



Services Contract/Agreement



REQUEST FOR PROPOSALS
Erate
Category 1
2021-2022

RFP NO: IT21-001

For Contracting Agency: Amy Biehl Charter High School

Contact Person: Mark Carrara

Address: 123 4th St SW

City/State/Zip: Albuquerque, NM 87102

Telephone: 505-299-9409

E-Mail: mcarrara@abhs.k12.nm.us

DEADLINE FOR RECEIPT OF PROPOSALS IS AS FOLLOWS:

DATE: Friday, February 12, 2021 **TIME:** 5:00 PM MST

DELIVER TO: Lisa Tayler, Chief Procurement Officer.

The date and time received will be logged by the District Offices. Late Proposals will not be accepted. It is the responsibility of the Offeror to ensure that proposals are delivered on time in the correct manner.

PRE-PROPOSAL CONFERENCE WILL BE HELD

Tuesday January 5 at 10:00 AM MST

Due to COVID restriction the meeting will be help online via Zoom.

<https://us04web.zoom.us/j/76424247214?pwd=WERCb292d2gvRUdBK050akNFc2RjQT09>

ID: 76424247214 Password: z9LppkX083

Email the Technical Contact for more information

STATE OF NEW MEXICO
Amy Biehl Charter High School

I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The Amy Biehl High School (ABHS) is requesting proposals for services to perform the scope of work described herein. All potential Offerors are encouraged to read this Request for Proposals carefully, especially mandatory requirements.

The District has funds to administer the projects described in Section IV, Detailed Scope of Work.

The ABHS reserves the right to terminate any or all agreements prior to funding from E-rate.

(See Section IV for detailed Scope of Work.)

B. PROJECT CONTACTS

Any questions concerning the selection process for this Request for Proposals should be submitted to the Chief Procurement Officer listed below. Technical questions regarding the scope of work should be submitted to the IT Director listed below.

For questions regarding the selection process:

Procurement Contact Name	Lisa Tayler
Address	123 4th St SW
City/State/Zip	Albuquerque, NM 87102
Phone Number	505-299-9409

For technical questions regarding the scope of work:

District IT Director Contact Name	Mark Carrara
Address	123 4th St SW
City/State/Zip	Albuquerque, NM 87102
Phone Number	505-299-9409

C. BACKGROUND SUMMARY



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ABHS is a state chartered high school located in downtown Albuquerque, NM. We have two locations across the street from each other, the main building and the Simms's Annex. Our school has approximately 300 students and fifty staff members. We currently have two fiber circuits for Internet Access. A 500 mbps connection to the main building and a 100 mbps connection to the annex. The hand off at both locations is copper. The locations are connected with a site-to-site VPN.

D. DEFINITION OF TERMINOLOGY

This paragraph contains definitions that are used throughout this Request for Proposals (RFP), including appropriate abbreviations.

"75% Complete" is when the construction document (working drawings and specifications) are complete and ready to bid and have received formal approval and acceptance by the owner.

"Addendum" or "Amendment" means a written change, addition, alteration, correction, or revision to an Invitation to Bid, Request for Proposal, or contract document.

"Adequacy and Planning Guide" means the reference guide to be used in the programming and design of school projects. The purpose of this guide is to clarify the "Adequacy Standards" and to provide assistance through references and "best Practice" examples.

"Adequacy Standards" means the New Mexico Public School Statewide Adequacy Standards, which establish the acceptable levels for the physical condition and capacity of school buildings, the educational suitability of those facilities and the need for technological infrastructure at those facilities. The standards are not intended to restrict a facility's size.

"Agreement" means the agreement between NMPSFA and the firm for the work covered by this solicitation.

"Authorized Purchaser" means an individual authorized by a Participating Entity to place orders against this contract.

"Award" means the final execution of the contract document resulting from this solicitation.

"Business Hours" means 8:00 AM to 5:00 PM Mountain Standard Time or Mountain Daylight Time, whichever is in effect on the given date.

"Close of Business" means 5:00 PM Mountain Standard Time or Mountain Daylight Time, whichever is in effect on the given date.



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“Confidential” means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978, § 57-3-A-1 to § 57-3A-7. See NMAC § 1.4.1.25. As one example, no information that could be obtained from a source outside this solicitation can be considered confidential information.

“Contract” means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

“Contractor” or “Consultant” means any business having a contract with a state agency or local public body.

“Cost Reimbursement” means a contract which provides for a fee other than a fee based on a percentage of cost and under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms.

“Design Professional” means the entity defined as an engineer, or the equipment Contractor, or both, which have undertaken to design the Project pursuant to a contract agreement with the Owner.

“Desirable” The terms “may”, “can”, “should”, “preferable”, or “refers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).

“Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“District” means the School District.

“e-Builder” means the Construction Information Management System (CIMS) utilized by the Owner and Co-Owner, and which the Design Professional must also utilize.

“Electronic Version/Copy” means a digital form consisting of text, images, or both, readable on computers or other electronic devices that includes all content that the Original, Hard Copy proposals or bids contain. The digital form may be submitted using a USB flash drive or compact disc (CD).

“Energy Star” is a voluntary program of the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy that identifies energy-efficient products and buildings. Qualified products and buildings exceed minimum Federal standards for energy consumption by a certain amount. Qualifying buildings which achieve an ENERGY STAR rating of 75 or above are eligible to receive the ENERGY STAR label. (See: <http://www.energystar.gov>) Compliance with ENERGY STAR is required on certain projects pursuant to NMSA 1978, § 15-3-36.



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“Engineer” means a New Mexico licensed engineer and is responsible for the engineering services.

“Evaluation Committee” means a body appointed by the NMPSFA to perform the evaluation of Offeror proposals.

“Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the solicitation.

“Finalist” is defined as an Offeror who meets all the mandatory specifications of this Request for Proposal and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“Firm Fixed Price Contract” means a contract which has a fixed total price or fixed unit price.

“Hourly Rate” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

“Local Public Works” means a project of a local public body that uses architectural or engineering services requiring professional services costing fifty thousand dollars (\$50,000) or more or landscape architectural or surveying services requiring professional services costing ten thousand dollars (\$10,000) or more, excluding applicable state and local gross receipts taxes.

“MACC” means the maximum allowable construction cost, which is the total sum available for construction purposes, including furnishings and equipment, but excluding professional fees, owner’s contingency funds, acquisition costs, and other costs which are the responsibility of the Owner.

“Mandatory” The terms “must”, “shall”, “will”, “is required”, or “are required” identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

“Minor Technical Irregularities” means anything in the proposal that does not affect the price, quality, and quantity, or any other mandatory requirement.

“Multiple Source Award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property, or construction to more than one Offeror.

“New Mexico Public School Facilities Authority” or “NMPSFA” is a statutorily created agency pursuant to NMSA 1978, § 22-24-9 which serves as staff to the Public School Capital Outlay Council.



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“Offeror” or “Offerors” is any person, corporation, or partnership who chooses to submit a proposal.

“Procurement Manager” means any person or designee authorized by the District to enter into or administer contracts and make written determinations with respect thereto.

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.

“Proposal” means an Offeror’s written offer or response to a Request for Proposal.

“Public School Capital Outlay Council” or “PSCOC” distributes funds from the Public Outlay Fund to school districts throughout the State of New Mexico as prescribed by NMSA 1978, § 22-24-1 through § 22-24-6.

“Redacted” means a version/copy of the proposal with the information considered confidential as defined by NMAC 1978, § 1.4.1.45 and defined herein and outlined in Section 2.2.9 this RFP, blacked out BUT NOT omitted or removed.

“Request for Proposal” or “RFP” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“Responsible Offeror” means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

“Responsive Offer” or “Responsive Proposal” means an offer which confirms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity, or delivery requirements.

“Sealed” means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed, and clearly labeled on the outermost package as directed in the RFP instructions. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. NMPSFA reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs



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with this process and accepts the determination of the Procurement Manager in such cases.

“Staff” means any individual who is a full-time, part-time, or an independently contracted employee with the Offeror’s company.

“State (the State)” means the State of New Mexico.

“State Agency” or “Agency” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution, or official of the executive, legislative or judicial branch of the government of this State. “State Agency” or “Agency” includes the New Mexico Public School Facilities Authority.

“Statement of Concurrence” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirements. This statement shall be included in Offeror’s proposal. (E.g. “We concur”, “*Understands and Complies*”, “Comply”, “Will Comply if Applicable”, etc.)

“Unredacted” means a version/copy of the proposal containing all complete information including any that the Offeror would otherwise consider confidential; such copy for use only for the purpose of evaluation.

“Written” means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

E. DOCUMENT LIBRARY

A document library has been established for Offerors to review. The library contains the information listed below and the content of each item can be located at the NMPSFA website at <https://www.nmpsfa.org> using the path as indicated:

Governance > Rules and NM Statewide Adequacy Standards

6.27.30 NMAC Statewide Adequacy Standards

6.27.31 Special Purpose Schools Educational Facility Adequacy

Adequacy Planning Guide (including Change #20

Special Purpose Schools Adequacy Planning Guide

6.27.1 PSCOC General Provisions

6.27.2 PSFA Duties & Authority

6.27.3 Application & Grant Procedures

6.27.4 Post Grant Procedures

Operations > Project Development > Process & Procedures > Contract Documents & Forms > Other PSFA Standard Guide Specifications

Guide Specifications Division 02-49, Division 07 Thermal & Moisture Protection, Roofing Program Handbook and Table of Contents:



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Inclusive of all specification/requirements of Division 07 Thermal and Moisture Protection [if applicable].

Operations > Project Development > PSFA Performance Assurance Programs and Forms

The following documents are among those listed on the webpage:

- 019113 – General Commissioning Specification
- 230593 – Test, Adjust, and Balance Specification
- 230800 – HVAC Commissioning Specification
- NMPSFA Performance Assurance Manual Rev-07.30.2020
- Performance Assurance Program Manual for TAB

See also:

Operations > Planning > Building Standards and Planning Guidelines > Adequacy Standard & Guidelines

Operations > Planning > Educational Master Planning and Procurement

Operations > Project Development

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP describes the major procurement events as defined in the RFP Schedule Overview, and the conditions governing the procurement. The Procurement Manager will make every effort to adhere to the RFP schedule.

A. SEQUENCE OF EVENTS

- | | |
|--|---|
| 1. Issue RFP | Wednesday December 23, 2020 |
| 2. Pre-Proposal Meeting | Tuesday January 5, 2021 |
| 3. Deadline for written questions | Friday January 15, 2021 |
| 4. Response to questions | Friday January 19, 2021 |
| 5. Submission of Proposal
pm MST | Friday February 19, 2021 at 5:00 |
| 6. Notice of Award
26, 2021 | Tentative Date: Friday February |
| 7. Contract Negotiations | TBD |
| 8. Issue Notice of Award/Prepare Contract | TBD |



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9. Protest of Award Deadline **TBD**

B. EXPLANATION OF EVENTS

1. Issue RFP: This RFP is issued by the District in accordance with the provisions of Sections 13-1-120 and 13-1-121 NMSA 1978.
2. Pre-Proposal Conference: This meeting will occur virtually at the following ZOOM meeting link (see Page 1): <https://us04web.zoom.us/j/76424247214?pwd=WERCb292d2gvRUdBK050akNFc2RjQT09>
ID: 76424247214 Password: z9LppkX083
3. Deadline to Submit Written Questions: This is the date and time set for submitting written questions regarding the RFP document and procurement process to the Procurement Manager.
4. Response to Written Questions: This is the date and time set for response of the written questions submitted regarding the RFP document and procurement process from the Procurement Manager.
5. Submission of Proposal: Offerors are to send their proposals to the Procurement Officer listed below. Proposal Questions on submission to be directed to:

Procurement Contact Name	Lisa Tayler
Address	123 4th St SW
City/State/Zip	Albuquerque, NM 87102
Phone Number	505-299-9409

All Proposals are to be submitted electronically. Offerors are to send an email to mcarrara@abhs.k12.nm.us requesting access to a secure folder, at which time the procurement officer will build a secure folder for the Offeror and provide the contact their credentials for their secure folder. Offerors will upload their proposal to this folder prior to the deadline of 5pm Friday February 19, 2021. At this time the Offerors will have access to their folder removed.

See Section II.A. for submittal time and date deadline.

PROPOSALS RECEIVED AFTER THE DEADLINE ARE NON-RESPONSIVE.

Proposals will be reviewed, for completeness and compliance with requirements, by the Selection Committee, or designee. If any proposal submitted is deemed non-



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responsive, the Offeror will be notified in writing of such determination and the method of protesting that determination.

Many New Mexico entities have moved to online proposal submittal systems and many of these systems will not allow for proposals to be submitted after the deadline.

6. Proposal Evaluation/Short listing: The Selection Committee will review each Offeror's proposal. Points will be allocated, by each member, as outlined in Section V of this RFP. Each member's point totals will be translated into a numeric ranking of all proposals. The four (4) individual member's rankings will be totaled together to determine the overall ranking of proposals.

It is the general practice of the Selection Committee to hold interviews with the highest-ranked proposals. The Selection Committee may award the selection based on the results of the short listing. If fewer than three proposals are received the Selection Committee may recommend an award or direct that the RFP be reissued.

7. Notice of Finalists: Each responsive Offeror will be notified in writing as to the results of the short listing. This notice will include the overall rankings awarded by the Selection Committee for all proposals submitted and will note firms selected for interview. In general, the Selection Committee attempts to mail notices two weeks prior to the interview date. A public log will be kept of the names and overall rankings of all Offerors short listed for interviews.
8. Interviews with Finalists: For those proposals selected for interview, notices to finalists will include the interview date and time. Interviews are generally held at the offices of the District. The interview location may be changed at the discretion of the Selection Committee. Scoring for the interview will be based on responses to the questions presented at the pre-interview meeting. Interview scoring will total approximately 100 points. The points will be equally divided between the prepared questions and points will be allocated, by each member. Each member's point totals will be translated into a numeric ranking of all interviewed firms. The four individual member rankings will be totaled together to determine the overall ranking of firms for the interview.
9. Notice of Award: The District will notify finalists in writing of the final award(s). This notice will include the interview rankings of firms and the final combined rankings for the project award(s). At this time, all proposals that were submitted are open for public inspection for a period of 30 days after the award.
10. Contract Negotiations: The Owner and the successful Offeror(s) will begin contract negotiations as soon as possible after notice of award. The PSFA Standard Agreement between the Owner and Contractor will be available on the PSFA website at <https://www.nmpsfa.org/wordpress/broadband-e-rate-documents/>
11. Issue Notice of Award/Prepare Contract: Upon the successful completion of contract



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negotiations and Board of Education approval, the Procurement Manager shall issue the Notice of Award and prepare the Contractor Agreement.

12. Protest Deadline: The protest period for award of the contract shall begin the day after the date of the Notice of Award. This date shall be determined by the District Procurement Manager.

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with NMSA 1978, Chapter 13, and purchasing regulations.

1. Acceptance of Conditions Governing the Procurement: Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the Letter of Transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V. of this RFP.
2. Incurring Cost: Any cost incurred by the potential Offeror in preparation, transmittal and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for setup and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.
3. Prime Contractor Responsibility: Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a state agency which may derive from this RFP. The District entering into a contractual agreement with a Contractor will make payments to only the prime contractor.
4. Subcontractors/Consent: The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement, whether or not subcontractors are used. Additionally, the prime contractor must receive written approval from District awarding any resultant contract before any subcontractor is used during the term of this agreement.
5. Certifications and Licenses: Potential Offerors must have the proper certifications and licenses to do business in New Mexico as follows:
 - a. Corporations:
 - i File Articles of Incorporation with the Secretary of State's Office and record with the County pursuant to NMSA 1978, § 53-4-6.
 - ii Name of registered agent pursuant to NMSA 1978, § 53-5-2.
 - iii Certificate of Authority from the Secretary of State's Office indicating that the corporation is authorized to conduct business in New Mexico pursuant to NMSA 1978, § 53-17-6 and § 53-17-8.
 - iv Obtain a Federal Employer Identification Number.



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- v Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.
 - b. Limited Liability Companies:
 - i Registered office and registered agent for service of process that is either a New Mexico resident or domestic corporation, limited liability company, or partnership that is located in New Mexico.
 - ii File and Application for Registration with the Secretary of State's Office to conduct business in New Mexico and must obtain a Certificate of Good Standing from the Secretary of State's Office to conduct business in New Mexico.
 - iii Obtain a Federal Employer Identification Number.
 - iv Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.
 - c. Limited Partnerships:
 - i Apply for Certificate of Registration with the New Mexico Secretary of State pursuant to NMSA 1978, § 54-2-1 through § 54-2-48.
 - ii File a Statement of Qualifications with the New Mexico Secretary of State pursuant to NMSA 1978, § 54-1A-101 through § 54-1A-1206.
 - iii Obtain a Federal Employer Identification Number.
 - iv Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.
 - d. General Partnerships:
 - i File a Statement of Partnership Authority with the Secretary of State pursuant to NMSA 1978, § 54-1A-101 through § 54-1A-1206.
 - ii Obtain a Federal Employer Tax Identification Number.
 - iii Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.
 - e. Sole Proprietorships and Joint Ventures:
 - i Obtain a Federal Employer Identification Number.
 - ii Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.
6. Amended Proposals: An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be replacements for a previously submitted proposal and must be clearly identified as such in the Letter of Transmittal. District personnel will not merge, collate, or assemble proposal materials.
7. Offeror's Rights to Withdraw Proposal: Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.



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8. Proposal Offer Firm: Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals, or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

9. Disclosure of Proposal Contents:
 - a. Proposals will be kept confidential until negotiations and the award are completed by the District. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements: Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
 - b. Confidential data is restricted to confidential financial information concerning the Offeror's organization; and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, § 57-3A-1 to § 57-3A-7.
 - c. PLEASE NOTE: The price of products offered, or the cost of services proposed shall not be designated as proprietary or confidential information.
 - d. If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the District shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

10. No Obligation: This RFP in no manner obligates the District to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

11. Termination: This RFP may be cancelled at any time. Any and all proposals may be rejected in whole or in part when the Procurement Manager determines such action to be in the best interest of the District.

12. Sufficient Appropriation: Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be affected by sending written notice to the Contractor. District's decision as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final.

13. Legal Review: The District requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.



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14. Governing Law: This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.
15. Prohibited Bidding: Pursuant to NMSA 1978, § 10-16-13, no state agency or political subdivision of the State shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications, or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a State agency or political subdivision of this State shall exercise due diligence to ensure compliance with this section.
16. Consent to Jurisdiction and Venue: If a recipient of this RFP chooses to offer a proposal, the Offeror understands and agrees that by submitting such proposal to the District, they thereby consent to and agree to the exclusive jurisdiction of the Courts of the State of New Mexico for the resolution of any disputes arising under or resulting from the contract selection and/or approval process in response to this RFP, or any dispute arising under or resulting from the performance of any contract resulting from this RFP, which cannot be resolved informally. The Offeror, by submitting such proposal, waives any objection to the personal jurisdiction of the Courts of the State of New Mexico over the Offeror. By submitting such proposal, the Offeror agrees and consents that the Bernalillo County District Court shall have venue and jurisdiction over all matters arising or derived from this RFP.
17. Basis for Proposal: Only information supplied, in writing, by the District through the Procurement Manager or in this RFP should be used as the basis for the preparation of the Offeror's proposal.
18. Contract Terms and Conditions:
 - a. The contract between the District and a Contractor will follow the format specified by the District and contain the terms and conditions set forth in the Sample Agreement (General Terms and Conditions), Appendix A. However, the District reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Agreement) with any Offeror.
 - b. The District discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Agreement. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgement of the District (and its evaluation committee), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.
 - c. Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Agreement strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose specific alternative language. District may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete



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- substitutions of the Sample Agreement are not acceptable to the District and will result in disqualification of the Offeror's proposal.
- d. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the Agreement. In the event the Offeror's proposal conflicts with the RFP, the RFP governs, and, in the event the Agreement conflicts with the proposal, the Agreement governs.
 - e. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection and successful Offeror) is an explicit agreement by the Offeror that the contractual terms and conditions contained herein are accepted by the Offeror.
19. Offeror's Terms and Conditions: Offerors must submit with the proposal a complete set of any additional terms and conditions which they expect to have included in a contract negotiated with the District.
 20. Contract Deviations: Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the District and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.
 21. Contract Negotiations: Contract negotiations may be held in accordance with applicable procurement laws, NMSA 1978, § 13-1-28 through § 13-1-199 and the District Procurement Regulations.
 22. Offeror Qualifications: The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, § 13-1-83 and § 13-1-85.
 23. Right to Waive Minor Irregularities: The Evaluations Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.
 24. Change in Contractor Representatives: The District reserves the right to require a change in contractor representatives if the assigned representative(s) is not, in the opinion of the District, adequately meeting the needs of the District.



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25. Notice of Penalties: The Procurement Code, NMSA 1978, § 13-1-28 through § 13-1-199 imposes civil misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.
26. District Rights: The District, in agreement with the Evaluation Committee, reserves the right to accept all or a portion of a potential Offeror's proposal.
27. Right to Publish: Throughout the duration of this procurement process and contract term, Offerors and Contractors must secure from the District written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or District contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.
28. Ownership of Proposals: All documents submitted in response to this Request for Proposal shall become the property of the District.
29. Confidentiality:
 - a. Any confidential information provided to or developed by the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the District.
 - b. The contractor agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the District's written permission.
30. Electronic Mail Address Required: A large part of the communication regarding this procurement will be conducted by electronic mail (email). Offeror must have a valid email address to receive this correspondence.
31. Use of Electronic Versions of this RFP: This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the District, the version maintained by the District shall govern.
32. Disclosure of Campaign Contributions, Appendix B: Offeror must complete, sign, date and return the Campaign Contribution Disclosure Form, Appendix B, as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor. Failure to complete and return the signed and dated, unaltered form will result in disqualification.
33. Disclosure Regarding Responsibility:
 - a. Any prospective contractor and any of its principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local



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public body for professional services, tangible personal property, services, or construction, agrees to disclose whether the contractor or any principal of the contractor's company:

- i. Is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any Federal entity, state agency, or local public body.
 - ii. Has within a three (3) year period preceding this offer, been convicted in a criminal matter or had a civil judgement rendered against them for:
 1. The commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract.
 2. Violation of Federal or state anti-trust statutes related to the submission of offers; or
 3. The commission in any Federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, violation, or Federal criminal tax law, or receiving stolen property.
 - iii. Is presently indicted for, or otherwise criminally or civilly charged by any (Federal, state, or local) government entity with the commission of any of the offenses enumerated in NMSA 1978, 13-1-178: Causes for Debarment and Suspension.
 - iv. Has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 1. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 2. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - v. Have within a three (3) year period preceding this offer, had one or more contracts terminated for default by any Federal or state agency or local public body.
- b. Principal, for purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
 - c. The Contractor shall provide immediate written notice to the District or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
 - d. A disclosure that any of the items in this requirement exist, will not necessarily result in termination of this Agreement. However, the disclosure



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will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.

- e. Nothing contained in the forgoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- f. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If, during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (Federal, state or local) with commission of any offenses named in this document, the Contractor must provide immediate written notice to the District or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the District or Central Purchasing Officer may terminate the involved contract for cause. Still further, the District or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the District or Central Purchasing Officer.

34. **New Mexico Preferences; Does not apply to federally funded projects:**

- a. To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation and Revenue.
<http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>
- b. New Mexico Resident Business Preference and New Mexico Resident Veteran Business Preference.
- c. The District shall not award a business both a Resident Business Preference and a Resident Veteran Business Preference.
- d. The New Mexico preferences shall not apply when the expenditures for this RFP include Federal Funds.

35. **Conflict of Interest: Government Conduct Act:**

- a. The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
- b. The Offeror certifies that the requirements of the Governmental Conduct Act, NMSA 1978, § 10-16-1 through § 10-16-18, regarding contracting with a public officer or state employee, or former state employee, have been followed.



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36. Equal Employment Opportunity:

- a. In connection with this RFP and the Contract, Offeror shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, being physically challenged, or on the basis of sexual preference.
- b. Offeror shall take affirmative action to ensure that all applicants are treated fairly during employment, without regard to race, color, religion sex, national origin, age, marital status, being physically challenged, or on the basis of sexual preference.
- c. Such action shall include but not be limited to the following: layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Only one proposal may be submitted by each individual entity for the one project, which is the subject of this RFP.

Proposals are to be submitted to secure folder by the submission deadline. This secure folder will be provided by ABHS. Please submit to the technical contact listed herein.



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B. NUMBER OF COPIES

The submission of proposal should have access for Procurement Officer to download and disseminate to selection committee members. The Proposals will not be made public until after contract negotiations are final.

C. PROPOSAL FORMAT (Electronic Copy)

The proposal must be limited in format and length. Length of the proposal shall be limited to a maximum of 45 pages/slides of text and/or graphic material for project proposals. Spreadsheets and charts can be in Excel format. If the Excel files are password protected on the electronic copies, the password must be provided in written form with the flash drives. **If there is any question as to format requirements they shall be directed to the Procurement Officer for clarification, prior to submittal of documents.**

Material excluded from the 45-pages/slides maximum count shall include and **shall be limited to:**

- Front cover (blank on back side)
- Letter of Transmittal – this letter should contain the address and instructions to obtain the digital proposal (one page maximum)
- Tables of Contents page (one page maximum)
- Divider pages (See Sections below)**
- Campaign Contribution Disclosure
- Certificate(s) of Insurance
- W-9 Form
- Back cover (blank on one side)
- Cost Proposal

ANY SHEETS OR PAGES INCLUDED IN THE PROPOSAL, BUT NOT SPECIFICALLY EXCLUDED, AS NOTED ABOVE - SHALL BE COUNTED TOWARDS THE 45-PAGE MAXIMUM.

Divider Pages are noted herein. The Selection Committee will score proposals based on these Sections. A more detailed description and points assigned to each Section is provided under Section V. EVALUATION. Reminder – Divider Pages do not count towards the 45-page maximum.

- Section 1 Business Profile; Design and Technical Competence
- Section 2 Capacity and Capability
- Section 3 Past Record of Performance
- Section 4 Proximity/Familiarity w/Site(s)
- Section 5 Design Work produced in-state
- Section 6 Volume of Work previously done
- Section 7 Evidence of Understanding of Scope of Work



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Any proposal deemed non-conforming by the Selection Committee *Chairman* in regard to format will be considered non-responsive. Offerors shall contact the District Representative to clarify any questions concerning format prior to submission.

1. Proposal Organization: All pages *should* be numbered except for those specifically excluded as noted above. All foldout pages shall be counted as two (2) pages and *should* be numbered as such. Proposals *should* be organized into sections, including the seven (7) areas of the evaluation criteria. Tabs delineating each section are to be included in the ORIGINAL hard copy of the proposal. For the Electronic copies, there should be a cover page delineating each of the sections.
2. Letter of Transmittal: Each proposal must be accompanied by a Letter of Transmittal containing the following:
 - a. identify the submitting business;
 - b. identify name and title of the person(s) authorized by the company to contractually obligate the business for the purposed of this RFP;
 - c. identify the names, titles, and telephone numbers of persons to be contacted for clarification questions regarding this RFP;
 - d. be signed by a person authorized to contractually obligate the Offeror;
 - e. acknowledge receipt of any and all amendments to this RFP;
 - f. contain a statement indicating a commitment to comply with all requirements of the Americans with Disabilities Act of 1990 for work performed as a result of this RFP.
3. Cost Proposal Form – Appendix C: See paragraphs B.1. and B.2. for instructions for submitting the completed Cost Proposal Form. The Cost Proposal Form is an Excel Spreadsheet included as Appendix C to this RFP.

IV. SPECIFICATIONS AND EXHIBIT A – SCOPE OF WORK

See Appendix B for scope of work.

B. MANDATORY SPECIFICATIONS AND FORMS



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Offerors shall respond in the form of a thorough narrative to each mandatory specification requiring such. The narratives along with required supporting materials will be evaluated and awarded points accordingly. Failure to address mandatory specifications/requirements, or provide the mandatory forms, will deem your proposal non-responsive.

1. Business Profile; Design and Technical Competence

Offerors must identify the Principal member or officer of the firm who will be responsible for the administration of the contract. Include a current, signed W-9 Form.

Offerors are to provide information about the firm's specific technical experience with similar projects that demonstrate competence to successfully complete the project. Indicate the relevance of previous projects to the anticipated scope of work. Demonstrate the successful aspects of past design projects and the corresponding applications to the proposed scope of work. Describe your firm's specialized problem solving techniques or approaches, innovative practices/ideas, and advantages your team brings or offers to the project.

2. Capacity and Capability of the Offeror to Perform the Work

Offeror's must provide information about the business that demonstrates the ability to provide sufficient professional competence, meet time schedules, accommodate cost considerations and project administration requirements. Provide information that demonstrates your firm's ability to perform the services required for this project. Include an organizational chart indicating key project team members, including any sub consultants, and their specific roles on the project and/or area(s) of expertise. Clearly identify the lead engineer who will be directly responsible for the project. Include in the organizational chart the percentage of time each team member will spend or commit to providing services toward the project.

Provide brief resumes for the lead engineer and key project team members, describing why each team member was selected for this project, highlighting relevant project experience and knowledge. Indicate if a subcontractor is affiliated with the prime contractor as an affiliated company, firm, or business. Also identify the firms or teams list of current projects.

3. Past Record of Performance

Offeror's must demonstrate through historical documentation that the firm has the ability to meet schedules and budgets, as well as user program goals, and final construction project costs. Project schedules should provide information about the progress of work as related to owner schedules and goals as well as the overall success of projects and client satisfaction. Describe 3-5 past projects, specifying



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relevance to the current project. Include client references (names, addresses, email address and telephone numbers) for each project.

4. Proximity to or Familiarity with Site Location

Offeror must identify your familiarity with the project area and your understanding of the project scope. Offeror's must demonstrate through narrative, graphics or maps the firm's ability to respond quickly to on and off-site requirements for engineering services and administration of the project. Indicate previous knowledge or experience regarding the project location, and any current work or associated consultants who could enhance the firm's ability to provide timely responses or special expertise to project needs.

5. Evidence of Understanding of Scope of Work

Describe in detail the anticipated scope of work for the project. Include information about the project site, project administration, scheduling, budget and programmatic user requirements. The proposal should demonstrate competent knowledge of project constraints as well as any applicable discussion of possible options for design approaches or techniques.

6. Completed Campaign Contribution Disclosure Form, Appendix B

Offerors shall submit with their proposals a completed Campaign Contribution Disclosure Form with their proposal.

7. Format – Comply with requirements of Section III.

8. Errors and Omissions Insurance

Documentation of current errors and omissions insurance is *a mandatory requirement* at the time of the contract execution in the amount of stated in the Sample Agreement at Appendix A. Proof of insurance *should* be included in the proposal in the form of a current Certificate of Insurance.

9. Cost – (E-rate eligible cost must be highest weighted factor)

10. Cost – Ineligible E-rate service cost

V. EVALUATION

A. EVALUATION CRITERIA

Short Listing: A maximum total of 100 points are possible in scoring each proposal for the shortlist evaluation. The Selection Committee will evaluate the proposals and may conduct interviews with Offerors applying for selection.



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The evaluation criteria to be used by the Selection Committee for the proposal shortlist and the corresponding point values for each criteria are as follows:

1. **Design and technical competence** of the business, including a joint venture or association, regarding the type of services required..... **25 points**
2. **Capacity and capability** of the business to perform the work, including any specialized services, within the time limitations..... **15 points**
3. **Past record of performance** on contracts with government agencies and private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules..... **20 points**
4. **Proximity to or familiarity** with the area in which the project is located..... **10 points**
5. The **volume of work previously done** by the entity requesting proposals that is not 75% complete with respect to basic professional design services..... **5 points**
6. **Evidence of understanding of scope of work**, the site, and existing conditions...**25 points**
7. **Errors and Omissions Insurance****pass/fail**
8. **Cost** – (E-rate eligible cost must be highest weighted factor)**50 points**
9. **Cost** – Ineligible E-rate service cost**5 points**

POSSIBLE POINTS: 155

10. **Finalist Interview, if applicable**..... **50 points**

TOTAL POSSIBLE POINTS: 155 - 205

B. SHORT LIST EVALUATION FACTORS

A brief explanation of each evaluation category is listed below. Information in one category may overlap information in other categories. Offerors are encouraged to fully address each category completely, as points are assigned for responses to each separate category.

1. Design and Technical Competence - Provide information about the firm's specific technical experience with similar projects that demonstrate competence to successfully complete the project. Indicate the relevance of previous projects to the anticipated scope of work. Demonstrate the successful aspects of past design projects and the corresponding applications to the proposed scope of work.



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2. Capacity and Capability - Provide information about the business that demonstrates the ability to provide sufficient professional competence, meet time schedules, accommodate cost considerations and project administration requirements. Indicate the relationship of the work in this RFP to the firm's other current projects. Indicate proposed work schedules and milestones, with completion methods and strategies. Indicate key project team members and their specific rolls, experience and background. Demonstrate or indicate project team organization and working relationships. Other items could include references from clients, financial institutions and insurance carriers.
3. Past Record of Performance - Demonstrate through historical documentation that the firm has the ability to meet schedules and budgets, as well as user program goals, and final construction project costs. Include information regarding owner budgets, construction estimates, bidding and completed project cost including change order information. Project schedules should provide information about the progress of work as related to owner schedules and goals as well as the overall success of projects and client satisfaction. References from past clients can be included.
4. Proximity to or Familiarity with Site Location - Demonstrate through narrative, graphics or maps the firm's ability to respond quickly to on and off-site requirements for design, construction and administration of the project. Indicate previous knowledge or experience regarding the project location, and any current work or associated consultants who could enhance the firm's ability to provide timely responses or special expertise to project needs.
5. Evidence of Understanding of the Scope - Describe in detail the anticipated scope of work for the project. Include information about the project site, project administration, scheduling, budget and programmatic user requirements. The proposal should demonstrate competent knowledge of project constraints as well as any applicable discussion of possible options for design approaches or techniques.
6. Cost - E-rate eligible cost must be highest weighted factor - This is the cost for the entire project. Anything that is not e-rate eligible must be designated as ineligible.

C. EVALUATION PROCESS

1. Notice of Non-Responsiveness - For any proposal submitted which is deemed non-responsive, the Offeror will be notified in writing of such determination and the method for protesting the determination.
2. Short listing Meeting - The Selection Committee established by Section 13-1-121 NMSA 1978 will meet to review the proposals. The Selection Committee will review each Offeror's proposal. Points will be allocated as outlined in Section V.A. of this RFP, by each member of the committee. Each member's point totals will be translated to a numeric ranking. The committee member rankings will be totaled to determine the overall ranking of the firms.



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The Selection Committee may award the selection based on the results of the short listing alone. If fewer than three proposals are received, the Selection Committee may recommend an award or reissue the RFP.

3. Notice of Finalists - Each responsive Offeror will be notified in writing whether their proposal has been short listed.
4. Final Rankings - The combined weighted rankings from shortlist and interview determine the final rankings.
5. Point Calculations - All calculations of point standings, including any addition or deduction of points to Offeror submittals shall occur at a meeting of the Selection Committee, with all members in attendance.

All overall committee rankings are public record and will be available for public inspection at the District after the successful Offeror's contract is signed by the District. Ties in ranking shall be scored using the sum of the ranking places, divided by the number of firms in a tie. The following is an example of scoring, for a tie at first:

<u>Scoring</u>	<u>Numerical Ranking</u>
Firm A Tie	$(1st + 2nd/2) = 1.5$
Firm B Tie	$(1st + 2nd/2) = 1.5$
Firm C 3rd	$= 3$

A tie for first, at the end of the final rankings after the completion of short listing and interviews, shall be broken by a separate ranking by the committee members, only ranking the firms involved in the tie. If a tie still exists after ranking only the tied firms, the tie shall be broken by the chairman of the District's Selection Committee.

6. Notice of Award - The Chair of the Selection Committee will notify all Offerors in writing of the final results of the solicitation by e-mail return receipt acknowledgement, after execution of the contract. For a period of thirty (30) days after the written date of award, proposals will be available for public inspection by appointment only, at the District Offices. The District shall keep one each of all proposals submitted for the procurement file. Offerors may make arrangements with the District to pickup or mail the Offeror's cost the additional copies of the proposals as soon as possible.



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APPENDIX A
SAMPLE SERVICE AGREEMENT

BROADBAND FIBER OPTICS/INTERNET SYSTEMS
SERVICES AGREEMENT

Project No: RFP # _____

Agreement No: _____

Commodity Code Number(s): _____

Location: _____



Distribution to:

- checkbox District Representative (original)
checkbox Service Provider (original)
checkbox Other

This Agreement entered into this _____ day of _____, 20_____, by and between

(NAME) SCHOOL DISTRICT
(ADDRESS 1)
(ADDRESS 2)
(CITY/TOWN), NM (ZIP CODE)
TELEPHONE: (505) (PHONE)

(NAME OF FIRM)
(ADDRESS 1)
(ADDRESS 2)
(CITY/TOWN), NM (ZIP CODE)
TELEPHONE: (505) (PHONE)
FEDERAL ID:
CRS NUMBER:

PRICING AND SERVICES
AGREEMENT

FOR:

Construction and Installment of Infrastructure for the
Broadband/WAN Systems



Services Contract/Agreement

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Services Contract/Agreement

THIS AGREEMENT is made and entered into by and between the

_____ ,
hereinafter referred to as the "District," and

_____ ,
hereinafter referred to as the "Service Provider,"

and is effective as of the date set forth below upon which it is executed by the both parties.

IT IS AGREED BETWEEN THE PARTIES:

That the intent and purpose that this Agreement (inclusive of all associated pricing and services) is to establish an Agreement for E-rate Program/Services and Projects for use by, and benefit of the District, in support of the State of New Mexico's E-rate Public Schools & Libraries Program for E-rate eligible educational entities of the State of New Mexico.

The Service Provider has the experience, organization, human resources, financial and technical ability to provide the work/services.

This Agreement, by this reference, incorporates to the same extent as if they were set out verbatim herein, the specifications and requirements of **RFP# _____**, its associated Addendums, and Volume II Cost Proposal submitted by the Service Provider.

This Services/Pricing Agreement shall be executed in Two (2) Parts, which are as follows:

1. **Part I: Consist of the Construction and Installment of Infrastructure for the Broadband/WAN Systems.** The services to be provided under Part One of this Agreement is set-forth in Section 1.0 Scope of Work herein-below.
2. **Part II: Deployment, Service and Access (Page# _____).** The commencement date of this Part of the Agreement shall be contingent upon, and shall not be effective until Part I is fully completed and accepted via Notice to Proceed by the District. All cost associated with this Part shall be billed and invoiced separately from Part I of this Agreement.

Services provided/performed under this Agreement shall be performed at: _____ , and, if applicable, at Service Provider's location at _____ , between the hours of 8:00 a.m. and 5:00 p.m. Mountain Time Monday through Friday, excluding applicable State and Federal holidays.



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PRICING AND SERVICES AGREEMENT PART I

1. SCOPE OF WORK

The Service Provider shall perform and provide the Services and Products contained in this Section, and such other services necessary for or incidental to the performance of Part I of this Agreement, in accordance with the Terms, Conditions, Requirements, Specifications, Standard of this Agreement, **RFP No:** _____ inclusive of Exhibit A, the applicable provisions of Part II of this Agreement, and the Service Provider's Proposal.

Any conflict between the contents of the Service Provider's Proposal, and the general or specific provisions of Part II of this Agreement, in regards to the services provided under this Section 1.0, the general or specific provision of Part I of this Agreement and **RFP #** _____ shall prevail.

The Service Provider shall provide qualified personnel (*qualified by applicable education, knowledge, or experience*) skilled in performing and completing all the services required to be provided under this Agreement. The Service Provider's principal, on any project, shall possess at least 3 years of supervisory/management hands-on experience in the technical area being serviced.

Service Provider shall provide a Single Point of Contact (Service Provider Project Manager) to facilitate communication between the District and Service Provider during project implementation, facility turn-up and subsequent ongoing service delivery. The Service Provider Project Manager shall provide regular documents status updates to the District's Representative(s) on all project activities.

The Service Provider shall provide all applicable and appropriate Certificates of Insurance, Licenses, and all other applicable Certification for the work/service before the commencement of the work.

- A. The Contract shall provide and perform all necessary, required components and services for the delivery of the services and products specified in this Section 1.0, for the effective implementation, integration, delivery or, as applicable, the establishment of the services intended to be provided by the products and services:

ADD STATEMENT OF WORK (SOW) HERE



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Service Provider agrees to be bound by, and at its own cost, comply with all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as “laws”) applicable to the services provided under this Agreement.

B. Extension of/or Additional Services

Any services exceeding the scope of work and cost of **Part I** of this Agreement and the approved initial **Purchase Order**, shall be mutually agreed to in advance by District and the Service Provider, and shall be authorized by an approved **Amendment to this Agreement** prior to the Service Provider proceeding with any additional work.

Amendments to the Proposal may form the basis of an additional **Purchase Order** to cover additional services, or in an amendment to the existing purchase order, depending on circumstances and approval by the District. It is the Service Provider’s responsibility to inform District in advance and in a timely manner when it is anticipated that any additional services will require modifications due to changes in the work. District is not responsible for work performed without the proper documentation and an approved amended purchase document.

C. Investigation of Site and Project Conditions

Service Provider represents that, prior to submittal of the Proposal for the RFP and this Agreement, it has/will take all steps reasonably necessary to ascertain the nature and location of the Work and that it has investigated and satisfied itself as to the general and local conditions, which can affect the Work or its cost. In the event that the District furnished the Service Provider with any information about such matters, Service Provider acknowledges that any reliance on such information will be at its own risk and that the District does not warrant the correctness or accuracy of the information. Service Provider represents that it has examined all Contract/Agreement Documents and familiarized itself with the Project, the laws, rules, and regulations relating to the Project; the environmental considerations affecting the Project and the Work; and the character of equipment and facilities needed preliminary to and during Work performance.

No allowance will be made to Service Provider for not having made such examination and review, or for requirements, which a reasonable examination, inquiry, or review would have disclosed. Except to the extent equitable adjustments may be made for differing site condition if: (1) the Service Provider did not know, or could not have known about the actual condition found at the site; (2) the Service Provider could not reasonably have anticipated the actual condition at the site from inspection or general experience; (3) the actual condition varied from the norm in similar contracting work; (4) the contract indicated the conditions that the Service Provider could expect to find at the site; (5) the conditions indicated in the contract differed materially from the actual conditions; (6) the actual conditions were reasonably unforeseeable based upon all the information available to the Service Provider at the time of the proposal; (7) the Service



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Provider acted as a reasonably prudent Service Provider in interpreting the contract documents; and (8) the Service Provider incurred additional costs as a result of the difference between the expected conditions and the actual conditions. Service Provider will complete the work for the compensation stated in this Contract/Agreement and assume complete responsibility for the conditions (including subsurface or otherwise latent conditions) existing at the site and its surroundings.

Service Provider's obligation hereunder may include, but not be limited to, the location of all utilities that may affect or interfere with Service Provider's Work. Service Provider shall obtain all utility locates for all areas of its work and shall fully protect, and as necessary or required, maintain in operation all utilities at all times.

C.1. MATERIALS AND WORKMANSHIP

Service Provider expressly warrants that all items, materials, and work furnished by Service Provider under this contract will strictly conform to the contract documents. All the Work shall be performed with workmanship consistent with sound construction/installation practice, and all items and materials shall be new (unless otherwise provided in the contract documents), free from defects, of merchantable quality, and fit for the purposes, intended. Service Provider shall install or apply all materials in strict accordance with installation or application instructions and procedures set forth by the material manufacturer. Installation or application by any other method shall not be permitted or accepted, unless specifically allowed herein. If required by the District, Service Provider shall supply satisfactory evidence of the kind and quality of the items and materials purchased or otherwise supplied by Service Provider. In the event the scope of the Contract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Sub-contractor to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to ensure a satisfactory and proper installation.

- a. All manufacturer or installer guarantees/warranties obtained by the Service Provider for any materials, products, services, or equipment procured under this contract shall be obtained for use and benefit of the District.
- b. All materials, products, parts or equipment used to provide the services under this Contract shall be new and warranted by the manufacturer/installer standard warranty.
- c. Documentation for all warranted items shall be provided to the District either before or upon installation/use of the item(s). Warranty documentation for any and all items provided under this contract shall, at a minimum, contain the following information:



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1. Brief statement that a warranty exists.
2. Substance of the warranty.
3. Duration of the warranty.
4. Person/Company to notify if the items are defective.

D. The Service Provider shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

E. The Service Provider must be eligible to, and shall participate in the E-rate Program and has the responsibility to educate itself about the Program requirements and timelines. The Schools and Libraries Division (SLD) of the Universal Service Administration (USAC) will hold the Service Provider to statements made in applications, registrations, certifications and invoice forms. For more information on E-rate participation and procedures go to <https://www.usac.org/>.

F. *Performance Measure/Deliverables*

Service Provider shall provide the District with complete as-built documentation of the network components including all network route information and circuit identification numbers.

2. Compensation

A. This is a Fixed-Price Agreement.

The work to be performed under **Part I** of this Agreement will be funded/paid for in part by and through the Federal Communication Commission (FCC) E-rate Program by USAC, **the District shall pay the non-discounted share for Service Provider services satisfactorily rendered pursuant to the Scope of Work** set-forth in this agreement, inclusive of all expenses, an amount not to exceed _____ (\$ _____), excluding New Mexico gross receipts taxes.

The total monthly recurring cost, inclusive of the non-discounted amount, of this Agreement shall not exceed _____ (\$ _____), excluding New Mexico gross receipts taxes.

The total yearly/annual recurring cost, inclusive of the non-discounted amount, of this Agreement shall not exceed _____ (\$ _____), excluding New Mexico gross receipts taxes.

A.1. The New Mexico Gross Receipts tax to be levied on the **Firm-Fixed Price** total amount payable by the District under this Agreement shall be at the rate of ____ % or \$ _____ and shall be paid by District to the Service Provider. The total **Firm-Fixed Price**



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total amount payable to the Service Provider under this Agreement, including gross receipts tax shall not exceed _____ (\$ _____).

The work performed under this **Part I** of this Agreement is to be directly funded/paid in part under FCC/USAC E-rate Funding. It shall be the Service Provider's responsibility to submit invoices directly to USAC for the discount share of the approved eligible services. Service Provider hereby affirms that it meets, is fully knowledgeable and capable of all applicable FCC/USAC E-rate billing/invoicing requirements.

Service Provider shall be responsible for paying any and all taxes levied on amounts payable under this Agreement. For those taxes enumerated on Service Provider invoices payable by District, the Service Provider will pay the taxing governmental agencies with funds received from District for tax payment of said invoices. If an applicable Governmental Authority Tax Rate changes, during the life of this Agreement, District shall amend this Agreement to cover government taxing authority's changes in applicable Tax Rates costs.

The amount set for in Paragraph A.1 of this Section 2 is the maximum amount and not a guarantee that the work assigned to be performed by Service Provider under Part I of this Agreement shall equal the amount stated. The parties do not intend for Service Provider to continue to provide services without compensation when the total compensation amount is reached. Service Provider is responsible for notifying the District when the services provided under this Agreement reach the total compensation amount.

In no event shall Service Provider be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided. District shall receive all invoices no later than 30 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date CANNOT BE PAID.

B. Service Provider shall be responsible for paying any taxes levied on amounts payable under this Agreement.

C. **INVOICING/COMPENSATION SCHEDULE:**

Subject to the condition precedent set forth in **Part I** of this Agreement, District will make payments to Service Provider. The progress payment amounts shall be based on the District and Service Provider agreed upon Work Breakdown Structure (WBS) with assigned Schedules of value (SOV) submitted by the Service Provider within two (2) weeks after award of the Agreement. The maximum monthly compensation amount under this Agreement shall not exceed the value established under the WBS/SOV, *including New Mexico Gross Receipts Tax*, for the portion of the Work performed and completed in the preceding month in accordance with monthly invoices prepared by Service Provider and as approved by District.



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The specified payable amount shall be based on and paid for upon satisfactory completion of services under this agreement. For services contained in the WBS/SOV that are not satisfactorily completed, payment shall be payable for the portion satisfactorily completed.

Service Provider must submit detailed statements accounting for all services performed, goods obtained, and expenses incurred. Invoices must be supported by approved purchase order or equivalent documentation and invoice by supplier, evidencing the propriety of each claim for payment. Service Provider shall certify that labor charges to the contract are direct charges and shall maintain records of wages, dates worked, and hours worked to support the certifications. If the District finds that the statement, services, goods, or expenses are not acceptable, within 30 days after the date of receipt of (i) written notice from the Service Provider that payment is requested, and (ii) all supporting documentation; the District shall provide the Service Provider a letter of exception explaining the defect or objection to the statement, services, goods, or expenses, and outlining steps the Service Provider may take to provide remedial action. Upon the District's certification that the statement, supporting documentation, services, goods, or expenses have been received and accepted, District shall tender payment to the Service Provider within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.

However, the District shall not incur late charges, interest, or penalties, for failure to make payment within the time specified herein.

It is anticipated that some or all of the District's costs under this Agreement shall be eligible for the "E-Rate" discount under the Federal Communications Commission (FCC) Universal Service Provision. Accordingly, contingent upon the District's receipt of a funding commitment decision letter (FCDL) from SLD/USAC and both District's and Service Provider's compliance with all the SLD/USAC guidelines, vendor shall offer an SLD/USAC discounted invoice payment option. In providing the two-tier billing system or discounted invoice payment option, Service Provider will be required to recover its compensation for the approved E-Rate eligible discounted services, which can be from twenty percent (20%) up to ninety percent (90%), directly from the Schools and Libraries Division (SLD) of the Universal Service Administration Company (USAC) in accordance with procedures established by the FCC and SLD/USAC. The Service Provider's invoices will itemize/breakdown the costs of all E-Rate eligible products and/or services from all non-E-Rate eligible products and/or services. To determine which items are eligible, visit the SLD/USAC E-Rate eligible services list <https://www.usac.org/e-rate/applicant-process/before-you-begin/eligible-services-list/>

C-1. Exclusion of Liability for E-Rate Funding.

The District shall have no liability for the E-Rate Portion of any costs incurred by the Service Provider's invoice if one of the following occurs:



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- a. Products or services billed to the SLD are deemed ineligible pursuant to any event, including but not limited to an audit, after the SLD has reimbursed the Offeror for products or services that were previously considered eligible.
- b. The vendor fails to adhere properly to SLD guidelines (e.g., missing a filing deadline for invoicing to the SLD), or is subject to the FCC “Red Light Rule” and subsequently is not paid by the SLD.

3. TERM

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY DISTRICT. This **Part I** of the Agreement shall terminate on the **date of** _____ unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

Service Provider under this **Part I of the Agreement** is awarded a _____ month Term. The District reserves the right to extend the terms and conditions of Part I of this Agreement for an additional Two (2) years, in one (1) year increments, based on need for continuation of services, the performance and services rendered under the original term of the Agreement.

If the Primary Service Provider/principal providers of all services associated with the work, services, or products assigned/specified in this Agreement is released from its obligations by the District for any reason (prior to the expiration of its tenure), the Second Ranked finalist in the RFP process may be moved to the vacated position to complete the contractual term as outlined in its proposal.

The District reserves the right to review any Service Provider’s performance at any time as it relates to reliability, service, delivery, or invoice discrepancies and possibly elevate the “Secondary Ranked” RFP Service Provider to the “Primary” position if deemed in the best interest of the District. In the event the District is compelled to replace the “Primary” provider with the “Secondary”, due to default on the part of the “Primary”, the District shall have the absolute right to deduct from any monies due the vendor or that may thereafter become due to the contract, the difference between the amount due and the actual cost of services to be replaced or substituted.

Failure by a Service Provider to provide or perform the services as specified in the Agreement may result in the Service Provider being prohibited from doing business with District or the State of New Mexico for a period up to two years.

SURVIVAL CLAUSE: All duties and responsibilities of the Service Provider under this Agreement which, either expressly or by their nature extend into the future, shall extend beyond and survive the end of the contract term or cancellation of this agreement.



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4. TERMINATION/SUSPENSION

- A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the District's sole liability upon such termination shall be to pay for acceptable work performed prior to the Service Provider's receipt of the notice of termination, if the District is the terminating party, or the Service Provider's sending of the notice of termination, if the Service Provider is the termination party; provided; however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Service Provider shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Service Provider if the Service Provider becomes unable to perform the services contracted for, as determined by the District or if, during the term of this Agreement, the Service Provider or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE SERVICE PROVIDER'S DEFAULT/BREACH OF THIS AGREEMENT.*
- B. Termination Management. Immediately upon receipt by either the District or the Service Provider of notice of termination of this Agreement, the Service Provider shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the District; 2) comply with all directives issued by the District in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the District shall direct for the protection, preservation, retention or transfer of all property titled to the District and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Service Provider with contract funds shall become the property of the District upon termination and shall be submitted to the District as soon as practicable.
- C. Agreement Suspension. District may order the Service Provider in writing to suspend, delay or interrupt all or any part of the Contract Work for such period of time as may be determined to be appropriate. If such suspension, delay or interruption is unreasonable, then Service Provider may be entitled to an equitable adjustment. The short/incidental/reasonable stoppage of the Contract Work shall not be deemed suspension, delay, or interruption of work.

The Contract price shall not be adjusted for any suspension, delay or interruption to the extent that the performance of the Contract is, was, or would have been so suspended, delayed or interrupted by the fault or neglect of the Service Provider is entitled only to a time extension under this Contract.



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- D. Curing a Breach. Either Party who receives a written Notice of Termination, of this Agreement, for a material breach by the other Party, the breaching Party will have the opportunity to cure such breach or breaches within the thirty (30) day period specified in the notice. In the event a cure is not made within the thirty (30) day period, this Agreement will terminate.

5. APPROPRIATION

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico, or a Funding Commitment Decision Letter (FCDL) from Universal Service Administration (USAC) for this Agreement. If sufficient appropriations and authorization are not made by the Legislature or USAC, this Agreement shall terminate immediately upon written notice being given by the District to the Service Provider. The District's decision as to whether sufficient appropriations are available shall be accepted by the Service Provider and shall be final. If the District proposes an amendment to the Agreement to unilaterally reduce funding, the Service Provider shall have the option to terminate the Agreement or to agree to the reduced funding within thirty (30) days of receipt of the proposed amendment.

6. STATUS OF SERVICE PROVIDER

The Service Provider and its agents and employees are independent Service Providers performing professional services or labor for the District and are not employees of the District or the State of New Mexico. The Service Provider and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the District or the State of New Mexico as a result of this Agreement. The Service Provider acknowledges that all sums received hereunder are reportable by the Service Provider for tax purposes, including without limitation, self-employment and business income tax. The Service Provider agrees not to purport to bind the District or the State of New Mexico unless the Service Provider has express written authority to do so, and then only within the strict limits of that authority.

Certification. Service Provider shall furnish to District(s), upon request, any certification required to be furnished by any provision of this Agreement or Order issued hereunder, including any clauses incorporated by reference herein, and any certificate required by this Agreement, any law, ordinance or regulation with respect to Service Provider's compliance with the terms and provisions of such law, ordinance, regulation, or this Agreement.

7. SUBCONTRACTING AND ASSIGNMENT

Service Provider shall not subcontract any portion of the Work without the prior written approval of the District of the lower-tier subcontractor and the form, terms and conditions of the lower-tier subcontract. Service Provider's request for subcontracting shall not be unreasonably withheld. Service Provider shall not assign this Contract, or any of its rights hereunder, without the prior written approval of the District. No assignment or subcontracting, even with the District's approval, shall relieve Service Provider of any obligations hereunder, or create any contractual relationship between such lower-tier subcontractor and the District. Any lower-tier subcontractor



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shall assume unto District all of the obligations of Service Provider as they relate to such portion of the sublet Work.

If the Service Provider wishes to assign any of its rights (e.g., assign payment to another entity) whether internal or external to its organization, any such assignment shall be effectuated via a Deed of Assignment, and if Service Provider is to be, may be/or will be acquired either in part, substantially, or entirely by an outside entity, Service Provider shall effectuate such an action via a Deed of Novation. Service Provider submission of either of the stated deeds for approval will not be unreasonably denied by the District.

8. RELEASE

Final payment of the amounts due under this Agreement shall operate as a release of the District, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

9. CONFIDENTIALITY

Any confidential information provided to or developed by the Service Provider in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Service Provider without the prior written approval of the District.

Service Provider shall be responsible for ensuring that all reports and analysis of any type which are developed by or communicated to Service Provider or any of its affiliates in performing the Work and all information, oral, electronic or written, obtained by Service Provider in connection with this Contract from the District shall not be disclosed unless prior written approval from the District is obtained. This obligation of Service Provider shall survive the expiration, suspension, or termination of this Contract. This obligation of confidentiality shall not apply to information: (a) that is previously known, or available, to Service Provider on an unrestricted and non-confidential basis; (b) that is, or becomes a part, of the public domain through a third party; (c) that is any obligation of confidentiality; or (d) that must be disclosed pursuant to legal requirements to which Service Provider is subject if such disclosure is mandatory upon Service Provider and failure to so disclose would subject Service Provider to civil or criminal penalties.

10. PRODUCT OF SERVICE -- COPYRIGHT RESERVED

11. CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT

A. The Service Provider represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Service Provider further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement



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complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Service Provider specifically represents and warrants that:

- 1) in accordance with Section 10-16-4.3 NMSA 1978, the Service Provider does not employ, has not employed, and will not employ during the term of this Agreement any District employee while such employee was or is employed by the District and participating directly or indirectly in the District's contracting process;
- 2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Service Provider is not a public officer or employee of the State; (ii) the Service Provider is not a member of the family of a public officer or employee of the State; (iii) the Service Provider is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Service Provider is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;
- 3) in accordance with Section 10-16-8(A) NMSA 1978, (i) the Service Provider is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Service Provider is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the District's making this Agreement;
- 4) this Agreement complies with Section 10-16-9(A) NMSA 1978 because (i) the Service Provider is not a legislator; (ii) the Service Provider is not a member of a legislator's family; (iii) the Service Provider is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Service Provider is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by Section 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;
- 5) in accordance with Section 10-16-13 NMSA 1978, the Service Provider has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and



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- 6) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Service Provider has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the District.
- C. Service Provider's representations and warranties in Paragraphs A and B of this Section 11 are material representations of fact upon which the District relied when this Agreement was entered into by the parties. Service Provider shall provide immediate written notice to the District if, at any time during the term of this Agreement, Service Provider learns that Service Provider's representations and warranties in Paragraphs A and B of this Section 11 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Service Provider's representations and warranties in Paragraphs A and B of this Section 11 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the District and notwithstanding anything in the Agreement to the contrary, the District may immediately terminate the Agreement.
 - D. All terms defined in the Governmental Conduct Act have the same meaning in this Section 11(B).

OCI Attachment 2014 is attached to this Contract and is incorporated herein to the same extent as if it has been set out verbatim in this Section 11.

12. AMENDMENT

- A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.
- B. If District proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Service Provider shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Section 4 herein, or to agree to the reduced funding.

District may at any time, by written notice, and without in any way invalidating this Agreement, make changes within the general scope of this Agreement in any one or more of the following: (i) description of services to be performed; (ii) time of performance; (iii) place of performance of the services; (iv) drawings, designs or specifications; or (v) method of delivery or packaging of Deliverables.

13. MERGER

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and



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understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

14. PENALTIES FOR VIOLATION OF LAW

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

15. EQUAL OPPORTUNITY COMPLIANCE

The Service Provider agrees to abide by all federal and state laws, rules, regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Service Provider assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Service Provider is found not to be in compliance with these requirements during the life of this Agreement, Service Provider agrees to take appropriate steps to correct these deficiencies.

16. GOVERNING LAW AND VENUE

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Service Provider acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

17. WORKER'S COMPENSATION

The Service Provider agrees to comply with state laws and rules applicable to worker's compensation benefits for its employees. If the Service Provider fails to comply with the Worker's Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the District.

18. RECORDS AND FINANCIAL AUDIT

The Service Provider shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the District, the Department of Finance and Administration and the State Auditor. The District shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the District to recover excessive or illegal payments



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19. INDEMNIFICATION

The Service Provider shall defend, indemnify and hold harmless the District and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Service Provider, its officers, employees, servants, subcontractor or agents, or if caused by the actions of any client of the Service Provider resulting in injury or damage to persons or property during the time when the Service Provider or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Service Provider or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Service Provider, the Service Provider shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the District and the Risk Management Division of the New Mexico General Services Department by certified mail.

20. NEW MEXICO EMPLOYEES HEALTH COVERAGE

A. If Service Provider has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Service Provider certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Service Provider and the State exceed \$250,000 dollars.

B. Service Provider agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Service Provider agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information:
<http://www.hsd.state.nm.us/LookingForAssistance/centennial-care-overview.aspx>.

21. INSURANCE REQUIREMENTS

Prior to any work/services to be performed for any project under this agreement, the Service Provider shall submit Service Provider's proof of insurance via Certificate of Insurance.

The Service Provider will, at its sole expense, secure and maintain and will file with the District proper and acceptable evidence of the following described insurance, which coverage shall (1) be secured with an insurance company acceptable to the District, (2) be issued as a primary policy not contributing with and not in excess of any primary and/or excess coverages carried by the District and (3) contain loss payable clauses satisfactory to the District for applicable coverages.



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Such coverage shall be provided without interruption or lapse of any kind regardless of the reason for the same. Subcontractor shall ensure that the policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the District shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or Service Provider gives written notice to the District, whichever period is longer.

A. Worker's Compensation Insurance and Employer's Liability Insurance. Worker's compensation insurance and employer's liability insurance in compliance with the laws of all applicable jurisdictions and any other coverages that may apply where the work is performed covering all employees engaged in the performance of the Work associated in this Agreement and any project hereunder, including coverage for Employer's Liability for:

- a. Bodily Injury by Accident - \$500,000 each accident
- b. Bodily Injury by Disease - \$500,000 each employee
- c. Bodily Injury by Disease - \$500,000 policy limit

B. Commercial Liability Insurance. with minimum limits as follows:

- a. Each Occurrence Limit - \$1,000,000 combined single limit for bodily injury and property damage liability.
- b. Med Expense (Any one person) - \$10,000.
- c. Personal and advertising injury limit - \$1,000,000.
- d. Products-Completed Operations Aggregate Limit - \$2,000,000
- e. General Aggregate Limit (other than Products-Completed Operations) - \$2,000,000. This policy shall be endorsed to have the General Aggregate limit apply on a "per project basis".

C. Automobile Liability Insurance. (Note: May be a Combined Insurance Policy)

Automobile liability insurance covering any auto (owned, non-owned and hired vehicles) with limits of not less than \$1,000,000 (each occurrence), for bodily injury (per person) not less than \$1,000,000, bodily injury (per accident) not less than \$1,000,000, and property damage liability resulting from any one accident not less than \$1,000,000.

D. Excess/Umbrella Liability Insurance. Excess/Umbrella insurance in an amount not less than \$3,000,000 combined single limit for any one occurrence, and \$3,000,000 aggregate. This policy is to provide no less than the same coverage described in Paragraphs i, ii, and iii above, and is to be in excess of required primary limits of liability.

E. Pollution Insurance (*this policy shall be applicable only to services/work involving hazardous materials*). Pollution insurance in an amount not less than \$2,000,000 combined single limit for any one occurrence, and \$5,000,000 annual aggregate. The policy shall include endorsements for abatement of all hazardous materials including, but not limited to, asbestos and lead containing materials.



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- F. Professional Liability Insurance.** Professional liability insurance in an amount not less than \$1,000,000 per claim with a \$2,000,000 annual aggregate. Insurance will be maintained in force for a period of three (3) years after substantial completion of the project.
- G.** All liability insurance shall insure performance by the Subcontractor of the indemnification provisions under Section 19 of the Agreement.
- H.** The minimum policy limits required in this Section are exclusive of costs of defense. The Service Provider's obligation to procure and maintain the insurance required in this Section 21, subparagraphs i-viii above is not in derogation of, nor in substitution for Service Provider's obligation to protect, defend, indemnify and save the District harmless under those provisions or under the Indemnification clause, it being understood that Service Provider's obligation to protect, defend, indemnify and save the District harmless are not dependent upon nor limited to the amount or availability of insurance proceeds.
- I. Additional Insured.** The District shall be listed as additional insured on the Service Provider's policies for all liability insurance, except worker compensation and professional liability, required under the terms of this Agreement, and such liability insurance policies, including all primary policies and any excess/umbrella policies shall be primary to any primary and/or excess/umbrella liability insurance carried by the District.
- J. Waiver of Subrogation.** All policies shall be endorsed to provide that underwriters and insurance companies of the Service Provider shall not have any rights to subrogate against the District or the State of New Mexico.
- K. Certificates and Policies.** The Subcontractor shall furnish certificates of insurance evidencing compliance with the foregoing requirements, including the per project general aggregate, as a condition of initial prequalification as well as a condition of continued prequalification for the Contract period. Each Certificate will provide that:

"All coverage provided by this certificate is primary and non-contributory."

Premiums Responsibility. All policies shall be endorsed to provide that there will be no recourse against the District for payment of the Service Provider's premiums.

22. INVALID TERM OR CONDITION

If any provision of this Agreement is unenforceable to any extent, the remainder of this subcontract, or any application of that provision to any persons or circumstances other than those as to which it is held unenforceable, will not be affected by that unenforceability and will be enforceable to the fullest extent permitted by law.



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23. ENFORCEMENT OF AGREEMENT

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

24. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the District:

To the Contractor: [insert name, address and email].

If District issues a Rejection Notice where Service Provider reasonably believes the Service test results conform to the Testing and Acceptance Standards, the parties shall work together to do cooperative testing to determine whether the test results conform to specifications. The date of Acceptance shall constitute the “**Effective Date.**”

25. AUTHORITY

If Service Provider is other than a natural person, the individual(s) signing this Agreement on behalf of Service Provider represents and warrants that he or she has the power and authority to bind Service Provider, and that no further action, resolution, or approval from Service Provider is necessary to enter into a binding contract.



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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last executed by either party hereto as indicated below.

Contractor:

By: _____ **Date:** _____

Print Name: _____

Title: _____

Service Provider: _____

District:

By: _____ **Date:** _____

Print Name: _____

Title: _____

District: _____

NM CRS Number: _____



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OCI Attachment 2014

New Mexico Public School Facilities Authority

ORGANIZATIONAL CONFLICTS OF INTEREST - SPECIAL CLAUSE (January 2014)

- (a) Purpose. The Public School Facilities Authority's (PSFA) primary purpose of this clause is to aid in ensuring that the Service Provider (1) is not biased because of its past, present, or currently planned interests (financial, sub-contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the Service Provider and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Service Provider") in the activities covered by this clause as a prime Service Provider, Contractor, cosponsor, joint venturer, consultant, or in any similar capacity.
- (i) The Service Provider shall be ineligible to participate in any capacity in PSFA contracts, subcontracts, or proposals therefore (solicited or unsolicited) which stem directly from the Service Provider's performance of work under this contract. Furthermore, unless so directed in writing by the PSFA Authorized Representative, the Service Provider shall not perform any technical consulting or management support services work under this contract on any of its products or services or the products or services of another firm if the Service Provider is or has been substantially involved in their development or marketing
- (ii) If the Service Provider under this contract prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Service Provider shall be ineligible to perform or participate in any capacity in any contractual effort that is based on such statement of work or specifications. The Service Provider shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by PSFA, in which case the restriction in this subparagraph shall not apply.
- (iii) Nothing in this paragraph shall preclude the Service Provider from offering or selling its standard commercial items to PSFA.



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(1) Access to and use of information.

- (i) If the Service Provider, in the performance of this contract, obtains access to information, such as PSFA plans, policies, reports, studies, financial plans, confidential internal data, or data which has not been released or otherwise made available to the public, the Service Provider agrees that without prior written approval of the PSFA it shall not: (a) use such information for any private purpose unless the information has been released or otherwise made available to the public; (b) compete for work for the PSFA based on such information for a period of one (1) year after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first; (c) submit an unsolicited proposal to PSFA which is based on such information until one year after such information is released or otherwise made available to the public; and (d) release such information unless such information has previously been released or otherwise made available to the public by the PSFA.
- (ii) In addition, the Service Provider agrees that to the extent it receives or is given access to proprietary data, data protected by state or federal law, or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
- (iii) The Service Provider shall have, subject to patent, data, and security provisions of this contract, the right to use technical data it first produced after the requirements of the instant subcontract have been met.

(c) Disclosure after award.

- (1) The Service Provider agrees that if after award it discovers an organizational conflict of interest with respect to this contract, an immediate and full disclosure shall be made in writing to PSFA that shall include a description of the action, which the Service Provider has taken or proposes to take to avoid or mitigate such conflicts.

PSFA may, however, terminate the contract for convenience if it deems such termination to be in the best interest of PSFA.

- (2) In the event that the Service Provider was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict, PSFA may terminate the contract for default.



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(d) Lower-tier subcontracts.

- (1) The Service Provider shall include this clause, including this paragraph, in subcontracts of any tier which involve performance or work of the type specified in (b)(1) above or access to information of the type covered in (b)(2) above. The terms "subcontract", "Service Provider" and "PSFA Authorized Representative" shall be appropriately modified to preserve the PSFA/Government's rights.
- (2) If a lower-tier subcontract is to be issued for evaluation services or activities, technical consulting or management support services work, the Service Provider shall obtain for the PSFA a disclosure statement or representation from each intended Service Provider or consultant. The Service Provider shall not enter into any lower-tier subcontract nor engage any consultant unless the PSFA shall have first notified the Service Provider that there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest the award is in the best interest of PSFA.

(e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, PSFA may terminate the subcontract for default, disqualify the Service Provider for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this contract.

(f) Waiver. Requests for waiver under this clause shall be directed in writing to the PSFA and shall include a full description of the requested waive and the reasons in support thereof. If it is determined to be in the best interests of PSFA, the PSFA may grant such a waiver in writing.

(g) Modifications. Prior to a contract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the subcontract are changed, PSFA will request and Service Provider is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.



BROADBAND FIBER OPTICS/INTERNET SYSTEMS
SERVICES LEASE AGREEMENT

Project No: RFP # _____

Agreement No: _____



PRICING AND SERVICES LEASE AGREEMENT
PART II
Deployment, Service and Access

THIS PART II OF THE AGREEMENT is the Telecommunications Services **and** _____ Lease Agreement portion of this Agreement and is made and entered into by and between **the** _____ hereinafter referred to as the “**District**” **and** _____, hereinafter referred to as the “**Service Provider**” and is effective as of the date set forth below upon which it is executed by the both parties.

That the intent and purpose that this Lease Agreement (inclusive of all associated pricing and services) is to establish a Lease Agreement (Agreement) **for** _____ and related



Services Contract/Agreement

services described herein (the “Services”) for use by, and benefit of the District for E-rate eligible services.

The Service Provider has the experience, organization, human resources, financial, and technical ability to provide the work/services.

This Agreement, by this reference, incorporates to the same extent as if they were set out verbatim herein, the specifications and requirements of **RFP No.** _____, its associated Addendums, Attachments, Volume II Cost Proposal submitted by the Service Provider, Section 1.0 Sections B through D, and Sections 4.0 through 25 of Part I of this Agreement.

DEFINITIONS:

Words, Phrases, and Terminology with unique and specific meaning within Service Provider’s operational environment may be incorporated herein, via an Attachment, by way of this reference: Said Attachment is hereby designated/titled as https://nmppsfa.org/wordpress/wp-content/uploads/2020/05/Con5-2017-v1-2_DEFINITION_OF_TERMINOLOGY.pdf

PRICING AND SERVICES AGREEMENT PART II

1. SCOPE OF WORK

The Service Provider shall perform and provide the Services and Products contained in this Section, and such other services necessary for or incidental to the performance of Part II of this Agreement, in accordance with the Terms, Conditions, Requirements, Specifications, and Standards of this Agreement, **RFP No.:** _____ inclusive of Exhibit A, the applicable provisions of Part I of this Agreement, and the Service Provider’s Proposal.

Any conflict between the contents of the Service Provider’s Proposal, and the general or specific provisions of Part II of this Agreement, in regards to the services provided under this Section 1, the general or specific provision of Part I of this Agreement and **RFP No.** _____ shall prevail.

The Service Provider shall provide qualified personnel (*qualified by applicable education, knowledge, or experience*) skilled in performing and completing all the services required to be provided under this Agreement. The Service Provider’s principal, on any project, shall possess at least three years of supervisory/management hands-on experience in the technical area being serviced.

The Service Provider shall provide all applicable and appropriate Certificates of Insurance, Licenses, and all of the applicable Certification for the work/service before the commencement of the work.

- A. Service Provider shall provide and perform all necessary, required components and services for the delivery of the services and products specified in this Agreement, Section 1 for the effective implementation, integration, delivery or, as applicable, the establishment of the services intended to be provided by the products and services:



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Service Provider shall commence provisioning of the services listed herein as agreed upon in the Work Breakdown Structure (WBS) to be submitted by the Service Provider as outlined in Section 2 paragraph C of this Agreement.

Service Provider has proposed, and District has accepted a identify term of contract for a identify type of service in detail. See RFP Scope of Work attached to this agreement as Exhibit A.

All applicable provisions of Service Provider’s Technical Proposal dated specifically commencing with Section 5.2 through Section 6, and Section 8 inclusive, are adopted herein and made a part of this Section 1 in same manner as it was set-forth herein verbatim. Nothing in this paragraph is intended, and shall not be interpreted to exclude or diminish the applicability of any Provision of the Technical Proposal not specifically mentioned herein.

Service Provider intends to construct, or is currently constructing a multi-conduit fiber optic communications system (the “Service Provider System”) as generally described and depicted herein this Agreement.

Service Provider further intends to install within the conduits of the Service Provider System _____ (0) Strands count of fiber optic cable (the “Cable”).

Fibers will be terminated at the points/locations identified in _____.

Service Provider desires to grant to District a _____ right to use the stated fibers and other facilities described herein, all upon subject to the terms and conditions set forth in this Agreement.

Title. _____

B. Scope of Grant

2. COMPENSATION

A. This is a _____-Year Fixed-Prices Lease Agreement.

The work to be performed under **Part II** of this Agreement will be funded/paid for in part by and through the Federal Communication Commission (FCC) E-rate Program by USAC, the District shall pay the non-discounted share for Service Provider services satisfactorily rendered pursuant to the Scope of Work set-forth in this agreement, inclusive of all expenses

The total monthly recurring cost, inclusive of the non-discounted amount, of this Agreement shall not exceed _____ (\$ _____), excluding New Mexico gross receipts taxes.

The total yearly/annual recurring cost, inclusive of the non-discounted amount, of this Agreement shall not exceed _____ (\$ _____), excluding New Mexico gross receipts taxes.



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A.1. The New Mexico Gross Receipts tax to be levied on the **Firm-Fixed Price** total amount payable by the District under this Agreement shall be at the rate of _____ % or \$ _____ and shall be paid by District to the Service Provider. The total **Annual Firm-Fixed Price** amount payable to the Service Provider under this Agreement, including gross receipts tax shall not exceed _____ (\$ _____).

The work performed under **Part II** of this Agreement is to be directly funded/paid in part under FCC/USAC E-rate Funding, it shall be the Service Provider's responsibility to submit invoices directly to USAC for the discount share of the approved eligible services. Service Provider hereby affirms that it meets, is fully knowledgeable and capable of all applicable FCC/USAC E-rate billing/invoicing requirements.

Service Provider shall be responsible for paying any and all taxes levied on amounts payable under this Agreement. For those taxes enumerated on Service Provider invoices payable by District, the Service Provider will pay the taxing governmental agencies with funds received from District for tax payment of said invoices. If an applicable Governmental Authority Tax Rate changes, during the life of this Agreement, District shall amend this Agreement to cover government taxing authority's changes in applicable Tax Rates costs.

The amount set for in Paragraph A.1 of this Section 2 is the maximum amount and not a guarantee that the work assigned to be performed by Service Provider under Part I of this Agreement shall equal the amount stated. The parties do not intend for Service Provider to continue to provide services without compensation when the total compensation amount is reached. Service Provider is responsible for notifying the District when the services provided under this Agreement reach the total compensation amount.

In no event shall Service Provider be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided. District shall receive all invoices no later than 30 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date CANNOT BE PAID.

B. Service Provider shall be responsible for paying any taxes levied on amounts payable under this Agreement.

C. **INVOICING/COMPENSATION SCHEDULE:**

Subject to the condition precedent set forth in **Part II** of this Agreement, District will make payments to Service Provider. The progress payment amounts shall be based on the District and Service Provider agreed upon Work Breakdown Structure (WBS) with assigned Schedules of Value (SOV) submitted by the Service Provider within two (2) weeks after award of this Agreement. The maximum monthly compensation amount under this Agreement shall not exceed the value established under the submitted WBS/SOV, *including New Mexico Gross Receipts Tax*, for the portion of the Work performed and completed in the preceding month in accordance with monthly invoices prepared by Service Provider and as approved by District.



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The specified payable amount shall be based on and paid for upon satisfactory completion of services under this agreement. For services contained in the WBS/SOW that are not satisfactorily completed, payment shall be payable for the portion satisfactorily completed.

Service Provider must submit detailed statements accounting for all services performed, goods obtained, and expenses incurred. Invoices must be supported by approved purchase order or equivalent document and invoice by the supplier, evidencing the propriety of each claim for payment. Service Provider shall certify that labor charges to the contract are direct charges and shall maintain records of wages, dates worked, and hours worked to support the certifications. If the District finds that the statement, services, goods, or expenses are not acceptable, within 30 days after the date of receipt of (i) written notice from the Service Provider that payment is requested, and (ii) all supporting documentation, the District shall provide the Service Provider a letter of exception explaining the defect or objection to the statement, services, goods, or expenses, and outlining steps the Service Provider may take to provide remedial action. Upon the District's certification that the statement, supporting documentation, services, goods, or expenses have been received and accepted, District shall tender payment to the Service Provider within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the District shall not incur late charges, interest, or penalties, for failure to make payment within the time specified herein.

It is anticipated that some or all of the District's costs under this Agreement shall be eligible for the "E-Rate" discount under the Federal Communications Commission (FCC) Universal Service Provision. Accordingly, contingent upon the District's receipt of a funding commitment decision letter (FCDL) from SLD/USAC and both District's and Service Provider's compliance with all the SLD/USAC guidelines, vendor shall offer an SLD/USAC discounted invoice payment option. In providing the two-tier billing system or discounted invoice payment option, Service Provider will be required to recover its compensation for the approved E-Rate eligible discounted services, which can be from twenty percent (20%) up to ninety percent (90%), directly from the Schools and Libraries Division (SLD) of the Universal Service Administration Company (USAC) in accordance with procedures established by the FCC and SLD/USAC. The Service Provider's invoices will itemize/breakdown the costs of all E-Rate eligible products and/or services from all non-E-Rate eligible products and/or services. To determine which items are eligible, visit the SLD/USAC E-Rate eligible services list <https://www.usac.org/e-rate/applicant-process/before-you-begin/eligible-services-list/>

C-1. Exclusion of Liability for E-Rate Funding.

The District shall have no liability for the E-Rate Portion of any costs incurred by the Service Provider's invoice if one of the following occurs:

- a. Products or services billed to the SLD are deemed ineligible pursuant to any event, including but not limited to an audit, after the SLD has reimbursed the Offeror for products or services that were previously considered eligible.



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- D. The vendor fails to adhere properly to SLD guidelines (e.g., missing a filing deadline for invoicing to the SLD), or is subject to the FCC “Red Light Rule” and subsequently is not paid by the SLD.
- E. *Monthly Service Fee.* Service Provider shall invoice District each month for its portion of the monthly recurring charges as delineated in Attachment A of this Agreement. District, in Attached Service Provider’s Cost Proposal of this Agreement. District shall pay the non-discounted monthly portion of the Monthly Service Fee (i.e., the portion of the Monthly Service Fee not covered by USAC) within thirty (30) days of receipt of the invoice.
- F. *Failure to Pay.* If District fails to pay the Monthly Service Fee within thirty (30) calendar days of the date received, Service Provider may impose a late fee. The late payment fee shall be one and one half percent (1-1/2%) of the unpaid balance due.
- G. Notwithstanding the foregoing, if District’s failure to pay is due to the inability, through no fault of its own, to collect the matching payments from the state of New Mexico or from USAC, then District shall be exempt from any such late fee(s) for such period of time, however long, that corresponds to the delay in collecting such payments.
- H. E-Rate Applications. District shall make every reasonable effort to obtain and maintain E-Rate Funding throughout the Term of this Agreement. Failure of District to file all appropriate paperwork within established USAC deadlines and perform all administrative tasks to obtain and maintain E-Rate Funding may result in District becoming liable to Service Provider for the discounted services actually delivered.

3. TERM

THIS LEASE AGREEMENT SHALL BECOME EFFECTIVE AFTER APPROVAL BY ALL PARTIES (Service Provider and District), ON THE (FIRST DAY OF THE MONTH FOLLOWING THE SUBMITTAL DATE OF THE WRITTEN NOTICE OF ACCEPTANCE FROM THE DISTRICT (which is defined as, all circuits are turned over, accepted). This _____ Lease Agreement shall terminate identify terms after the commencement of the Services, unless terminated pursuant to Part I of this Agreement Section 4 (Termination), or Section 5 (Appropriations).

Force Majeure. Neither Party shall be liable to the other Party, and each Party’s performance under this Agreement shall be excused, if and to the extent that any failure or delay in such Party’s performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party’s performance of such obligations shall be excused and extended for and during the period of any such delay: act of God; fire, flood, shortages or unavailability or other delay in material delivery not resulting from the responsible Party’s failure to timely place orders therefore; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; strikes or other labor disputes; failure of a third party to grant or recognize an Underlying Right; inability of a Party to obtain rights of way, easements, building



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access or other rights from private property owners; inability of Service Provider to obtain access to the Service Provider System; or any other cause beyond the reasonable control of such Party (each a “**Force Majeure Event**”). The Party claiming relief under this Section shall notify the other in writing of the existence of the event relied on, the estimated duration and the cessation or termination of said event, and the Party claiming relief shall exercise all reasonable efforts to minimize the time of any such delay.

4. ACCEPTANCE AND DOCUMENTAION

1. **Acceptance.** District shall be deemed to have accepted and to be in possession of the ___ fibers upon the Effective Date pursuant to the procedures set forth below.

(a) **Installation and Delivery.** Service Provider will install and deliver the fibers on or before the ready for Service Date provided in the WBS (see Section 2 compensation, Section C, supra.).

(b) **Acceptance Process.** Upon completion of the installation and delivery of the fibers, Service Provider will notify District that the District fibers are ready for acceptance testing (Completion Notice). Service Provider’s notice must include with the Completion Notice the results of Service Provider testing. Within ten (10) business days of receipt of a Completion Notice, District shall provide Grantor with a written notice accepting or rejecting the fibers. District shall have the right to independently test the fibers during the ten (10) business day period; provided that Service Provider shall have the right to be present at any such independent testing. Acceptance of the fiber shall be accomplished by a written Notice of Acceptance from the District.

Issuance of an Acceptance Notice or failure to issue an Acceptance/Rejection Notice within the ten (10) business day period shall constitute unconditional and irrevocable Acceptance of the ___ fiber for all purposes under this Agreement by District as of the 11th day.

District may reject the Buyer Fibers only if they do not conform to the Specifications and Performance Standards, in which case Service Provider will promptly undertake to investigate and correct any deficiency or non-conformity in the ___ fibers. Thereafter, Service Provider shall again conduct testing of the ___ fibers from access point to access point. The foregoing procedure shall apply again and successively thereafter until Service Provider has remedied all defects or failures and Service Provider has received written notice from District that the ___ fiber conforms to the Specifications and Performance Standards, provided. However, if District delivers to Service Provider any subsequent Rejection Notices after the initial ten (10) business day period, within ten (10) business days after receipt of the relevant test results from Service Provider, the District shall be deemed to have Accepted the ___ Fibers.

If District issues a Rejection Notice where Service Provider reasonably believes the ___ fiber test results conform to the Testing and Acceptance Standards, the parties shall work together to do cooperative testing to determine whether the test results conform to specifications. The date of Acceptance shall constitute the “**Effective Date.**”



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5. AUTHORITY

If Service Provider is other than a natural person, the individual(s) signing this Agreement on behalf of Service Provider represents and warrants that he or she has the power and authority to bind Service Provider, and that no further action, resolution, or approval from Service Provider is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last executed by either party hereto as indicated below.

Contractor:

By: _____ **Date:** _____

Print Name: _____

Title: _____

Service Provider: _____

District:

By: _____ **Date:** _____

Print Name: _____

Title: _____

District: _____

NM CRS Number: _____



Services Contract/Agreement

APPENDIX B

CAMPAIGN CONTRIBUTION DISCLOSURE

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The Prospective Contractor must disclose whether they, a family member or a representative of the Prospective Contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the Contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the Prospective Contractor, a family member or a representative of the Prospective Contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a Prospective Contractor, a family member of the prospective Contractor, or a representative of the Prospective Contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a Prospective Contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the Prospective Contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to federal, statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.



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“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law, or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association, or any other private legal entity.

“Prospective Contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a Prospective Contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the Prospective Contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contribution(s): _____

Signature _____ Date _____

Title (position)

- OR -

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature _____ Date _____

Title (position)

Offeror Business Name





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**APPENDIX C
COST PROPOSAL FORM**

See attached Cost Proposal Form in Excel Format