptable to their respective Representatives) for use in this project.

**2) Purchase of Hardware:** The City shall be responsible for purchasing the hardware initially required for the establishment of the WLAN portion of the System, generally anticipated to consist of the items described in Exhibit A.

**3) Installation, Maintenance and Replacement of City Hardware:** Exhibit A also describes certain hardware as "City Hardware." Following the purchase or procurement of such hardware by the University, the City shall be responsible for the installation, maintenance and replacement of the City Hardware.

**4) Provision of Internet Connection:** If required by a mutually agreed upon design, the University shall provide the internet connection for use in the System and shall allocate internet connection bandwidth to said System in an amount as it shall determine to be appropriate. Parties shall establish language in said terms and conditions, whereby any user of the System agrees to indemnify and hold harmless the Parties from any consequences, liabilities or damages arising out of the use, attempted use, misuse or unavailability of the System at any time. Accepting such obligation shall be a condition precedent to any person or entity's use of the System. The internet connection available through the System shall be made available for all persons within range of the System on the same terms and conditions and shall not exclude any person.

**5) Data Collection:** Data Collection is defined as the act of gathering, storing, aggregating, and reporting Data through the WLAN. The WLAN portion of this Agreement shall incorporate a method to collect non-identifying, aggregate data on the use of the WLAN service in a planned, responsible manner. The WLAN Data Collection will be available to both parties for reporting and research purposes.

**6) Level of Service Determination:** For any obligation herein to provide a service or to provide maintenance or repair, the City and the University shall each be responsible for determining the level of service/repair, the amount of funding to allocate, and the extent to which the service shall be provided. Either party may terminate its obligations hereunder in accordance with the provisions of this Agreement.

**7) Ownership of Fiber Optic Lines:** Each of the Parties shall retain ownership of any lines that they construct or have constructed. With respect to fiber optic lines that either of the Parties has the right to use but which are under the ownership of a third party, such lines shall remain the property of the third party and this Agreement shall not operate to alter the University or the City's rights to such lines.

**8) Regular Maintenance of Fiber Optic Lines and Equipment:** The Parties agree that they each shall undertake such routine maintenance of the fiber optic lines and equipment contemplated herein as shall be determined to be appropriate by their respective Representatives from time to time. In the event that either party contemplates a planned outage of the fiber optic lines or equipment, such party shall

provide not less than two business days notice of such planned outage to the other party.

**9) Emergency Repair of Fiber Optic Lines:** The Parties agree and acknowledge that maintaining the fiber optic connections in service is critical to public safety. Accordingly, the Parties agree to utilize their best efforts to coordinate the immediate identification of any interruption in service or breakage of any lines. The Parties agree that their respective Representatives shall be authorized to identify one or more Authorized Contractors for the performance of emergency repairs to the fiber optic lines, and also authorized to approve agreements for such services (e.g. terms and conditions, not-to-exceed pricing, etc.).

Whenever either of the Parties becomes aware of a breakage in the fiber optic lines or other interruption in service, it shall immediately notify the other party, and it shall also immediately contact one of the Authorized Contractors to initiate a service call and/or repair. Where such repair is required on a portion of the fiber optic line which is owned by one of the Parties, the party owning the line shall be responsible for the costs of repair (without regard to who initiated the service call). Where such repair is required at a point of connection between the Parties' respective fiber optic lines, the repair cost shall be shared equally.

**10) Sub-Agreements:** Subject to the limitations described herein, the Representatives of each of the Parties are authorized to enter into one or more sub-agreements between the Parties to carry out the obligations of this Agreement, to facilitate the cooperation contemplated herein, to permit the sharing of costs incurred by either of the Parties, where acceptable to both of the Representatives, or to establish any regulations contemplated or reasonably required by this Agreement. With regard to the sharing of costs, the Representatives shall be authorized to enter into sub-agreements regarding the sharing of direct costs and/or agreements providing for the payment of a fee or contribution towards direct and indirect costs, as the Representatives shall deem appropriate.

**11) Third Party Beneficiaries:** This Agreement shall not be interpreted to provide any benefits or entitlements to any third parties. More specifically, the cost sharing provisions and allocation of responsibilities herein shall not limit the liability of any third party who damages any equipment owned by either of the Parties, nor shall it preclude or limit the recovery of damages against any such third party.

**12) Third Party Contributors:** To the extent that this Agreement requires either of the Parties to fund any expense or provide any feature, the Parties shall be free to solicit or employ contributions or services from third parties, and this Agreement shall not limit the ability of the Parties to so act.

**13) Third Party Access:** Neither of the Parties to this Agreement shall permit any third party to utilize the systems, networks, hardware, software or data contemplated herein, except in accordance with this Agreement and the terms of service established

by the University. In no circumstance shall there be any guarantee of uptime, availability or bandwidth to any third party.

**14) Designees:** Each of the Representatives and Emergency Contacts identified herein shall be deemed to refer to the individuals identified and their respective designees. With regard to the Emergency Contacts identified, the Parties shall take such action necessary to ensure that such contact information is monitored twenty-four hours per day, three hundred and sixty-five days per year.

**15) Authorizations:** The Representatives of the Parties are authorized and directed to undertake all actions contemplated herein, provided however that this Agreement shall not serve to modify or amend any spending authority or purchasing policy established by either of the Parties.

**16) Indemnification, Defense and Insurance:** Subject to applicable provision and limitations of Illinois law, each of the Parties agrees that it shall indemnify, defend and hold harmless the other Party (including its employees and agents) for any claims, liabilities or damages to the extent attributable to its act, omission or conduct, and also for its pro-rata share of any liability for which it is responsible. Each of the Parties shall maintain such insurance as it shall deem appropriate to secure itself against any liabilities which may arise out of the performance of this Agreement. Except for indemnification obligations and subject to applicable provisions and limitations of Illinois law, neither Party shall be liable to the other Party for any indirect, consequential or punitive damages or for lost profits, even if foreseeable.

**17) Jurisdiction and Venue:** The Parties agree that with respect to any state law claim arising between the Parties, jurisdiction and venue shall be exclusively fixed in the courts of the State of Illinois. The University does not waive any rights that it has to litigate in the Court of Claims with respect to the claims of any third party.

**18) Term:** This Agreement shall have an initial term from the Effective Date, through June 30th, 2027. This Agreement may be terminated by either party for convenience upon the provision of not less than ninety (90) days notice. This Agreement may be terminated by either party for cause, either: a) without notice, upon the occurrence of a violation of this Agreement which jeopardizes public safety and/or the integrity of either of the Parties' respective information technology systems, equipment or hardware (in their sole and absolute discretion); or, b) upon the provision of thirty (30) days written notice of breach and opportunity to cure. Upon termination of this Agreement, each of the Parties shall return any equipment of the other party back to the other party, and shall terminate the connections contemplated herein.

**19) Compliance with Laws:** This Agreement shall be governed by the laws of the State of Illinois without regard to its conflict of laws provisions. Each of the Parties shall fully comply with any applicable laws, regulations, statutes or ordinances which

govern the operation of any of their respective systems or the data contemplated to be shared herein.

**20) Copying or Duplication of Data:** Except where otherwise required by law, neither of the Parties shall copy or duplicate data shared by or received from the other party, except within the regulations established by the Representatives of the Parties.

**21) Entire Agreement / Modification:** This Agreement, along with its Exhibit A, attached herein and made a part hereof, shall constitute the entirety of the Agreement between the Parties as to the subject matter hereof, and shall supersede any prior agreements, understandings and discussions relating to the subject matter of this Agreement. This Agreement shall only be modified in writing, approved by both of the Parties. Notwithstanding the foregoing, this Agreement shall be carried out pursuant to the sub-agreements, rules and regulations adopted by the Representatives of the Parties, to the extent authorized above.


**22) Prior Agreement.** The Intergovernmental Agreement for Shared Utilization of Fiber Optic Network entered into as of the 24th day of April, 2017 (hereafter known as "Prior Agreement"), is canceled and superseded by this Agreement, as of the Effective Date.

**23) Survivability.** Any section or provision of this Agreement based on its context and intent reasonably ought to survive the termination or expiration of this Agreement, shall so survive.

**24) Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all such counterparts together shall constitute one and the same instrument.

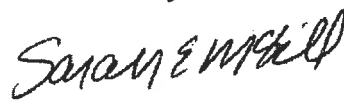
Entered into and agreed as of the date set forth above.

**City of DeKalb**

By:   
Name: Jerry Smith

Title: Mayor

**Board of Trustees of Northern Illinois University**

By:   
Name: Sarah E. McGill

Title: VP Administration and Finance & CFO

## **Exhibit A: WLAN System Description - Phase I**

This Exhibit A pertains to Intergovernmental Agreement for Shared Utilization of Wireless Local Area Network ("WLAN") ("Agreement") is entered into as of the 30<sup>th</sup> day of August 2018 ("Effective Date"), by and between Northern Illinois University ("the University") and the City of DeKalb ("City"). Each party is referred to individually as "Party" and the parties collectively are referred to as the "Parties").

The concept of the wireless for downtown DeKalb was developed by a plan between Northern Illinois University and the City of DeKalb. The vision of the wireless network is that NIU and the City of DeKalb would develop partnerships that envision four major participants benefiting from the program:

- Northern Illinois University (NIU) Students/Employees
- Downtown Residents & Businesses
- Downtown Visitors
- City of DeKalb Employees

The partners saw a need for a cooperative communications network to serve the increased public as a major benefit to both NIU and the City of DeKalb.

### **Goals and Objectives**

***The ultimate goal is for NIU and the City of DeKalb to work cooperatively and provide WIFI connectivity in the Downtown area of the City of DeKalb and the Campus of Northern Illinois University. This WIFI connectivity will be for the benefit of all that live, work, or visit downtown, as well as provide a platform for security and other technology. We are hopeful to develop a friendly communications environment for NIU Students and Downtown DeKalb visitors.***

The objectives of the wireless communications network and the hardware include the following:

- The integration of a wireless network to mobile devices that will provide wireless communications alternatives to expand coverage where otherwise lacking. Users of the network would realize cost savings by decreasing their demand on commercial providers.
- Provide options for the Downtown Revitalization Plan, recognizing that a vital Downtown is essential to ensure economic prosperity and a high quality of life for all DeKalb area residents. The long-term plan for Downtown DeKalb envisions a rejuvenated business and residential core that is compact and walk

able, the home of distinctive destinations and amenities that reflect DeKalb's unique character. The installation of a wireless network as proposed was a recommended goal of the Downtown Revitalization Plan.

- Provide wireless connectivity for the public good.
  - General internet access for the public for World Wide Web and E-mail services.
  - Future authenticated access providing full services for the City of DeKalb employees for application services provided by the City.

The proposed network will be a login based system for full user access and web access for general public access. The proposal has defined two specific types of users that will have access to the network along with one future type of user:

- Visitors/General Public (No Authentication)
- NIU Students/Employees
- FUTURE - City of DeKalb (Authentication Required provided by DeKalb)

#### **Partnership Responsibilities**

##### **Northern Illinois University will provide:**

- If required, Internet Bandwidth and services
- Funding (in the amount of \$13,631,06) for the City of DeKalb provided service in the downtown area specified in the Phase I map below.
- Any logos or branding required to have an NIU presence in the system.

##### **The City of DeKalb will provide:**

- Design of wireless network.
- All hardware required to provide and maintain system.
- Provide City owned fiber where feasible to use with the wireless project.
- Metric and user usage data (as it relates to NIU affiliated users) as mutually agreed upon by NIU and City of DeKalb.
- Bandwidth and support for the public Internet access connectivity for the wifi system.



