



**Abilene Independent School District  
Competitive Sealed Proposal**

**Proposal Name: Dedicated Internet Access South NOC  
Proposal Number: 014, 20-21**

The Abilene Independent School District ("AISD" and/or the "District") is soliciting proposals for Dedicated Internet Access South NOC as more fully set out in the Scope of Work and Specific Conditions, Specifications and Pricing sections of this Request for Competitive Sealed Proposals ("RCSP") and Master Service Agreement hereafter may be referred to as the Contract attached as Exhibit 1.

One (1) original version of the proposal in hard copy (clearly marked "original"), two (2) copies of the proposal in hard copy (clearly marked "copies"), and one (1) searchable electronic copy of the proposal on a thumb drive, in PDF format, shall be submitted in a SEALED envelope or container. These must be submitted in accordance with the instructions set out herein to:

Abilene Independent School District  
Purchasing Department  
3757 Amarillo Street  
Abilene, Texas 79602

Proposals will be received at the above address until 1:00 PM (CST), Tuesday, January 5, 2021.

Proposals received at the Purchasing Department after above date and time, whether mailed or delivered in person, will not be considered.

*The Abilene ISD Purchasing Office will be closed December 21, 2020 through January 1, 2021. The office will open on January 4, 2021 at 7:00 A.M (CST).*

*Abilene ISD Warehouse and Central Receiving offices located at 3757 Amarillo Street, Abilene, Texas 79602 (same as above) will accept Vendor's proposals that are delivered via expedited courier (e.g. FedEx or UPS) during the holidays. These offices will be closed December 24<sup>th</sup>-25<sup>th</sup> and December 31<sup>st</sup> –January 1<sup>st</sup>.*

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## 1.0 NOTICE OF INTENT

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It is the intent of the Abilene Independent School District (AISD or the District) to award a Contract for the District's Dedicated Internet Access Services for 4 Gb, 6 Gb, 8 Gb, or 10 Gb with the ability to upgrade or downgrade during the Contract, as needed, in a form substantially similar to the one attached to this RFP as Exhibit 1 (which will include the Contract Documents listed in Section 1.1.2), using the Competitive Sealed Proposals procurement method permitted by described in both Texas Education Code, Section 44.031 and (for purposes of Special Construction proposed) Texas Government Code, Section 2269.151-155. Products and services considered for award shall, at a minimum equal or exceed the quality level of industry standards and the standards defined within the Scope of Work and Specifications and Pricing Form of this proposal, and shall comply with all applicable federal, state, and local technical, environmental, and performance standards and specifications.

1.1 **DEFINITIONS:** In this RFP the following terms are defined as follows:

1.1.1 "AISD, the District, and/or government entity" refers to Abilene Independent School District.

1.1.2 "Contract Documents" means an agreement entered into between the District and a Vendor as a result of this RFP. The Contract consists of (1) Service Order/Service Order Addendum and associated Exhibits, but solely with respect to the Service covered by that Service Order; (2) the Service Schedule but solely with respect to the Service covered by that Service Schedule and (3) this MSA including associated Exhibits; (4) any Purchase Order issued under this Contract Document, (5) the Request for Proposals, including all Addenda and (6) the Vendor's Proposal that is satisfactory to the District. The order of precedence for the documents included in the Contract as defined in this Section is in the order listed herein, beginning with number (1).

1.1.3 "Proposer" or "Offeror" refers to the person/firm that submits the proposal to this RFP.

1.1.4 "Project" means the Scope of Work for furnishing goods and services as outlined in this RFP.

1.1.5 "Proposal" refers to the documents submitted by a Proposer that addresses the scope and requirements of this RFP.

1.1.6 "Purchase Order" or "PO" means the purchase order between AISD and the Vendor issued in connection with the written Contract entered into by the District with the Vendor. Terms and conditions agreed to by the Vendor and AISD are included in the Master Agreement attached as Exhibit 1 and E-Rate Special Terms and Conditions attached hereto as Exhibit 2 and the terms and conditions stated therein are considered part of the Vendor's Obligations. No Vendor Terms and Conditions will be included in the P.O. or the Contract (or incorporated by reference) which delete or diminish Vendor obligations or increase District's obligations unless agreed in writing by both parties prior to execution of the Contract. Purchase Orders from Abilene ISD will be delivered by email or by fax and electronic signatures on such documents shall be sufficient and binding.

1.1.7 "RFP" or "RCSP" refers to this Request for Competitive Sealed Proposal.

1.1.8 "Responsive Proposal" refers only to those proposals that comply with all material administrative and substantive aspects of this RFP.

1.1.9 "Scope of Work" is set forth in Scope of Work and Specifications section of this RFP.

1.1.10 "Vendor" refers to the person(s)/entity(ies) with whom a contract is entered pursuant to this RFP.

1.1.11 Singular terms shall include the plural and vice versa. A gender reference includes both genders.

## 2.0 PROPOSAL PROCESS

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2.1 **GENERAL INFORMATION:** The following instructions by the District are intended to provide a fair and equal opportunity for all Proposers to participate in the proposal process to provide a specific set of criteria upon which Proposers will be evaluated and provide notice of the District's business and service requirements. This proposal is governed by the Texas Education Code (TEC), Texas Government Code, other applicable Texas state statutes, federal statutes, e-rate rules and regulations, local ordinances and regulatory requirements and the District's Board Policy.

2.2 **QUESTIONS CONCERNING THE RFP:** The District designates the following person as the District's Representative with regard to this RFP.

Lisa Metcalf, Director of Purchasing  
Abilene Independent School District  
P.O. Box 5764  
Abilene, Texas 79608  
E-Mail: [lisa.metcalf@abileneisd.org](mailto:lisa.metcalf@abileneisd.org)

Respondent shall restrict its contact with any other District personnel, the Administration, or the Board of Trustees, and direct all questions regarding this RFP, including questions regarding terms and conditions, to the District Representative in writing via e-mail at the address above. Contact with any of these prohibited individuals after issuance of the RFP and before selection is made, may result in disqualification of your proposal. **Questions concerning the RFP will be answered only if received by the District's Representative in writing at the email listed above on or before 5:00 p.m. December 15, 2020.** All questions properly and timely submitted in writing as described above will be answered in a formal written Addendum which will be posted on the USAC-SLD website using the RFP upload feature in EPC. Each Addendum issued must be acknowledged by each Proposer in its Response. Acknowledgement of all Addenda is the responsibility of the Proposer and failure to acknowledge any Addendum may be grounds for disqualification of that Offeror's Proposal.

### 2.3 BID SECURITY FOR PROPOSED SPECIAL CONSTRUCTION

2.3.1. Offerors submitting a proposal including special construction must submit a certified or cashier's check or proposal bond, made payable to the Abilene Independent School District, executed by a corporate surety acceptable to the District, which is licensed pursuant to the Texas Insurance Code and listed on the United States Department of the Treasury's Listing of Approved Sureties (Dept Circular 570).

2.3.2. The bond amount or check shall be the amount of Five Percent (5%) of The Total Cost of any Special Construction proposed. The Proposal Bond must be valid for sixty (60) days following the deadline for submission of proposals; must be conditioned upon the Contractor entering into the Contract in writing with the Owner in accordance with terms of the proposal, and furnishing such bonds and other instruments as may be specified in the Master Agreement attached to this RFP as Exhibit 1 with good and sufficient Surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; must be accompanied by an original signed and notarized Power-of-Attorney bearing the seal of the issuing surety company; and reflect that the signatory to the bond is a designated Attorney-in-Fact.

2.3.3. The Bid Security deposited by Offerors shall be returned when a Contract has been executed by the successful Offeror and all conditions to commencement of work have been provided by the successful Offeror. The Bid Security for all Offerors may be returned at an earlier date if the District rejects all offers, fails to accept any proposal within sixty (60) days after the date scheduled for opening of proposals, or for an individual Offeror if its proposal is withdrawn.

### 2.4 PROPOSAL SUBMISSION:

2.4.1 AISD will not accept a faxed or emailed Proposal.

2.4.2 One (1) original version of the proposal in hard copy, (clearly marked "original"), two (2) copies of the proposal in hard copy (clearly marked "copies"), and one (1) searchable electronic copy of the proposal on a thumb drive, in PDF format, shall be submitted in a SEALED envelope or container. Proposals will be received via hand at the District's Purchasing Department during regular District hours. First class mail or expedited courier (e.g. FedEx or UPS) will not deliver to a P.O. Box.

If delivered by US Postal Mail:

Abilene Independent School District  
Purchasing Department  
PO Box 5764  
Abilene, Texas 79608

OR

If delivered by hand or via overnight courier (e.g. FedEx):

Abilene Independent School District  
Purchasing Department  
3757 Amarillo Street  
Abilene, Texas 79602

All sets of the proposal and the electronic copy on a thumb drive must be submitted in a single envelope or container. The envelope or container must be SEALED. The outside of the envelope (or other package or container) must bear the following information in clear and legible form:

- a) In the upper left-hand corner: print the full name and address of the bidding entity, and the name and telephone number, including area code, of the person to contact with questions about the proposal submission, and
- b) In the lower left-hand corner: "Proposal Enclosed", the proposal name, proposal number, and submission deadline indicated on the Notice of Invitation to Bid.

*Note: The Abilene ISD Purchasing Office will be closed December 21, 2020 through January 1, 2021. The office will open on January 4, 2021 at 7:00 A.M (CST).*

*Abilene ISD Warehouse and Central Receiving offices located at 3757 Amarillo Street, Abilene, Texas 79602 (same as above) will accept Vendor's proposals that are delivered via expedited courier (e.g. FedEx or UPS) during the holidays. These offices will be closed December 24<sup>th</sup>-25<sup>th</sup> and December 31<sup>st</sup> –January 1<sup>st</sup>.*

**2.5 MODIFICATION OR WITHDRAWAL OF PROPOSALS:** Proposals may be modified or withdrawn by written notice received by District Representative prior to the exact hour and date specified as the deadline for receipt of proposals. Proposal modifications made on the outside of proposal envelope are to be considered non-responsive and will not be considered.

**2.6 LATE PROPOSALS:** Responses submitted after the due date and time noted in this RFP shall not be considered. AISD is not responsible for lateness of U.S. Mail, Commercial (Professional) Carrier, personal delivery, or any other delivery method. The time and date stamp clock in the Abilene ISD's Purchasing Department, 3757 Amarillo Street, Abilene, Texas, shall evidence the official date and time of receipt. It shall be Proposer's sole responsibility to ensure that the Proposal is received at the appropriate location by the specified deadline. **Proposals submitted after 1:00 P.M. (CST), Tuesday, January 5, 2021 will not be accepted and will be returned to the proposer, unopened. There shall be no exceptions to these requirements.**

**2.7 OPENING PROPOSALS:** Following the deadline for receipt, the District's staff will receive, publicly open, and read aloud the names of the offerors and prices stated in the proposals. Within 45 days following the date of the opening, an evaluation committee made up of District staff, to whom the Board has delegated this authority, will consider, evaluate and rank each proposal submitted in relation to the Evaluation Criteria set forth herein (with cost for E-Rate eligible items weighted highest) determining which offers the best value for the District from first to last. Following the evaluation, a recommended ranking will be made to the Board of Trustees which will either approve the rankings or re-rank the Proposals based on the same published evaluation criteria. Following the Board's approval of the Evaluation Committee's ranking or conducting its own ranking, the District representative will attempt to negotiate an agreement with the number one ranked offeror. In accordance with Texas Education Code Section 44.0352 and/or Texas Government Code Section 2269.155, the Superintendent or Board designee may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the District is unable to negotiate an agreement with the first ranked offeror, the District will, formally and in writing, end negotiations with that offeror and proceed to the next ranked offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

**2.8 RESPONSIVE PROPOSAL:**

**2.8.1** Respondents are expected to examine this RFP and information provided herein carefully, understand the terms and conditions for providing the services listed herein and respond completely. To be deemed responsive and qualify for evaluation, a Proposal must be timely submitted and must materially satisfy all mandatory requirements identified in this RFP. **FAILURE TO COMPLETE AND PROVIDE ANY OF THE REQUESTED INFORMATION MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.**

**2.8.2** All responses in the offeror's proposal will be used to help AISD select a vendor based on the evaluation criteria. The District reserves the right to verify the accuracy and completeness of all responses by utilizing any information available to the District without regard to whether such information appears in your proposal.

**2.9 RETENTION OF PROPOSAL DOCUMENTATION:** All Proposal materials and supporting documentation submitted in response to this RFP becomes the permanent property of AISD and will not be returned to Proposer.

2.10 **FINANCIAL RESPONSIBILITY:** Proposer shall pay all costs related to the preparation and submission of its Proposal.

2.11 **RESERVATION OF RIGHTS:** AISD reserves the right to:

2.11.1 Cancel this RFP in whole or in part, at the sole discretion of AISD or make no award.

2.11.2 Reject and/or disqualify any or all Proposals received based on the terms of the RFP. may reject any part of any bid without affecting the remainder of that proposal, or may choose to not award a contract pursuant to this RFP.

2.11.3 Not award this proposal.

2.11.4 Waive any formalities, technicalities, irregularities, or other defects in submissions so long as it does not provide unfair advantage.

2.11.5 Be the sole judge of quality and suitability of any products or services offered, make all decisions regarding this RFP, including, without limitation, the right to decide whether a Proposal materially complies with the requirements set forth herein.

2.12 **WAIVER OF RIGHTS.** By submitting a proposal, each offeror agrees to waive any claim it has or may have against the District, the District's consultants, and their respective trustees, agents and employees, and any reference sources, arising out of or in connection with the administration, evaluation, or recommendation of any proposal; waiver of any requirements under the proposal documents; acceptance or rejection of any proposal; and award of a contract.

2.13 **TEXAS PUBLIC INFORMATION ACT.**

2.13.1 As a governmental body, AISD is subject to and will comply with the Texas Public Information Act (Chapter 552, Tex. Gov't Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. All Proposers should obtain and thoroughly familiarize themselves with the Act, rules, statutes and case law applicable to the issue of confidentiality and public information and in particular the most recent amendments to the Act – Section 552.0222 which went into effect January 1, 2020. Texas Government Code Section 552.0222, which defines “contracting information” as public, except to the extent it is excepted from disclosure under the Act and provides a broad definition of “contracting information” in Section 552.003(7) of the Act, to include: (1) information maintained by a governmental body or sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor which is contained in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; (2) the solicitation or bid documents relating to a contract with a governmental body; (3) communications sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor during the solicitation, evaluation, or negotiation of a contract; (4) documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and (5) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body. Certain terms or information included in the definition of “contracting information” have, however, been specifically deemed by Section 552.0222(b)(3) to be public information, and not subject to the exceptions from disclosure provided by Section 552.110 for trade secrets and certain commercial or financial information and Section 552.1101 for proprietary information.

During the course of the selection process, Proposals are exempt from disclosure to the public under the Texas Public Information Act, however, upon award of a Contract, the contents of the Proposals are presumed to be public information, subject to disclosure to any person who makes a proper request for review of the documents, unless information contained within the Proposals is subject to one of the exceptions provided in the Act. Some of the information you may provide in your Proposal may contain commercial or financial information which you consider confidential, a trade secret, proprietary, or of a nature which you believe will cause substantial competitive harm to your business if disclosed by the District to a third-party even after the award. You may be entitled to protect some or all of this information in the event a proper request is made for disclosure; however, you will need to consult your legal counsel to assure that this kind of information, if included in your Response, is properly marked prior to submission, in a manner most likely to effectively identify information you believe to be exempt from disclosure and preserve your rights. The District will not advise a Proposer as to the nature or content of documents entitled to protection from disclosure under the Act or other Texas Laws, as to the interpretation of such Laws, or as to the definition of trade secret. The Proposer shall be solely responsible for all determinations made by it under applicable Laws. Each Proposer is advised to contact its own legal counsel concerning the effect of applicable laws to that Proposer's own circumstances.

2.13.2 In the event that the District receives a proper request for disclosure of public information under the Act in connection with this RFP or any non-public Contracting Information in its custody or control, and the District has a reasonable basis to believe the information may be considered confidential under the Act or other law, involves a person's privacy interests, constitutes a trade secret, confidential commercial, financial or proprietary information, economic development or investment information which may fall within one of the exceptions to disclosure under the Act, the District will decline to release the information for the purpose of

requesting an attorney general decision and make a good faith attempt to provide notice to the Proposer of the request and comply with the other procedural requirements of Section 552.305 of the Texas Government Code. Under no circumstances shall the District be obligated to submit any argument or reasons why the information should be withheld or released, or raise any objection to release on behalf of the Proposer. Proposer understands and agrees that it shall be solely responsible for submitting arguments and information to the Attorney General on its own behalf, to monitor such proceedings and make timely filings. The District's only obligation shall be to comply with the requirements of Section 552.305 of the Texas Government Code. The District may, but is not obligated to, make filings of its own concerning possible disclosure; however, the District is under no obligation to support the positions of the Proposer.

2.13.4 By submitting a Proposal to the District in response to the RFP, the Proposer consents to, and expressly waives any right to contest, the provision by District to the Office of the Attorney General of all, or representative samples of, the Proposal, including any non-public financial statements of privately held entities and other confidential or proprietary information, in accordance with the Act and each Proposer consents to the release of all such information to the Office of the Attorney General for purposes of the Attorney General making a determination in response to a disclosure request under the Act and to disclose the name of the Proposer and pricing at the opening of proposals as required by statute. Under no circumstances will District be responsible or liable to a Proposer or any other party as a result of disclosing any materials, whether the disclosure is deemed required by Law or by an order of court or occurs through inadvertence, mistake or negligence on the part of District or its officers, employees, contractors or consultants.

### 3.0 PROPOSAL INSTRUCTIONS AND REQUIREMENTS

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3.1 **COMPLIANCE REQUIRED:** To achieve a uniform review process and obtain the maximum degree of comparability, it is required that proposals be organized in the manner specified below. Each responsive Proposal shall be typewritten and bound in a three-ring binder or other form which will allow the Proposal to lay flat. Font size shall be no less than 12-point type. Each page shall be numbered. Each proposal must include the sections based on the (Forms listed below and attachments, if any), in the sequence listed below.

3.1.1 **FORM A: Vendor Questionnaire.** Complete and submit the *Vendor Questionnaire* attached hereto as FORM A, attach any documents requested behind FORM A in your Proposal submittal.

3.1.2 **FORM B: References.** Using the form attached as Form B, provide information regarding five (5) clients (preferably school district clients), other than Abilene ISD, to whom you have provided goods and services under the E-Rate Program, similar to the goods and services requested in this Request for Proposals, or clients with whom you have worked on E-Rate projects of similar size and scope to the one for which goods and services are requested in this Request for Proposals. For each named reference, provide the name of the client, and the name, address, telephone number and e-mail address of a person that be contacted regarding the quality of your work, the materials provided, your experience reputation and qualifications, and if the reference is provided based on the similarity of a project provide a description of the project, including, whether any part of the funding via e-rate, the year the project was completed, the final contract amount and indicate whether the project was completed on schedule.

3.1.3 **FORM C: Direct Internet Access (DIA) Pricing.** Complete and submit the *Direct Internet Access (DIA) Pricing Sheet* attached hereto as FORM C with your Proposal submittal.

3.1.4 **FORM D: Deviations/Exceptions To Form Of Contract.** Complete and submit FORM D: *Deviations/Exceptions To Master Agreement* any Deviations/Exceptions proposed to the Master Agreement attached hereto as Exhibit 1 Master Agreement, and include an explanation for the requested change(s) with your response. By execution of its Proposal, Respondent agrees to the Master Agreement attached as Exhibit 1. FORM D, must be submitted with your Proposal, indicate that you propose No Exceptions on the FORM. **NOTE: FAILURE TO PROVIDE COMMENTS OR REQUESTED CHANGES WILL INDICATE YOUR ACCEPTANCE OF THE REQUIRED CONTRACT PROVISIONS AND NO FURTHER NEGOTIATION OF THE PROVISIONS WILL BE PERMITTED.** The final contract shall be subject to review and approval of legal counsel.

3.1.5 **FORM E: General Certifications.** Initial, sign, and submit the Proposer's General Representations, Acknowledgements, Certifications, attached as FORM E with your Proposal.

3.1.6 **FORM F: E-Rate Certifications.** Initial, sign, and submit the Proposer's E-Rate Representations, Acknowledgements, Certifications, attached as FORM F with your Proposal

3.1.7 **FORM G: Conflict Of Interest Questionnaire.** Persons who seek to contract for the sale or purchase of property, Goods, or Services with the District are required to file a completed Conflict of Interest Questionnaire (CIQ) with the District. Complete, sign and submit the Conflict of Interest Questionnaire attached as FORM G with your Proposal.

- 3.1.8 **FORM H: Felony Conviction Notification.** Complete, sign and submit the Felony Conviction Notification Form, attached as FORM H with your Proposal.
- 3.1.9 **FORM I: Non-Collusion Affidavit.** Complete and submit the Non-Collusion Affidavit, attached as FORM I with your Proposal.
- 3.1.10 **FORM J: Antitrust Certification Statement**
- 3.1.11 **FORM K : IRS Form W-9,** Complete and submit IRS Form W-9, attached as FORM K with your Proposal.
- 3.1.12 **FORM L: Insurance Requirements.** A Certificate of Insurance (Acord Form) shall be included with proposal submittal.
- 3.1.13 **Bid Security.** If Proposing Special Construction, submit Bid Security documents as required by Section 2.3. of this Request for Competitive Sealed Proposal.
- 3.1.14 **FORM M: Execution of Offer** – Complete, **manually sign** and submit Execution of Offer, **FORM M.** The Execution of Offer must be **manually signed** by a person, or persons, authorized to bind the entity, or entities, submitting the proposal. **UNSIGNED PROPOSALS WILL NOT BE ACCEPTED.**

Respondents are expected to examine this RFP carefully and to fully inform themselves as to all conditions, requirements, and specifications, understand the terms and conditions for providing the Goods and/or Services listed herein and respond completely. **FAILURE TO COMPLETE AND PROVIDE ANY OF THE ABOVE ITEMS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.**

## 4.0 EVALUATION, CRITERIA WEIGHTS AND AWARD

4.1 **EVALUATION FACTORS:** AISD will conduct a comprehensive, fair and impartial evaluation of all Proposals and will analyze each Proposal to determine overall responsiveness and completeness as defined in Scope of Work and Specifications and Pricing sections. The District, in its sole discretion, may deem a Proposal non-responsive if Proposer fails to comply with the instructions in this RFP or submits an incomplete Proposal. AISD may, in its sole discretion, eliminate non-responsive proposals from further evaluation.

Criteria #	Criteria Description	Weighted Value
1	Price / Value (E-Rate eligible Costs Only)	33%
2	The experience and reputation of the Proposer (including experience with the E-Rate Program and positive or negative experience with District or and other references)	25%
3	The quality of the Proposer's goods and services	15%
4	The extent to which the goods and services meet the District's needs	25%
5	The Proposer's past relationship with the District (considered as part of Criteria 2)	0%
6	The impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses - M/WBE analysis (Not Applicable)	0%
7	The total long-term cost to the District to acquire the Proposer's Products or Services (considered as part of Criteria 4)	0%
8	E-Rate Ineligible Costs	2%

### 4.2 **CONFLICT OF INTEREST:**

4.2.1 **Disclosure of Interested Parties.** District Policy and section 2252.908 of the Texas Government Code requires that a governmental entity or state agency not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295) to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission. A specimen copy of the Disclosure of Interested Parties is attached hereto for reference only as Exhibit 3. The Proposer shall certify its willingness and intention to execute this Disclosure by initialing the Certification in Form E.

4.2.2 **Conflict of Interest Questionnaire.** District Policy and Chapter 176 of the Local Government Code, requires the filing of the Conflict of Interest Questionnaire by a vendor who has a business relationship as defined by Section 176.001(1-a) with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. The District requires that the Conflict of Interest Questionnaire, which is attached as Form G be submitted with the Proposer's Response.



4.2.3 In order to ensure a fair and open competitive bidding process free of conflicts, the E-rate Program rules impose significant restrictions on applicants and consultants regarding the direct or indirect solicitation or acceptance of gifts (defined as gratuities, favors, entertainment, loans, or any other thing else of value) from service providers or prospective service providers, and the combined value of items received by any individual may not exceed \$50 from any one source per funding year. "One source" includes all employees, officers, representatives, agents, independent contractors, and directors of a service provider. Any offering, acceptance, or request of gifts between involved parties is considered a competitive bidding violation. Restrictions on gifts apply all year, not just during the competitive bidding process. For more information regarding please reference the USAC website for the "gift rules". The Proposer shall certify its compliance with the Gift Rules by initialing the Certification in Form F.

4.3 **SIMILAR PRODUCTS:** Whenever AISD refers to a product by describing a proprietary product or by using the name of a manufacturer or brand name, the term "or equal" if not inserted shall be implied, as applicable. The specified product shall be understood as indicating type, function, minimum standard of design, efficiency and quality desired and shall not be construed as to exclude other manufactured products or comparable quality, design and efficiency, as applicable.

#### 4.4 **DISQUALIFICATION:**

4.4.1 Proposer may be disqualified before or after AISD opens proposals upon evidence of any of the following: collusion with the intent to defraud, material misrepresentation, intent to perform other illegal activities for the purpose of obtaining an unfair competitive advantage, debarment and suspension, or indebtedness to the District.

4.4.2 Inclusion of deviations, exceptions or change in the Scope of Work on which Proposal is based in the Vendor's response, may result in disqualification.

4.5 **RANKING OF CONTRACT:** In accordance with applicable laws, rules, and regulations for public procurement, the ranking of Proposals will be determined, based on the evaluation criteria and applicable weights published in this RFP to offer the best value to AISD, with e-rate eligible pricing being the most heavily weighted criteria.

4.6 **EXECUTION OF OFFER:** A signed and submitted Proposal constitutes an offer to Contract with AISD to provide the goods and/or perform the services specified in this RFP. The District shall have no contractual obligation to any Proposer, nor will any Proposer have any property interest or other right in the contract or Work being proposed unless and until the Contract is executed and delivered by all parties, a Purchase Order is issued pursuant to that Contract, and all conditions to commencement of the Contract have been fulfilled by the Vendor.

## 5.0 SCOPE OF WORK AND SPECIFICATIONS

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5.1 **Scope of Work and Specifications.** The District, is requesting proposals for Dedicated Internet Access (DIA) - South NOC located at 3749 South 23rd., Abilene, TX 79605, to meet the District's Internet requirements in accordance with this Scope of Work and Specifications:

5.1.1 The service will provide a 10 Gbps Ethernet Transport with a Committed Data Rate (CDR) options of 4 Gbps, 6 Gbps, 8 Gbps and 10 Gbps of dedicated Internet bandwidth.

5.1.2 The Internet Service Provider (ISP) must provide all necessary equipment, modules, trenching, conduit, cable, etc. in order to complete the connection and fulfill the goal of this RFP as applicable for the delivery of the service.

5.1.3 The ISP may provide secondary Domain Name System (DNS) service as an option.

5.1.4 The service request is for a 10 Gbps capable Internet Service starting with a CIR of 4 Gbps, 6 Gbps, 8 Gbps or 10 Gbps.

5.1.5 The provider should be a Tier One provider or a high capacity/quality Tier 2 provider. If Tier 2/Blended Internet Service is proposed, the response should include the upstream Internet access providers used with the service.

5.1.6 The service provider's transport network from the AISD demarcation point to the provider backbone Internet connection should provide a CDR on the network for the contracted bandwidth, not oversubscribed and be dedicated to AISD.

5.1.7 The provider will provide a dedicated, rate limited service for the CDR, not a burstable service.

5.1.8 The ISP must have a highly reliable and available network. A description of the Transit network should be included including the last and middle mile.

5.1.9 The respondent should include network descriptions and the associated SLA. The network description should include, but is not limited to:

- The facility entry(s)
- The network capacity and network architecture
- The ability to provide a CDR up to the 10 Gbps capacity of the contract.

5.1.10 To ensure E-Rate compliance, the district requests a scalable contract. The contract itself should include pricing for each service level 4 Gbps, 6 Gbps, 8 Gbps, and 10 Gbps and must allow AISD the ability to upgrade to or downgrade from any of those service levels during the term of the contract, without entering into a new contract.

5.1.11 The contract may reference an attachment with those pricing levels as long as the attachment is submitted at the same time as the contract (e.g. – “Service provider will allow upgrades during the term of this contract to any service level/price identified in Attachment \_\_\_”)

5.1.12 The proposal should provide the qualities of services listed below but not limited to the following:

- Lowest Cost per Mb and Cost effectiveness
- Unlimited data transfers
- High quality service
- Dedicated, non-oversubscribed transport
- Dedicated, non-oversubscribed Internet Port Service
- Bandwidth monitoring to ensure good throughput to the Internet
- Easy to maintain connectivity solution
- High reliability
- Support Standard and Jumbo Frame Sizes

5.1.13 The proposal must provide the following:

- Dedicated 10 Gb Internet Service with 4 Gb, 6 Gb, 8 Gb, and 10 Gb Committed Data Rate (CDR) options.
- High availability, reliability and scalability are priority requirements of the service.
- Internet service will support approximately 20,000 users and an estimated 40,000 devices.

5.1.14 AISD will provide the following assets and components for the service:

- AS Number: AS394072
- AS Name: ABILENE-ISD
- Registry: ARIN
- Netblock: 172.99.16.0/22
- AISD will utilize the District’s IPv4 IP blocks with the service.
- AISD will provide Border Gateway Protocol (BGP) routers to support the connection.

## 5.2 Service Specifications

5.2.1 10 Gb DIA Internet Service with bandwidth options of 4 Gb, 6 Gb, 8 Gb, and 10 Gb from July 1, 2021 up to a possible June 30, 2024.

5.2.2 The contract should provide a 1-year term agreement with the ability to renew annually for two 1-year extensions.

5.2.3 The proposals will be evaluated on a 3-year total cost of services.

5.2.4 Provide a 7x24 Enterprise technical support desk and service.

5.2.5 Provide a Customer Portal that allows secure access to view and manage the service with 24 hour a day, seven days a week access or provide usage reporting.

5.2.6 Provide a solution that can monitor and report usage online, electronic format for billing and program assessment.

5.2.7 The District reserves the right to use the Internet service for any District Internet traffic at the discretion of the District.

5.2.8 The responding vendor will provide a response to each Internet Access service requirement as to service availability and description of services to meet the service request.

5.2.9 Ethernet User-to-Network Interface. The service will provide bidirectional, full duplex transmission of Ethernet frames using a standard IEEE 802.3 Ethernet interface (UNI).

5.2.10 Service Provider Infrastructure. The service will provide a highly available, robust infrastructure of equipment and transport to deliver the service. The provider will include information on the delivery network (transport), available services and equipment for reliability, speed and performance to deliver the service.

5.2.11 CDR Based Service. The service will provide a solution that provides capped Committed Data Rate (CDR) service.

5.2.12 Maximum Frame Size. The service will support a maximum transmission unit (MTU) frame size of 1518 bytes at a minimum.

5.2.13 Address Allocation. AISD will provide the IP address space.

5.2.14 Online Reporting. The service provider will provide access to online reports containing historical network traffic information.

5.2.15 Committed Bandwidth and Services. The contracted bandwidth capacity and any associated backhaul transport bandwidth will provide a Committed Data Rate (CDR) as a committed, non-oversubscribed service.

5.2.16 Monitoring, Technical Support and Maintenance.

- Network Monitoring. Services will be monitored on a 24x7x365 basis.
- Technical Support. Provide technical support on a 24x7x365 basis. Provides technical support for service-related inquiries.
- Escalation. Provide an escalation process, timeline and person responsible at each interval until problem resolution.
- Maintenance: Scheduled maintenance will be performed during a defined maintenance. Service will provide a minimum of forty-eight (48) hour notice for non-service impacting scheduled maintenance. Service will provide a minimum of a seven (7) day notice for service impacting planned maintenance and the service will not be done during regular business hours. Emergency maintenance will provide an estimate service disruption time notice and communicate hourly updates until service restoration.

5.2.17 Service Level Agreement with Service Level Objectives. Provide a Service Level Agreement on the proposed service. The service proposal will define Service Level Objectives (SLO) for the service, including network availability, mean time to respond, and mean time to restore. The following are baselines; however, the respondent will provide a detail of the Service Level Agreement and proposed objectives based on their service capabilities. The SLO will be evaluated as part of the quality of the service criteria.

- Availability. Availability is a measurement of the percentage of total time that the service is operational when measured over a 30 day period. Service is considered "inoperative" when either of the following occurs: (i) there is a total loss of signal for the service, (ii) output signal presented to the customer by Service Provider does not conform to the technical specifications provided.
- Mean Time to Respond. Mean Time to Respond is the average time required to begin troubleshooting a reported fault. The Mean Time to Respond objective is fifteen (15) minutes upon receipt of a fault notification or from the time a trouble ticket is opened.
- Mean Time to Restore. Mean Time to Restore is the average time required to restore service to an operational condition as defined by the technical specifications in Section 1 of this document. The Mean Time to Restore objective is four (4) hours for electronic equipment failure or six (6) hours for fiber optic facilities failure from the time a trouble ticket is opened.  
The responding vendor will provide a response to each Internet Access technical requirement as to the proposal's ability to address the requirement.

## 5.5 Term of Contract:

5.5.1 Monthly Recurring Services - The term of contract is July 1, 2021 through June 30, 2022 with the option to extend for two (2) additional one year terms.

A. The new service is to begin on July 1, 2021.

B. A provision to extend the contract for monthly recurring services annually upon the initial contract expiration for up to two (2) additional one-year renewals will be at the District's discretion. The District will not accept a contract that automatically renews or requires complicated or extended notice by the District in order to terminate the Contract. To comply with FCC competitive bidding requirement, Abilene ISD has indicated with this Section, its intent to enter into a contract that includes multi-year contract options whereas the end of contract renewals are voluntary extensions at the District's option. This contract coincides with SLD funding beginning

July 1 through June 30 and this term is non-negotiable. Failure by Proposer to implement services by July 1 does not obligate the District to submit payment for products/services beyond June 30th of that E-rate funding year, nor does it obligate the District to submit payment for services that are not yet operational. The District will not submit payment for products/services prior to the start date of the contract.

C. Pricing for the monthly recurring cost shall not exceed the pricing listed on Form C: Pricing Sheet. Proposer agrees by submission of this proposal to provide AISD with opportunity for decreases in monthly recurring cost if there is a cost reduction in such service for the market or for similar customer contracts during the term of the contract.

5.5.2 **Special Construction** - Special Construction shall be completed in time to provide internet transport for the monthly recurring internet service to be provided under the Contract.

A. To comply with FCC competitive bidding requirement, Abilene ISD has indicated with this Section, its intent to enter into a contract that includes voluntary extensions. This contract coincides with SLD funding for internet service beginning July 1 through June 30; therefore, the completion time is non-negotiable. Failure on the behalf of the vendor to implement services by July 1 of the applicable e-rate funding year does not obligate the District to submit payment for products/services contracted as recurring internet service beyond June 30<sup>th</sup> of the e-rate funding year nor does it obligate the District to submit payment for services that are not yet operational.

B. Pricing for the special construction shall be held firm until execution of the Contract.

5.6 **Non-Appropriation:** In accordance with Tex. Local Gov't Code Section 271.903 concerning non-appropriation of funds for multi-year contracts, renewal of this contract, if any, will be at the sole discretion of the District and shall be subject to the District's continuing right to terminate at the expiration of each of the District's budget period during the term of the contract. The Contract will require the District to use best efforts to attempt to obtain and appropriate funds for payment of the contract. The parties agree that the Contract and/or any Purchase Order are commitments of the current revenue of AISD only. Vendor further acknowledges E-Rate funds will be used to pay for some amounts due under this Contract; as such, if AISD does not receive sufficient E-rate funding to make the payments due under the Contract or a Purchase Order resulting from this RFP, AISD may terminate this Contract or any Purchase Order without penalty or further obligation to Vendor, at any time upon written notice to Vendor.

5.7 **Invoicing and Payment Terms.**

5.7.1 **Monthly Recurring Service.**

A. Because a portion of funding for this project will come from the FCC's E-Rate Program, the District is requesting the Billed Entity Applicant Reimbursement (BEAR) method will be applicable to the monthly recurring service for this contract. Using the BEAR method, the Vendor's invoice will reflect the full amount of the service. The District is responsible to pay the full amount and file the BEAR form to receive the reimbursement from USAC.

B. Vendor shall invoice the District on or before the thirtieth (30th) day of each month, for the full amount of the portions of the Goods delivered and accepted and/or Services performed during the preceding month at rates provided in its Proposal and included in the Contract as an Exhibit. The District shall make payment to the Vendor for amounts properly due and invoiced not later than thirty (30) days after its receipt of the Vendor's invoice or as required by the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code) or its successor. The District shall not be required to make any payments to Vendor at any time Vendor is in default under this Contract. Payments under the Vendor Contract, will be due to Vendor not later than thirty (30) days after the District's receipt of the Vendor's invoice or as required by the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code) or its successor. The maximum interest rate on any past due payments by the District to Vendor shall be limited to the rate provided by Section 2251.025 of the Texas Government Code or its successor.

C. **Master Agreement for Monthly Recurring Services.** The form of Contract utilized for Monthly Recurring Services, a specimen of which is attached to this RFP as Exhibit 1. Proposer shall detail all exceptions to this Form of Agreement as explained in Form D, attached to this RFP. **NOTE: FAILURE TO PROVIDE COMMENTS OR REQUESTED CHANGES WILL INDICATE YOUR ACCEPTANCE OF THE REQUIRED CONTRACT PROVISIONS AND NO FURTHER NEGOTIATION OF THE PROVISIONS WILL BE PERMITTED.** The final contract shall be subject to review and approval of legal counsel.

### 5.7.2 Special Construction (if any).

A. Service Provider Invoice (SPI) method for the Special Construction only, if any is proposed and selected. Therefore, the awarded vendor will invoice only the District's portion of the project cost. In turn, the awarded vendor submits the SPI to obtain reimbursement from the USAC for the remainder of the total amount as it relates to this contract.

B. Vendor will be required to pay any subcontractors the appropriate share of the payment received from AISD not later than the tenth (10th) day after the date Vendor receives the payment from AISD. The exceptions to payments made by AISD listed in Tex. Gov't Code Section 2251.002 shall apply to this Contract.

C. Vendor shall invoice the District on or before the thirtieth (30th) day of each month, for the portions of the Goods delivered and accepted and/or Services performed during the preceding month at rates provided in its Proposal and included in the Contract as an Exhibit. The District shall make payment to the Vendor for District's portion of the project costs properly due and invoiced using the SPI Method, not later than thirty (30) days after its receipt of the Vendor's invoice or as required by the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code) or its successor. The District shall not be required to make any payments to Vendor at any time Vendor is in default under this Contract. Payments under the Vendor Contract, will be due to Vendor not later than thirty (30) days after the District's receipt of the Vendor's invoice or as required by the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code) or its successor. The maximum interest rate on any past due payments by the District to Vendor shall be limited to the rate provided by Section 2251.025 of the Texas Government Code or its successor.

### 5.7.3 General.

A. Vendor's invoices should be sent to Abilene Independent School District, Accounts Payable Department, PO Box 981, Abilene, Texas 79604. Alternative payment terms may be accepted, in AISD's sole discretion.

B. Invoices will be date and time stamped upon receipt in the Accounts Payable Department. Vendor's invoices must contain the appropriate AISD purchase order number on the face of the invoice. Each line item on the invoice should contain the corresponding line item number shown on the purchase order and a detailed description identifying the item(s) or service delivered, including quantity, item number, product code, item description, services, etc. Invoices submitted without the correct purchase order number shown may be returned to the Vendor for correction. Corrected invoices will be subject to the same payment provisions as original invoices.

C. In the event a Vendor presents the District with invoices, statements, reports, etc. that are incomplete, inaccurate or in need of substantial internal research, such action could result in delay of payment. The District will not be responsible for any interest charges and/or late fees as a result of delayed payment due to time delays caused by inadequate or incomplete information provided in invoices by Vendor.

D. **Master Agreement for Special Construction.** The form of Contract utilized for Special Construction Services, a specimen of which is attached to this RFP as Exhibit 1, Master Agreement. Proposer shall detail all exceptions to this Form of Agreement as explained in Form D, attached to this RFP. **NOTE: FAILURE TO PROVIDE COMMENTS OR REQUESTED CHANGES WILL INDICATE YOUR ACCEPTANCE OF THE REQUIRED CONTRACT PROVISIONS AND NO FURTHER NEGOTIATION OF THE PROVISIONS WILL BE PERMITTED.** The final contract shall be subject to review and approval of legal counsel.

## 5.8 Performance and Payment Bonds (NOTE: Bonding Requirements Only Applicable To Special Construction)

5.8.1 The Contractor contracting for Special Construction is required, as a condition precedent to the execution of a Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the total Special Construction cost. This is not applicable to the non-recurring cost.

5.8.2 The Contractor contracting for Special Construction is required, as a condition precedent to the execution of a Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the total Special Construction cost for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee. This is not applicable to the non-recurring cost.

5.8.3 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power-of-Attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided. Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance

of the contract, the surety of the Contractor's bonds becomes insufficient, Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld. All bonds will be reviewed by the District for compliance with the Contract prior to execution of the Contract.

5.8.4 The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than (B+) in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for this Project.

5.8.5 Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

## 5.9 Prevailing Wage Rates:

5.9.1 Vendor and all subcontractors of Vendor shall comply with all laws regarding Prevailing Wage Rates, including, but not limited to, Tex. Gov't Code Chapter 2258 applicable to the construction of a public work. Abilene ISD has included a scale of prevailing wages which is incorporated in the proposal as Exhibit 5, and not less than this established scale must be paid on the project. The rates referenced in Exhibit 5 are the Prevailing Wage Rates for Building Construction for Taylor County from the U.S. Department of Labor in accordance with the Davis-Bacon Act. (Determination 9/11/2020). Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction. Texas law does not require fringe benefits listed on the Prevailing Wage Schedule to be included.

5.9.2 A Contractor or Subcontractor who violates the requirements of Tex. Gov't Code, Chapter 2258, shall pay to District the sum of Sixty Dollars and No/100 (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b)

5.10 Insurance: This is applicable to Vendors that will be on AISD property (including in connection with providing monthly recurring services) and applicable to the duration of the Contract. [Also set out in Form L are additional provisions that will be applicable to Special Construction, if any.] Unless otherwise agreed to by AISD, Vendor shall carry insurance with responsible carriers acceptable to AISD rated A or better, by A.M. Best with minimum limits of liability coverage, included at Form L in this RFP, against claims for damages caused by bodily injury, including death, to employees and third parties, and claims for property damage. Vendor shall furnish an Accord Certificates or a letter from the insurance carrier on the insurance carrier's letterhead with its Proposal response as required in Form L. indicating compliance with this paragraph. Upon receipt of a letter of intent to award from Purchasing, the Vendor must submit to Purchasing the actual Accord Form prior to being recommended to the Director of Purchasing for contract approval. The Vendor will have three (3) business days from the date of the letter to submit their certificates of insurance; failure to provide all the requirements will cause your proposal to be non-responsive. Insofar as allowed by law, such Certificates shall indicate an agreement by each carrier not to cancel or significantly diminish coverage without a minimum of thirty (30) days prior written notice to AISD.

## 5.11 Required Notice to Proceed and Funding Availability

5.11.1 Abilene ISD will follow the purchasing policies of the Abilene ISD Board and requirements and procedures of the FCC's E-rate program as administered by the Universal Service Administrative Company to be eligible for all available funding.

5.11.2 The implementation of any associated contracts resulting from this competitive bid process will be dependent on the district's issuance of a Purchase Order.

5.11.3 E-rate funding notification alone will not signify Notice to Proceed. The district will have the right to allow the contract to expire without implementation if appropriate funding does not come available.

## 6.0 ATTACHMENTS

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Items below are Forms and Exhibits (collectively "Attachments"). The attachments include FORMS and EXHIBITS. The FORMS are documents that require completion by the Proposer and return with its Proposal. The EXHIBITS are included for reference;

Proposer is asked to review the Forms to be sure that all applicable required responses have been provided, and the Forms included in Offeror's Response. If any required response on the Forms listed is missing, please notify AISD immediately. Depending on the materiality and the fairness to the Offeror and other Offerors, the Vendor may be permitted to provide the information or its proposal may be disqualified as non-responsive.

### FORMS

- FORM A: Vendor Information and Questionnaire
- FORM B: References
- FORM C: Pricing Sheet
- FORM D: Deviation/Exceptions To Form Of Contract.
- FORM E: Proposer's General Representations, Acknowledgements, and Certifications
- FORM F: Proposer's E-RATE Representations, Acknowledgements, and Certifications
- FORM G: Conflict Of Interest Questionnaire (CIQ) And Instructions
- FORM H: Felony Conviction Notification
- FORM I: Non-Collusion Affidavit
- FORM J: Antitrust Certification Statement
- FORM K: IRS Form W-9
- FORM L: Insurance Requirements. Certificate of Insurance (Acord Form) shall be included with proposal submittal
- FORM M: Execution of Offer

### EXHIBITS

- EXHIBIT 1: Master Agreement
- EXHIBIT 2: E-Rate Supplemental Terms And Conditions
- EXHIBIT 3: Disclosure Of Interested Parties (Form 1295) – Do not file with Texas Ethics Commission or include in proposal submittal unless requested by AISD at a later date.
- EXHIBIT 4: Criminal Background Certification
- EXHIBIT 5: Prevailing Wage Rates

**FORM A: VENDOR QUESTIONNAIRE**  
(Restate each question as written & provide response)

**SECTION 1. GENERAL INFORMATION**

1. **Company Information:** Provide the following information regarding your company.

Name/Name of Firm/Company: \_\_\_\_\_

Mailing Address \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Street Address If Different From Mailing Address Above:

Address \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Data Universal Numbering System (DUNS) Number: \_\_\_\_\_

SPIN Number: \_\_\_\_\_

Type of Entity:

Corporation (State of Incorporation: \_\_\_\_\_); Registered Agent:

General Partnership (Number of Partners \_\_\_\_\_)

Limited Partnership (Name of General Partner: \_\_\_\_\_)

Limited Liability Company (Member or Manager Managed? \_\_\_\_\_)

Limited Liability Partnership (Member or Manager Managed? \_\_\_\_\_)

Sole Proprietorship

Number of Full and Part Time Employees

Full Time: \_\_\_\_\_

Part Time: \_\_\_\_\_

2. **Contact Information:**

List the person who the District may contact concerning your Proposal or setting dates for meetings.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Email: \_\_\_\_\_

List the person who the District may contact concerning Information Technology (IT) Issues at your Company:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Email: \_\_\_\_\_

3. **Purchase Order Preferences.** Purchase Orders from AISD will be sent via E-Mail or Via Facsimile. Select your desired option and provide information requested below:

Please provide Purchase Orders via E-Mail at the following address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone No. \_\_\_\_\_

Please provide Purchase Orders via Facsimile at the following Facsimile No. \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone No. \_\_\_\_\_

4. Does Vendor's Business/Company anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months that may affect the organization's ability to carry out its Proposal?

Yes  No

If yes, please explain on a separate page.



5. If incorporated, is business authorized by State Controller to do business in Texas? Yes  No

If not registered, or not in good standing, please indicate this and seek resolution with the state comptroller.

Note: Any outstanding Issue regarding a Corporation's authorization to do business in Texas must be addressed prior to contracting with the District.

6. Please identify all assumed names under which Vendor does business, if any.
7. Please identify the majority owner of the Vendor's business, whether sole proprietorship, partnership, limited partnership, corporation, limited liability company, limited liability partnership or other organizational structure.  
Name: \_\_\_\_\_

8. Is the Vendor's business owned, in whole or in part, by a parent company? If yes, please provide name of parent.

Yes  No  Name: \_\_\_\_\_

9. Provide any other names under which your business has operated within the last 10 years.

10. Has the Company or any of its principals been debarred or suspended from contracting with any public entity?

Yes  No

If yes, identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

11. Do you have experience with other school districts? Yes  No

If yes, please provide names of school districts.

12. Please provide the names of any authorized agents for your organization or business, including any person or entity authorized to 'act with' or 'act on your behalf,' such as consultants, sub-contractors, re-sellers, lobbyists, confidants, etc., whether compensated or not compensated.

13. Has vendor (including any owner, principal shareholder or stockholder, officer, agent, salesperson, or employee) been involved in past, pending, or present litigation involving the District or another governmental entity?

Yes  No

If yes, please provide the style and status of the case, as well as, the type of litigation.

14. Check one of the following:

Vendor will provide goods and services with own work force

Vendor will purchase goods directly from the manufacturer or other supplier

15. Does vendor have e-commerce capability? Yes  No

## SECTION 2. QUALITY OF GOODS AND SERVICES AND ABILITY TO MEET DISTRICT'S NEEDS

1. Please provide a description of how customer contact with the District, if any, would be handled and what customer service benefits your company offers.
2. Provide an overview of the services, if any, which your firm proposes to provide the District which address the Scope of Services specified in this RFP, including information regarding why the Services you are proposing will meet the needs of the District and provide the District with the best value.
3. Provide the names and qualifications for individuals (or staff) you are proposing to provide the Services to meet the Scope of Services specified in this RFP.

4. List resources of your business that would be made available to the District that would distinguish your business as best able or qualified to perform the requested Goods and Services for the District.
5. Provide a timeline for bringing all site online. For solutions requiring special construction, provide a schedule for bringing site online, including an explanation of how this timeline would shift if E-Rate funding approval were to be delayed in any fashion.

Signature of Authorized Representative Completing this Form:

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title of Authorized Signatory

**FORM B: REFERENCES**

<b>Reference #1</b>	
Client/Owner Name	
Contact Person	
Contact Phone #	
Contact Email Address	
Project Description	
Final Contract Amount	\$
Year Project was Completed	
Was Project Completed on Schedule	Yes <input type="checkbox"/> No <input type="checkbox"/>

<b>Reference #2</b>	
Client/Owner Name	
Contact Person	
Contact Phone #	
Contact Email Address	
Project Description	
Final Contract Amount	\$
Year Project was Completed	
Was Project Completed on Schedule	Yes <input type="checkbox"/> No <input type="checkbox"/>

<b>Reference #3</b>	
Client/Owner Name	
Contact Person	
Contact Phone #	
Contact Email Address	
Project Description	
Final Contract Amount	\$
Year Project was Completed	
Was Project Completed on Schedule	Yes <input type="checkbox"/> No <input type="checkbox"/>

<b>Reference #4</b>	
Client/Owner Name	
Contact Person	
Contact Phone #	
Contact Email Address	
Project Description	
Final Contract Amount	\$
Year Project was Completed	
Was Project Completed on Schedule	Yes <input type="checkbox"/> No <input type="checkbox"/>

<b>Reference #5</b>	
Client/Owner Name	
Contact Person	
Contact Phone #	
Contact Email Address	
Project Description	
Final Contract Amount	\$
Year Project was Completed	
Was Project Completed on Schedule	Yes <input type="checkbox"/> No <input type="checkbox"/>

FORM C: DIRECT INTERNET ACCESS (DIA) SOUTH NOC- PRICING SHEET  
3749 South 23<sup>rd</sup>, Abilene, Texas 79605

**Cost Summary**

Product	1 Yr Term Monthly	Non-Recurring Installation	1 Yr Cost Total
4 Gbps E-rate Eligible			
4 Gbps E-rate Ineligible			
Total 4 Gbps			
6 Gbps E-rate Eligible			
6 Gbps E-rate Ineligible			
Total 6 Gbps			
8 Gbps E-rate Eligible			
8 Gbps E-rate Ineligible			
Total 8 Gbps			
10 Gbps E-rate Eligible			
10 Gbps E-rate Ineligible			
Total 10 Gbps			

**Additional "Added Value" Service Cost Option:**

Description	
E-rate Eligible Cost	
E-rate Ineligible Cost	
<b>Total</b>	
Description	
E-rate Eligible Cost	
E-rate Ineligible Cost	
<b>Total</b>	

Bandwidth change fee:	Non-recurring E-rate Eligible Costs	Non-recurring E-rate Ineligible Costs	Total
Upgrade 4 Gbps to 6 Gbps			
Upgrade 4 Gbps to 8 Gbps			
Upgrade 4 Gbps to 10 Gbps			
Upgrade 6 Gbps to 8 Gbps			
Upgrade 6 Gbps to 10 Gbps			
Upgrade 8 Gbps to 10 Gbps			
Downgrade 10 Gbps to 8 Gbps			
Downgrade 10 Gbps to 6 Gbps			
Downgrade 10 Gbps to 4 Gbps			
Downgrade 8 Gbps to 6 Gbps			
Downgrade 8 Gbps to 4 Gbps			
Downgrade 6 Gbps to 4 Gbps			



**FORM E: PROPOSER’S GENERAL REPRESENTATIONS  
ACKNOWLEDGEMENTS AND CERTIFICATIONS**

Vendor shall initial in the column next to the representation to indicate its acknowledgement, agreement and/or certification, as requested.

1	_____ (initial)	<p><u>Disclosure Of Interested Parties.</u> Texas Government Code, Section 2252.908 requires that Disclosure of Interested Parties using the form and procedure established by the Texas Ethics Commission, to be filed with the District at the same time it submits the signed contract, if 1) the contract award requires action or a vote by the Board of Trustees; (2) the value of the contract awarded as a result of the solicitation is at least one million dollars (\$1,000,000.00); or (3) the contract is for services that would require a person to register as a lobbyist under Tex Gov’t Code Chapter 305. A copy of the Disclosure Of Interested Parties and explanatory information about the process required is attached hereto as Exhibit 3 for the Proposer’s Reference. Proposer agrees that upon notification of award and of the applicability of this requirement, it will timely comply with the filing requirements set forth by the Commission and required by Section 2252.908 of the Texas Government Code. Proposer shall confirm its agreement by initialing the certification adjacent to this statement and its signature below.</p>
2	_____ (initial)	<p><u>Criminal History Records Check (“CHRI”).</u> Texas Education Code Chapter 22 requires entities that contract with school districts (“Respondent”) to obtain criminal history record information (“CHRI”) on <i>Covered Employees</i>. Covered Employees with <i>Disqualifying Criminal Histories</i> are prohibited from serving at a school district. Respondent must certify to the District that it has complied and must obtain similar information from its employees, subcontractors of every tier and independent contractors, to the extent they are Covered Employees. Vendor agrees that prior to commencement of performance under the awarded Contract, to the extent required, it will timely obtain CHRI on Covered Employees, at its sole expense, and provide the certifications set out in the form of Criminal Background Certification attached as Exhibit 4 for Proposer’s reference. <b>Note: Criminal Background Certification is not required to be executed as part of your Proposal – only agreement to comply is required.</b></p> <p>Proposer shall certify its agreement that prior to commencement of performance under the awarded Contract, it will timely obtain CHRI on Covered Employees, if any, at its sole expense, and provide the certifications set out in the form of Criminal Background Certification as set out in Exhibit 4 by initialing the certification adjacent to this statement and its signature below.</p>
3	_____ (initial)	<p><u>Family Code Sec.231.006 Certification.</u> In accordance with Section 231.006 of the Texas Family Code, to the extent applicable to this Agreement, the Proposer certifies that the individual or business entity named in its RFP Proposal submission is not ineligible to receive the payments under a contract entered into as a result of this RFP and acknowledges that any contract entered into as a result its selection under this RFP may be terminated and payment withheld if this certification is inaccurate.</p>
4	_____ (initial)	<p><u>Certification Regarding Terrorism.</u> Pursuant to Sections 2252.151-.154 of the Texas Government Code, the vendor hereby certifies that it is not a company identified on the Texas Comptroller’s list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law.</p>
5	_____ (initial)	<p><u>Certification Regarding Israel.</u> Pursuant to Texas Government Code Chapter 2271, if this contract is valued at \$100,000 or more and if the Contractor has at least ten (10) full time employees, then the Contractor, by its execution of this Agreement represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship</p>
6	_____ (initial)	<p>Pursuant to Subchapter J, Chapter 552, Texas Government Code, the Proposer hereby certifies and agrees to (1) preserve all contracting information [as defined by Texas Government Code Section 552. 003(7)] related to this Agreement as provided by the records retention requirements applicable to AISD for the duration of the Agreement; (2) promptly provide to AISD any contracting information related to the Agreement that is in the custody or possession of the Proposer on request of AISD; and (3) on completion of the Agreement, either (a) provide at no cost to AISD all contracting information related to the Agreement that is in the custody or possession of Proposer, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to AISD. Proposer understands that if it knowingly or intentionally fails to comply with the requirements of Subchapter J.</p>

7	_____ (initial)	<p><u>Compliance with District Policies and Decorum on District Campuses.</u> Vendor acknowledges that the work and delivery of goods solicited under this RFP may be performed in connection with an educational facility that is currently occupied and in use. Vendor agrees to and shall comply with all rules, regulations, policies and requirements of the District and the school campus on which work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of District.</p>
	_____ (initial)	<p>Vendor recognizes that the ongoing school activities in proximity with its onsite activities requires the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Vendor's deliveries and/or performance of services will be scheduled so as not to interfere with, interrupt, disturb, or disrupt District's normal operations or facilities.</p>
	_____ (initial)	<p>The Vendor recognizes that the site is a public-school campus. Vendor understands that under the required Contract, the Vendor will be responsible for the actions of its employees and any contractor working for the Vendor under contact. Vendor certifies that it shall:</p> <ul style="list-style-type: none"> <li>a. permit employment of unfit persons or persons not skilled in tasks assigned to them;</li> <li>b. prohibit the possession or use of alcohol, controlled substances, tobacco (including e-cigarettes);</li> <li>c. prohibit the possession of any weapons on a school site or in cars of employees or contractors of Vendor, regardless of whether the owner of the weapon has permit to open or concealed carry a weapon; and</li> <li>d. require adequate dress of the Vendor's forces consistent with the nature of the work being performed.</li> </ul>
	_____ (initial)	<p>Proposer understands and acknowledges that Proposer and Proposer's employees will be required to obtain a temporary badge from the AISD Maintenance Department while on the District's property. A photo ID, preferably a driver's license, will be required for issuance of the badge. Badges shall be returned to AISD Maintenance Department upon completion of project.</p>

By his/her signature below the Authorized Signatory for Vendor who completed this form confirms the foregoing representations, certifications, acknowledgements and agreements.

Vendor's Name: \_\_\_\_\_

Address, City, State, and Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Signature of Authorized Representative Completing this Form:

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title of Authorized Signatory

Email Address: \_\_\_\_\_



**FORM F: PROPOSER'S E-RATE REPRESENTATIONS,  
ACKNOWLEDGEMENTS AND CERTIFICATIONS**

The following certifications and provisions are required for E-Rate and is applicable for any contract resulting from this procurement process.

1	(initial)	<u>Records Retention.</u> The E-Rate rules and regulations require Vendor to preserve all records and documents relating to this RFP and Contract including but not limited to proposal, contracts, invoices, statement of work, service provisions, and correspondence for a period of ten (10) years from the last date of service. If a contract is voluntarily extended, the ten (10) years retention begins upon expiration of the final contract renewal or last payment whichever is latest. Vendor certifies and commits that it will comply with these requirements.
2	(initial)	<u>E-Rate Billing.</u> Because a portion of funding for this project will come from the FCC's E-Rate Program, the District is requesting the Service Provider Invoice (SPI) method for this project. Therefore, the awarded vendor will invoice only the District's portion of the project cost. In turn, the awarded vendor submits the SPI to obtain reimbursement from the USAC for the remainder of the total amount as it relates to this contract. Please confirm that you agree to handling of District and project reimbursement in this manner by initialing to the left.
3	(initial)	<u>Participation In E-Rate Program Integrity Assurance (PIA) Review.</u> The Vendor certifies and provides assurance that it will: a. promptly provide Abilene ISD with any information being requested as part of PIA review. b. assist Abilene ISD with preparing funding requests or responding to PIA questions and may speak directly with PIA reviewers. c. for all responses that include special construction, produce all construction labor, construction materials and other cost information in <u>A DETAILED BILL OF MATERIALS</u> requested that will be <b>REQUIRED</b> during PIA review. USAC has developed a set of procedures for this information to be communicated in a confidential manner, if the awarded Vendor would prefer the information be treated as proprietary or otherwise confidential, they should be prepared to follow the procedures outlined below to respond to USAC's questions.
4	(initial)	<u>Gift Rules.</u> In order to provide for a fair and open competitive bidding process, the E-rate rules impose significant restrictions on the direct or indirect solicitation or acceptance of gifts, gratuities, favors, entertainment, loans or any other thing of value by E-rate applicants from service providers or prospective service providers. The rules also significantly restrict the gifts, gratuities, favors, entertainment or any other thing of value that E-rate service providers or prospective service providers can offer or provide E-rate applicants.  As a general matter, the gift rules under the E-rate program permit certain <i>de minimis</i> gifts. Such gifts are limited to the following:  <ul style="list-style-type: none"> <li>• Modest refreshments not offered as part of a meal (e.g., coffee and doughnuts provided at a meeting)</li> <li>• items with little intrinsic value intended solely for presentation (e.g., certificates and plaques)</li> <li>• Items worth \$20 or less (e.g., meals, pencils, pens, T-shirts, and other items worth \$20 or less, including meals) as long as those items do not exceed \$50 per funding year per employee from any one source. "One source" includes all employees, officers, representatives, agents, independent contractors, and directors of a service provider.</li> </ul> <p align="center">Vendor certifies that it has complied with the E-Rate Gift Rules and has not provided items above the prohibited limit to the Applicant.</p>
5.	(initial)	<u>E-Rate Supplemental Terms And Conditions.</u> The Vendor certifies and provides assurance that it can comply with and will execute as part of the Master Agreement, the E-Rate Supplemental Terms And Conditions attached as Attachment 1 to the Master Agreement.

By his/her signature below the Authorized Signatory for Vendor who completed this form confirms the foregoing representations, certifications, acknowledgements and agreements.

Vendor's Name: \_\_\_\_\_  
 Address, City, State, and Zip Code: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Signature of Authorized Representative Completing this Form: \_\_\_\_\_  
 Date: \_\_\_\_\_

Printed Name and Title of Authorized Signatory Email Address: \_\_\_\_\_

**FORM G: CONFLICT OF INTEREST INSTRUCTIONS AND QUESTIONNAIRE (FORM CIQ)**

AISD is required to comply with Texas Local Government Code Chapter 176, Disclosure of Certain Relationships with Local Government Officers. No employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. AISD local government officers must disclose conflicts of interest by completing Form CIS, Local Government Officer Conflicts Disclosure Statement.

**I. CONFLICT OF INTEREST QUESTIONNAIRE (CIQ) INSTRUCTIONS**

AISD is required to comply with Texas Local Government Code Chapter 176, Disclosure of Certain Relationships with Local Government Officers. H.B. 23 significantly changed the laws relating to Conflict of Interest Disclosures as well as the corresponding forms and required disclosures. As of September 1, 2015, Vendor must sign and complete the new Conflict of Interest Questionnaire (CIQ) and submit the CIQ with its proposal.

In accordance with Chapter 176 of the Texas Local Government Code, any vendor who does business with AISD or who seeks to do business with AISD must fill out the new Conflict of Interest Questionnaire (CIQ) whether or not a conflict of interest exists. A conflict of interest exists in the following situations:

- 1) If the vendor has an employment or other business relationship with a local government officer of AISD or a family member of the officer, as described by section 176.003(a)(2)(A) of the Texas Local Government Code; or
- 2) If the vendor given a local government officer of AISD, or a family member of the officer, one or more gifts with the aggregate value of \$100, excluding any gift accepted by the officer or a family member of the officer if the gift is: (a) a political contribution as defined by Title 15 of the Election Code; or (b) a gift of food accepted as a guest; or
- 3) If the vendor has a family relationship with a local government officer of AISD.

*“Vendor”* means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries. *Texas Local Government Code 176.001(7).*

*“Business relationship”* means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on: (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity; (B) a transaction conducted at a price and subject to terms available to the public; or (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency. *Texas Local Government Code 176.001(3).*

*“Local government officer”* means: (A) a member of the governing body of a local governmental entity; (B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or (C) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Texas Local Government Code 176.001(4).*

- *AISD Board of Trustees and Superintendent include:*  

Daryl Zeller	Derek Hood
Cindy Earles	Rodney Goodman
Angie Wiley	Dr. Danny Wheat
Bill Enriquez	Dr. David Young, Superintendent
- *Current local government officers include, but are not limited to:*  

Joseph Waldron	Cary Owens
Lisa Metcalf	Gaylan Ohlhausen

*“Family relationship”* means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code. *Texas Local Government Code 176.001(2-a).*

**VENDOR MUST SIGN AND SUBMIT FORM CIQ EVEN IF NO CONFLICT EXISTS.**

If no conflict exists, Vendor must fill out Box 1 and write N/A in Box 3.

I hereby certify that I have read Form G, Section I, Conflict of Interest Questionnaire (CIQ) Instructions, and I agree and understand that the failure to disclose a conflict of interest and/or the failure to sign and submit Form CIQ, even if no conflict exists, with this proposal may result in disqualification.

Name and Title of Authorized Representative: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_ Date: \_\_\_\_\_

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

**CONFLICT OF INTEREST QUESTIONNAIRE**  
**For vendor doing business with local governmental entity**

**FORM CIQ**

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

**2**  **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_  
 Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes       No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes       No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6**  Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
 Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
 Date

FORM H: FELONY CONVICTION NOTIFICATION

Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract."

This notice is not required of a Publicly-Held Corporation.

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony conviction has been received by me and the following information furnished is true to the best of my knowledge.

Vendor's Business Name \_\_\_\_\_

Authorized Company Official's Name (Printed) \_\_\_\_\_

A. My firm is a publicly-held, stock-exchange corporation, therefore this requirement is not applicable.

Signature of Company Official: \_\_\_\_\_

Date Signed: \_\_\_\_\_

B. My firm is not owned or operated by anyone who has been convicted of a felony.

Signature of Company Official: \_\_\_\_\_

Date Signed: \_\_\_\_\_

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony (printed name and general description of type of felony or felonies):

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_

Signature of Company Official: \_\_\_\_\_

Date Signed: \_\_\_\_\_

FORM I: NON-COLLUSION AFFIDAVIT

STATE OF TEXAS §

COUNTY OF TAYLOR §

\_\_\_\_\_ , being first duly sworn, deposes and says this:

(1) He is \_\_\_\_\_ of \_\_\_\_\_  
(a partner or officer) (the firm of, etc.)

the Proposer who has submitted the attached proposal.

(2) He is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal.

(3) That Proposal is genuine and is not a collusive or sham Proposal.

(4) Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with another Proposer, firm or person, to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal has been submitted or to refrain from proposing in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion, or communication or conferences, with any other Proposer, firm or person to fix the price or prices with the attached Proposal or of any other Proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Abilene Independent School District of Abilene, Texas or any person interested in the proposed contract; and,

(5) The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Proposer's Business Name): \_\_\_\_\_

(Proposer's Representative Signature) \_\_\_\_\_

(Proposer's Representative Title) \_\_\_\_\_

THIS AFFIDAVIT SHALL BE NOTARIZED

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

My commission expires on \_\_\_\_\_, 20\_\_.

**FORM J: ANTITRUST CERTIFICATION STATEMENT**  
(Tex. Government Code § 2155.005)

Vendor affirms under penalty of perjury of the laws of the State of Texas that:

- (1) I am duly authorized to execute this RFP Proposal on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Vendor) listed below;
- (2) In connection with this bid, neither I nor any representative of the Vendor have violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- (3) In connection with this bid, neither I nor any representative of the Vendor have violated any federal antitrust law; and
- (4) Neither I nor any representative of the Vendor have directly or indirectly communicated any of the contents of this bid to a competitor of the Vendor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Vendor.

Vendor: \_\_\_\_\_  
Vendor Address \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

Signature of Authorized Signatory for Vendor \_\_\_\_\_  
\_\_\_\_\_  
Printed Name and Title

**Form W-9**  
(Rev. August 2013)  
Department of the Treasury  
Internal Revenue Service

**Request for Taxpayer  
Identification Number and Certification**

**Give Form to the  
requester. Do not  
send to the IRS.**

**Print or type**  
**See Specific Instructions on page 2.**

Name (as shown on your income tax return)

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:  
 Individual/sole proprietor    C Corporation    S Corporation    Partnership    Trust/estate  
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶  
 Other (see instructions) ▶

Exemptions (see instructions):  
 Exempt payee code (if any) \_\_\_\_\_  
 Exemption from FATCA reporting code (if any) \_\_\_\_\_

Address (number, street, and apt. or suite no.)    Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
				-			-	

Employer identification number								
				-				

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

**Sign Here**    Signature of U.S. person ▶    Date ▶

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** The IRS has created a page on IRS.gov for information about Form W-9, at [www.irs.gov/w9](http://www.irs.gov/w9). Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.



In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity,
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust, and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

#### Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* on page 1.

**What is FATCA reporting?** The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

**Partnership, C Corporation, or S Corporation.** Enter the entity's name on the "Name" line and any business, trade, or "doing business as (DBA) name" on the "Business name/disregarded entity name" line.

**Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulation section 301.7701-2(c)(2)(iii). Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on the "Name" line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the "Business name/disregarded entity name" line. If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

**Note.** Check the appropriate box for the U.S. federal tax classification of the person whose name is entered on the "Name" line (Individual/Sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

**Limited Liability Company (LLC).** If the person identified on the "Name" line is an LLC, check the "Limited liability company" box only and enter the appropriate code for the U.S. federal tax classification in the space provided. If you are an LLC that is treated as a partnership for U.S. federal tax purposes, enter "P" for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter "C" for C corporation or "S" for S corporation, as appropriate. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the "Name" line) is another LLC that is not disregarded for U.S. federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.

**Other entities.** Enter your business name as shown on required U.S. federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

## Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the *Exemptions* box, any code(s) that may apply to you. See *Exempt payee code* and *Exemption from FATCA reporting code* on page 3.

**Exempt payee code.** Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends. Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following codes identify payees that are exempt from backup withholding:

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a) 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements.

- A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)
- B—The United States or any of its agencies or instrumentalities
- C—A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities
- D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Reg. section 1.1472-1(c)(1)(i)
- E—A corporation that is a member of the same expanded affiliated group as a corporation described in Reg. section 1.1472-1(c)(1)(i)
- F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

- G—A real estate investment trust
- H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940
- I—A common trust fund as defined in section 584(a) J—A bank as defined in section 581
- K—A broker
- L—A trust exempt from tax under section 664 or described in section 4947(a)(1)
- M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Part I. Taxpayer Identification Number (TIN)**

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

**Part II. Certification**

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt payee code* earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

- 1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.
- 2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.
- 3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.
- 4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).
- 5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**What Name and Number To Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>1</sup>  The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.  
<sup>2</sup> Circle the minor's name and furnish the minor's SSN.  
<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.  
<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

\*Note. Grantor also must provide a Form W-9 to trustee of trust.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Secure Your Tax Records from Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

- To reduce your risk:
- Protect your SSN.
  - Ensure your employer is protecting your SSN, and
  - Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

**Privacy Act Notice**

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

**FORM L: CERTIFICATE OF INSURANCE (ACORD FORM)**

Vendor shall attach to its Proposal Response, an Acord Certificate of Insurance or a letter from the insurance carrier on the insurance carrier's letterhead with its Proposal response indicating that Vendor can provide insurance with indemnification limits as indicated in the table below and the requirements stated in this Form L.

**7.5 Insurance.**

7.5.1 The Vendor shall carry and maintain in force insurance described below. Prior to execution of the Contract, the Vendor shall procure insurance coverage in the types and amounts as follows:

<u>Workmen's Compensation:</u> (Including Waiver of Subrogation Endorsement)	All liability arising out of Vendor's employment of workers and anyone for whom Vendor shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.
<u>Employer's Liability:</u>	\$1,000,000.00 each accident; \$2,000,000.00 disease - policy limit; \$1,000,000.00 disease - each employee
<u>Commercial General Liability:</u>	
Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00 (A Designated Construction Project General Aggregate Limit shall be provided)
Personal & Advertising Injury Products and Completed Operations	\$1,000,000.00 each person \$1,000,000.00 (for one (1) year, commencing with issuance of final Certificate for Payment)
Property Damage	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
Independent Contractors	(Same limits as above)
Contractual Liability	(Same limits as above)
<u>Automobile Liability:</u>	
Bodily Injury/Property Damage	\$1,000,000.00 combined single limit (all owned, non-owned vehicles, and hired vehicles)
<u>Umbrella Coverage</u>	\$5,000,000.00

7.5.2 **Prior to Commencement.** Vendor shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Vendor is in force and the Architect has issued a written notice to proceed.

7.5.3 **Qualified Company.** The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the District. The District's Representative will contact the State Board of Insurance to confirm that the issuing companies are admitted and authorized to issue such policies in the State of Texas

7.5.4 **Additional Insured Requirements.** To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage and automobile liability coverage required by this Section to include (1) the Owner, as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04.

7.5.5 **Disclosure Of and Responsibility for Deductibles.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor. If the insurance is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto. The insurance required by this Section shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis,

shall be maintained without interruption from the date of commencement of the project until the date of final payment and termination of any coverage required to be maintained after final payment.

7.5.6 **Certificates Furnished.** Vendor shall have its insurance carrier(s) furnish to District insurance certificates in form satisfactory to District specifying the types and amounts of coverage in effect, the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed while the during the term of this Contract, without thirty (30) calendar day's prior written notice to District. Vendor shall permit District to examine the insurance policies, declarations and/or endorsements at District's option.

7.5.7 **Notice of Cancellation.** Within ten (10) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

7.5.8 The required Worker's Compensation Policy shall be subject to the following Provision:

**Workers' Compensation.** The Contractor shall provide Workers' Compensation at statutory limits including all liability arising out of Contractor's employment of workers and anyone for whom Contractor shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.

#### Workers' Compensation Insurance Coverage

##### .1 Definitions:

- .1.1 **Certificate of coverage ("Certificate").** A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.
- .1.2 **Duration of the Project.** Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.
- .1.3 **Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096).** Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- .2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.
- .3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.
- .4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
- .5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:
  - .5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
  - .5.2 no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- .6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
- .7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- .8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

- .9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:
  - .9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
  - .9.2 provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
  - .9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - .9.4 obtain from each other person with whom it contracts, and provide to the Contractor:
    - (a) a certificate of coverage, prior to the other person beginning work on the Project; and
    - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - .9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
  - .9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
  - .9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.
- .10 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Department of Insurance, Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- .11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 TAC Rule §(a)(7)]

7.5.9 **Waivers of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section and shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

7.5.10 **Special Construction Additional Insurance Requirements.** In addition to the coverage set out in Paragraph 7.5 and all subparts, additional Insurance may be required in connection with Special Construction performed in connection with a Service Order under this MSA. If Special Construction is included in the Scope of any Service Order, the additional insurance coverage set out in Paragraph 7.5.1 through 7.5.1.9, as well as the following types and amounts of coverage in Paragraphs 7.5.10.a through 7.5.10.b shall also be obtained at the Vendor's expense prior to commencement of any work under this MSA or any Service Agreement associated therewith.

- a. The Contractor's Commercial General Liability policy required shall not contain an exclusion or restriction of coverage by endorsement or otherwise, for the following:
  - .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
  - .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was

- performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
  - .4 Claims for indemnity under Section 3.18 arising out of injury to employees of the insured.
  - .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
  - .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
  - .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
  - .8 Claims related to roofing, if the Work involves roofing.
  - .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
  - .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
  - .11 Claims related to explosion, collapse and underground hazards, where the Work involves
  - .12 Any endorsement that modifies Exclusion L in the ISO GL0001 policy form.

**FORM M: EXECUTION OF OFFER**  
**Dedicated Internet Access South NOC, Proposal 014, 20-21**

Check the box that indicates business structure of Proposer

Individual/Sole Proprietorship    Partnership or Joint Venture    Corporation    Other Entity (State Type)

The undersigned certifies that (s)he is \_\_\_\_\_ (title) of the Proposer entity named below; that (s)he is authorized to sign this Proposal Form (if a Corporation then by resolution with Certified Copy of resolution attached) for and on behalf of the entity, if any, named below, and that (s)he is authorized to execute same for and on behalf of and bind said entity to the terms and conditions provided for in the Proposal as required by this RFP, and has the requisite authority to execute an Agreement on behalf of Respondent, if awarded, and that the 11-digit Comptroller's Taxpayer Number for the entity, if any, is:

\_\_\_\_\_  
11-digit Comptroller's Taxpayer Number

\_\_\_\_\_  
Employer Identification Number

\_\_\_\_\_  
Respondent Organization Name

Authorized Signature: \_\_\_\_\_ (Original Must Be Manually Signed)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By signing this Execution of Offer, I do hereby declare that I have read the Request for Competitive Sealed Proposals, on which our Proposal is submitted and had made an investigation such that Proposer is fully informed of the conditions, facilities, difficulties, restrictions and requirements which Proposer will, or may encounter in the completion of the Project, and with full knowledge of the requirements, and do hereby agree to furnish all services in full accordance with the requirements outlined in the Request for Competitive Sealed Proposals

By signing and executing this Proposal, I further certify on behalf of my organization and represent to the Abilene Independent School District that Proposer has not offered, conferred or agreed to confer any pecuniary benefit, as defined by TEXAS PENAL CODE ANN. § 218, or any other thing of value, as consideration for the receipt of information or any special treatment or advantage relating to this proposal; the Proposer also certifies and represents that Proposer has not offered, conferred or agreed to confer a pecuniary benefit or other things of value as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion concerning this proposal; the Proposer certifies and represents that Proposer has neither coerced nor attempted to influence the exercise of discretion by any officer, trustee, agent or employee of the Abilene Independent School District concerning this proposal on the basis of any consideration not authorized by law; the Proposer also certifies and represents that Proposer has not received any information not available to other Proposer so as to give the undersigned a preferential advantage with respect to this proposal; the Proposer further certifies and represents that Proposer has not violated any state, federal or local law, regulation or ordinance relating to bribery, improper influence, collusion or the like and that Proposer will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the Abilene Independent School District in return for the person having exercised the person's official discretion, power or duty with respect to this proposal; the Proposer certifies and represents that it has not nor and will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the Abilene Independent School District in connection with information regarding this proposal, the submission of this proposal, the award of this proposal or the performance, delivery or sale pursuant to this proposal.

**ACKNOWLEDGEMENT OF ADDENDA:**

Proposer acknowledges receipt of Addenda Nos. \_\_\_\_ through \_\_\_\_ and that the Proposals contained herein are offered in after review and consideration of same.

To the best of the Proposer's knowledge, no Addenda have been issued.



**EXHIBIT 1: FORM OF MASTER SERVICE AGREEMENT**  
**MASTER SERVICE AGREEMENT FOR E-RATE SERVICES**  
**Dedicated Internet Access South NOC**

This Master Service Agreement for E-Rate Services (“**MSA**”) is made effective as of \_\_\_\_\_ 2021 (“**Effective Date**”) by and between \_\_\_\_\_ (“**Vendor**”) and **Abilene Independent School District**, a school district in the State of Texas, with an address of \_\_\_\_\_ (“**District**”). Each may be referred to herein as a “**Party**” and collectively as the “**Parties**.”

**ARTICLE 1 - GENERAL**

**1.1 Agreement Structure, Compliance with E-Rate Rules.**

1.1.1 The purpose of this MSA is to provide general terms, conditions and a framework within which District may from time to time purchase certain telecommunications and related infrastructure services (“**Services**”) from Vendor utilizing funds obtained through the Federal Universal Service Fund program known as the “E-Rate Program” (“E-Rate” or “E-Rate Program”) for its use and/or the use of its students, faculty, library patrons, and staff (“**End Users**”) solely for educational purposes. The Parties acknowledge that E-Rate is administered by the Schools and Libraries Division (“**SLD**”) of the Universal Service Fund Administrative Company (“**USAC**”). The Parties further acknowledge that the Federal Communications Commission (“**FCC**”) has promulgated regulations that govern the participation in the E-Rate Program. The Parties agree to adhere to FCC regulations as well as the rules established by SLD and USAC regarding participation in the E-Rate Program.

1.1.2 Additional terms and conditions that apply to each type of Service (including the Lease of Fiber) are set forth in service schedules (each a “**Service Schedule**”) made part of this MSA. The Parties agree that the terms of this MSA and the applicable Service Schedules shall apply only to Services purchased after the Effective Date utilizing E-Rate Program funds. Vendor has been selected via competitive procurement and this MSA, the attached Service Order and Service Schedule.

1.1.3 The E-Rate Supplemental Terms and Conditions which are attached hereto as Exhibit 1 To the Master Service Agreement For E-Rate Services, and incorporated herein by reference are part of this Agreement and shall be separately executed to indicate the Vendor’s specific agreement to the requirements, terms and conditions of the E-Rate Program.

1.2 Orders for Services. District may request Vendor to provide a Service by submitting a service order in a form provided by Vendor from time to time (“**Service Order**”) in accordance with the procedures set forth in this Agreement. The Service Order shall incorporate by reference, and shall be subject to, the terms and conditions of this Agreement and the applicable Service Schedule. Service Orders shall clearly set forth the term, pricing, service type and location(s), monthly recurring charge (“**MRC**”), non-recurring charge (“**NRC**”), and any additional specific terms for the Services.

1.3 Order of Precedence. In the event of an express conflict between a term(s) of this MSA and the term(s) of any Service Schedule and/or Service Order/Service Order Addendum and associated Exhibits, as well as the rest of the Contract documents, the order of precedence will be given in the following order: (1) Service Order/Service Order Addendum and associated Exhibits, but solely with respect to the Service covered by that Service Order; (2) the Service Schedule but solely with respect to the Service covered by that Service Schedule and (3) this MSA including associated Exhibits; (4) any Purchase Order issued under this Contract Document, (5) the Request for Proposals, including all Addenda and (6) the Vendor’s Proposal that is satisfactory to the District. The order of precedence for the documents included in the Contract as defined in this Section is in the order listed herein, beginning with number (1).

**ARTICLE 2 - PAYMENT TERMS**

2.1 Billing Commencement and Commencement of the Work. Vendor may commence billing and District shall be liable for payment for Services upon the issuance of a Purchase Order by the District pursuant to this Contract and the Service Order.

**2.2 Invoicing and Payment Terms.**

2.2.1 Vendor shall provide District with a monthly itemized invoice, on or before the thirtieth (30<sup>th</sup>) day of each month, for the portions of the Goods delivered and accepted and/or Services performed during the preceding month. All Invoices must reflect (a) the name and address of the vendor, (b) the appropriate Purchase Order Number, and (c) detailed descriptive information identifying the item(s), including quantity, product number, product code, product description, and specific location of all serialized equipment, etc. (d) if this Contract includes Special Construction scope, the Vendor shall provide a list from its detailed bill of materials provided during the PIA review as part of its invoice. Special Construction billing will be more specifically described in the Service Order prepared for the Special Construction portion of the Project, if any.

2.2.2 Invoices must be mailed to the Abilene Independent School District, P.O. Box 981, Abilene, Texas 79604. Alternative payment terms may be accepted in writing, in District’s sole discretion. Invoices for Goods and/or Services shall not

include Federal Excise, State or City Sales Tax for which an Independent School District is exempt under State Law. The District shall furnish a tax exemption certificate, if required.

2.2.3 The District shall make payment to the Vendor for the District's undisputed portion of the project cost not later than thirty (30) days after its receipt of the Vendor's properly submitted and documented invoice or as required by the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code) or its successor. The maximum interest rate on any past due payments by the District to Vendor shall be limited to the rate provided by Section 2251.025 of the Texas Government Code or its successor. The District shall not be required to make any payments to Vendor at any time Vendor is in default under this Contract.

2.2.4 Invoices will be dated and time stamped upon receipt in the Accounts Payable Department. Vendor's invoices must contain the appropriate AISD purchase order number on the face of the invoice. Each line item on the invoice should contain the corresponding line item number shown on the purchase order and a detailed description identifying the item(s) or service delivered, including quantity, item number, product code, item description, services, etc. Invoices submitted without the correct purchase order number shown may be returned to the Vendor for correction. Corrected invoices will be subject to the same payment provisions as original invoices.

2.2.5 In the event a Vendor presents the District with invoices, statements, reports, etc. that are incomplete, inaccurate or in need of substantial internal research, such action may result in delay of payment. The District will not be responsible for any interest charges and/or late fees as a result of delayed payment caused by inadequate or incomplete information provided in invoices by Vendor. Such invoices, and, if applicable, E-Rate Form 474 requesting payment from USAC, will be issued by Vendor in accordance with then-current Service Provider Invoice (SPI) or Billed Entity Applicant Reimbursement (BEAR) allocation and invoicing methods as described in E-Rate Program rules and as set forth in the Agreement. Unless otherwise stated in the Service Order or Service Schedule, and subject to E-Rate funding approval and E-Rate Program rules, Vendor shall invoice District for any non-recurring charge ("NRC") upon acceptance of a Service Order. Billed Entity Applicant Reimbursement (BEAR) method will be applicable to the monthly recurring service for this contract. Using the BEAR method, the Vendor's invoice will reflect the full amount of the service. The District is responsible to pay the full amount and file the BEAR form to receive the reimbursement from USAC Service Provider Invoice. The (Service Provider Invoice ("SPI") method shall be used for Special Construction charges, if any, and requires Vendor to invoice only the District's portion of the project cost. In turn, the Vendor will be required to submit the SPI to obtain reimbursement from the USAC for the remainder of the total amount as it relates to this Contract.

2.3 **E-Rate Funding, Non-Appropriations.** District represents that it is a public entity and/or that the Services provided under the Agreement are subject to public funding sources, including E-Rate funding.

2.3.1 **Cancellation for Denial of E-Rate Funding.** The Vendor understands that the District has sought funding through E-Rate for some or all of the Products or Services purchased under the Agreement. In the event that District's good faith application for E-Rate funding to purchase the Products or Services hereunder is denied by USAC, in whole or in part, then the Parties may agree to amend the applicable Service Orders to provide for District's purchase of Products or Services only to the extent District's application for E-Rate funding is approved. Alternatively, the District may, upon written notice to Vendor, cancel the affected Service Order entirely, with no further liability to Vendor. Notwithstanding the foregoing, District expressly acknowledges and agrees that Vendor shall not be obligated to perform any work or to incur any costs to provide the Products or Services to District prior to USAC approval of District's E-Rate funding unless a separate agreement dated after the date of this Agreement is entered with District committing to pay for the Goods and Services regardless award of E-Rate funding.

2.3.2 **Termination for Non-Appropriation of Funds.** In accordance with Tex. Local Gov't Code Section 271.903 concerning non-appropriation of funds for multi-year contracts, renewal of this contract, if any, will be at the sole discretion of the District and shall be subject to the District's continuing right to terminate at the expiration of each of the District's budget periods during the term of the contract. The Contract will require the District to use best efforts to attempt to obtain and appropriate funds for payment of the Contract. The parties agree that the Contract and/or any Purchase Order are commitments of the current revenue of District only.

### ARTICLE 3 - TERM

3.1 **MSA Term.** This MSA shall be in effect for a period of one year beginning July 1, 2021 through June 30, 2022 ("Initial Term") unless terminated earlier as otherwise provided for in this MSA, will be subject to renewal at the District's option, for two (2) additional one (1) year periods thereafter (each a "Renewal Term" together with the Initial Term, shall be referred to as the "Term"). The District will notify the Vendor at any time prior to the expiration of the then current term of its intent not to renew, however shall in good faith endeavor to provide notice to the Vendor as soon as possible after its decision to terminate is made.

3.2 **Service Order/Schedule Term.** The term of the Service Order shall commence on the Service Activation Date for such Service and continue for the term specified in the Service Order and thereafter, the Service Order shall renew on the same schedule as this MSA and shall be subject to termination on the same terms as set out in Paragraph 4.1. (collectively, the "Service Term").

3.2.1 **Monthly Recurring Services.** The new service is being planned to begin on July 1, 2021. This contract coincides with SLD funding beginning July 1, 2021 through June 30, 2022; this term is non-negotiable. Failure by the Vendor to implement services by July 1 does not obligate the District to submit payment for products/services beyond June 30<sup>th</sup> of that SLD Funding year, nor does it obligate the District to submit payment for services that are not yet operational. The District will not submit payment for products/services prior to the start date of the contract. Pricing for the monthly recurring cost shall not exceed the pricing listed on in the Service Order. Any opportunity for decreases in monthly recurring cost if there is a cost reduction in such service for the market or for similar customer contracts during the term of the contract shall be extended to the District.

3.2.2 **Special Construction -** Special Construction shall be completed in time to provide internet transport for the monthly recurring internet service to be provided under the Contract. Pricing for the special construction shall be held firm from proposal until execution of the Contract. Following execution of the Contract, the pricing for Special Construction shall be fixed by the Contract.

#### ARTICLE 4 - TERMINATION

##### 4.1 Termination Without Cause.

4.1.1 This Agreement may be terminated by District without cause, prior to District's representative giving Vendor written Notice to Proceed or commencement of the then current term, should District's representative, in its sole discretion, determine that it is not in District's best interest to proceed with this Agreement. Such notice shall be provided in accordance with the notice provisions contained in this Agreement, and shall be effective immediately upon delivery to the Vendor.

4.1.2 This Agreement may be terminated by the District at any time after issuance of the District's representative's Notice to Proceed or commencement of the initial or then current term, either for the District's convenience or because of Vendor's failure to fulfill Vendor's contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the District.

4.1.3 If the termination is for the convenience of the District, and following inspection and acceptance of Vendor's services properly performed or goods properly delivered prior to the effective date of termination an equitable adjustment in the contract price shall be made. Vendor shall not, however, be entitled to lost or anticipated profit on unperformed services or undelivered goods, should District choose to exercise its option to terminate, nor shall Vendor be entitled to compensation for any unnecessary or unapproved work performed during time between the issuance of the District's notice of termination and the actual termination date.

4.1.4 If the termination is due to Vendor's failure to fulfill its obligations, the District may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Vendor shall be liable to the District for any additional cost occasioned to the District thereby.

4.1.5 If, after notice of termination for failure to fulfill Contract obligations, it is determined that the Vendor had not so failed, the termination shall be deemed to have been effected for the convenience of the District. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 4.1.3 above

4.1.6 The rights and remedies of the District provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

4.1.7 This Agreement may be terminated by the Vendor, at any time after issuance of the District's representative's Notice to Proceed, upon ninety (90) calendar days written notice provided in accordance with the Notice provisions contained in this Agreement.

4.2 **Defaults With Opportunity for Cure.** Should Vendor fail, as determined by the District's representative, to satisfactorily perform the duties or provide the goods set out in an any Service Order issued under this MSA or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, the District shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. Vendor shall have ten (10) calendar days after receipt of the written notice to cure such default. If Vendor fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, District shall have the right, without further notice, to terminate this Contract in whole or in part as District deems appropriate, and to contract with another Vendor to complete the work required by this Agreement. District shall also have the right to offset the cost of said new agreement with a new Vendor against Vendor's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of District to mitigate its losses.

4.3 **Termination For Cause.** Upon the occurrence of one (1) or more of the following events, and following written notice to Vendor given in accordance with the notice provisions contained in this Agreement, District may immediately terminate this Contract, in whole or in part, "for cause":

4.3.1 Vendor makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to District in connection with this Agreement or its performance hereunder; or

4.3.2 Vendor violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

4.3.3 Vendor fails to cure, or initiate steps reasonably calculated to cure, a default as required by this Agreement, within the time period required for cure; or

4.3.4 Vendor violates any rule, regulation or law to which Vendor is bound or shall be bound under the terms of this Agreement, including FCC regulations, rules established by SLD and USAC; or

4.3.5 Vendor attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of this Agreement; or

4.3.6 Vendor ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Vendor's assets or properties.

4.4 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

4.5 **Orderly Transfer Following Termination.** Regardless of how this Agreement is terminated, Vendor shall effect an orderly transfer to District or to such person(s) or firm(s) as the District may designate, at no additional cost to District. Upon the effective date of expiration or termination of this Agreement, Vendor shall cease all operations of work being performed by Vendor, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Vendor, in connection with the services rendered by Vendor under this Agreement, regardless of storage medium, shall be transferred to District. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Vendor's sole cost and expense. Payment of compensation due or to become due to Vendor is conditioned upon delivery of all such documents.

4.6 **Termination Not Sole Remedy.** In no event shall District's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of District's remedies, nor shall such termination limit, in any way, at law or at equity, District's right to seek damages from or otherwise pursue Vendor for any default hereunder or other action.

#### ARTICLE 5 – TAXES AND OTHER FEES AND SURCHARGES

5.1 **Tax Exemption.** The District is exempt from Federal Excise, State or City Sales Tax and Ad Valorem Property tax under State Law and no such obligations are included in the price under this Contract. The District will furnish a tax exemption certificate, upon request of Vendor.

#### ARTICLE 6 - DELIVERY OF GOODS AND SERVICES

6.1 **Delivery of Goods and Services.** Vendor agrees to provide Goods and Services listed and described in the Service Order, which is attached hereto and incorporated herein by reference for all purposes. Goods and Services may separately be referred to as "Goods" or "Services" where appropriate to the context.

6.1.1 **Delivery, Packaging and Acceptance of Goods.** Unless otherwise stated in or changed by written modification, signed by the District, the Goods shall be delivered in accordance with the following Standard Delivery Terms:

- a. Delivery shall be F.O.B. District's Central Receiving Dock at 3757 Amarillo Street. Abilene, Texas 79602.
- b. Unless otherwise notified in writing, deliveries will be made between the following hours:
  - August through May – Monday through Friday 7 a.m. and 11:30 a.m. and 12 p.m. and 3 p.m. daily
  - June through July – Monday through Thursday 7 a.m. and 11:30 a.m. and 12 p.m. and 3 p.m. daily; and Friday 7:00 a.m. until 11:00 a.m.
- c. After a Contract has been executed and all required insurance requirements have been met, and bonds (if required) are delivered to the District, the District representative will issue a Notice to Proceed and a Purchase Order referencing this Contract will be issued. Vendor shall commence delivery of the products and/or provision of the services

described in this Contract to AISD. Conforming product(s) and/or services shall be delivered/provided in accordance with the delivery terms as stated in the Purchase Order. At the option of the District, invoices with incorrect prices or other errors or inconsistencies will not be paid until corrected, whether by credit memo(s) or issuance of a corrected invoice. If delivery is not or cannot be made or if services are not or cannot be provided within this time period, Vendor must receive authorization from AISD for the delayed delivery or delayed provision of services.

d. The Goods will be packed in accordance with good commercial practice and in a manner which will facilitate securing the lowest transportation costs, conform to requirements of common carriers and any applicable specifications. Each shipping container shall be clearly identified with: (a) Seller's name and address; (b) the Vendor's name, address the Purchase Order number; (c) Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. The District's count or weight determination shall be final and conclusive on shipments not accompanied by packing slips/lists.

e. The District assumes no liability for Goods delivered in damaged or in unacceptable condition. The Vendor shall handle all claims with insurance carriers, and in the event that Goods are damaged in transit shall ship replacement Goods immediately upon notification by the District of damage.

f. Vendor is not authorized to ship the Goods under reservation and no tender of a Bill of Lading will operate as a tender of Goods. The District shall have the right to inspect the Goods at delivery before accepting them and no Goods will be deemed accepted until written acceptance is provided by authorized District Representative. Any written warranties will commence upon acceptance of the Goods by the District. If Vendor delivers defective or incorrect products, AISD may reject the defective or incorrect products and return the products to Vendor at no cost to AISD. Vendor agrees to pay all shipping and handling costs for any such return shipment. Vendor also shall be responsible for arranging the return of the defective or incorrect products. The District will not be held responsible for any products delivered or invoiced without a valid current Purchase Order Number.

g. Drivers. Drivers shall present a neat and clean appearance, be in uniform, show valid picture ID, and make their deliveries in an efficient and courteous manner. Drivers must meet all requirements for license and driving record, required by the Tex. Educ. Code Section 22.085.

h. Shortages. Vendor must notify AISD of any back order or shortage items at least one (1) day prior to the scheduled delivery. Any items that Vendor fails to deliver on the designated, scheduled delivery date must be reshipped immediately thereafter.

## 6.2 Delivery of Services and Standard of Care.

6.2.1 Delivery. Vendor agrees to provide Services listed and described in the Service Order, which is attached hereto and incorporated herein by reference for all purposes Services in a manner consistent with industry standards and performed, will conform to the required specifications set out herein and shall be delivered in compliance with all applicable laws, rules, regulations, procedures and consistent with industry standards.. Nothing contained in this Contract shall require District to pay for any unsatisfactory Services, as determined by District's representative, or for work that does not comply with the terms of this Contract. Minimum standards of identity, fill of container, fill of package, etc., are automatically part of a product specification or identity.

6.2.2 Standard of Care. If the Services are performed by a non-professional Vendor, Vendor represents, covenants, and warrants that it will devote its good faith, best efforts in provision of the Services and will provide the Services with reasonable care and skill and in a good and workmanlike manner, and covenants and warrants that its services will conform to the required specifications set out herein and shall be delivered in compliance with all applicable laws, rules, regulations, procedures and consistent with industry standards.

6.3 Scope of Work Delivery. Vendor agrees to use commercially reasonable best efforts to provide the product(s) and/or service(s) subject to this Contract. Vendor shall furnish all supervision, labor, tools, equipment, permits, licenses, transportation, insurance, material, and supplies necessary to complete any Scope Of Work or delivery of Goods required by this Contract. Vendor shall use skilled, trained personnel, who shall be supervised by Vendor.

## 6.4 Warranties for Goods and Services.

6.4.1 Express Warranties. Vendor expressly represents, warrants and covenants, that:

a. Vendor will devote its good faith, best efforts in provision of the Goods and/or Services.

b. Vendor has and will retain sufficient financial condition, working capital, experience, expertise, personnel, licenses, certifications, and authority to provide the Goods and/or Services, that it will provide copies of its licenses and certifications to the District upon request and will comply with the vendor ethics policies of the District.

c. The Goods provided will conform to the exact specifications and requirements set out in this Contract

(or as modified by the Parties in writing), will be free from defects in materials and/or workmanship, will comply with all applicable laws, rules, regulations, procedures and consistent with industry standards and are fit for the particular purpose for which the District intended.

d. The Services promised will adequately address the Scope of Services set forth in the Contract and its exhibits and will comply with all applicable laws, rules, regulations, procedures and consistent with the Vendor's standard of care.

e. All Goods are new and the quality of the Goods is consistent with or better than industry standard.

#### 6.4.2 Implied Warranties.

a. The Goods comply with all implied warranties, including but not limited to, the implied warranty of merchantability and fitness for the particular purpose for which they were obtained. The Vendor agrees to provide the Services agreed to herein in a good and workmanlike manner.

b. No implied warranties for Goods and/or Services or provided in connection with this Contract are waived modified or excluded by any provision of this Contract, or any terms and conditions included in any document prepared by the Vendor, and any provision so intended, or interpreted shall be treated as void *ab initio*.

c. Safety Warranty and Provision of Material Safety Data Sheets. The Goods supplied to the District under this Contract shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA) of 1970. In the event the Goods do not conform to OSHA standards, the District will be permitted to refuse or return the non-conforming Goods for correction or replacement at the Vendor's expense. Where Goods to be delivered under this Contract require the maintenance of, Material Safety Data Sheets (MSDS), a copy of the relevant MSDS will be made available to the District's representative prior to delivery of the relevant Goods.

6.5 No Warranty by Consent. No review, consent, or approval by the District of any documents prepared by Vendor shall constitute a representation or warranty by the District of the legality, suitability, or quality of the same or content thereof.

6.6 Non-Conforming Work. If seven (7) calendar days following written notice to Vendor identifying the defective or work not in conformance with the above standards, the defective or non-conforming work remains uncorrected, District may order Vendor to stop further work, or any portion thereof, until it properly corrects the defect or nonconformance. Should Vendor not proceed with the correction of defective or non-conforming work within three (3) additional calendar days of District's order to stop work, as set forth above, District may arrange for the removal, repair or correction of the defective or nonconforming work and, at its election may charge all associated costs of the same to Vendor.

6.7 Survival. All warranties set out in this Article 6, shall survive delivery of the goods and completion of the services, and shall not be deemed waived either by reason of the district's acceptance of said goods and services or by payment for them.

6.8. No Liability for Certain Actions. Vendor is not responsible for the content of any information transmitted or received through the Services. Other than as expressly stated in a Service Schedule, District shall be solely responsible for all of the security and confidentiality of information it transmits using a Service.

#### 6.9 Royalties, Patents and Copyrights

The Vendor shall pay all royalties and license fees. The Vendor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the District harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Owner's Specifications. However, if an infringement of a copyright or patent is discovered by, or made known to, the Vendor, the Vendor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### ARTICLE 7 – INDEMNIFICATION, INSURANCE AND IMMUNITY

7.1 Indemnification. Vendor agrees to INDEMNIFY, DEFEND, AND HOLD-HARMLESS THE DISTRICT AND ITS TRUSTEES, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES ("INDEMNIFIED PARTIES") FROM AND AGAINST, ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED OR CAUSED BY VENDOR'S NEGLIGENT ACT, ERROR, OR OMISSION, ANY AGENT, OFFICER, REPRESENTATIVE, EMPLOYEE, VENDOR OR SUB-CONSULTANT OF VENDOR (COLLECTIVELY "VENDOR AFFILIATE") WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR

DUTIES UNDER THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE INDEMNIFIED PARTIES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT VENDOR AND/OR A VENDOR AFFILIATE AND ANY INDEMNIFIED PARTY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE DISTRICT, ITS EMPLOYEES/OFFICIALS UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF DISTRICT ITS EMPLOYEES/OFFICIALS UNDER THE TEXAS TORT CLAIMS ACT OR OTHER TEXAS LAW. VENDOR SHALL PROMPTLY ADVISE DISTRICT, IN WRITING, OF ANY CLAIM OR DEMAND AGAINST AN INDEMNIFIED PARTY, VENDOR AND/OR A VENDOR AFFILIATE KNOWN TO VENDOR, RELATED TO OR ARISING OUT OF ACTIVITIES OF VENDOR AND/OR A VENDOR AFFILIATE UNDER THIS CONTRACT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS AGREED WITH RESPECT TO ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AND AFFECTING THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION OBLIGATION, SUCH LEGAL LIMITATIONS ARE MADE A PART OF THE INDEMNIFICATION OBLIGATION TO THE MINIMUM EXTENT NECESSARY TO BRING THE PROVISION INTO CONFORMITY WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND AS SO MODIFIED, THE INDEMNIFICATION OBLIGATIONS SHALL CONTINUE IN FULL FORCE AND EFFECT.

**7.2 Intellectual Property Rights Indemnification.** Vendor shall INDEMNIFY, DEFEND, AND HOLD HARMLESS the District, its elected officials, employees, officers, and representatives harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) for infringement of any patent, copyright or similar property right including, but not limited to, misappropriation of trade secrets and any infringement by Vendor and its employees and consultants, in connection with any license provided, any deliverable or any service furnished hereunder, and used by either the District or Vendor within the scope of this Agreement (unless said infringement results directly from Vendor's compliance with District's written standards or specifications).

**7.3 General Obligations Applicable to Paragraphs 7.1 and 7.2**

**7.3.1 Defense Counsel.** In connection with any indemnification obligation in this Article 7, District, in its sole discretion shall have the right to approve or select defense counsel to be retained by Vendor in fulfilling its indemnity obligation hereunder, unless such right is expressly waived by District in writing. District reserves the right to provide a portion, or all of its own defense, at its own expense; however, District is under no obligation to do so. Any such action by District is not to be construed a waiver of Vendor's obligation to defend District or a waiver of Vendor's obligation to indemnify District pursuant to this paragraph. Vendor shall retain District-approved defense counsel within seven (7) business days of District's written notice that District is invoking its right to indemnification under this Agreement. If Vendor fails to retain counsel within such time period, District shall have the right to retain defense counsel on its own behalf, and Vendor shall be responsible for all costs incurred by District until such time as the Vendor provides a defense.

**7.3.2** The provisions of this Section are solely for the benefit of the parties hereto, and not intended to create or grant any rights, contractual or otherwise, to any other person or entity and the obligations herein shall survive the termination or expiration of this Agreement.

**7.4 Immunities.** To the extent allowed by law, Vendor shall enjoy any statutory protections, if any, granted to utility providers. District does not waive or relinquish any governmental immunities or defenses on behalf of itself and its trustees, officers, employees, or agents as a result of the execution of this Agreement and performance of the functions or obligations described herein. Nothing herein shall be construed as creating any personal liability on the part of any trustee, officer, director, or employee of District. No provision of this Agreement is consent to suit.

**7.5 Insurance.**

**7.5.1** The Vendor shall carry and maintain in force insurance described below. Prior to execution of the Contract, the Vendor shall procure insurance coverage in the types and amounts as follows:

<u>Workmen's Compensation:</u> (Including Waiver of Subrogation Endorsement)	All liability arising out of Vendor's employment of workers and anyone for whom Vendor shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.
<u>Employer's Liability:</u>	\$1,000,000.00 each accident; \$2,000,000.00 disease - policy limit; \$1,000,000.00 disease - each employee

<u>Commercial General Liability:</u>	
Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00 (A Designated Construction Project General Aggregate Limit shall be provided)
Personal & Advertising Injury Products and Completed Operations	\$1,000,000.00 each person \$1,000,000.00 (for one (1) year, commencing with issuance of final Certificate for Payment)
Property Damage	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
Independent Contractors	(Same limits as above)
Contractual Liability	(Same limits as above)
<u>Automobile Liability:</u>	
Bodily Injury/Property Damage	\$1,000,000.00 combined single limit (all owned, non-owned vehicles, and hired vehicles)
<u>Umbrella Coverage</u>	\$5,000,000.00

7.5.2 **Prior to Commencement.** Vendor shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Vendor is in force and the District has issued Its written Purchase Order for the Work set out in the Service Order.

7.5.3 **Qualified Company.** The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the District. The District's Representative will contact the State Board of Insurance to confirm that the issuing companies are admitted and authorized to issue such policies in the State of Texas

7.5.4 **Additional Insured Requirements.** To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage and automobile liability coverage required by this Section to include (1) the Owner, as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04.

7.5.5 **Disclosure Of and Responsibility for Deductibles.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor. If the insurance is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto. The insurance required by this Section shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the project until the date of final payment and termination of any coverage required to be maintained after final payment.

7.5.6 **Certificates Furnished.** Vendor shall have its insurance carrier(s) furnish to District insurance certificates in form satisfactory to District specifying the types and amounts of coverage in effect, the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed while the during the term of this Contact, without thirty (30) calendar day's prior written notice to District. Vendor shall permit District to examine the insurance policies, declarations and/or endorsements at District's option.

7.5.7 **Notice of Cancellation.** Within ten (10) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

7.5.8 The required Worker's Compensation Policy shall be subject to the following Provision:



Workers' Compensation. The Contractor shall provide Workers' Compensation at statutory limits including all liability arising out of Contractor's employment of workers and anyone for whom Contractor shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.

#### Workers' Compensation Insurance Coverage

- .1 Definitions:
  - .1.1 Certificate of coverage ("Certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.
  - .1.2 Duration of the Project. Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.
  - .1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096). Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- .2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.
- .3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.
- .4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
- .5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:
  - .5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
  - .5.2 no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- .6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
- .7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- .8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- .9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:
  - .9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
  - .9.2 provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
  - .9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - .9.4 obtain from each other person with whom it contracts, and provide to the Contractor:
    - (a) a certificate of coverage, prior to the other person beginning work on the Project; and
    - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

- .9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
  - .9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
  - .9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.
- .10 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Department of Insurance, Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- .11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 TAC Rule §(a)(7)]

7.5.9 **Waivers of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section and shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

7.5.10 **Special Construction Additional Insurance Requirements.** In addition to the coverage set out in Paragraph 7.5 and all subparts, additional Insurance may be required in connection with Special Construction performed in connection with a Service Order under this MSA. If Special Construction is included in the Scope of any Service Order, the additional insurance coverage set out in Paragraph 7.5.1.1 through 7.5.1.9, as well as the following types and amounts of coverage in Paragraphs 7.5.10.a through 7.5.10.b shall also be obtained at the Vendor's expense prior to commencement of any work under this MSA or any Service Agreement associated therewith.

a. The Contractor's Commercial General Liability policy required shall not contain an exclusion or restriction of coverage by endorsement or otherwise, for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Article 7 arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves
- .12 Any endorsement that modifies Exclusion L in the ISO GL0001 policy form.

## ARTICLE 8 - CONFIDENTIALITY

8.1 Subject to applicable law and E-Rate Program rules and the Texas Public Information Act ("TPIA"), Texas Government Code Chapter 552, "Confidential Information" shall mean all information regarding the telecommunications needs of District and the Services that Vendor offers under this Agreement which is disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party"), to the extent that such information is marked or identified as confidential or proprietary. Notwithstanding the foregoing, all written or oral pricing and contract proposals exchanged between the Parties shall be deemed Confidential Information, whether or not so designated. Confidential Information is the property of the Disclosing Party and shall be returned to the Disclosing Party upon request. Information that (i) is independently developed by the Receiving Party, (ii) is lawfully received by the Receiving Party free of any obligation to keep it confidential, or (iii) becomes generally available to the public other than by breach of this Agreement, shall not be considered Confidential Information. A Receiving Party, including its officers, directors, employees, partners, affiliates, agents and representatives, shall hold all Confidential Information in confidence from the time of disclosure until three (3) years following its disclosure. During that period, the Receiving Party: (a) shall use such Confidential Information only for the purposes of performing its obligations under this Agreement; (b) shall reproduce such Confidential Information only to the extent necessary for such purposes; (c) shall restrict disclosure of such Confidential Information to employees that have a need to know for such purposes; (d) shall not disclose Confidential Information to any third party without prior written approval of the Disclosing Party except as expressly provided in this Agreement or as required by law; and (e) shall use at least the same degree of care (in no event less than reasonable care) as it uses with regard to its own proprietary or confidential information to prevent the disclosure, unauthorized use or publication of Confidential Information. In the event that the Receiving Party is required to disclose Confidential Information of the Disclosing Party pursuant to law, the Receiving Party will use reasonable efforts to notify the Disclosing Party of the required disclosure with sufficient time for the Disclosing Party to seek relief or a make any argument as to confidentiality to the Attorney General on its own behalf, , and will make such disclosure in a fashion that maximizes protection of the Confidential Information from further disclosure, until such time as Receiving Party is ordered to do so by a court or the Attorney General. Notwithstanding anything in this Article to the contrary, the fact that District is a Customer of Vendor shall not be deemed Confidential Information and Vendor may disclose the same without liability therefor.

8.2 Vendor understands that, during the term of this Contract, Vendor will have access to certain information belonging to the District and designated as confidential by the District or not generally known by non-District personnel (collectively, the "Confidential Information"). During the term of this Contract and at all times thereafter, Vendor shall not, without the prior written consent of the District, do any of the following, directly or indirectly: (a) use any of the Confidential Information for Vendor's own purposes or for the purposes of any person or entity other than the District; and/or (b) disclose any of the Confidential Information to any third party, except as reasonably and in good faith required in connection with performance of this Contract by Vendor. Vendor further shall take all steps necessary to prevent disclosure of Confidential Information by any other person or entity, during the term of this Contract and at all times thereafter, without the prior written consent of the District. All data, disks, lists, financial records, other records, documents, property, information, specifications, and materials of the District relating to the Goods and/or Services provided to Vendor during the term of this Contract, as well as all copies thereof (collectively the "Materials"), shall be and remain the sole and exclusive property of the District. None of the Materials shall be retained by Vendor, or shall be transmitted to anyone at any time, either now or in the future, except as reasonably and in good faith required in connection with performance of this Contract by Vendor. Upon termination of this Contract, or upon request by the District, Vendor shall promptly return the Materials to the District. The Materials are included within the definition of Confidential Information. Vendor further agrees that, if it receives information or records concerning any student, it shall not disclose the same, except as permitted by the Family Educational Rights and Privacy Act a/k/a FERPA.

### 8.3 E-Rate Confidentiality.

8.3.1 Some of the information requested during the E-Rate Program Integrity Assurance review could be considered by the Vendor to be proprietary or sensitive commercial and financial information. Certain information is already protected from public disclosure as trade secrets and commercial or financial information under the Federal Communication Commission's (FCC) rules at 47 C.F.R. § 0.457(d). If you believe this rule does not provide adequate protection, you may request that information and documentation provided be protected from public disclosure or inspection through 47 C.F.R. § 0.459. Vendors requesting confidential treatment under 47 C.F.R. § 0.459 should submit a letter outlining the reasons for why the information should be withheld from public inspection. The request should include the following:

- A statement of the reasons for withholding the information from public inspection;
- Identification of the specific information for which confidential treatment is sought;
- Explanation of the degree to which the information is commercial or financial, or contains trade secrets or is privileged;
- Explanation for how disclosure of the information could result in competitive harm;
- Identification of any measures the party has taken to prevent unauthorized disclosure;
- Identification of whether the information is already available to the public and the extent of any previous disclosure;

- Justification for the period of time the party asserts the information should not be available for public inspection; and
- Any other information that the party believes may be useful in assessing whether its request for confidentiality should be granted.

8.3.2 Options to Submit Data: If you wish to submit responses to the questionnaire on behalf of the District, you may submit them via:

- a. Email: [SLD\\_Submissions@usac.org](mailto:SLD_Submissions@usac.org)
- b. Mail: Universal Service Administrative Co.  
Attn: Schools and Libraries (E-rate) Program  
700 12th Street, NW, Suite 900  
Washington, D.C. 20005
- c. Service Provider Customer Case: Log in to EPC. Select the Contact Us link from the upper right menu on your landing page to create a customer service case. Label the topic of your customer case as such, "Confidential Responses – FRN <Enter FRN>". Abilene ISD will then respond to the open information request in EPC with the customer case number. Abilene ISD will then respond to the open information request in EPC with the customer case number.

## 8.4 Texas Public Information Act.

8.4.1 As a governmental body, AISD is subject to and will comply with the Texas Public Information Act (Chapter 552, Tex. Gov't Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. All Vendors should obtain and thoroughly familiarize themselves with the Act, rules, statutes and case law applicable to the issue of confidentiality and public information and in particular the most recent amendments to the Act – Section 552.0222 which went into effect January 1, 2020. Texas Government Code Section 552.0222, which defines "contracting information" as public, except to the extent it is excepted from disclosure under the Act and provides a broad definition of "contracting information" in Section 552.003(7) of the Act, to include: (1) information maintained by a governmental body or sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor which is contained in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; (2) the solicitation or bid documents relating to a contract with a governmental body; (3) communications sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor during the solicitation, evaluation, or negotiation of a contract; (4) documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and (5) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body. Certain terms or information included in the definition of "contracting information" have, however, been specifically deemed by Section 552.0222(b)(3) to be public information, and not subject to the exceptions from disclosure provided by Section 552.110 for trade secrets and certain commercial or financial information and Section 552.1101 for proprietary information.

8.4.2 Some of the Contracting Information you may have provided or will provide during the Term of this Agreement may contain commercial or financial information which you consider confidential, a trade secret, proprietary, or of a nature which you believe will cause substantial competitive harm to your business if disclosed by the District to a third-party. You may be entitled to protect some or all of this information in the event the District receives a proper request for disclosure; however, you will need to consult your legal counsel to assure that this kind of information, if it is exempt Contracting Information is properly marked in a manner most likely to effectively identify information you believe to be exempt from disclosure and to preserve your rights. The District will not advise a Vendor as to the nature or content of documents entitled to protection from disclosure under the Act or other Texas Laws, as to the interpretation of such Laws, or as to the definition of trade secret. The Vendor shall be solely responsible for all determinations made by it under applicable Laws. Each Vendor is advised to contact its own legal counsel concerning the effect of applicable laws to that Vendor's own circumstances.

8.4.3 In the event that the District receives a proper request for disclosure of public information under the Act for Contracting Information or other information in its custody or control, and the District has a reasonable basis to believe the information may be considered confidential under the Act or other law, involves a person's privacy interests, constitutes a trade secret, confidential commercial, financial or proprietary information, economic development or investment information which may fall within one of the exceptions to disclosure under the Act, the District will decline to release the information for the purpose of requesting an attorney general decision and make a good faith attempt to provide notice to the Vendor of the request and comply with the other procedural requirements of Section 552.305 of the Texas Government Code. Under no circumstances shall the District be obligated to submit any argument to the Attorney General, or reasons why the information should be withheld or released, or raise any objection to release on behalf of the Vendor. Vendor understands and agrees that it shall be solely responsible for submitting arguments and information to the Attorney General on its own behalf, to monitor such proceedings and make timely filings. The District's only obligation shall be to comply with the requirements of Section 552.305 of the Texas

Government Code The District may, but is not obligated to, make filings of its own concerning possible disclosure; however, the District is under no obligation to support the positions of the Vendor.

8.4.4 By submitting a Proposal to the District in response to the RFP, the Vendor consents to, and expressly waives any right to contest, the provision by District to the Office of the Attorney General of all, or representative samples of, the Proposal, including any non-public financial statements of privately held entities and other confidential or proprietary information, in accordance with the Act. The Vendor consents to the release of all such information to the Office of the Attorney General for purposes of the Attorney General making a determination in response to a disclosure request under the Act and to disclose the name of the Vendor and pricing at the opening of proposals as required by statute. Under no circumstances will District be responsible or liable to a Vendor or any other party as a result of disclosing any materials, whether the disclosure is deemed required by Law or by an order of court or occurs through inadvertence, mistake or negligence on the part of District or its officers, employees, contractors or consultants.

#### ARTICLE 9 - FORCE MAJEURE

9.1 **Force Majeure.** If by reason of Force Majeure (i.e. acts of God, network failures acts of civil or military authorities, civil disturbances, strikes, lockouts, wars, fires, transportation contingencies, other catastrophes, or any other occurrences which are reasonably beyond such party's control), either Party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Contract then such Party shall give notice and full particulars of Force Majeure in writing to the other Party within a reasonable time after occurrence of the event or cause relied upon. The obligation of the Party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. Notwithstanding any other provision of this Contract, in the event the Vendor's performance of its obligations under this Contract is delayed or stopped by a force majeure event, AISD shall have the option to terminate this Contract by providing thirty (30) calendar days written notice to the Vendor.

#### ARTICLE 10 - MISCELLANEOUS PROVISIONS

10.1 **Subject to Laws.** This Agreement is subject to all applicable, state, federal and local laws, and regulations, rulings and orders of governmental agencies, including, but not limited to, the Communications Act of 1934, as amended, the Telecommunications Act of 1996, the Rules and Regulations of the FCC and USAC, Vendor's applicable tariffs, if any, and the obtaining and continuance of any required approval or authorization of the FCC or any governmental body. Either Party may terminate its obligations under this Agreement and/or a Service Schedule and/or a Service Order without liability if ordered to do so by the final order or ruling of a court or other governmental agency or if such order or ruling would make it impossible for either Party to carry out its obligations under this Agreement. The extent any certifications are required, they may be found in applicable Service Orders.

10.2 **Governing Law.** This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by the laws of the State of Texas. Venue for any action in connection with this Agreement shall lie in the County where the District's administrative offices are located.

10.3 **Prevailing Party.** In the event that suit is brought or an attorney is retained by either Party to enforce the terms of this Agreement or to collect any money as due hereunder or to collect any money damages for breach hereof, the prevailing Party shall be entitled to recover, in addition to any other remedy, reasonable attorneys' fees and court costs, incurred in connection therewith, as ordered by the court.

10.4 **Relationship of Parties.** This Agreement does not create a partnership, joint venture or agency relationship between the Vendor and District. Neither Party shall have any authority to bind the other Party to any agreement, understanding or other instrument, in any manner whatsoever.

10.5 **Assignment; Binding Effect.** Neither Party shall transfer or assign, voluntarily or by operation of law, its obligations under this Agreement without the prior written consent of the other Party. Each of the undersigned hereby state that he/she has full authority to enter into this MSA and hereby accepts this MSA on behalf of the companies identified below.

10.6 **Notices.** Notices under this MSA shall be in writing and delivered by certified mail, return receipt requested, or by nationally recognized courier to the persons whose names and business addresses appear below, and such notice shall be effective on the date of receipt, or refusal of delivery, by the receiving Party.

<b>If to Vendor:</b>	<b>If to District:</b>
	Abilene Independent School District Attn: Superintendent 3757 Amarillo Street Abilene, Texas 79602
	<b>With Copy to:</b> Purchasing Department 3757 Amarillo Street Abilene, Texas 79602

10.7 **No Third Party Beneficiaries.** The representations, warranties, covenants and agreements of the Parties set forth herein are not intended for, nor shall they be for the benefit of or enforceable by, any third party or person not a Party hereto, including without limitation, End Users.

10.8 **Entire Agreement.** This Agreement constitutes the entire understanding between the Parties relating to the rights, duties and obligations granted and assumed herein. Any prior agreements, promises, negotiations or representations regarding the subject matter hereof are of no force or effect. No alteration or variation of the terms of any provision shall be valid unless made in writing and signed by a duly authorized representative of Vendor and the District. In the event that any one or more of the provisions of this MSA shall for any reason be held to be invalid or unenforceable, the remaining provisions of this MSA shall be unimpaired, and shall remain in effect and be binding upon the Parties. The Services provided by Vendor are subject to the condition that they will not be used for any unlawful purposes. No course of dealing between the Parties and no failure to exercise any right hereunder shall be construed as a waiver of any provision hereof.

10.9 **Counterparts/Facsimile Signatures.** This MSA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This MSA and any Service Schedule and any Service Orders may be executed via a recognized electronic signature service (e.g., DocuSign) or may be delivered by facsimile transmission, or may be signed, scanned and emailed to Vendor, and any such signatures shall be treated as original signatures for all applicable purposes.

10.10 **Additional Provisions.**

10.10.1 **Change Orders/Amendments.** If a change in plans or specifications is necessary after the performance of a Contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, AISD may approve change orders making the changes. Any change orders or requests will be made in accordance with Tex. Educ. Code Section 44.0411 and applicable AISD procedures and policies and in accordance with FCC rules and USAC procedures governing such changes. Any changes to a purchase order shall be communicated to Vendor by the issuance of a formal change purchase order. Only an AISD purchasing staff member may make a change to the purchase order by issuing and sending a formal change purchase order to Vendor. If Vendor acts on the direction of a District employee who is not authorized to make changes, Vendor does so at his or her own risk or peril and risks termination of the Contract for cause. Also, if Vendor attempts, or receives, a modification/amendment from a District employee that is not authorized to make changes, Vendor does this at his or her own risk or peril and risks termination of the Contract for cause. No amendment of this Contract shall be permitted unless and until first approved in writing by AISD, and no such amendment shall have any effect unless and until a written amendment to this Contract is executed by the AISD Purchasing Department.

10.10.2 **Participation In E-Rate Program Integrity Assurance (PIA) Review.** The Vendor shall participate and assist the District in the E-Rate Program Integrity Assurance (PIA) Review, if any by providing the following:

- a. promptly providing the District with any information being requested as part of PIA review.
- b. assisting the District with preparing funding requests or responding to PIA questions and, if requested or approved by the District, speaking directly with PIA reviewers.
- c. producing all construction labor, construction materials and other cost information in a detailed bill of materials if Vendor's response to the RFP on which this Contract is based, included Special Construction, as this will be required during PIA review.

USAC has developed a set of procedures for this information to be communicated in a confidential manner, if the Vendor would prefer the information be treated as proprietary or otherwise confidential, they should be prepared to follow the procedures set out in Article 8. Confidentiality, to respond to USAC's questions.

10.10.3 **Equal Employment Opportunity.** Vendor represents and warrants that it will comply with all applicable equal employment opportunity laws and the terms of the Equal Employment Opportunity clause provided in 41 C.F.R., Part 60-1.4(b) and as set out in its entirety in the applicable Service Order.. Vendor shall not deny any benefit to, exclude from any opportunity, or discriminate in any way against, any employee or any other person because of age, color, creed, sex, disability, national origin, race, religion, genetic information, or any other characteristic protected by law.

**10.10.4 Right to Audit.** Vendor's records and accounts related to this Agreement only, shall be open to inspection and subject to audit and/or reproduction by District's agents, or its authorized representatives, USAC and other E-Rate auditors, to the extent necessary to adequately permit evaluation and verification of Vendor's compliance with Agreement requirements. Vendor shall maintain its records and accounts related to this Agreement in a manner which shall assure a full accounting for all funds received and expended by Vendor in connection with the Agreement. These records and accounts shall be retained by Vendor and made available for programmatic or financial audit by District and by others authorized by law or regulation to make such an audit for a period of not less than ten (10) years from the date of completion of the Agreement or the date of the receipt by District of Vendor's final claim for payment or final expenditure report in connection with this Agreement, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed. Vendor will use its best efforts to ensure that contractors utilized by Vendor shall cooperate with the purpose of this paragraph. Vendor further agrees that acceptance of funds under this Agreement acts as acceptance for District, or its funding source, to conduct an audit or investigation in connection with those funds. Vendor shall cooperate fully with District, or its funding source in the conduct of the audit or investigation, including providing all records, pertaining to this Agreement that are requested.

**10.10.5 Antitrust:** Vendor represents and warrants that neither Vendor nor any firm, corporation, partnership, or institution represented by Vendor, or anyone acting for such firm, corporation or institution has, (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business during the procurement process for this Agreement.

**10.10.6 Family Code Applicability:** Vendor certifies that under Section 231.006, Family Code, that Vendor is not ineligible to receive specified grant, loan, or payment under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate. District reserves the right to terminate this Agreement if Vendor is found to be ineligible to receive payment. If Vendor is found to be ineligible to receive payment and the Agreement is terminated, Vendor is liable to District for reasonable attorney's fees, the costs necessary to complete the Agreement, including the cost of advertising and awarding a second agreement, and any other damages or relief provided by law or equity.

**10.10.7 Gift Rule Compliance.** Vendor certifies that it has complied with the E-Rate Gift Rules and has not provided items above the prohibited limit to the Applicant.

#### **ARTICLE 11 - SPECIAL CONSTRUCTION ADDITIONAL PROVISIONS**

**11.1 Special Construction Additional Provisions.** In addition to all provisions set out above in this Contract, if Special Construction is included in the Scope of any Service Order, the additional provisions set out in this Article 11, will also be deemed incorporated into this MSA and any Service Order issued thereunder and shall be applicable to this Contract.

**11.1.1 Labor and Materials.** Vendor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

##### **11.1.2 Prevailing Wages**

a. The Project is subject to the requirements of Texas Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Vendor, and any subcontractor under the Vendor, to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract. In accordance therewith, the District has established a Scale Of Prevailing Wages which is incorporated in the project specifications and attached to this Contract as Exhibit 2, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction.

b. A Vendor or Subcontractor who violates the provisions of the previous subsection shall pay to District the sum of SIXTY AND NO/100 DOLLARS (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

##### **11.1.3 Supervision and Construction Procedures**

a. The Vendor shall be responsible to the District for acts and omissions of the Vendor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Vendor or any of its Subcontractors.

b. The Vendor shall supervise and direct the Work, using the Vendor's best skill and attention shall enforce strict discipline and good order among the Vendor's employees and other persons carrying out the Work. The Vendor shall not permit employment of unfit persons, persons not skilled in tasks assigned and shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

c. The Vendor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. The Vendor shall assign a superintendent who shall make decisions in behalf of the Vendor and its Subcontractors. The superintendent shall be on the Project, in this capacity, at all times while work on the Project is in progress.

d. The Vendor recognizes that the Project Site may be on or adjacent to an operational public school campus or may be adjacent thereto. Accordingly, Vendor will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site. Sexual harassment of employees of the Vendor or employees or students of the District by employees of the Vendor is strictly forbidden. Any employee of the Vendor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Vendor, including removal from the job site.

e. The Vendor shall review subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Vendor's duties shall not relieve any subcontractor(s) or any other person or entity (e.g. a supplier) including any person or entity with whom the Vendor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section are not intended to impose upon the Vendor any additional obligations that the Vendor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

**11.1.4 Permits, Fees, Notices, and Compliance with Laws.** The Vendor shall secure and pay for any required permits fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**11.1.5 Criminal History Records Checks.** For purposes of this Paragraph (and all subparagraphs) the following definitions shall be applicable:

a. "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.

b. "Covered Employees", shall mean, all employees of Vendor, as well as employees of Vendor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

c. "Disqualifying Criminal History" means: a conviction within the last 30 years, related to one or more of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: (1) a felony offense under Texas Penal Code Title 5 Offenses Against Persons (homicide; kidnapping, unlawful restraint, smuggling of persons, trafficking of persons, sexual offenses; and assault offenses); (2) an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or (3) an equivalent offense under federal law or the laws of another state. Vendor shall assume all expenses associated with obtaining criminal history record information, providing the certification, and performing Vendor's responsibilities as set out herein.

d. "Opportunity For Direct Contact With Students" is contact that results from activities that provide a substantial opportunity for verbal or physical interaction with students, and that is not supervised by a certified educator or other professional district employee. An employee is not considered to have an Opportunity For Direct Contact With Students if: (1) the employee's work does not involve the construction alteration or repair of an Instructional Facility; (2) the employee's work involves construction of a new Instructional Facility and the person's duties related to the contacted services will be completed not later than the seventh day before the first date the facility will be used for instructional purposes; or (3) if the employee's work involves an existing Instructional Facility and:

(i) the project site area contains sanitary facilities and is separated from all areas used by students, by a secure barrier fence that is not less than six feet in height; and



- (ii). the Vendor has adopted a written policy applicable to its employees, as well as employees of its subcontractors (of any tier) and its independent contractors and consultants, which prohibits these parties from interacting with students or entering areas used by students, informs these parties of the policy, and enforces the policy on the Project site and at any other areas where the Work of this Contract will be conducted.
- (iii). the Vendor has sought and received written approval by the District of the adopted policy (including its enforcement provisions) and Vendor's its means of informing the relevant parties of the existence of the policy.
- (iv). Vendor certifies that, if it has taken the above precautions or imposed conditions to ensure that the Vendor's employees and employees of any of its subcontractors, independent contractors, or consultants, will not become Covered Employees, then Vendor will make reasonable efforts to ensure that these precautions or conditions continue throughout the time the contracted services are provided.

e. "Instructional Facility" is defined as real property or improvements to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required under Texas Education Code § 28.002; Texas Education Code § 22.08341(a)(2); and Texas Education Code § 46.01.

Pursuant to Texas Education Code §22.08341, Vendor shall obtain criminal history record information through the Fingerprint-Based Applicant Clearinghouse of Texas ("FACT Clearinghouse"), for all of Vendor's Covered Employees. To the extent, Vendor does not have a direct contractual connection with a lower-tier subcontractor, Vendor shall require its subcontractor, independent contractors, and consultants, by the terms of their respective contract with Vendor, to obtain the required criminal history record information through the FACT Clearinghouse, for their Covered Employees, and that such subcontractors, independent contractors, and consultants of Vendors subcontractors, require their subcontractors, independent contractors, and consultants of every tier, to timely make the same certifications to the Vendor as those required by the District from the Vendor herein, in order to allow Vendor to timely provide the certifications to the District required by the following paragraph, pursuant to Texas Education Code §22.08341. If Vendor is required by this subsection to obtain criminal history record information through the FACT Clearinghouse, then Vendor will subscribe the FACT Clearinghouse for purposes of receiving updates to the criminal history record information it obtained and shall require the same of its lower-tier subcontractors, independent contractors and consultants, by contract.

If Covered Employees will be working on the Project, before beginning any Work on the Project, Vendor will provide written certification to the District that Vendor that the criminal history review requirements for all Covered Employees working on the District's Project have been satisfied, and specifically that Vendor:

- a. has obtained the required criminal history record information through the FACT Clearinghouse for its Covered Employees;
- b. has obtained written certification from its subcontractors independent contractors, and consultants (of any tier) that they have obtained the required criminal histories documentation through the FACT Clearinghouse for the subcontractor's, independent contractors', and consultants' Covered Employees; that the criminal history review requirements for all Covered Employees working on the District's Project have been satisfied; that either none of their respective Covered Employees had a Disqualifying Criminal History, or if a Covered Employee had a Disqualifying Criminal History they have been excluded from assignment to the Project; and that if the subcontractor, independent contractor, or consultant receives information during the performance of this Contract that one of its Covered Employees associated with the Work of this Contract, is subsequently reported to have a Disqualifying Criminal History or offense, it will immediately remove the Covered Employee from the project site or any other District Property where the Work of this Contract will be conducted and notify the Vendor in writing within three (3) business days;
- c. will not assign or permit Covered Employees (of either Vendor or any of its subcontractors, independent contractors, or consultants) with a Disqualifying Criminal History to performing any work on District's project or on District's property where the Work of this Contract will be conducted;
- d. if Contractor receives information during the performance of this Contract that a Covered Employee associated with the Work of this Contract, is subsequently reported to have a Disqualifying Criminal History or offense, it will immediately remove the Covered Employee from the project site or any other District Property where the Work of this Contract will be conducted and notify the District in writing within three (3) business days; and
- e. if any employee associated with the work under this Contract is not a Covered Employee will make a reasonable effort to ensure that the reasons the employee is determined not to be a Covered Employee will continue to exist throughout the time the contracted services are provided.

### 11.1.6 Warranty

a. The Vendor warrants to the District that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Vendor further warrants that the Work will conform to the requirements of the Contract and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective. The Vendor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Vendor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Vendor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Vendor by the District within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by District. Vendor's express warranty herein shall be in addition to, and not in lieu of, any other remedies District may have under this Agreement, at law, or in equity for defective Work.

b. The Vendor agrees to assign to the District at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Vendor shall submit to District a complete set of warranties from subcontractors, manufacturers, or suppliers as appropriate, and executed by Vendor as required, with a warranty commencement date as required by the Contract Documents.

### 11.1.7 Special Construction Indemnification

a. TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR WAIVES AND RELEASES ALL CLAIMS AGAINST AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DISTRICT, DISTRICT'S TRUSTEES, CONSULTANTS, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE:(1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE VENDOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF DISTRICT, DISTRICT'S TRUSTEES, CONSULTANTS, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF DISTRICT, DISTRICT'S, DISTRICT'S TRUSTEES, CONSULTANTS, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF DISTRICT, OR ARCHITECT IS A CONCURRING CAUSE, VENDOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF DISTRICT, ARCHITECT AND VENDOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH DISTRICT, ARCHITECT AND VENDOR ARE ALL PARTIES.

b. In claims against any person or entity indemnified under this Article 11.1.7 by an employee of the Vendor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under the previous paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Vendor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

c. VENDOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD DISTRICT FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO VENDOR'S OR ITS SUBCONTRACTOR'S CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO VENDOR'S OBLIGATIONS UNDER PARAGRAPH 11.1.7

d. Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the District, its Trustees, Consultants, and their respective employees, agents and representatives pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder

for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Vendor is to comply with said statutes in performance of the Work by Vendor and that the obligations of the District, the Architect and their respective agents, consultants, and representatives under said statutes are secondary to that of the Vendor.

e. The provisions of Article 11.1.7 shall survive the completion, termination or expiration of this contract in its entirety.

**11.1.8 District's Right to Carry Out the Work.** If the Vendor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the District to commence and continue correction of such default or neglect with diligence and promptness, the District may, without prejudice to any other remedies the District may have, correct such default or neglect and may deduct the reasonable cost thereof, including District's expenses made necessary thereby, from the payment then or thereafter due the Vendor. The District may withhold payment in whole or in part, to the extent reasonably necessary to reimburse the District for the reasonable cost of correcting such deficiencies

**11.1.9** Pursuant to Texas Government Code Chapter 2270, the Contractor represents and warrants to the District that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

**11.1.10** Architect verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Architect misrepresents its inclusion on the list, then such omission or misrepresentation shall void this Agreement.

**ABILENE INDEPENDENT SCHOOL DISTRICT**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Superintendent of Schools

Exhibits attached and incorporated by reference:

Exhibit 1 To Master Service Agreement - E-Rate Supplemental Terms and Conditions (See Exhibit 2 of RFP)

Exhibit 2 To Master Service Agreement– Adopted Scale Of Prevailing Wages (See Exhibit 5 of RFP)

## EXHIBIT 2. E-RATE SUPPLEMENTAL TERMS AND CONDITIONS

The Telecommunications Act of 1996 established a fund by which Schools and Libraries across the Country could access discounts on eligible telecommunications products and services. The program is commonly known as the E-rate Program. The eligibility for discounts on internet access, telecommunications products and services, internal connection products, services and maintenance is determined by the Federal Communications Commission (FCC). Funding is made available upon application approval by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC), which was established by the Act. The amount of discount is based on the numbers of students eligible to receive free and reduced-price meals using the USDA's National School Lunch Program eligibility guidelines or another approved alternative measure of poverty.

### SERVICE PROVIDER REQUIREMENTS

The Applicant expects Service Providers to make themselves thoroughly familiar with any rules or regulations regarding the E-rate program.

Service Providers are required to be in full compliance with all current requirements and future requirements issued by the SLD throughout the contractual period of any contract entered into as a result of this IFB.

Service Providers are responsible for providing a valid SPIN (Service Provider Identification Number or Form 498 ID) at the time the bid is submitted. More information about obtaining a SPIN/Form 498 ID may be found at this website: <http://www.usac.org/sl/service-providers/step01/default.aspx>

Service Providers are responsible for providing a valid Federal Communications Commission (FCC) Registration Number (FCC RN) at the time the bid is submitted. More information about obtaining an FCC RN may be found at this website: <https://fjallfoss.fcc.gov/coresWeb/publicHome.do>

Service Providers are responsible for providing evidence of FCC Green Light Status at the time the bid is submitted. Any potential bidder found to be in Red Light Status will be disqualified from participation in the bidding process and will be considered non-responsive. More information about FCC Red and Green Light Status may be found at this website: [http://www.fcc.gov/debt\\_collection/welcome.html](http://www.fcc.gov/debt_collection/welcome.html)

Products and services must be delivered before billing can commence. At no time may the Service Provider invoice before July 1, 2021.

Prices will not increase for the duration of the associated E-rate Funding Year(s) or until all work associated with the project is complete (including any contractual and USAC approved extensions). It is also expected that should pricing for contracted services drop during the term of the contract, the Applicant will realize those cost savings.

Goods and services provided shall be clearly designated as "E-rate Eligible". Non-eligible goods and services shall be clearly called out as 100% non-eligible or shall be "cost allocated" to show the percentage of eligible costs per SLD guidelines.

In the event of questions during an E-rate pre-commitment review, post-commitment review and/or audit inquiry, the awarded Service Provider is expected to reply within 3 days to questions associated with its proposal.

Services providers must comply with the FCC rules for Lowest Corresponding Price ("LCP"). Further details on LCP may be obtained at USAC's website: <http://www.usac.org/sl/service-providers/step02/lowest-corresponding-price.aspx>. To the extent that USAC or the FCC finds a violation of LCP and, therefore, makes any type of adjustment to the E-rate Funding, Service Provider agrees to solely bear all costs for the difference in E-rate Funding and the reduction in that funding as a result of the LCP violation.

### SERVICE PROVIDER ACKNOWLEDGEMENTS

The Service Provider acknowledges that no change in the products and/or services specified in this document will be allowed without prior written approval from the Applicant and a USAC service substitution approval (with the exception of a Global Service Substitutions).

The Service Provider acknowledges that all pricing and technology infrastructure information in its bid shall be considered as public and non-confidential pursuant to §54.504 (2)(i)(ii).

The Service Provider acknowledges that its offer is considered to be the lowest corresponding price pursuant to § 54.511(b). Should it not be the lowest corresponding price, the service provider must disclose the conditions leading to the applicant being charged in excess of lowest corresponding price.

This offer is in full compliance with USAC's Free Services Advisory <http://www.usac.org/sl/applicants/step02/free-services-advisory.aspx>. There are no free services offered that would predicate an artificial discount and preclude the applicant from paying its proportionate non-discounted share of costs. The service provider agrees to provide substantiating documentation to support this assertion should the applicant, USAC, or the FCC request it.

The Service Provider attests that its offer will not violate the FCC's Report and Order in the matter of "Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs", WC Docket No. 18-89, Action by the Commission November 22, 2019 by Report and Order, Further Notice of Proposed Rulemaking, and Order (FCC 19-121) and can be found at <https://docs.fcc.gov/public/attachments/FCC-19-121A1.pdf>.

#### INVOICING

For Special Construction, the Service Provider agrees to bill and receive a portion of the payment for the provisions of goods and services described herein directly from USAC via the Form 474 Service Provider Invoice (SPI). The Applicant will only be responsible for paying its non-discounted share of costs and does not intend to use the BEAR process (Form 472). The maximum percentage the Applicant will be liable for is the pre-discount amount minus the funded amount as shown on the FCC Form 471 Block 5 and any identified ineligible costs. Upon the successful receipt or posting of a Funding Commitment Decision Letter from the SLD and submission and, certification and USAC approval of FCC Form 486, the Applicant shall pay only the discounted amount beginning with the billing cycle immediately following said approval. Alternatively, should the Applicant decide that it is in the best interest of the Applicant to file a Form 472, the Applicant will inform the Service Provider of its intent.

All Service Provider invoicing to USAC must be completed within 120 days from the last day of service. Should the Service Provider fail to invoice USAC in a timely manner, the Applicant will only be responsible for paying its non-discounted share.

For monthly recurring costs, the District will use the BEAR process (Form 472).

#### FCC/SLD AUDITABILITY

The E-rate program requires that all records be retained for at least ten (10) years from the last date of service provided on a particular funding request. Service Provider hereby agrees to retain all books, records, and other documents relative to any Agreement/Contract resulting from this IFB for ten (10) years after receipt of service(s). The Applicant, its authorized agents, and/or auditors reserves the right to perform or have performed an audit of the records of the Service Provider and therefore shall have full access to and the right to examine any of said materials within a reasonable period of time during said period.

I, the undersigned, as an authorized agent of \_\_\_\_\_ (Service Provider Name), hereby certify that I have read the E-rate Supplemental Terms and Conditions, am fully compliant and intend to cooperate with the E-rate process as outlined above.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Service Provider Name: \_\_\_\_\_

EXHIBIT 3: DISCLOSURE OF INTERESTED PARTIES

CERTIFICATE OF INTERESTED PARTIES			FORM 1295	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.			<b>OFFICE USE ONLY</b>	
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.				
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.				
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.				
Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)		
		Controlling	Intermediary	
5 Check only if there is no interested party. <input type="checkbox"/>				
6 UNSWORN DECLARATION My name is _____, and my date of birth is _____. My address _____, _____, _____, _____, _____. (street) (city) (state) (zip code) (country) I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State of _____, on the _____ day of _____, 20____. (month) (year)				
_____ Signature of authorized agent of contracting business entity (Declarant)				
<b>ADD ADDITIONAL PAGES AS NECESSARY</b>				

Form provided by Texas Ethics Commission

www.ethics.state.tx.us

Revised 12/22/2017

## EXHIBIT 4: CRIMINAL BACKGROUND CERTIFICATION

**Introduction:** Texas Education Code Chapter 22, requires Contractors to obtain criminal history record information through the Fingerprint-Based Applicant Clearinghouse of Texas ("FACT Clearinghouse"), for all of Contractor's Covered Employees and provide certifications set out below to the Owner. To the extent, Contractor does not have a direct contractual connection with a lower-tier subcontractor, Contractor shall require its subcontractor, independent contractors, and consultants, by the terms of their respective contract with Contractor, to obtain the required criminal history record information through the FACT Clearinghouse, for their Covered Employees, and that such subcontractors, independent contractors, and consultants of Contractors subcontractors, require their subcontractors, independent contractors, and consultants of every tier, to timely make the same certifications to the Contractor, in order to allow Contractor to timely provide the certifications to the Owner. If Contractor is required by this subsection to obtain criminal history record information through the FACT Clearinghouse, then Contractor will subscribe the FACT Clearinghouse for purposes of receiving updates to the criminal history record information it obtained and shall require the same of its lower-tier subcontractors, independent contractors and consultants, by contract.

### Definitions:

"Continuing Duties" is defined as work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.

"Covered Employees" are defined as all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

A "Disqualifying Criminal History" includes a conviction within the last 30 years, related to one or more of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: (1) a felony offense under Texas Penal Code Title 5 Offenses Against Persons (homicide; kidnapping, unlawful restraint, smuggling of persons, trafficking of persons, sexual offenses; and assault offenses); (2) an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or (3) an equivalent offense under federal law or the laws of another state. Contractor shall assume all expenses associated with obtaining criminal history record information, providing the certification, and performing Contractor's responsibilities as set out herein

"Opportunity For Direct Contact With Students" is contact that results from activities that provide a substantial opportunity for verbal or physical interaction with students, and that is not supervised by a certified educator or other professional district employee. An employee is not considered to have an Opportunity For Direct Contact With Students if: (1) the employee's work does not involve the construction alteration or repair of an Instructional Facility; (2) the employee's work involves construction of a new Instructional Facility and the person's duties related to the contacted services will be completed not later than the seventh day before the first date the facility will be used for instructional purposes; or (3) if the employee's work involves an existing Instructional Facility and:

- a. the project site area contains sanitary facilities and is separated from all areas used by students, by a secure barrier fence that is not less than six feet in height; and
- b. the Contractor has adopted a written policy applicable to its employees, as well as employees of its subcontractors (of any tier) and its independent contractors and consultants, which prohibits these parties from interacting with students or entering areas used by students, informs these parties of the policy, and enforces the policy on the Project site and at any other areas where the Work of this Contract will be conducted.
- c. the Contractor has sought and received written approval by the District of the adopted policy (including its enforcement provisions) and Contractor's its means of informing the relevant parties of the existence of the policy.
- d. Contractor certifies that, if it has taken the above precautions or imposed conditions to ensure that the Contractor's employees and employees of any of its subcontractors, independent contractors, or consultants, will not become Covered Employees, then Contractor will make reasonable efforts to ensure that these precautions or conditions continue throughout the time the contracted services are provided.

"Instructional Facility" is defined as real property or improvements to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required under Texas Education Code § 28.002; Texas Education Code § 22.08341(a)(2); and Texas Education Code § 46.01.

## CRIMINAL BACKGROUND CERTIFICATION

On behalf of \_\_\_\_\_ (“Contractor”), I certify that: [check one]:

None of Contractor’s employees are Covered Employees, as defined above.

**OR**

Some or all of Contractor’s employees are Covered Employees. If this box is selected, I further certify that:

1. Contractor has obtained the required criminal history record information through the FACT Clearinghouse for its Covered Employees;
2. Contractor has obtained written certification from its subcontractor (of any tier), independent contractors, and consultants that they have obtained the required criminal histories documentation through the FACT Clearinghouse for the subcontractor’s, independent contractors’, and consultants’ Covered Employees; that the criminal history review requirements for all Covered Employees working on the Owner’s Project have been satisfied; that either none of their respective Covered Employees had a Disqualifying Criminal History, or if a Covered Employee had a Disqualifying Criminal History they have been excluded from assignment to the Project; and that if the subcontractor, independent contractor, or consultant receives information during the performance of this Contract that one of its Covered Employees associated with the Work of this Contract, is subsequently reported to have a Disqualifying Criminal History or offense, it will immediately remove the Covered Employee from the project site or any other District Property where the Work of this Contract will be conducted and notify the Contractor in writing within three (3) business days;
3. Contractor will not assign or permit Covered Employees (of either Contractor or any of its subcontractors, independent contractors, or consultants) with a Disqualifying Criminal History to performing any work on Owner’s project or on Owner’s property where the Work of this Contract will be conducted;
4. If Contractor receives information during the performance of this Contract that a Covered Employee associated with the Work of this Contract, is subsequently reported to have a Disqualifying Criminal History or offense, it will immediately remove the Covered Employee from the project site or any other District Property where the Work of this Contract will be conducted and notify the Owner in writing within three (3) business days; and
5. If any employee associated with the work under this Contract is not a Covered Employee will make a reasonable effort to ensure that the reasons the employee is determined not to be a Covered Employee will continue to exist throughout the time the contracted services are provided.

I also certify to the Owner on behalf of Contractor that Contractor has obtained certifications from its subcontractors and their subcontractors of any tier, of compliance with Education Code § 22.08341, Note: Noncompliance by Contractor with this certification may be grounds for contract termination. All related costs including background checks/fingerprinting shall be at the Contractor’s expense.

Contractor Name: \_\_\_\_\_

Submitter’s Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

Submitter’s Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**INSTRUCTIONS TO SCHOOL DISTRICT CONTRACTORS  
REGARDING CRIMINAL HISTORY BACKGROUND SEARCHES  
UNDER TEXAS EDUCATION CODE, CHAPTER 22**

Texas Education Code, Chapter §22, requires Contractors to obtain criminal history record information through the Fingerprint-Based Applicant Clearinghouse of Texas ("FACT Clearinghouse"), for all of Contractor's Covered Employees. In order for contractors to receive the information through FACT, they must first establish an account with the DPS for FACT clearinghouse access. The Contractor owner must sign a user agreement with the DPS. To obtain the user agreement and more information, Contractor must contact:

Access and Dissemination Bureau  
Texas Department of Public Safety  
Crime Records Service  
P. O. Box 149322  
Austin, Texas 78714-9322  
Email: [FACT@txdps.state.tx.us](mailto:FACT@txdps.state.tx.us)  
Phone: (512) 424-2365

For fastest service, please email or call. State in the message that the Contractor is a school district contractor and needs to have an account established for DPS FACT clearinghouse access. Please include:

Contractor Name  
Contractor Address  
Contractor Phone  
Name of Contractor point of contact  
Phone of Contractor point of contact  
Contractor email to be used for notification of FACT records and messages

The information in the DPS FACT Clearinghouse is confidential, and access must be restricted to the least number of persons needed to review the records. The account must include at least one designated supervisor to make necessary changes and to monitor the site's security and the access to the criminal history data retrieved. Additional users must be limited to those who need to request, retrieve, or evaluate data regarding the individual applicants.

**PLEASE NOTE:** After the Contractor signs the DPS User Agreement for FACT, DPS will provide the Contractor with a revised *FAST Fingerprint Pass* that Contractor will have to provide to its employees and applicants. Contractor's employees and applicants will use that *FAST Fingerprint Pass* when scheduling their FAST fingerprinting.

**EXHIBIT 5: PREVAILING WAGE RATES**  
(Not Subject to Federal Requirements)

In compliance with laws of the State of Texas relating to Labor, Owner has ascertained and determined that wage rates in Abilene Independent School District, Texas for various crafts are as follows:

<b>Classification(s)</b>	<b>Rates</b>
Boiler Maker	\$28.00
Electrician (Excludes Low Voltage Wiring)	\$26.19
Power Equipment Operator	
(1) Tower Crane	\$32.85
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 Tons and Above	\$28.75
(3) Hydraulic Cranes 59 Tons and Under	\$32.35
Ironworker, Ornamental	\$25.26
Plumber	\$26.05
Bricklayer	\$20.04
Carpenter	\$12.71
Cement Mason / Concrete Finisher	\$15.32
Electrician (Low Voltage Wiring only)	\$17.00
Insulator – Mechanical (Duct, Pipe & Mechanical System Insulation)	\$19.77
Ironworker, Reinforcing	\$12.27
Ironworker, Structural	\$22.16
Laborer: Common or General	\$11.89
Laborer: Mason Tender – Brick	\$11.36
Laborer: Mason Tender – Cement / Concrete	\$10.58
Laborer: Pipelayer	\$12.49
Laborer: Roof Tearoff	\$11.28
Operator: Backhoe/Excavator/Trackhoe	\$14.25
Operator: Bobcat/Skid Steer/Skid Loader	\$13.93
Operator: Bulldozer	\$18.29
Operator: Drill	\$16.22
Operator: Forklift	\$14.83
Operator: Grader/Blade	\$13.37
Operator: Loader	\$13.55
Operator: Mechanic	\$17.52
Operator: Paver (Asphalt, Aggregate, and Concrete)	\$16.03
Operator: Roller	\$12.70
Painter (Brush, Roller, and Spray)	\$14.45
Pipefitter	\$25.80
Roofer	\$13.75
Sheet Metal Worker (HVAC Duct Installation Only)	\$22.73
Sheet Metal Worker (Excludes HVAC Duct Installation)	\$21.13
Tile Finisher	\$11.22
Tile Setter	\$14.74
Truck Driver: Dump Truck	\$12.39
Truck Driver: Flatbed Truck	\$19.65
Truck Driver: Semi-Trailer Truck	\$12.50
Truck Driver: Water Truck	\$12.00

\*Rates referenced from Prevailing Wage Rates for Building Construction for Taylor County from the U.S. Department of Labor in accordance with the Davis-Bacon Act. (revision date 9/11/2020)