Contract No. **BA-E####**
Federal ID No.

LIT AND DARK FIBER WAN SERVICES AGREEMENT
RFP No. E2717

THIS LIT AND DARK FIBER WAN SERVICES AGREEMENT (this "Agreement) is entered into this 1st day of July 20XX, by and between the Socorro Independent School District (the "District" or "SISD") and AWARDED VENDOR (the "Contractor").

WHEREAS, the Contractor desires to perform the described work pursuant to the terms and conditions of this Agreement and **RFP No. E2717.**

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the District and the Contractor hereby agree as follows:

1. Work of Contractor. The Contractor shall serve as an independent contractor to provide the LIT AND DARK FIBER WAN SERVICES, products, equipment, and services described herein in strict accord with the SISD Request for Proposals E2717 and Contractor's response thereto attached as **Exhibit "A"** (Supplier Response) and incorporated herein by reference for all purposes (the "Work"). Any attachments submitted with original response and/or any revised/clarifications (via e-mail/fax/hard copy etc.) agreed to by both parties will be documented under original file, to be set forth within this contract. Notwithstanding any conflict between the language in Exhibit A or RFP and the terms set forth below, the terms set forth below shall prevail with respect to the Agreement between the parties.

(a) Negotiations: SISD reserves the right to have any additional terms and conditions incorporated into the agreement provided an authorized modification to the contract/purchase order is mutually agreed upon and duly executed by both parties. SISD reserves the right to add and/or delete items during the contract period as the need arises as long as these items are within the scope of the solicitation/contract. The successful vendor will be contacted and asked to provide product/service and pricing for these items. The additions will be firm for the remaining contract period. The addition of new goods and/or services cannot materially change the contract between Socorro ISD and the Vendor. In the event that a material change occurs to a contract, the contract will not be renewed upon conclusion of its term. "Material Change" means a modification that substantially exceeds the terms of the original contract.

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2. Services Provided by the District – District Representation. The District, in its sole discretion, may provide (at the District's sole cost and expense) the Contractor with such administrative assistance as may be reasonably required by the Contractor for the performance of the Work. District's Chief Technology Officer, or designee, is designated as the District's representative for this contract. However, the Board of Trustees of SISD must approve, in writing, any amendment or change in the terms of this Agreement. All instructions related to schedules routes and times of access and egress for the provision of pick-up and delivery services covered by this Agreement will be communicated through the designated representative in writing, or if oral communications are necessary because of urgent circumstances, confirmed in writing as soon as reasonably possible.

3. Schedule to Provide Work. Contractor shall commence the Work upon the complete execution hereof, delivery of all required documents, including, but not limited to, certificates of insurance; payment, performance bonds and issuance of notice to proceed by SISD, except for the provisions of this Agreement which survive termination, and shall accomplish the Work in accord with the schedule and terms of service provided herein. Contractor shall not commence Work under this Contract until all insurance required herein has been obtained and evidence of insurance has been submitted to and verified by SISD. SISD reserves the right to terminate this Agreement if the required insurance certificates are not supplied by Contractor or if Contractor permits any of the insurance to lapse.

4. Liquidated Damages. The Contractor acknowledges and agrees that: (i) time is of the essence in this Agreement; (ii) the District will suffer damages if the Work is not completed in accord with the service schedule established; and (iii) such damages will be difficult to calculate accurately. Therefore, the Contractor agrees that it shall be liable for and shall pay to the District the sum of $500.00 per day, not as a penalty, but as the fixed, agreed liquidated damages, for each full or partial calendar day of unexcused delay wherein Contractor, at no fault of SISD fails to provide the services, products or equipment required by this Agreement. For the purposes of this Paragraph 4, a delay shall not be considered unexcused if the delay was caused by strikes, lockouts, acts of governmental agencies, and/or acts of nature preventing the Contractor from performing the Work. The per day amount set forth in this Paragraph 4 is fixed and agreed upon by and between the Contractor and the District because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the District would in such event sustain, and said amount is agreed to be the amount of damages which the District would sustain. Assessment of liquidated damages set forth herein does not preclude SISD from seeking and obtaining other remedies as set forth herein or any other available remedy at law or in equity.

5. Compensation. As compensation for the Work, the District shall pay the Contractor in accordance with the pricing schedule and terms set forth on the attached **Exhibit "B."** (Summary Sheet) The Contractor acknowledges and agrees that the Compensation is a fixed sum which may only be adjusted in accordance with the terms and conditions of this Agreement and after written approval by the District. The Contractor acknowledges and agrees that the Compensation shall constitute full payment to the Contractor and shall include, without limitation, costs of all supplies, materials, equipment, travel expenses, lodging, meals and all other expenses of any kind or nature incurred by the Contractor in the performance of the Work.

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6. Payment. The Contractor shall provide the District with invoices for compensation, in a form acceptable to the District, on a monthly basis. Invoices which are acceptable to the District shall be paid within thirty (30) days of receipt. Contractor agrees to provide the "Prompt Payment" discount set forth in the approved bid response. (1% Discount in 10 days)

7. Adjustment of Compensation and/or Completion Date. In the event of any occurrence wholly beyond the Contractor's control, which is not reasonably anticipatable or any other cause which the District, in its sole discretion, determines justifies an adjustment to the Compensation or the schedule, the District may, in writing, make such adjustments to the Compensation or the schedule as the District, in its sole discretion, may approve.

8. Independent Contractor Arrangement. The Contractor is serving as an independent contractor only, and this Agreement will in no way create any joint venture or employment relationship between the Contractor and the District. The Contractor shall have no authority to bind the District in any contract, agreement or otherwise. The District shall have no obligation to: (i) provide training to the Contractor; (ii) instruct the Contractor as to when, where, or how the Contractor is to work; (iii) hire or supervise or pay any assistants for the Contractor; or (iv) furnish the Contractor with tools, materials or equipment. The District shall have no obligation to withhold from the Compensation any taxes, FICA, or federal or state unemployment insurance premiums. The Contractor shall not accrue leave, retirement, insurance, bonding, profit-sharing or any other benefits which may or may not be afforded employees of the District.

9. Ownership/Use of Documents. Any report(s) and any other documents prepared by the Contractor with respect to the Work shall be the property of the District with all common law and statutory rights related thereto. The District shall have the right to use such documents for any purpose deemed appropriate by the District; provided however, the Contractor shall have no liability for any use of such documents by the District for any purpose unrelated to the Work. The Contractor shall provide the District with five (5) copies of each document requested by the District in both hard copy and electronic form.

THE DISTRICT'S REVIEW, APPROVAL OR USE OF ANY AND ALL DOCUMENTS PREPARED BY THE CONTRACTOR SHALL BE FOR THE DISTRICT'S SOLE PURPOSE AND SHALL NOT IMPLY THE DISTRICT'S REVIEW OF THE SAME, NOR OBLIGATE THE DISTRICT TO REVIEW SAME FOR QUALITY, COMPLIANCE WITH ALL APPLICABLE STATUTES, CODES, RULES AND REGULATIONS OR OTHER LIKE MATTERS. ACCORDINGLY, NOTWITHSTANDING THAT ANY DOCUMENTS PREPARED BY THE CONTRACTOR AND REVIEWED BY THE DISTRICT OR ANY AGENT OR EMPLOYEE OF THE DISTRICT, AND NOTWITHSTANDING ANY ADVICE OR ASSISTANCE WHICH MAY BE RENDERED TO THE CONTRACTOR BY THE DISTRICT OR THE DISTRICT'S AGENTS OR EMPLOYEES, INCLUDING BUT NOT LIMITED TO THE DISTRICT'S DESIGNATED REPRESENTATIVES, THE DISTRICT SHALL HAVE NO LIABILITY WHATSOEVER IN CONNECTION THEREWITH AND SHALL NOT BE RESPONSIBLE FOR ANY OMISSIONS OR ERRORS CONTAINED IN ANY SUCH DOCUMENT SUBMITTED TO THE DISTRICT FOR REVIEW AND APPROVAL AND ANY SUCH DISTRICT

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APPROVAL SHALL NOT CONSTITUTE A WAIVER OR RELEASE OF THE CONTRACTOR HEREUNDER OR AS PROVIDED BY APPLICABLE LAW. THE PROVISIONS HEREOF AND THE ENFORCEMENT OF SUCH PROVISIONS SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

10. Insurance. Unless otherwise agreed to in writing by the parties, the Contractor acknowledges and agrees that the District shall have no duty to obtain and maintain any insurance including, but not limited to, a workers' compensation insurance policy, for the benefit of the Contractor. The Contractor hereby agrees to provide Workers' compensation insurance coverage that meets or exceeds legal requirements covering all of the Contractor's employees and such insurance policies as are set forth on **Exhibit "C"** (Insurance Requirements) attached hereto and incorporated herein by reference. If leased employees will be used, the Contractor shall provide the District with a copy of the leasing company's Texas State License and evidence of workers' compensation coverage insuring the leased employees. SISD, its officers, agents and employees shall be named as additional insureds on all of Contractor's insurance policies with the exception of Worker Compensation and Employer's Liability Coverage. Contractor shall; before performing any of the services herein; file with the District, certificates of insurance described herein naming the District as additional insured and providing for notice to the District in the event of cancellation or lapse of said insurance coverage.

11. Dispute Resolution. The District and the Contractor are fully committed to working with each other and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements with respect to the Work to be performed by the Contractor pursuant to the terms of this Agreement. If disputes or disagreements do arise, the District and the Contractor each commit to resolve such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays, and disruptions to completion of the Work. The District and the Contractor will first attempt to resolve any disputes or disagreements at the field level through discussions between the parties' respective designated representatives. The Contractor shall continue to perform the Work and satisfy its obligations to the District (provided contractor is performing all required work) pending the final resolution of any dispute or disagreement between the parties. If the parties are unable to resolve the dispute through discussions between their designated representatives, either party may file a written request for mediation with the other party. Such mediation will be conducted in accordance with the applicable mediation rules of the American Arbitration Association currently in effect. The parties shall share the costs of mediation equally. Unless otherwise agreed by the parties, the mediation shall be held in the City of El Paso, El Paso County, Texas. Any dispute which cannot be resolved by mediation may then be submitted to the appropriate state or federal court in the City of El Paso, El Paso County, Texas. In the event the efforts to resolve the dispute through mediation are unsuccessful, the Contractor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court, or any United States Federal Court, sitting in the City of El Paso, El Paso County, Texas, over any suit, action or proceeding arising out of or relating to this Agreement. The Contractor further hereby irrevocably waives, to the fullest extent permitted by law, any objection that the Contractor may now or hereafter have to the laying of venue in any such court and any claims that any such court is an inconvenient forum. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement,

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the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which it may be entitled.

12. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

13. Termination; Suspension.

This contract shall be in force and effect for one year. SISD shall have, within its discretion, the option to extend the term for two additional one year terms at the end of the Primary Term or any later extended Term, unless terminated earlier as herein provided:

(a) By the District. The District may terminate this Agreement immediately upon any breach of this Agreement by the Contractor. The District may also terminate this Agreement or any portion of the Work under this Agreement upon written notice to the Contractor for the District's convenience and without cause. Upon written notice to the Contractor, the District may for its convenience and without cause suspend performance of the Work by the Contractor or any portion of the Work for a period not to exceed ninety (90) consecutive days.

(b) By the Contractor. The Contractor may terminate this Agreement if the District fails to perform its obligations herein. Provided, however, that the Contractor must have first given the District written notice of such failure and the District must have failed to cure such failure within twenty (20) days of receipt of such notice. The Contractor may also terminate this Agreement if the District suspends Contractor's performance of the Work for a period in excess of ninety (90) consecutive days. In the event of a termination of this Agreement, the District shall be paid an amount equal to the value of the products sold by the Contractor as of the date of such termination.

(c) District's rights of Termination, Suspension or Cancellation are in addition to other remedies District may have in law or equity.

14. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring, evaluation and audit by the District. Contractor shall provide access to any books, documents, papers and records of the Contractor which are directly pertinent to the Work or the calculation of gross sales upon demand during regular business hours. Contractor shall maintain all records regarding the Work and all deliveries and pick-ups for twenty-four (24) months after termination of this Agreement.

15. Indemnification. The Contractor shall indemnify and hold harmless the District, its Board of Trustees, employees, agents and representatives (the "Indemnified Parties") from all losses, claims, liabilities, injuries, damages, actions or causes of action, and any costs and expenses, including, without limitation, reasonable attorney's fees, of any type or description, brought, asserted or made for or on account of any injuries or damages received or sustained by any person or person (including, without limitation, one of the Indemnified Parties) or property, arising out of, relating to, or occasioned by the performance or lack of performance, errors, omissions, negligence or intentional acts of the Contractor, its agents, contractors, subcontractors

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or employees related to the Work and its duties and obligations under or pursuant to this Agreement, whether or not any other party contributes to such performance or lack of performance, errors, omissions, negligence or intentional acts of the Contractor, its agents, Contractors, subcontractors or employees. Upon demand by the District, the Contractor shall diligently defend any indemnified matter relating to the Work and which is made or commenced against the District, whether alone or together with the Contractor or any other person, all at the Contractor's own cost and expense and by counsel to be approved by the District in the exercise of its reasonable judgment. In the alternative, at any time the District may elect to conduct its own defense through counsel selected by the District and at the cost and expense of the Contractor. Nothing in this Paragraph 16 shall limit or impair any rights or remedies of the District against the Contractor or any other person under any other provision of this Agreement or under applicable law. The Contractor shall not be required to indemnify the District if such indemnification would be a violation of a Texas statute. The terms of this Paragraph 16 shall survive the termination of this Agreement.

16. Status of the Contractor. The Contractor hereby represents, promises and warrants to the District: that the Contractor is financially solvent and possesses sufficient experience, all required licenses, authority, personnel and working capital to complete the Work required under this Agreement.

17. Business Ethics Standards. The Contractor hereby acknowledges that it has reviewed the District's business ethics policy attached hereto as **Exhibit "D"** (Ethics Policy) and incorporated herein by reference for all purposes. The Contractor represents to the District that it has not violated such standards, as are listed in the policy, in its dealings with the District and covenants that it will abide by such policy in the Contractor's performance of this Agreement.

18. Criminal Background Check. Awarded contractor shall ensure to Socorro ISD that any agent/representative and/or employee(s) who will be performing services on campuses or will have direct contact with students shall be subject to a criminal history background check using the LEE FAST PASS process and shall not have a criminal history which is objectionable to the district. Awarded contractor shall submit appropriate information to SISD in compliance with Section 22.0834 and 22.08341 et.seq., Texas Education Code regarding criminal history records. The criminal background checks must be performed before any new employee or subcontractor is permitted to enter SISD property. SISD reserves the right to require additional background checks of identified personnel performing work on any projects or services where direct contact with staff and students may occur. The cost of required background checks and badges will be the responsibility of the successful contractor. Awarded vendor(s) shall also be required to provide identification badges for every employee(s) who will be performing services to the district at its expense. The badge will require the company's name, employee's name and a picture of the employee.

19. Confidentiality. The District considers all non-public information concerning the Work to be performed under the terms of this Agreement as well as any reports or other documentation related thereto to be confidential and proprietary unless otherwise expressly indicated in writing by the District to the Contractor. The Contractor shall not release any non-public information to any third party without the prior written consent of the District. Contractor understands that SISD must release information under the Texas Public Information Act.

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20. Assignment. The Contractor agrees that the duties and obligations of the Contractor under this Agreement are not assignable or transferable and the Contractor agrees not to subcontract any of the Work to be performed hereunder, without the prior written approval of the District.

21. Entire Agreement. This Agreement constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by both parties.

22. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same Agreement.

23. Right to Audit. During the term of this agreement, including any extension(s) thereof, the District or its duly authorized audit representative will have the right to audit AWARDED VENDOR records and books, relevant to all services provided under this Agreement, during AWARDED VENDOR regular business hours and upon reasonable notice to AWARDED VENDOR. In the event an audit reveals any overpayments, AWARDED VENDOR will pay to the District the full amount of the overpayments within thirty (30) days after being notified of the audit finding. All audit findings are subject to confirmation by either party.

24. Special Terms and Provisions.

A. Compliance with Laws and Regulations.

Contractor shall, in providing equipment and services required hereunder, comply with all applicable laws, rules, regulations and ordinances, and to the extent applicable, comply with all SISD policies including the following exhibits.

1. **Exhibit E** - Certificate of Interested Parties (CIP Form 1295)
2. **Exhibit F -** Purchase Order Terms and Conditions
3. **Exhibit G –** EDGAR Certification Form
4. **Exhibit H –** Criminal Background Check

B. Non Performance.

If at any time the Contractor fails to fulfill or abide by the terms, conditions and specifications of this Agreement, SISD reserves the right to terminate this Agreement for cause.

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C. Contract Period.

This Agreement will extend for one year from the date hereof (the "Primary Term"). SISD shall have, within its discretion, the option to extend the term for two additional one year terms at the end of the Primary Term or any later extended Term.

D. No Quantity Guarantee.

SISD makes no express or implied representation that any particular quantity or dollar amount of fees will result from this Agreement.

E. Merger and Amendment

This Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes any existing rights in prior contracts between the parties with regard to the subject matter of this Agreement. No prior or contemporaneous agreement, oral or written, will be effective to vary the terms or conditions of this Agreement. No amendment to this Agreement will be effective unless reduced to writing and signed by an authorized representative of each party

NOTWITHSTANDING ANY PROVISIONS HEREIN CONTAINED TO THE CONTRARY: (i) THE SOCORRO INDEPENDENT SCHOOL DISTRICT DOES NOT WAIVE SOVEREIGN IMMUNITY BY ITS EXECUTION OR DELIVERY OF THIS AGREEMENT OR BY ANY CONDUCT OF ITS REPRESENTATIVES UNDER THIS AGREEMENT; AND (ii) THE DISPUTE RESOLUTION PROCESS HEREIN PROVIDED DOES NOT AFFECT THE SOCORRO INDEPENDENT SCHOOL DISTRICT'S RIGHT TO ASSERT ALL CLAIMS AND DEFENSES IN ANY LEGAL PROCEEDING.

Executed this 1st day of July 20XX.

THE CONTRACTOR:	**THE DISTRICT:**
AWARDED VENDOR	**SOCORRO INDEPENDENT SCHOOL DISTRICT**
Print Name: _____	Print Name: _____
Signature: _____	Signature: _____
Title: _____	Title: _____

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Exhibit "A"

Contractor's Response to RFP # E2717

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Exhibit "B"

Awarded Summary of Work and Pricing

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Exhibit "C"

Required Insurance and Limits

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Exhibit "D"

District Business Ethics Policy

SAMPLE

Exhibit "E"

Certificate of Interested Parties (CIP Form 1295)

SAMPLE

Exhibit "F"

Purchase Order Terms and Conditions

SAMPLE

Exhibit "G"

EDGAR Certification Form

SAMPLE

Exhibit "H"

Criminal Background Check

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