



Bid No. 21-30

**Leased Lit or Dark Fiber
Point to Point Connection**

**Fresno Unified School District
Purchasing Services
4498 N. Brawley
Fresno, California 93722
559-457-3588**

BIDDERS REGISTRATION FORM
E-MAIL BACK THIS SHEET ONLY

Leased Lit or Dark Fiber Point to Point Connection
Bid No. 21-30

Attn: Edward Van Patten
Email: edward.vanpatten@fresnounified.org

Fresno Unified School District Bids and Proposals are available online for this project. If you downloaded a Bid or Proposal, e-mail a completed form so that you may be added to the Plan Holders List and notified of any addenda to this solicitation.

Name	
Title	
Organization	
Street Address	
Address (cont.)	
City	
State/Province	
Zip/Postal Code	
Contractor's License Number (if applicable)	
Work Phone	
Fax	
E-mail	

FRESNO UNIFIED SCHOOL DISTRICT
Bid No. 21-30

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**FRESNO UNIFIED SCHOOL DISTRICT
NOTICE TO BIDDERS**

Bid No. 21-30, LEASED LIT OR DARK FIBER POINT TO POINT CONNECTION

Notice is hereby given that Fresno Unified School District will receive sealed responses for **Bid No. 21-30, Leased Lit or Dark Fiber Point to Point Connection** for a five (5) year contract to lease a lit or dark fiber connection between the CENIC node at 1111 Van Ness Ave, Fresno, CA 93721 and the Fresno Unified School District Education Center at 2309 Tulare Street, Fresno, CA 93721.

Interested BIDDERS must attend the **MANDATORY** Pre-Bid conference call at **2:30 PM PST** on **Thursday January 7, 2021**. This mandatory conference call will be held via Microsoft Teams. Reservations for the Conference call may be made in writing by notifying Edward Van Patten at edward.vanpatten@fresnounified.org a minimum of 48 hours in advance. Only Vendors that attended the pre-bid conference will be eligible for award.

Bid responses will be received prior to **3:01 PM** on **Tuesday February 2, 2021** in the Purchasing Department. Bid responses must be sealed, marked with the bid number and title, and returned to the Purchasing Department of Fresno Unified School District, 4498 N. Brawley Avenue, Fresno CA 93722. Bid responses received later than the designated time and date will not be accepted. Facsimile (FAX) or emailed copies of the bid response will not be allowed.

Special construction and service eligibility for reimbursement have changed starting with E-rate funding year 2016. See the FCC Second E-rate Modernization Order for more information. New fiber special construction charges for lit service, IRU, or self-provisioned fiber projects as defined by the FCC *Second E-rate Modernization Order* include construction, design, engineering, and project management. To the extent that the BIDDER's response requires special construction for the project described herein, the special construction will be subject to all applicable California public works bidding requirements, including prevailing wage. See more specific information in the instructions to BIDDERS section of this bid.

Fresno Unified School District reserves the right to accept or reject any or all proposals or any combination thereof and to waive any informality or irregularity in the bidding process.

In accordance with California Public Contract Code 20111, award will be made to the lowest responsive and responsible BIDDER. Bid Item No. 1 and Bid Item No. 2 will be evaluated independently by lowest total cost for dark fiber vs. lit fiber calculated over a 20-year period to determine the overall lowest BIDDER. District will only award the lowest cost solution of either dark fiber or lit fiber.

Copies of the bid documents may be downloaded from the Fresno Unified Purchasing website <https://purchasing.fresnounified.org/bid-opportunities/>, click on the BID title, or obtained from the **Fresno Unified School District Purchasing Department 4498 N. Brawley, Fresno, CA, 93722**. Refer any questions to Edward Van Patten at (559) 457-3583.

Published date: December 29, 2020
January 5, 2021

1 INFORMATION TO BIDDERS

- 1.1 **General.** This Information to BIDDERS is in addition to any instructions, requirements, definitions, terms, and conditions set forth in this Invitation for Bid (“BID”).
- 1.2 **Report Fraud, Waste, or Abuse.** Call the Anti-Fraud Hotline, (559) 325-3200, or by completing the fraud, waste, or abuse reporting form online at <http://www.ppcpas.com/fresno-unified-fraud-alert>. The anti-fraud, waste, or abuse reporting hotline is available to report alleged fraud, waste, or abuse in the District. The responsibility for monitoring the hotline rests with the internal auditor for Fresno Unified School District, Price, Page & Company. A report may be made anonymously.
- 1.3 **Pre-Bid Conference.** All BIDDERS interested in responding to this bid are required to attend a **MANDATORY** Pre-Bid conference call at **2:30 PM PST** on **Thursday January 7, 2021**. This mandatory conference call will be held via Microsoft Teams. Reservations for the Conference call may be made in writing by notifying Edward Van Patten at edward.vanpatten@fresnounified.org a minimum of 48 hours in advance. Additional information, modifications, and clarifications will be reduced to addendum, if deemed necessary by the District.

In order to have questions addressed at the Pre-Bid Conference, BIDDERS must submit them in writing to Fresno Unified School District no later than 48 hours prior to the Conference. Questions may be e-mailed to edward.vanpatten@fresnounified.org.

- 1.4 **Information Request(s).** In order to control information disseminated regarding this Bid, providers interested in submitting responses are directed not to make personal contact with members of the governing Board, District Administration, or staff with the exception and permission of Kim Friends at edward.vanpatten@fresnounified.org. All questions regarding this Bid are to be addressed to the individual listed. Submit all questions **via email only**. Questions must be submitted by **5:00 PM PST on January 15, 2021**, to allow sufficient time for release of any final addendum prior to the bid closing date and time. The District will advise all vendors of the questions and answers by addendum as deemed appropriate.

DISTRICT may issue written Addenda changing this BID at any time prior to bid closing. Such change may require the posting of a new FCC Form 470 and BID. Any addenda released that include substantial change(s) to the scope of work will require the bid due date and time to be extended by a minimum of an additional 28 days.

- 1.5 **Bid Responses.** To receive consideration, Bids shall be made in accordance with the following instructions:

Deadline for Receipt of Bids. Bids will be received prior to **3:01 PM on Tuesday February 2, 2021**, after which time the bids will be opened, read aloud, and reviewed for responsiveness. Envelopes containing a bid must be sealed, prominently marked with the bid number, bid title, bid opening time/date and name of BIDDER, and submitted to:

FRESNO UNIFIED SCHOOL DISTRICT
PURCHASING DEPARTMENT
4498 N. BRAWLEY AVENUE
FRESNO, CALIFORNIA 93722
Attn: Edward Van Patten

Bids must be received no later than the time and date designated above. Bids received later than the designated time and date will not be accepted. Facsimile (FAX) copies of the bid will not be accepted.

1.6 Tentative Schedule of Events.

Date & Time	Activity
December 29, 2020	2021/2022 FCC Form 470 Posted
December 29, 2020 and January 5, 2021	Fresno Publication Dates
January 5, 2021 at 5:00pm PT	Questions to be addressed at Pre-bid Conference due
January 7, 2021 at 2:30pm PT	Pre-Proposal Conference Call
January 15, 2021 at 5:00pm PT	Deadline for questions and requests for clarification
January 22, 2021	Last Day for Distributing Addenda
February 2, 2021 prior to 2:01pm PT	Bid Responses due prior to 3:01 P.M Pacific Time
February 3, 2021	Notification of Successful Bidder
March 17, 2021	Board Award

1.7 Prohibited Interests/Conflict of Interest. BIDDER is responsible for understanding and ensuring adherence to California Government Code section 1090 et seq., with respect to the Project. Pursuant to Government Code section 1090, no DISTRICT officers or employees shall be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall DISTRICT officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. No official or employee of DISTRICT who is authorized in such capacity and on behalf of DISTRICT to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving, any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall become, directly or indirectly, financially interested in the Project or in any part thereof. An officer shall not be deemed to be interested in a contract entered into by the Board if the officer has only a “remote interest” in the contract (as "remote interest" is defined in Government Code section 1091(b)) and if the fact of that interest is disclosed to the Board and noted in its official records, and thereafter the Board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the officer’s vote with the remote interest per Government Code 1091.

By way of non-exclusive example relating to whether a financial interest is a “remote interest” or not:

- (1) If the date upon which BIDDER first started doing business with a DISTRICT Officer/Board Member (i.e., the date BIDDER first received goods or services supplied by the Board Member) was at least 5 years prior to Board Member’s election or appointment, then the Board Member has a remote interest and BIDDER is not prohibited from submitting a bid on this Project.
- (2) If the date upon which BIDDER first started doing business with the Officer/Board Member (i.e., the date CONTRACTOR first received goods or services supplied by a Board Member) is less than five years before Board Member’s election or appointment, then the Board Member has a prohibited conflict of interest and BIDDER cannot bid on this project.
- (3) The provision of a bid/quote to BIDDER over 5 years prior to Board Member’s election or appointment, without the goods or services included in the bid actually being furnished to BIDDER, i.e., an unaccepted bid/quote, does not qualify to cause a financial interest to be a “remote interest” as that term is defined in California Government Code section 1091(b)(8).

In accordance with Government Code section 1092, every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the Officer (Board Member) interested therein. No such contract may be avoided because of the interest of an Officer (Board Member) therein unless such contract is made in the official capacity of such Officer, or by the Board. In the event any such contract is avoided due to a violation of California Government Code section 1090, BIDDER shall receive no compensation and shall repay DISTRICT any compensation received by BIDDER hereunder. BIDDER shall not aid, abet, or knowingly participate in a violation of Government Code Section 1090, et seq.

1.8 **Special Construction**

1.8.1 **Prevailing Wage.** To the extent a BIDDER'S bid response project requires special construction, only that part of the project that is special construction will be subject to all applicable provisions of the Public Contract Code, Labor Code, and other laws, regulations, rules and other governmental requirements relating to public works construction, including, without limitation, requirements for payment of prevailing wages, and the successful vendor shall be required to know and comply with any and all such applicable requirements.

Any special construction must be clearly separated from the monthly recurring costs part of the bid response. Pursuant to the provisions of Section 1720 et seq of the California Labor Code, the successful BIDDER and each of its subcontractors of any tier will be required to pay not less than the general prevailing rates of per-diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the contract ("Prevailing Wages"). A copy of the per diem rates of Prevailing Wages applicable to the Project is on file and available for review at <http://www.dir.ca.gov/dlst/pwd/index.htm>. Additionally, copies of the prevailing rate of per diem wages are on file at District's office, which shall be made available to any interested party on request. Notwithstanding the foregoing, the monthly recurring costs of the bid response are not subject to prevailing wages. The successful BIDDER will be required to indemnify the District against all claims and/or penalties arising from failure to comply with the prevailing wage requirements under California law.

Pursuant to Labor Code Section 1725.5, the DIR established a CONTRACTOR Registration Program, in which no CONTRACTOR or subcontractor shall bid on, be listed in a bid, or engage in the performance of any public work contract without being registered.

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the successful BIDDER or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the successful vendor, without further acknowledgement by the parties.

1.8.2 **Workers Compensation.** All BIDDERS are required to comply with Labor Code Section 3700. This section mandates that employers in the State must have Worker's Compensation Insurance that covers every employee. The Worker's Compensation Certificate included in this bid shall be completed and returned with the submittal.

1.8.3 **Fingerprinting.** All BIDDERS must comply with California Education Code sections 45122 through 45125.5. Every employee who will work at any site within Fresno Unified School District

must be fingerprinted by a law enforcement agency and pass a criminal background check conducted by the DOJ. The district has provided a certificate of understanding that shall be returned with the submittal.

- 1.8.4 **Contractor/Subcontractor Registration.** A Contractor and/or Subcontractor, as applicable, shall not be qualified to bid on, be listed on a bid response (subject to the requirements of Public Contract Code § 4104), or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Labor Code §1725.5, except under the limited circumstances set forth in Labor Code §1771.1(a). This requirement shall apply to any bid response submitted on or after March 1, 2015, and any contract for public work awarded on or after April 1, 2015. On or after such dates, the District may not accept a bid or enter into a contract for a public works project with an unregistered contractor.

BIDDER acknowledges that the license number required for the performance of Public Works is, at the time of submitting response, and shall be throughout the period of the contract, valid pursuant to State of California requirements.

- 1.9 **Use of District Documents.** Bid Responses must be submitted on forms or in the format provided by the District. No alteration to the District forms will be permitted, including substitutions, additions, deletions, or interlineations without the written consent of the District, which may be given or withheld in its sole and absolute discretion. Reproduction of District documents is permitted, so long as reproduced copies are exactly identical in size, format and content as the forms prepared by the District. Any response submitted in altered form may result in rejection of such response at the option of the District.
- 1.10 **Technology Clause.** As technology advances, it is understood that improved or enhanced products may supersede existing products in both price and performance and yet be essentially similar. This solicitation seeks to address the rapid advances in technology by allowing functionally equivalent or identical products that may be introduced in the future, during the term of the bid, to be included under the general umbrella of compatible product lines.
- 1.11 **Form of Agreement.** The Pro Forma Agreement (“Agreement”) contains Definitions and General Terms and Conditions and Schedules. Failure to accept the Definitions and General Terms and Conditions stated in the Agreement in their entirety shall render such Bid Response to be non-responsive, rejected by the District and removed from consideration of award.

The notice of staff recommendation of award is conditional upon receipt of the Agreement executed by lowest responsive and responsible BIDDER within 10 calendar days. Upon low BIDDER execution of Agreement, the recommendation will be presented to the Fresno Unified School Board for award. If the low BIDDER does not execute the Agreement within 10 calendar days of staff recommendation of award, DISTRICT reserves the right to award the contract to the next lowest BIDDER. The Schedules from successful BIDDER’s responses to this BID will be incorporated into the final Agreement between the Parties.

- 1.12 **Service Level Agreement (“SLA”).** BIDDER agrees to the Service Level Agreements and Vendor Requirements as set forth in Schedule C, incorporated herein by reference.
- 1.13 **Service Credits.** CONTRACTOR agrees to provide service credits in a timely manner for any services provided under this Agreement that are not available during the duration of the Agreement or are provided in a lesser performance than that specified in the BID. CONTRACTOR agrees to add a service credit

amount to the following period invoice to be deducted from the total amount due for said period as set forth in Schedule C to the Agreement, incorporated herein by reference.

- 1.14 **Authorized Signatures.** Bids must be signed by an authorized individual or officer of the firm submitting the bid. Unsigned bids will be rejected as non-responsive.
- 1.15 **Right to Accept or Reject Bids.** The Board of Education of the Fresno Unified School District reserves the right to accept or reject any or all bids in their entirety or any portions(s) thereof and to waive any informality or irregularity in the bid. BIDDERS shall be responsible for any and all expenses they may incur in preparing bids. All bids submitted to the District shall remain the property thereof and are subject to the California Public Records Act.
- 1.16 **Availability of Funds.** The DISTRICT'S obligation herein is contingent upon receipt by Fresno Unified School District of the maximum funding commitment approved by the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") through the E-Rate Program. No legal liability on the part of the District for payment of any money shall arise unless and until funds are made available for this project through the E-Rate Program. The District may award a contract for all requirements outlined in the bid, or any portion thereof, contingent upon the level of funding provided by SLD. The District reserves the right to proceed with the project with or without E-Rate approval.
- 1.17 **Equal Opportunity.** It is the policy of the Fresno Unified School District Board of Education that in connection with all work performed under Purchasing Contracts there shall be no discrimination against any prospective or active employee engaged in work because of race, color, ancestry, national origin, sex, or religious creed. Therefore, the BIDDER(S) agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment & Housing Act. In addition, the successful BIDDER(S) agrees to require like compliance by all subcontractors employed on the job by him/her.
- 1.18 **BIDDERS Interested in More Than One Bid.** No person, firm, or corporation shall be allowed to make, file, or be interested in more than one bid for the same work/Project unless alternate bids are specifically called for by the DISTRICT. A person, firm, or corporation that has submitted a sub-proposal to a BIDDER, or quoted prices for materials to a BIDDER, is not disqualified for that reason from submitting a sub-proposal or quoting prices to other BIDDERS or making a prime bid.

For purpose of this BID, DISTRICT does not consider providing alternate solutions for dark fiber and lit fiber as a separate bid for the same work/Project. BIDDER may submit cost for either both solutions or either one solution of leased dark WAN services or leased lit WAN services.

- 1.19 **Required Forms and Documentation to be Submitted with Bid.** In addition to all documentation required in this BID, all Bids must include the following completed forms. Failure to submit the required documentation and forms will render the Bid non-responsive, which will result in disqualification:

1. Bid Form
2. Agreement and Schedules
3. Services Agreement (will request signed copy from awarded vendor)
4. E-Rate Supplemental Terms and Conditions
5. Noncollusion Declaration
6. Workers' Compensation Form
7. Student Safety Declaration (Fingerprinting)
8. No Prohibited Interest/Conflicts of Interest Declaration

9. Iran Contracting Act Certification
10. Designated Subcontractors List (if applicable)
11. Prevailing Wage Certification (only applicable to special construction)
12. Evidence of FCC Green-Light status
13. Schedules
 - A. Statement of Work
 - B. Pricing Schedule
 - C. Service Level Agreement and Vendor Requirements
 - D. Deployment Schedule

2 GENERAL TERMS AND CONDITIONS

- 2.1 **The Bid.** All items on the Bid Form should be stated in figures, and signatures of all individuals must be in long hand. The completed form should be without interlineations, alterations, or erasures. Unsigned bids will not be accepted.
- 2.2 **Term of Agreement.** Pursuant to the provision of California Education Code Section 17596, school districts may execute contracts for services up to five (5) years.
- 2.2.1 **Initial Term of Agreement.** The Initial Term of this Agreement shall begin on the Effective Date.
- 2.2.2 **Services Term.** The Initial Term of Services under this Agreement (the “Services Term”) shall begin when the Services commence, which is defined as; all circuits are turned over and accepted by DISTRICT and, unless earlier terminated, shall expire on the last day of the 60th month succeeding the Service Start Date. The expiration of the Initial Term of this Agreement shall be coterminous with this date.
- 2.2.3 **Extension of Initial Term of Services.** The Services provided may be extended for up to 3 voluntary extensions terms of 60 months each (each an “Extension Service Term”), at DISTRICT’s sole option, by written notice from the DISTRICT prior to the expiration of the Initial Term or Extension Term. Notwithstanding, the DISTRICT may extend the Initial Term or any Extension Term on a month-to-month basis to facilitate the transition of services. The Monthly Service Fee shall remain the same, except as agreed to in writing by both Parties, as the last Monthly Service Fee charged before the termination or expiration of the Agreement, including any Extension Term(s).
- 2.2.4 **Changes to the Agreement Terms.** To the extent allowed by law, the Parties may change or modify the Agreement from time to time, as mutually agreed upon, which change(s) shall be in the form of an Amendment. Such modifications or changes may include changes to Service Location(s), addition of Service Location, removal of Service Locations, service upgrades, and partial termination of site(s). The DISTRICT may upgrade and add additional sites without rebidding this Agreement in accordance with the terms of the Agreement. Any Amendment to this Agreement will have a term that is coterminous with the Initial Service Term or Extension Service Term.
- 2.3 **Fax Bids.** Facsimile copies of bids will not be accepted for formal advertised bids.
- 2.4 **Definitions.** “Responsible” is a bidding party possessing the skill, judgement, integrity, and financial ability necessary to timely perform and complete the contract being bid.
- 2.4.1 Responsive; a bid which meets all the specifications set forth in the request for bids.
- 2.4.2 “Vendor”, “BIDDER”, and “Contractor” is used synonyms for the purpose of this solicitation.
- 2.4.3 “Bid”, “BID” and “Bid Response” is used synonyms for the purpose for this solicitation.
- 2.5 **Name and Nature of BIDDER’s Legal Entity.** The BIDDER(S) shall specify in the bid and in the bond, if furnished as a guarantee, the name and nature of its legal entity and any fictitious name under which it does any business covered by the bond. The bid shall be signed under the correct firm name by an authorized officer.

- 2.6 **Withdrawal of Bid.** Bid responses may be withdrawn by the BIDDERS prior to the time fixed for the opening of bids but may not be withdrawn for a period of ninety (90) days after the opening of bids. A successful BIDDER shall not be relieved of the bid submitted without the DISTRICT'S consent or BIDDER'S recourse to public Contract Code Sections 5100 et. seq.
- 2.7 **Assignment of Agreement or Purchase Order.** The BIDDER(S) shall not assign or transfer by operation of law or otherwise any or all its rights, burdens, duties or obligations without the prior written consent of the surety on the bond, if any, and the District.
- 2.8 **Bid Negotiations.** A bid response to any specific item of this bid with terms such as "negotiable" "will negotiate" or of similar intent, will be considered as non-responsive to the specific item and, thus, the entire bid will be disqualified.
- 2.9 **Prices.** Prices should be printed and shown as instructed on the Bid Form for each item, in the amount of quantity specified in the Bid Form. Errors may be crossed off and corrections made prior to bid opening only and must be initialed in ink by the person signing the bid or BIDDER'S authorized representative. If during the contract period there should be a decrease in prices of the items bid, a corresponding decrease in prices on the balance of the deliveries shall be made to the DISTRICT for as long as the lower prices are in effect, but at no time shall the prices charged the DISTRICT exceed the prices bid. The DISTRICT shall be given the benefit of any lower prices which may, for comparable quality and delivery be given by the BIDDER to any other school district or any other state, county, municipal or local governmental agency in Fresno County for products listed herein.
- 2.10 **Taxes.** Taxes and any applicable fees or surcharges shall be included in the monthly recurring costs proposed. The DISTRICT will pay only the State Sales and Use Tax and any applicable surcharges; however, California Use Tax will be paid to out-of-state vendors only when their permit number is shown on both their bid and invoices. The successful BIDDER(S) shall list separately any taxes payable by the DISTRICT and shall certify on the invoices that Federal Excise Tax is not included in the prices listed thereon. Federal Excise Tax is not applicable, because school districts are exempt therefrom. The DISTRICT, upon request, shall furnish the successful BIDDER such Federal Tax Exemption Certificates as may be required.
- 2.11 **Quantity and Quality of Materials or Services.** The successful BIDDER(S) shall furnish and deliver the service designated in the bid or purchase order. All materials, supplies or services furnished under the Agreement shall be in accordance with the bid specifications. Services that, in the opinion of the Executive Director of Purchasing, are not in accordance and conformity with said specifications shall be rejected and removed from the DISTRICT'S premises at the BIDDER'S expense. In bidding, the BIDDER(S) certifies that all materials conform to all applicable requirements of CAL OSHA and all other requirements of federal, state, and local laws.
- 2.12 **Acceptance or Rejection of Bids.** DISTRICT may purchase an individual item or combination of items, whichever is in the best interest of the DISTRICT. Bids shall remain open and valid and subject to acceptance for ninety (90) calendar days after the bid opening. Should any award be delayed due to any protest filed in accordance with "Miscellaneous Provisions, item 2.20", it is the expectation of Fresno Unified School District that the tentative bid award remain open and valid and subject to acceptance until such conflict is resolved.

- 2.13 **Bid Exceptions.** The taking of bid exceptions or providing false, incomplete, or unresponsive statements will be deemed nonresponsive and result in disqualification of the entire bid. Failure to accept the Agreement and Schedules in their entirety will subject the bid to disqualification.
- 2.14 **Awards.** The DISTRICT reserves the right of determination that items bid meet or do not meet bid specifications or their functional equivalent. Further, the Board of Education reserves the right to accept or reject any or all bids and to waive any informality or minor irregularity in the bidding.
- 2.15 **Execution of the Agreement.** Execution and acceptance of the Agreement and Schedules shall evidence the contractual agreement between the BIDDER(S) and the DISTRICT.
- 2.16 **Default by Contractor.** DISTRICT shall hold the BIDDER(S) responsible for any damage which may be sustained because of failure or neglect to comply with any terms or conditions of the Agreement or listed herein. It is specifically provided and agreed that time shall be of the essence in meeting the contract delivery requirements. If the successful BIDDER(S) fails or neglects to furnish or deliver any of the materials, supplies or services listed herein at the prices named and at the time and place herein stated or otherwise fails or neglects to comply with the terms of the bid, the DISTRICT may, upon written notice to the BIDDER in accordance with the provisions of the Agreement and Schedules, terminate the Agreement/Purchase Order in its entirety or terminate, cancel or rescind any or all items affected by such default, and may, whether or not the Agreement is terminated in whole or in part, purchase the materials, supplies or services elsewhere without further notice to the BIDDER. Any extra cost incurred as a result of such default may be collected by the DISTRICT from the successful BIDDER or deducted from any funds otherwise due the successful BIDDER as set forth in the Agreement and Schedules attached hereto.
- 2.17 **Insurance.** Successful BIDDER(S) shall maintain insurance adequate to protect it from claims under Workers' Compensation Laws and from claims for damages for personal injury, including death, and damage to property, which may arise from BIDDER'S operations under the Agreement.
- 2.17.1 CONTRACTOR shall provide DISTRICT with a Certificate(s) of Insurance that insures the CONTRACTOR for all foreseeable risks and liabilities associated with this Agreement:
- General Liability Insurance (CGL): Commercial general liability on an occurrence coverage form. The limits of liability shall not be less than:
 - \$1,000,000 each occurrence (combined single limit for bodily injury and property damage);
 - \$1,000,000 for personal and advertising injury liability;
 - \$1,000,000 aggregate on products and completed operations;
 - \$1,000,000 property damage
 - \$2,000,000 general aggregate.
 - Automobile Liability Insurance:
 - \$1,000,000 Combined single limit each accident for bodily injury and property damage. Include coverage on all owned, hired, and non-owned automobiles.
 - Workers Compensation (Statutory) and Employer's Liability:
 - \$1,000,000 each accident for bodily injury by accident; \$1,000,000 each employee for bodily injury by disease; \$1,000,000 policy limit for bodily injury by disease.

- 2.17.2 CONTRACTOR is responsible for assuring that any subcontractor maintains workers' compensation insurance for any employee, and CONTRACTOR, hereby, affirmatively agrees that the CONTRACTOR shall fully indemnify and hold harmless (including any attorney's fees, costs or liabilities) DISTRICT from any workers' compensation claims, for any reason, by an employee of CONTRACTOR, any subcontractor, and/or other individual, including such matters as a claim that DISTRICT is a joint-employer.
- 2.17.3 Additionally: (a) certificate/endorsement of **insurance policies shall name the Fresno Unified School District, its officers, employees, agents, and governing board members as additional insured.** Certificates of Insurance *must have attached Additional Insured Endorsement* (Insurance Services Officer form CG2010). Such policy(ies) of insurance shall be endorsed so that the CONTRACTOR'S insurance shall be primary and no contribution shall be required of the DISTRICT; and (b) certificate/endorsement showing any subcontractors as additional insureds and (c) CONTRACTOR'S insurance - certificate/endorsement showing a "waiver of subrogation" from any subrogation demand or claim against Fresno Unified School District; and (d) every subcontractor's insurance – certificate/endorsement showing a "waiver of subrogation" from any subrogation demand or claim against Fresno Unified School District.
- 2.17.4 CONTRACTOR has an affirmative obligation to maintain records showing the name and identification of any person (for CONTRACTOR or subcontractor) working on the Project, including a copy of a current federal I-9 Verification.
- 2.17.5 The proof of insurance, endorsement of additional insureds and waiver of subrogation in no manner waives, modifies or sets aside the additional obligations under the terms of this Agreement regarding indemnification and hold harmless provisions as set forth in the Agreement to the benefit of DISTRICT.
- 2.18 **Invoices and Payments.** Unless otherwise specified, the successful BIDDER(S) shall render invoices in duplicate for materials delivered or services performed under the contract, to the Accounting Department of the District, 2309 Tulare Street, Fresno, California, 93721. Invoices shall be submitted under the same firm name as shown on the bid. The successful BIDDER(S) shall list separately any taxes PAYABLE BY DISTRICT and shall certify on the invoices that Federal Excise Tax is not included in the prices listed thereon. The DISTRICT shall make payment for materials, supplies, or services furnished under the Agreement within a reasonable and proper time after acceptance thereof and approval of the invoices by the authorized DISTRICT Representative.
- 2.19 **Miscellaneous Provisions.**
- 2.19.1 **Entire Agreement.** This Bid and all attachments thereto constitute the entire agreement between the parties in this BID. There are no understandings, agreements, representations, or warranties, express or implied, not specified in this BID or the Agreement. BIDDER, by the execution of his/her signature on the Bid Form acknowledges that he/she has and read this BID in its entirety, including all Schedules, Attachments and Forms hereto, understands it, and agrees to be bound by its terms and conditions.
- 2.19.2 **Prevailing Law.** In the event of any conflict or ambiguity between these instructions and state or federal law or regulations, the latter shall prevail. Additionally, all equipment to be supplied or Services to be performed under the bid response shall conform to all applicable requirements of local, state, and federal law.
- 2.19.3 **Governing Law and Venue.** In the event of litigation, the bid documents, specifications, and related matters shall be governed by and construed only in accordance with the laws of the

State of California. Venue shall only be with the appropriate state or federal court located in Fresno County.

- 2.19.4 Permits and Licenses. The successful BIDDER(S) and all his employees or agents and subcontractors shall secure and maintain in force such certifications, licenses and permits as are required by local, state, and federal law, in connection with the furnishing of materials, articles or Services herein listed. All operations and materials shall be in accordance with local, state, and federal laws.
- 2.19.5 Independent Contractor. While engaged in carrying out and complying with terms and conditions of the Agreement, the BIDDER agrees by his/her signature on the Bid Form that he/she is an independent contractor and not an officer, employee or agent of the DISTRICT.
- 2.19.6 Non-Discrimination Statement. Fresno Unified School District prohibits discrimination, harassment, intimidation, and bullying based on actual or perceived race, color, ethnicity, national origin, immigration status, ancestry, age, creed, religion, political affiliation, gender, gender identity, gender expression, genetic information, mental or physical disability, sex, sexual orientation, marital status, pregnancy or parental status, medical information, military veteran status, or association with a person or a group with one or more of these actual or perceived characteristics or any other basis protected by law or regulation, in its educational program(s) or employment. If you believe you, or your student, have been subjected to discrimination, harassment, intimidation, or bullying you should contact your school site principal and/or the District's Chief Compliance and Title IX Officer Paul Idsvoog, by phone at 559-457-3730, by email at Paul.Idsvoog@fresnounified.org, or in person at 2309 Tulare Street Fresno, CA 93721.

2.20 Bid Protest Procedures.

This DISTRICT review procedure must be followed by any BIDDER who believes that a bid award recommendation is not consistent with DISTRICT regulations, the bid specifications, or in compliance with law:

- 2.20.1 Protest on a bid must be filed in writing with the Executive Director of Purchasing within two working days after receipt of the bid summary and its recommendations are sent to the BIDDERS.
- 2.20.2 Failure to file a timely bid protest shall constitute a BIDDER'S waiver of the right to have the bid award reviewed.
- 2.20.3 The Executive Director of Purchasing will convene a meeting with the review requestor to attempt to resolve the problem.
- 2.20.4 In the event the protest is not resolved, the protest will be referred to the Superintendent or his designee, normally the Chief Financial Officer.
- 2.20.5 Should the protest not be resolved at this level, it shall be referred to the Board along with all documentation regarding the protest and the responses at each level.
- 2.20.6 The Board will not act upon a protest until each of the proceeding steps has been exhausted.

FRESNO UNIFIED SCHOOL DISTRICT
Leased Lit or Dark Fiber Point to Point Connection
Bid No. 21-30

BID FORM

Pursuant to and in compliance with the contract documents, the undersigned BIDDER, having familiarized himself with the terms of the contract set forth in the Bid, the local conditions affecting the performance of the contract, the cost of the work at the place where the work is to be done, specifications and other contract documents, proposes, and agrees to perform the contract within the time stipulated, including all of its component parts and everything required to be performed and to provide and furnish any and all of the labor, materials, tools, expendable equipment and all applicable taxes, surcharges, utility and transportation services necessary to perform the contract and complete in a workmanlike manner all of the work required in connection with the work all in strict conformity with the specifications and other contract documents, including all addenda for the sum(s) indicated herein below.

BIDDER does not have to bid all items to be considered responsive. BIDDER may bid both or any one solution for dark and lit fiber. If not providing a cost for a bid item, indicate “N/A” or “NO BID” or “LEAVE BLANK”. **Do not indicate \$0.00.** District will only award the lowest cost solution of leased dark fiber or leased lit fiber (not both solutions).

Bid Item #1: Total Cost - Leased **Dark** Fiber Connection to include any
Special Construction & District furnished equipment: \$ _____
(Total from Schedule B)

Bid Item #2: Total Cost - Leased **Lit** Fiber Connection to include any
Special Construction: \$ _____
(Total from Schedule B)

Note: ALL ENTRIES SHALL BE LEGIBLE AND SHALL BE TYPEWRITTEN OR PRINTED.

The receipt of the following addenda to the specifications is acknowledged:

Addendum No. _____ Date _____ Addendum No. _____ Date _____

Addendum No. _____ Date _____ Addendum No. _____ Date _____

BIDDER: _____

FRESNO UNIFIED SCHOOL DISTRICT
Leased Lit or Dark Fiber Point to Point Connection
Bid No. 21-30

BID FORM
(Continued)

Bid Submitted by:

To be signed by authorized company agent.

Name of Company

Address

Signature

City State Zip Code

Print Name

Phone Number Fax Number

Title

Email Address

Federal Tax ID

SPIN

**Leased Lit or Dark Fiber Point to Point Connection
Bid No. 21-30**

Agreement and Schedules

All BIDDERS must agree to the Fresno Unified School District Agreement for Leased Lit or Dark Fiber Point to Point Connection Services and Schedules (“Agreement”) in their entirety, attached hereto. Any exceptions will render the Bid Response non-responsive and will disqualify the bid in its entirety.

BIDDER indicates acceptance of the Agreement by its signature of an authorized Officer of the Company below.

Name of Company

Signature

Print Name

Fresno Unified School District Agreement for Leased Lit or Dark Fiber Point to Point Connection

LEASED LIT OR DARK FIBER POINT TO POINT CONNECTION SERVICES AGREEMENT

This Fresno Unified School District Agreement for Leased Lit or Dark Fiber Point to Point Connection Services for a **[LEASED LIT FIBER SERVICE OR LEASED DARK FIBER SERVICE]** (the "Agreement") is entered into as of this ____ day of _____, 20____ (the "Effective Date"), by and between **[CONTRACTOR LEGAL ENTITY NAME]** ("CONTRACTOR"), **[A FOR-PROFIT CORPORATION / A LIMITED LIABILITY CONTRACTOR]** organized under the laws of the **[STATE OF ORGANIZATION]**, with its principal place of business located at _____, and Fresno Unified School District ("DISTRICT"), with its principal place of business located at 2309 Tulare St., Fresno, CA 93721. This Agreement sets forth the terms and conditions under which CONTRACTOR will deploy and provide certain telecommunications and related services described herein (the "Services") for the DISTRICT and DISTRICT's employees, agents, and students. CONTRACTOR and DISTRICT may be individually referred to herein as "Party" or collectively as "Parties."

RECITAL

WHEREAS, DISTRICT desires to lease a [LIT FIBER SERVICE OR DARK FIBER SERVICE (choose one)] from CONTRACTOR, and CONTRACTOR desires to provide such services to DISTRICT, all upon and subject to the terms and conditions contained in this Agreement; and

WHEREAS, CONTRACTOR timely submitted a proposal in response to DISTRICT'S Invitation to Bid ("BID"), and the DISTRICT accepted the CONTRACTOR'S proposal as the lowest responsible bidder and the most cost-effective solution to provide the Services under this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. DEFINITIONS

"Agreement" shall mean this Agreement and all Schedules, Addenda, Amendments and Exhibits thereto; which shall include the BID and all attachments thereto in their entirety, CONTRACTOR's Response to the BID, specifications and drawings, and the Purchase Order. All these documents shall be interpreted to include all provisions of the other documents as though fully set forth herein.

"Billing Date" commences on the Service Start Date.

"Certification" shall mean the verification by CONTRACTOR, as acknowledged by DISTRICT, that the Services meet the performance requirements set forth in the Agreement.

"E-Rate" shall mean the Schools and Libraries Universal Support Mechanism administered by the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC").

"E-Rate Discount" shall mean the discount percentage approved by SLD for the current Funding Year as shown on the Funding Commitment Decision Letter, and for which SLD agrees to provide E-Rate Funding.

"E-Rate Funding" shall mean (i) the agreement by SLD to provide funds through E-Rate to DISTRICT for the contracted services set forth on Schedule A and (ii) the funds so provided.

“FCDL” shall mean the Funding Commitment Decision Letter issued by SLD to the DISTRICT and CONTRACTOR notifying both Parties of approval by SLD of E-Rate Funding.

“BID” shall mean the BID Number 21-30 in its entirety and all forms, addenda, schedules, and exhibits, including:

1. Bid Pricing Form
2. Agreement and Schedules
3. Services Agreement
4. E-Rate Supplemental Terms and Conditions
5. Non-collusion Declaration
6. Workers’ Compensation Form
7. Student Safety Declaration (Fingerprinting)
8. No Prohibited Interest/Conflicts of Interest Declaration
9. Iran Contracting Act Certification
10. Designated Subcontractors List (if applicable)
11. Prevailing Wage Certification (only applicable to special construction)
12. Evidence of FCC Green-Light status
13. Schedules
 - A. Statement of Work
 - B. Pricing Schedule
 - C. Service Level Agreement and Vendor Requirements
 - D. Deployment Schedule

The BID is incorporated into this Agreement by this reference as if fully set out herein.

“Infrastructure” shall be the CONTRACTOR-owned infrastructure maintained by CONTRACTOR and used in the provision of the Services to DISTRICT, which shall include, but not be limited to hardware, customer premises equipment (“CPE”), electronics and fiber optic cabling.

“Monthly Service Fee” shall, during the Initial Term and any extension hereof contemplated by Section 9 of this Agreement, mean the monthly recurring service charge listed in the Agreement. Following the Initial Term and exercise of any such extensions, CONTRACTOR agrees to continue services on a month-to-month basis at the same monthly recurring rate to effectuate an orderly transition of services.

“Non-Recurring Charge” shall mean that portion of the total charge for the provision of the Services under this Agreement that is designated as the non-recurring charge listed in the Agreement for the use of the Infrastructure. Non-recurring charge may or may not include special construction.

“Response” shall mean CONTRACTOR’s Response to the BID dated _____, 20____, which is incorporated into this Agreement by this reference as if fully set out herein.

“Service Start Date” shall mean the date(s) on which Company first makes Service available for use by Customer. Company shall provide electronic notification of Service Commencement to the authorized person designated by the District [Contact Name and e-mail] that the Services are available for use, and the Parties agree that the date of electronic notification shall be called the “Service Start Date,” and the Term of the Agreement and/or Schedules, and any Amendments commences upon the Service Start Date and not the Effective Date.

“Service Locations” shall mean the location(s) specified in the Agreement at which Service and Infrastructure is deployed as set forth on Schedule A attached hereto.

“Service Window” shall mean Monday through Sunday, 24-hours per day (12am to 11:59pm) local time where the Services are being provided.

“Site Access” shall mean access to DISTRICT premise(s) provided to CONTRACTOR for routine or emergency maintenance of the CONTRACTOR connection during regular business hours and upon prior written notice to the DISTRICT. Specific emergency maintenance may be required outside of regular business hours to be mutually agreed upon by the Parties.

“Special Construction Charges” shall mean the one-time, upfront charges for construction of fiber or other technology neutral Services to meet the DISTRICT’s needs that are funded through E-rate special construction charges to the DISTRICT. Special Construction Charges are subject to California prevailing wage laws. Special construction and service eligibility for reimbursement have changed starting with E-rate funding year 2016. New fiber special construction charges for leased lit and dark fiber service, dark fiber IRU, or self-provisioned fiber projects, as well as other technology neutral services in this category as defined by the FCC *Second E-rate Modernization Order* include construction, design, engineering and project management.¹

“USAC” shall mean the entity that administers the Universal Service Fund under the Federal Telecommunications Act of 1996, including the SLD thereof, which is currently the Universal Service Administrative Company.

II. GENERAL TERMS AND CONDITIONS

A. Point to Point Connection

1. The Services. Subject to and under the General Terms and Conditions of this Agreement, CONTRACTOR shall provide to DISTRICT at DISTRICT’s designated locations the Services as defined and set forth in the Agreement and Schedule A attached hereto.

2. Availability of Funds. The DISTRICT’s obligation herein is contingent upon receipt by Fresno Unified School District of the maximum funding commitment approved by the Schools and Libraries Division (“SLD”) of USAC through the E-Rate Program. No legal liability on the part of the DISTRICT for payment of any money shall arise unless and until funds are made available for this project through the E-Rate Program. The District may award a contract for all requirements outlined in the bid, or any portion thereof, contingent upon the level of funding provided by SLD. The District reserves the right to proceed with the project with or without E-Rate approval.

3. Deployment and Purchase Order. CONTRACTOR, its agent(s), or subcontractor(s) shall schedule bi-weekly deployment meetings with the DISTRICT on a timely and regular basis to provide project status updates and notification of work on DISTRICT property. CONTRACTOR shall deploy the CONTRACTOR-owned service Infrastructure under this Agreement and subject to an executed Purchase Order. During the Initial Term of this Agreement or any Extension Term(s), DISTRICT grants to CONTRACTOR an exclusive right to deploy transmission cables and lines between the DISTRICT’s property line and the Service Locations in connection with CONTRACTOR’s use, maintenance, and operation of the Infrastructure. The license or easement granted shall include and also be classified, and documented if necessary, for the limited purpose of CONTRACTOR gaining access to DISTRICT property to construct, maintain, modify and service the Infrastructure in compliance with state and local construction laws and contractor requirements thereunder.

4. Governmental Approval. At no additional cost to DISTRICT, CONTRACTOR shall procure, process, or receive any and all regulatory licenses, permits, consents or approvals necessary for the deployment of the Infrastructure (“Authorizations”). DISTRICT shall cooperate fully with CONTRACTOR to secure any such Authorizations. CONTRACTOR is required to be licensed and comply with all federal, state, and local laws.

¹ See the FCC Second E-rate Modernization Order for more information, WC Docket No. 13-184) <https://www.fcc.gov/document/fcc-releases-order-modernizing-e-rate-21st-centuryconnectivity>

5. Changes in Deployment. Schedule A to the Agreement includes a requirement for a fiber connection design diagram that is necessary for the DISTRICT to determine whether the services proposed by the CONTRACTOR to DISTRICT meet the minimum required standards. If CONTRACTOR is required to modify that design, then CONTRACTOR shall do so in such a way that the design, as modified, will have service capability, performance, and reliability that is equivalent to or better than the original. CONTRACTOR shall be responsible for all costs and related charges, except that DISTRICT shall be responsible for the costs of any modification requested by DISTRICT. CONTRACTOR shall make no modifications to, or deviations from, the fiber connection design without first obtaining DISTRICT's written approval of the same.

6. Scalable Services. CONTRACTOR's fiber connection may be expanded to include additional locations and capacity increased at any time during the Term of this Agreement, including any Extension Term(s), to meet DISTRICT's requirements. Upgrade pricing is included in this Agreement as set forth in the BID Response. To the extent that DISTRICT requests a specific service upgrade not included in the original BID, then DISTRICT will be quoted new pricing at time of request, which will require a new posting of Form 470 if E-rate funding is sought for such upgrades. DISTRICT may add or delete sites (subject to changes in pricing and/or fees) at any time during the Term of this Agreement, including any Extension Term(s). To the extent that any expansion of the fiber connection shall include Special Construction Charges, the work shall be subject to California prevailing wage requirements as set forth in Section II.D.5 below.

7. Third-Party Use. CONTRACTOR may make any substitutions to or modifications of the Infrastructure as it determines may be necessary or compatible with the conduct of CONTRACTOR's business, provided however that such substitutions or modifications shall not affect the quality, performance, or reliability of the Services provided to DISTRICT. In addition, CONTRACTOR may lease capacity on its Infrastructure to a third party, to the extent that said lease(s) modifications shall not affect the quality, performance, or reliability of the Services provided to DISTRICT.

8. Schedules and Amendments. DISTRICT requests Services set forth in the Schedules attached hereto from CONTRACTOR. CONTRACTOR will deliver, install, and maintain the WAN Facilities. Representatives of CONTRACTOR and DISTRICT agree to meet in advance and on a regular basis, as necessary, to formulate and finalize the installation methodology and configuration design for the WAN facilities. The Parties agree to coordinate and cooperate in all activities required thereof.

9. Point to Point Connection Services. The Parties intend that this Agreement shall operate as a "lease", as defined by California law. Nothing in this Agreement shall be construed to result in the transfer of title to any part of the Lit or Dark Fiber Connection to DISTRICT or in the creation of a "security interest" within the meaning of California law. DISTRICT disclaims any interest it may claim in the materials, equipment, fiber optic cable and all personal property installed by CONTRACTOR as a fixture on to the real property of the DISTRICT.

10. Service Start Date. Upon installation, connection, testing and acceptance of the necessary facilities and equipment to provide the Services, CONTRACTOR shall send an electronic Service Commencement notification to DISTRICT confirming that the fiber has been tested and is available for use. The date of electronic notification shall be the "Service Start Date." DISTRICT agrees that this electronic Service Commencement notification serves as final confirmation that the Services are complete. Any failure or refusal on the part of DISTRICT to be ready to receive the Services on the Service Start Date shall not relieve DISTRICT of its obligation to pay applicable Service charges. The Services Term of the Agreement commences upon the Service Start Date and not the Effective Date.

11. Site Preparation, Debris Removal, and Landscaping. The DISTRICT agrees to prepare Service Location(s) for the installation of the WAN Facilities. CONTRACTOR will remove all debris from Service Location(s) resulting from the installation of the WAN Facilities, which, in part, may include disposing of such debris in DISTRICT trash receptacles. The DISTRICT is responsible for removal of trash from such receptacles. CONTRACTOR agrees to restore all landscaping at the DISTRICT'S Service Location(s) disturbed by the installation.

12. Service Performance.

(a) *Timeline*: CONTRACTOR and DISTRICT agree to the installation and configuration timeline set forth in Schedule D, incorporated herein and attached hereto. CONTRACTOR will not be held liable for any delay in the Service Start Date as a result of delays by DISTRICT. In the event any such delay is experienced, CONTRACTOR shall immediately notify DISTRICT of the same, in writing, stating the facts and circumstances of the delay and the cause of the same. Such written notification to DISTRICT shall be made not later than five (5) calendar days after commencement of the delay. CONTRACTOR understands and agrees that such written notice is required so that DISTRICT will have knowledge of the commencement of any such delay and an opportunity to take appropriate action to address and eliminate any conditions, acts, or omissions which are causing such delay. In the event a delay in installation is caused by acts or omissions of DISTRICT, or by those for whom DISTRICT is legally responsible, then CONTRACTOR shall be entitled to a time extension commensurate with the duration of such delay attributable to DISTRICT. However, CONTRACTOR shall not be entitled to additional time for any alleged delay with regard to which it has failed to provide written notice to DISTRICT as provided above, and any such failure to notify DISTRICT of a delay as set forth above shall constitute a waiver by CONTRACTOR of any and all claims for additional time associated with such delay.

(b) *Fiber Connection Availability (Service Level Agreement)*: CONTRACTOR is required to provide DISTRICT with maximum connection service availability. The Service Level Agreement ("SLA") is outlined in Schedule C, incorporated herein and attached hereto.

13. Electrical Circuits and Energy. The DISTRICT will provide all electrical circuits and all electrical energy required for the installation and operation of the lit or dark fiber connection at the DISTRICT'S Service Location(s).

14. Assignment or Sharing of Service. DISTRICT may not resell, share, sublicense or otherwise distribute the Services, or any portion thereof, to any unaffiliated third party without the prior written consent of CONTRACTOR.

15. School/Facility Closure. DISTRICT agrees to notify CONTRACTOR if DISTRICT becomes aware that the school or facility governed by this Agreement will be closed prior to the end of the Initial Term of this Agreement or any Extension Term(s). In the event of a school/facility closure, DISTRICT shall be responsible only for the non-discounted monthly recurring costs and non-recurring costs (if DISTRICT exercises its option to utilize a non-recurring cost installment plan) owed through the last date of service to such school/facility.

B. Charges, Billing, and Payments

1. Commencement of Billing. The Parties acknowledge and agree that construction of the Infrastructure shall neither commence nor continue, as applicable, until CONTRACTOR receives either (i) the applicable USAC Funding Commitment Letter(s) or (ii) payment by, and/or written assurance of prompt payment in the form of a Purchase Order for a specified scope, or other enforceable promise to pay the agreed upon sum for a specified scope, from DISTRICT to CONTRACTOR.

2. Non-Recurring Charge. Upon issuance of a Purchase Order and approval of E-rate funding, CONTRACTOR shall invoice DISTRICT the applicable Non-Recurring Charge specified in Schedule B, discounted by the percentage rate of DISTRICT'S E-Rate Discount as shown on the then-current FCDL. DISTRICT shall pay the Non-Recurring Charge within thirty (30) days of the invoice. The balance of such funds shall be paid solely through the E-Rate Program, and DISTRICT appoints CONTRACTOR its attorney-in-fact to take such actions as are reasonably necessary to collect the discounted portion of the Non-Recurring Charge. If applicable, CONTRACTOR will invoice DISTRICT on a per-site basis until all sites are operational. To the extent applicable and as negotiated by the Parties, DISTRICT may pay its non-discounted, non-recurring Special Construction Costs over the maximum allowable four (4) years in annual installments and as noted on the FCC Form 471.

3. Monthly Service Fee. CONTRACTOR shall invoice DISTRICT each month in advance for its non-discounted portion of the monthly recurring charges. DISTRICT shall pay the non-discounted monthly share of the Monthly Service Fee within thirty (30) days of the invoice. The balance of such funds shall be paid solely through the E-Rate Program, and DISTRICT appoints CONTRACTOR as its attorney-in-fact to take such actions as are reasonably necessary to collect the discounted portion of the Monthly Service Fee. If applicable, CONTRACTOR will invoice DISTRICT on a per-site basis until all sites are operational. In the event DISTRICT closes or disconnects one of the sites identified in Schedule A, the Monthly Service Fee shall be reduced by the corresponding value defined in Schedule B.

4. Collection of SLD Funds. Payment for services will be achieved via an invoice(s) to USAC's Schools and Libraries Division via FCC Form 474 for the E-rate discount approved portion and an invoice(s) to Fresno Unified School District for the remaining portion to equal 100% of the cost of service(s) provided. CONTRACTOR will be responsible for the invoicing and collection of the E-Rate Discount approved portion of funding from SLD by filing an FCC Form 474 Service Provider Invoice, as well as collection of the California Teleconnect Fund ("CTF"). This paragraph includes collection of non-recurring costs, as well as monthly recurring costs.

5. Re-connect. If DISTRICT disconnects the Services or if DISTRICT's Services are disconnected due to nonpayment or other breaches of this Agreement, and if CONTRACTOR subsequently agrees to reconnect the Services, DISTRICT may be charged a fee for the cost of reconnecting and redeploying the Services.

6. Taxes, Fees, and Surcharges. Except for taxes based on CONTRACTOR's net income, all applicable federal, state or local taxes and fees, including without limitation all use, sales, excise, commercial, gross receipts, privilege, right-of-way, occupation, franchise, surcharges, contributions to universal service support mechanisms, or other similar taxes, license fees, miscellaneous fees, and surcharges, whether charged to or against CONTRACTOR or DISTRICT (collectively, the "Taxes and Fees"), will be payable by CONTRACTOR, including any underlying provider's, miscellaneous tax, surcharge, and fee payments to federal, state or local governmental authorities associated with the provision of the Services (including any WAN facilities) by CONTRACTOR to DISTRICT. DISTRICT shall be required to provide documentation evidencing its exemption from any such Taxes and Fees, as applicable.

7. Service Credits. CONTRACTOR agrees to provide service credits in a timely manner for any services provided under this Agreement that are not available during the duration of the Agreement or are provided in a lesser performance than that specified in the BID. CONTRACTOR agrees to add a service credit amount to the following period invoice to be deducted from the total amount due for said period, as set forth in Schedule C attached hereto and incorporated herein by reference.

8. Lowest Corresponding Price ("LCP"). At all times prior to commencement of the Initial Term, during the Initial Term, and all Extension Term(s), through termination or expiration of the Agreement, CONTRACTOR covenants that it is providing DISTRICT with the Lowest Corresponding Price as required by FCC rules. 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, CONTRACTOR 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.

C. Term

1. Initial Term of Agreement. The Initial Term of this Agreement shall begin on the Effective Date.

2. Services Term. The Initial Term of Services under this Agreement (the "Services Term") shall begin when the Services commence, which is defined as; all circuits are turned over and accepted by DISTRICT and, unless earlier terminated, shall expire on the last day of the 60th month succeeding the Service Start Date. The expiration of the Initial Term of this Agreement shall be coterminous with this date.

3. Extension of Initial Term of Services. The Services provided may be extended for up to 3 renewal terms of 60 months each (each an "Extension Service Term"), at DISTRICT's sole option, by written notice from the DISTRICT prior to the expiration of the Initial Term or Extension Term. Notwithstanding, the DISTRICT may extend the Initial Term or any Extension Term on a month-to-month basis, at DISTRICT'S sole option, to facilitate the transition of services. The Monthly Service Fee shall remain the same, except as agreed to in writing by both Parties, as the last Monthly Service Fee charged before the termination or expiration of the Agreement, including any Extension Term(s).

4. Changes to the Agreement Terms. The Parties may change or modify the Agreement from time to time, as mutually agreed upon, which change(s) shall be in the form of an Amendment. Such modifications or changes may include changes to Service Location(s), addition of Service Location, removal of Service Locations, service upgrades, and partial termination of site(s). The DISTRICT may upgrade and add additional sites without rebidding this Agreement in accordance with the terms of the Agreement. Any Amendment to this Agreement will have a term that is coterminous with the Initial Service Term or Extension Service Term.

D. Termination

1. Termination by CONTRACTOR for Loss of E-Rate Funding. If E-Rate Funding is not approved by USAC for this project after the first year of this Agreement, CONTRACTOR will make all reasonable efforts to maintain Services for DISTRICT upon written agreement of both Parties. Notwithstanding the foregoing, in such event this Agreement is terminated due to loss of E-Rate funding, the Agreement will terminate on the last day of the fiscal period for which commitments were received, and DISTRICT shall have no further obligation to pay any remaining costs and fees to CONTRACTOR due after the date upon which E-Rate funding is no longer committed and/or funded.

2. Termination by DISTRICT for Convenience. The Parties further acknowledge and agree that if the DISTRICT terminates this Agreement for convenience, at its sole discretion, not prior to one year after the fiber connection is deployed, DISTRICT shall provide ninety (90) days written notice to CONTRACTOR of its intent to terminate and pay CONTRACTOR all contracted, non-recurring Special Construction costs to deploy the CONTRACTOR-owned Infrastructure, if applicable. In addition, DISTRICT shall pay all Monthly Service Fees owed through the last date that the CONTRACTOR provided actual service. DISTRICT is not responsible for the payment of any early termination fees and/or penalties.

3. Termination by DISTRICT for Cause. If CONTRACTOR fails to substantially provide the Services as required by the terms of this Agreement, DISTRICT may terminate this Agreement for cause by written notice to CONTRACTOR. DISTRICT shall give CONTRACTOR thirty (30) days written notice of such intention to terminate and an opportunity to cure any such default. In the event that CONTRACTOR commences to cure and diligently cures during that thirty (30) day period to the satisfaction of the DISTRICT, then DISTRICT may not terminate this Agreement for cause.

4. Termination for Cause by Either Party.

(a) If either Party breaches any material term of this Agreement and the breach continues without remedy for 30 days after notice of default, the non-defaulting Party may terminate for cause any Service materially affected by the breach.

(b) A Service may be terminated by either Party immediately upon notice if the other Party has become insolvent or involved in liquidation or has been adjudicated bankrupt or been involved in an assignment for the benefit of its creditors.

(c) Termination by either Party of a Service does not waive any other rights or remedies that it may have under this Agreement.

5. Non-Appropriation Clause. DISTRICT'S duty to continue performance of this Agreement is conditioned upon the appropriation of funds to fulfill the requirements of the Agreement by the DISTRICT. If the DISTRICT fails to appropriate sufficient monies to provide for the continuation of the

Agreement, at DISTRICT's sole option, DISTRICT may terminate the Agreement effective on the date of the beginning of the first fiscal year for which funds are not appropriated.

E. California Prevailing Wage Requirement

To the extent the CONTRACTOR's BID Response provides for special construction, as defined in the BID, only the special construction work will be subject to prevailing wages. The special construction portion of the project will be considered a Public Works Project under Section 1720(a) of the California Labor Code and, thus, subject to all applicable provisions of the California Public Contract Code, Labor Code, and other federal and state laws, regulations, rules and other governmental requirements relating to public works construction, including, without limitation, requirements for payment of prevailing wages. CONTRACTOR covenants that it will comply with all such applicable state law requirements. CONTRACTOR's non-compliance will constitute a material breach of this Agreement. CONTRACTOR agrees to fully defend, indemnify, and hold harmless DISTRICT from and against all claims and/or penalties arising from failure to comply with the prevailing wage requirements under California law.

In accordance with SB 854, no contractor or subcontractor may be listed on a bid proposal for a public works project for **special construction** unless registered with the Department of Industrial Relations ("DIR"). No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the DIR. Work performed on the project is subject to compliance monitoring and enforcement by the DIR. Substitutions are allowed pursuant to SB 854.

F. CONTRACTOR'S Ownership of Infrastructure

1. The Infrastructure to be located on DISTRICT premises by CONTRACTOR to provide the Services under this Agreement is and shall remain the property of CONTRACTOR. In no event will the Infrastructure be deemed to be affixed to or as a part of such real estate. DISTRICT shall use reasonable care to avoid damaging any Infrastructure and shall not alter, modify, sell, license, lease, assign, encumber, relocate, move or tamper with any of the same during the Initial Term or any Extension Term(s).

2. Upon termination or expiration of this Agreement (at the end of the Initial Term and all Extension Terms elected by DISTRICT), or disconnection of the Services, CONTRACTOR shall be obligated to recover the Infrastructure no longer needed to deliver Services from DISTRICT premises at CONTRACTOR's sole cost. In retrieving said Infrastructure, CONTRACTOR shall use reasonable care to avoid damaging DISTRICT's property. CONTRACTOR shall bear all costs for any damage caused by CONTRACTOR in the removal of the infrastructure. Alternatively, with written prior notice to DISTRICT, and only with DISTRICT's written approval, CONTRACTOR may abandon such Infrastructure in place at the Service Locations.

G. Defense, Indemnification, and Hold Harmless Provisions

1. To the maximum extent permitted by California Civil Code Section 2782 et seq., DISTRICT shall not be liable for, and CONTRACTOR shall defend, indemnify, and hold harmless DISTRICT and its officers, agents, employees and volunteers (collectively 'DISTRICT Parties'), from and against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as 'Claims'), which arise out of or are in any way connected to the work covered by this Agreement arising either directly or indirectly from any act, error, omission or negligence of CONTRACTOR or its officers, employees, agents, contractors, subcontractors, licensees or servants, including, without limitation, Claims caused by the concurrent negligent act, error or omission, of DISTRICT Parties. However, CONTRACTOR shall have no obligation to defend or indemnify DISTRICT Parties against Claims caused by the active negligence, sole negligence, or willful misconduct of DISTRICT Parties. This indemnification shall apply to all

liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by CONTRACTOR.

2. CONTRACTOR also agrees to defend DISTRICT for any loss, injury, liability, claim or demand ("Actions") that is/are the subject of Paragraphs D and G hereof. DISTRICT agrees to notify the CONTRACTOR promptly, in writing, of any Actions, threatened or actual, and to cooperate in every reasonable way to facilitate the defense or settlement of such Actions. The CONTRACTOR shall assume the defense of any Action with counsel of its own choosing, but which is reasonably satisfactory to the DISTRICT. DISTRICT may employ its own counsel in any such case and shall pay such counsel's fees and expenses. CONTRACTOR shall have the right to settle any claim for which indemnification is available; provided, however, that to the extent that such settlement requires DISTRICT to take or refrain from taking any action or purports to obligate DISTRICT, then CONTRACTOR shall not settle such claim without the prior written consent of DISTRICT, which consent shall not be unreasonably withheld, conditioned or delayed.

H. Insurance

1. CONTRACTOR shall provide DISTRICT with a Certificate(s) of Insurance that insures the CONTRACTOR for all foreseeable risks and liabilities associated with this Agreement:

- **General Liability Insurance (CGL):** Commercial general liability on an occurrence coverage form. The limits of liability shall not be less than:
 - \$1,000,000 each occurrence (combined single limit for bodily injury and property damage);
 - \$1,000,000 for personal and advertising injury liability;
 - \$1,000,000 aggregate on products and completed operations;
 - \$1,000,000 property damage
 - \$2,000,000 general aggregate.
- **Automobile Liability Insurance:**
 - \$1,000,000 Combined single limit each accident for bodily injury and property damage. Include coverage on all owned, hired, and non-owned automobiles.
- **Workers Compensation (Statutory) and Employer's Liability:**
 - \$1,000,000 each accident for bodily injury by accident; \$1,000,000 each employee for bodily injury by disease; \$1,000,000 policy limit for bodily injury by disease.

2. CONTRACTOR is responsible for assuring that any subcontractor maintains workers' compensation insurance for any employee, and CONTRACTOR, hereby, affirmatively agrees that the CONTRACTOR shall fully indemnify and hold harmless (including any attorney's fees, costs or liabilities) DISTRICT from any workers' compensation claims, for any reason, by an employee of CONTRACTOR, any subcontractor, and/or other individual, including such matters as a claim that DISTRICT is a joint-employer.

3. Additionally: (a) certificate/endorsement of **insurance policies shall name the Fresno Unified School District, its officers, employees, agents, and governing board members as additional insured.** Certificates of Insurance must have attached Additional Insured Endorsement (Insurance Services Officer form CG2010). Such policy(ies) of insurance shall be endorsed so that the CONTRACTOR'S insurance shall be primary and no contribution shall be required of the DISTRICT; and (b) certificate/endorsement showing any subcontractors as additional insureds and (c) CONTRACTOR'S insurance - certificate/endorsement showing a "waiver of subrogation" from any subrogation demand or claim against Fresno Unified School District; and (d) every subcontractor's

insurance – certificate/endorsement showing a “waiver of subrogation” from any subrogation demand or claim against Fresno Unified School District.

4. CONTRACTOR has an affirmative obligation to maintain records showing the name and identification of any person (for CONTRACTOR or subcontractor) working on the Project, including a copy of a current federal I-9 Verification.

5. The proof of insurance, endorsement of additional insureds and waiver of subrogation in no manner waives, modifies or sets aside the additional obligations under the terms of this Agreement regarding indemnification and hold harmless provisions as set forth in the Agreement to the benefit of DISTRICT.

I. Background Checks

1. The Project involved with the Services primarily involves access to school properties where students and others, of all ages, may be present. CONTRACTOR must comply with all school district, school, and/or state and local rules and laws regarding access to property. CONTRACTOR, at its expense, must conduct a background check for each of its employees, as well as for the employees of its subcontractors, who will provide services to DISTRICT (collectively "CONTRACTOR Employees"). The minimum background check process shall include, but not be limited to, the following checks:

- a) Social Security Number (SSN) Validation and Address History
- b) National Criminal Database
- c) County Felony and Misdemeanor (for past 7-year residence history)
- d) National Sexual Offender Registry Search

2. The background check must be conducted prior to the Service Start Date and initial access by CONTRACTOR'S Employees. CONTRACTOR must keep and maintain the background check records, including all signed waivers by the CONTRACTOR Employees. If a CONTRACTOR Employee separates employment from the CONTRACTOR, for any reason, the CONTRACTOR Employee must undergo another background check prior to regaining access to any project of DISTRICT. DISTRICT has a right to audit a CONTRACTOR'S background check process and records to ensure compliance with DISTRICT'S standards at any time. Such right does not relieve CONTRACTOR of its primary responsibility to fully comply with the requirements as set forth in this Section.

3. Additionally, CONTRACTOR shall notify all CONTRACTOR Employees, in writing, that the CONTRACTOR Employee has the responsibility to self-disclose any misdemeanor or felony convictions that occur while employed with CONTRACTOR or subcontractor, within three business days of the conviction. [For purposes of this provision, “conviction” includes, a court finding of guilty, a plea bargain arrangement, diversion or probationary agreement, and pleas of guilty or no contest]. The conviction must be reported to the CONTRACTOR, and if reported to the CONTRACTOR, it is the CONTRACTOR'S responsibility to notify the DISTRICT within three days of learning of the conviction. If at any time it is discovered that any CONTRACTOR Employee has a criminal record that includes a felony or misdemeanor, the CONTRACTOR is required to inform the DISTRICT, and the DISTRICT will assess the circumstances surrounding the conviction, time frame, nature, gravity, and relevancy of the conviction to the job duties as required under the Project to determine whether the CONTRACTOR employee will be placed on an DISTRICT'S project. The DISTRICT may withhold consent at its sole discretion. Failure of the CONTRACTOR to comply with the terms of this Section may result in the termination of its contract with the DISTRICT.

4. CONTRACTOR shall indemnify and hold harmless the DISTRICT, including any attorneys' fees, costs or liabilities, for any claim, including but not limited to, wrongful or negligent hiring, negligent retention, negligent endangerment, or claims related to violations of state or local rules or laws regarding access to students or school properties.

J. Force Majeure

The Parties to the contract shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, loss or shortage of transportation facilities, lockout, or commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other Party, provided that it is satisfactorily established that the nonperformance is not due to the fault or neglect of the Party not performing and, provided further, that the Party which has been so affected will (a) promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) therefore; and (b) resume its performance under this Agreement immediately upon the cessation of such cause(s). Except that a Force Majeure Event will not include the DISTRICT's obligation to pay for services; an increase in prices; the denial, in whole or in part, of E-Rate Program funding for any Service; or a change in regulation or law.

K. Notice

All notices, invoices, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been given only if and when: (i) personally delivered (including by means of a messenger service), or (ii) by United States first class mail postage prepaid (registered or certified) return receipt requested, (iii) when delivered (and receipted for) by an overnight delivery service, in each case addressed to the address set forth in the first paragraph of this Agreement, or (iv) when sent by e-mail, receipt of which will be governed by the date and time sent. Both Parties are required, and agree, to keep the other Party notified in a timely manner of any changes in the information.

DISTRICT and CONTRACTOR shall designate a representative who shall have the authority to represent and bind the DISTRICT and CONTRACTOR, in all of their respective dealings, and shall serve as the contact person in the event that either Party needs to contact the other for any reason. Representative contact information is as follows:

FOR DISTRICT:

Name: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
E-mail: _____

FOR CONTRACTOR:

Name: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
E-mail: _____

L. Assignment and Transfer

Neither Party shall assign any right, obligation, or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of the other Party. All obligations and duties of either Party under this Agreement shall be binding on all successors in interest and assigns of such Party.

M. Governmental Authorization

This Agreement is subject to all applicable federal, state and local laws, and regulations, rulings, orders and other actions of any governmental entity or agency (collectively, "Rules"), including, but not limited to the rules, orders, policies, and regulations of the Federal Communications Commission and any applicable state public service or public utility commission.

N. Compliance with Laws

Each of the Parties agrees to comply with all applicable local, state, and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.

O. Prevailing Law

In the event of any conflict or ambiguity between this Agreement and state or federal law or regulations, the latter shall prevail. Additionally, all equipment to be supplied or services to be performed under the Agreement shall conform to all applicable requirements of local, state, and federal law.

P. Governing Law and Venue

In the event of a dispute or litigation, the Agreement shall be governed by and construed only in accordance with the laws of the State of California. Venue shall only be with the appropriate state of federal court located in Fresno County.

Q. Mediation

In the event of an alleged breach of this Agreement by CONTRACTOR or DISTRICT or in the event of any other dispute arising out of this Agreement and involving CONTRACTOR and DISTRICT such breach or dispute initially shall be submitted to nonbinding mediation prior to the institution of any litigation. The Parties agree to utilize the services of a retired judge, or another qualified mediator mutually acceptable to both Parties.

R. Miscellaneous

1. Entire Agreement. This Agreement, as defined above, constitutes the entire agreement between the Parties on the subject matter hereof and may be amended or modified solely by written agreement signed by each of the Parties hereto. In the event of any inconsistency between this Agreement and Schedules and other Attachments hereto, the inconsistency shall be resolved in the following order of precedence:

- (a) Agreement and Schedules

- (b) BID and all its attachments and required forms
- (c) Contractor's Response to BID

2. No Third-Party Beneficiaries. This Agreement is not intended to confer and does not confer any rights or remedies upon any person or entity other than the Parties to this Agreement.

3. Severability. If any provisions of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

4. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by the Parties.

5. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the CONTRACTOR and DISTRICT and their respective successors and assigns.

6. Replacement of DISTRICT or CONTRACTOR Representative. In the event that either Party replaces Representative, the replacing Party shall appoint a new Representative and agrees to provide the other Party written notice of such change and the new Representative's contact information within five (5) business days.

7. Site-Specific Services. The Services are provided to the sites initially selected by DISTRICT and reflected on Schedule A.

8. Remedies Non-Exclusive. Wherever a remedy is expressly provided to a Party hereunder, such remedy is intended to add rather than to restrict all such Party's remedies in law and equity.

S. No Waiver

If either Party fails, at any time, to enforce any right or remedy available to it under this Agreement, that failure will not be construed to be a waiver of the right or remedy with respect to that or any other breach or failure by the other Party. Any waiver must be in writing and signed by the Party making the waiver.

T. Counterparts and Digital Signatures

This Agreement and Amendment(s) may be executed in any number of counterparts, each counterpart will constitute an original, and all counterparts together will constitute one agreement. This Agreement may be signed by any means producing a reasonably legible signature, and a digital electronic signature or digital copy of a signed signature page will be effective as an original.

IN WITNESS WHEREOF, the Parties have executed this as of the day and year below written. The persons whose signature appear below are duly authorized to enter into this Agreement on behalf of

each respective Party and both agree and covenant that they have read and agreed to the terms and conditions and terms of service as set forth in their entirety in this Agreement.

Fresno Unified School District

CONTRACTOR

By: _____

By: _____

Name

Name

Title

Title

Date

Date

E-RATE SUPPLEMENTAL TERMS AND CONDITIONS

Signed copy to be returned with bid response.

The successful BIDDER agrees to bill and receive a portion of the payment for the provisions of goods and services described herein directly from the Universal Service Administrative Company (“USAC”), and/or the Schools and Libraries Division (“SLD”) via the Form 474 Service Provider Invoice (SPI). The District will NOT file a Form 472 and will only be responsible for paying its non-discounted share of costs. Should the District, at the time of project implementation, decide that it is in the interest of the District to file a Form 472, the District will inform the Vendor of its intention. The District and the successful BIDDER will act in a reasonable manner and comply with any Schools and Libraries Universal Service Fund Program requirements.

To the extent BIDDER’S response requires special construction, DISTRICT requests that the respondents consider allowing DISTRICT to pay the non-discount share (share of special construction costs that are the responsibility of the applicant) to be paid in equal annual installments over the four years from Funding Year 2021 to Funding Year 2024 inclusive. Acknowledge by checking a box below:

Agree Disagree

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 receiving free and reduced-price meals.

1) **E-RATE CONTINGENCY**

The project herein may be contingent upon the approval of funding from the Universal Service Fund’s Schools and Libraries Program, otherwise known as E-rate. Even after award of contract(s) and/or E-rate funding approval is obtained, the District may or may not proceed with the project, in whole or in part. Execution of the project, in whole or in part, is solely at the discretion of the District.

2) **SERVICE PROVIDER REQUIREMENTS**

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

- a. 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 BID.
- b. Service Providers are responsible for providing a valid SPIN (Service Provider Identification Number). More information about obtaining a SPIN may be found at this website: <https://www.usac.org/e-rate/service-providers/step-1-obtain-a-spin/>

- c. Service Providers are responsible for providing a valid Federal Communications Commission (FCC) Registration Number (FRN) at the time the bid is submitted. More information about obtaining an FRN may be found at this website: <https://fjallfoss.fcc.gov/coresWeb/publicHome.do>
- d. 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 must provide an explanation of the steps it is undertaking to be removed to Red Light Status and the expected timeframe for resolution. A Service Provider's sustained Red-Light Status may be grounds for contract termination as it could prohibit the Service Provider from providing E-rate discounts in a timely manner which would cause harm to the Applicant. More information about FCC Red and Green Light Status may be found at this website: http://www.fcc.gov/debt_collection/welcome.html
- e. Products and services must be delivered before billing can commence. **At no time may the Service Provider invoice before July 1, 2021.**
- f. Prices must be held firm for the duration of the associated E-rate Funding Year(s) or until all work associated with the project is complete (including any contract and USAC approved extensions).
- g. 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.
- h. **Within one (1) week of award, the awarded Service Provider must provide the District a bill of materials using a completed USAC "Item 21 Template". Subsequent schedules of values and invoices for each site must match Item 21 Attachment or subsequent service substitutions. A summary sheet must also be provided to provide the cumulative amount for all sites.**
- i. 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.
- j. The awarded Service Provider is required to send copies of all forms and invoices to the District prior to invoicing USAC for pre-approval. Failure to comply with this requirement may result in the District placing the vendor on an "Invoice Check" with the USAC <https://www.usac.org/e-rate/applicant-process/invoicing/invoice-check/>
- k. Services providers must comply with the FCC rules for Lowest Corresponding Price ("LCP"). Further details on LCP may be obtained at USAC's

website: <https://www.usac.org/e-rate/service-providers/step-2-responding-to-bids/lowest-corresponding-price/>

3) **SERVICE PROVIDER ACKNOWLEDGEMENTS**

- a. 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 district and a USAC service substitution approval with the exception of a Global Service Substitutions.
- b. 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).
- c. The Service Provider acknowledges that its offer is considered to be the lowest corresponding price pursuant to § 54.511(b). Further details on LCP may be obtained at USAC's website: <https://www.usac.org/e-rate/service-providers/step-2-responding-to-bids/lowest-corresponding-price/>. 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.
- d. BIDDERS are required to comply with the FCC's Lowest Corresponding Price ("LCP") Requirement for all equipment and Services. BIDDER acknowledges that BIDDER is solely responsible to comply with LCP requirements. To the extent that USAC finds an LCP violation and reduces the E-rate Funding, BIDDER agrees that it will not hold the DISTRICT liable for any shortfall in E-rate funding and will be responsible for any ensuing appeals, COMADS and/or RIDFS.
- e. The Service Provider attests that its offer does not violate the FCC's REPORT AND ORDER, FURTHER NOTICE OF PROPOSED RULEMAKING, AND ORDER in the matter of "Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs" (FCC 19-121, adopted November 22, 2019, released November 26, 2019) and provisions contained in the Order and any subsequent Orders related to the FNPRM referenced in FCC 19-121. FCC 19-121 can be viewed at <https://docs.fcc.gov/public/attachments/FCC-19-121A1.pdf>
- f. This offer is in full compliance with USAC's Free Services Advisory <https://www.usac.org/e-rate/applicant-process/competitive-bidding/free-services-advisory/>. 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.

4) **STARTING SERVICES/ADVANCE INSTALLATION – Category 1 Services**

The annual E-rate Funding Year begins on July 1 and expires on June 30 of each calendar year. Regardless of the contract “effective date”, E-rate eligible goods and/or services requested in this RFP shall be delivered no earlier than the start of the 2021 funding year (July 1, 2021). If Category 1 services (Telecommunication Services and Internet access) will begin on or shortly after July 1 of a funding year, the service provider, in some cases, may need to undertake some construction and installation work prior to the beginning of that funding year. Within the limitations indicated below, the infrastructure costs of a service provider can be deemed to be delivered at the same time that the associated Category 1 services begin. That is, if services begin on July 1, then the delivery of service provider infrastructure necessary for those services can be considered as also delivered on July 1. However, NO INVOICING can take place prior to July 1 of the associated Funding Year.

EARLY FUNDING CONDITIONS

Category 1

There are four conditions that must be met in order for USAC to provide support in a funding year for Category 1 infrastructure costs incurred prior to that funding year.

- *Initiation of installation cannot take place before selection of the service provider pursuant to a posted Form 470 and in any event no earlier than six months prior to July 1 of the funding year.*
- *The Category 1 service must depend on the installation of the infrastructure.*
- *The underlying Category 1 service cannot have a service start date prior to July 1 of the funding year.*
- *No invoices can be submitted to USAC for reimbursement prior to July 1 of the funding year.*

For more information, please refer to the FCC Order involving the Nassau County Board of Cooperative Educational Services (DA 02-3365 , released December 6, 2002). This FCC decision only applies to Priority 1 services (telecommunications services and Internet access).

The complete text can be found at the following URL:

<https://www.usac.org/e-rate/applicant-process/starting-services/advance-installation/>

5) **INVOICING**

- a. 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 District 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 District 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, certification and USAC approval of Form 486, the District shall pay only the

discounted amount beginning with the billing cycle immediately following said approval. Alternatively, should the District decide that it is in the best interest of the District to file a Form 472, the District will inform the Service Provider of its intent.

- b. 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 District will only be responsible for paying its non-discounted share.

6) 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. Respondent hereby agrees to retain all books, records, and other documents relative to any Agreement resulting from this RFP for ten (10) years after final payment. The District, its authorized agents, and/or auditors reserves the right to perform or have performed an audit of the records of the Respondent 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.

7) PROCUREMENT OF ADDITIONAL GOODS AND/OR SERVICES/COTERMINOUS EXPIRATION

During the term of any Agreement resulting from this RFP, the District may elect to procure additional or like goods and/or services offered by the Respondent. Such services shall be negotiated and obtained via an official amendment to this Agreement and approval by the District's Governing Board. All terms, conditions, warranties, obligations, maintenance, and support of said goods or services shall have a coterminous expiration date with the original date of this Agreement. The District shall not enter into a separate Agreement for said goods or services. Respondents must state in their proposal that they acknowledge, accept and are in agreement with coterminous expiration conditions.

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.

_____ Name of Company	_____ Address
_____ Signature	_____ City State Zip Code
_____ Print Name	_____ Phone Number Fax Number
_____ Title	_____ Email Address
_____ Federal Tax ID	_____ SPIN

NONCOLLUSION DECLARATION

I, _____, declare that I am the party making the foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the proponent has not directly or indirectly induced or solicited any other proponent to put in a false or sham bid and has not directly or indirectly colluded, conspired, connived, or agreed with any proponent or anyone else to put in a sham bid, or that anyone shall refrain from responding; that the proponent has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix any overhead, profit, or cost element of the bid price, or of that of any other proponent, or to secure any advantage against the public body awarding the Contract of anyone interested in proposed Contract; that all statements contained in the bid are true, and, further, that the proponent has not, directly or indirectly, submitted his or her bid price of any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date

Name of Vendor

Printed name of Authorized Company Representative

Signature of Authorized Company Representative

**CONTRACTOR'S CERTIFICATE
REGARDING WORKERS COMPENSATION
TO BE EXECUTED AND SUBMITTED WITH BID/RESPONSE**
(Only Required for Special Construction)

Labor Code Section 3700 Provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.

- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers Compensation or to undertake self-insurance in accordance with the provisions of that Code and I will comply with those provisions before commencing the performance of the work of this Contract.

CONTRACTOR: _____

By _____

Type/Print Name

Title

Date

(In accordance with Labor Code section 1860, this certificate must be signed and filed with the awarding body prior to performing any work under this Contract.)

STUDENT SAFETY DECLARATION

Education Code Section 45125.2

(TO BE EXECUTED BY AND SUBMITTED WITH BID)

I, _____ [name/title], declare as follows:

1. I am a representative of _____ [company], and am authorized to make this declaration on its behalf;
2. Pursuant to Education Code section 45125.2, I shall not permit any employee, agent, or subcontractor to have more than limited contact with pupils without taking protective steps as set forth in that section and this declaration.
3. I declare that I have taken one or more of the following protective measures pursuant to Education Code section 45125.2 and General Conditions Section 00 73 19:
 - a. Neither I, my employees, agents nor subcontractors will have more than limited contact with students.
 - b. I have installed or will install a physical barrier at the worksite such that no employee, agent, or subcontractor will have more than limited contact with students.
 - c. An employee, agent or subcontractor will continually monitor and supervise all employee(s), agent(s) and subcontractor(s) who will have more than limited student contact. I will **have individual(s) processed through the DISTRICT** to submit fingerprints to the Department of Justice (DOJ) for the monitoring and supervisory of employee(s), agent(s), or subcontractor(s). I will not begin work on the job site until a DOJ cleared supervisor submitted through the DISTRICT is provided on the job site, and I certify that none of these supervisory employees, agents or subcontractors will have been convicted of a felony as defined in Education Code section 45122.1.

I know the above of my own personal knowledge and if called as a witness could competently testify thereto. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed

on _____ [month/year], _____ [day], at _____ [city], California.

Name of Contractor

By: _____

NO PROHIBITED INTEREST/CONFLICTS OF INTEREST DECLARATION

I hereby certify and declare that the undersigned BIDDER has reviewed and understands the definition provided in the Information to BIDDERS, Prohibited Interests/Conflicts of Interest, and that BIDDER has no business relationship with any member of the Board of Education (“BOE”) that gives any BOE member a financial interest in any contract between BIDDER and the DISTRICT, other than a financial interest that qualifies as a “remote interest” or a “noninterest,” and that no Prohibited Interests/Conflicts of Interest exist which violate this provision of the Information to BIDDERS and thereby preclude BIDDER from contracting with the Fresno Unified School District. BIDDER further understands that the provision of a bid/quote to BIDDER over 5 years prior to a BOE member’s election or appointment, without the goods or services included in the bid actually being furnished to BIDDER, i.e., an unaccepted bid/quote, does not qualify to cause a financial interest to be a “remote interest” as that term is defined in California Government Code section 1091(b)(8).

Consistent with the foregoing and with definition provided in the Information to BIDDERS relating to Prohibited Interests/Conflicts of Interest, BIDDER understands that if BIDDER is awarded the contract for this Project and a Prohibited Interests/Conflict of Interest is thereafter discovered which violates this provision of the Information to BIDDERS, Prohibited Interests/Conflicts of Interest, the contract between BIDDER and Fresno Unified School District may be void, and in such event BIDDER may be required to disgorge all monies received pursuant to such void contract.

I declare under penalty of perjury under the laws of the State of California that 1) BIDDER has reviewed all necessary documents and exercised all due diligence in determining that no Prohibited Interests/Conflicts of Interest exist as set forth above and as described in the Information to BIDDERS relating to Prohibited Interests/Conflicts of Interest, with respect to the undersigned BIDDER, 2) I am authorized by BIDDER to execute this form on BIDDER’s behalf and to make the certifications contained herein, and 3) the representations and certifications set forth herein are true and correct.

Dated: _____, 20____

[Company Name]

[Name and Title of BIDDER’s Representative]

[Signature]

IRAN CONTRACTING ACT CERTIFICATION

Public Contract Code Sections 2202-2208

Pursuant to Public Contract Code 2204. (a) A public entity shall require a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a public entity with respect to a contract for goods or services of one million dollars (\$1,000,000) or more to certify, at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable.

To comply with this requirement, please insert your company/entity and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts in accordance with Public Contract Code section 2205.

OPTION 1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the company/entity identified below, and the company/entity identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person or entity, for 45 days or more, if that other person or company/entity will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS in accordance with subdivision (b) of Public Contract Code 2203.

<i>Company Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County of _____</i> <i>in the State of _____</i>

OPTION 2 – EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

DESIGNATED SUBCONTRACTOR LIST

(Only Required for Special Construction)

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH RESPONSE (IF APPLICABLE)

Please reference Information to BIDDERS – Special Construction, items a-d.

If not applicable, please indicate “None” in Item 9 below.

PROJECT: **BID No. 21-30 “Leased Lit or Dark Fiber Point to Point Connection”**

1. BIDDER must list hereinafter the name and location of each subcontractor who will be employed, and the scope of Work that each will perform relating to the Special Construction portion of the Bid if the Contract is awarded to the BIDDER. BIDDER acknowledges and agrees that under Public Contract Code section 4100, et seq., it must clearly identify the name and location of each subcontractor who will perform work or labor or render service to the BIDDER in or about the construction of the Special Construction Work in an amount in excess of one-half of one percent (1/2 of 1%) of BIDDER’s total Special Construction Bid.
2. As to any Special Construction Work that BIDDER fails to list, BIDDER agrees to perform that portion itself or be subjected to penalty under applicable law.
3. If alternate Special Construction bids are called for and BIDDER intends to use Subcontractors different from or in addition to those Subcontractors listed for work under the base Special Construction Bid, BIDDER must list Subcontractors that will perform Work in an amount in excess of one half of one percent (1/2 of 1%) of BIDDER’s total Special Construction Bid, including alternates.
4. In case more than one subcontractor is named for the same scope of Work, state the portion that each will perform.
5. BIDDER need not list entities that are only vendors or suppliers of materials.
6. BIDDER must provide the Contactor State License Board number (“CSLB No.,”) for all listed subcontractors.
7. BIDDER must provide the Department of Industrial Relations registration number (“DIR No.,”) for all listed subcontractors.
8. **The District will permit each BIDDER to submit each listed subcontractor’s CSLB No. and the DIR No. no later than twenty-four (24) hours after bid opening.**
9. If further space is required for the list of proposed subcontractors, additional sheets showing the required information, as indicated below, shall be attached hereto, and made a part of this document.

Subcontractor Name: _____ **Location:** _____

Type of Work: _____

Percent of Work: _____ % CSLB No.: _____ DIR No.: _____

Subcontractor Name: _____ **Location:** _____

Type of Work: _____

Percent of Work: _____ % CSLB No.: _____ DIR No.: _____

ADD ADDITIONAL PAGES AS NECESSARY WITH ALL INFORMATION COMPLETED

Prevailing Wage Certification

(Only Required for Special Construction)

RELATED LABOR REQUIREMENTS CERTIFICATION

PROJECT/CONTRACT NO.: Bid No. 21-30 between Fresno Unified School District (the “District) and _____ (the “Contractor” or the “BIDDER”) (the “Contract” or the “Project”).

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hour notice, payroll records, and apprentice and trainee employment requirements, for any identified Special Construction (Non-Recurring Costs) component(s) of the project including, without limitation, the requirement that it and all of its Subcontractors are registered pursuant to Labor Code section 1720, et seq.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

SCHEDULE A

STATEMENT OF SERVICES

Services. **DISTRICT is seeking bids from qualified BIDDERS to provide a Leased Lit or Dark Fiber Point to Point Connection.**

The district requests Data Transport connecting the District Ed Center to CENIC at 1111 Van Ness Ave. Fresno, CA 93271.

The District Ed Center is located at 2309 Tulare Street, Fresno, CA 93721.
The CENIC node is located at 1111 Van Ness Ave, Fresno, CA 93721.

LEASED LIT FIBER REQUIREMENTS

For leased lit fiber, the data transport circuit shall be 40GB circuits in Years 1-3, scaling to 100GB in Years 4-10, and scaling to 200GB in years 11-20 of any resulting Agreement. The lease charge for the service providing the 40GB, 100GB and 200GB connections will include optics and intervening electronics which would allow routing of packets across the circuit. The service should include monitoring and notification of fiber connection outages in accordance with the SLA in Schedule C.

For leased lit fiber, the following additional conditions should be considered:

- DISTRICT prefers underground fiber.
- DISTRICT requires single-mode fiber.
- DISTRICT requires LC termination at patch panel.
- DISTRICT does not require diverse entry into each site or MPOE.
- DISTRICT does not expect any site or building in this solution to be connected via an aerial feed. Bidder must enter MPOE using underground conduit from curb.
- If the existing conduit is suitable (meets all industry and code standard requirements) and has available capacity at a location, it should be available for the vendor to use. Otherwise, bidder must develop a pathway to provide service to the MPOE.

BIDDER must describe how the proposed leased lit fiber solution meets the conditions stated above.

LEASED DARK FIBER REQUIREMENTS

For leased dark fiber, the data transport circuit shall provide the capacity for 40GB circuits in Years 1-3, scaling to 100GB circuits in Years 4-10, and scaling to 200GB in Years 11-20 of any resulting Agreement.

DISTRICT expects that monthly recurring charges are inclusive of facility lease charges and maintenance and operations in accordance with the SLA in Schedule C.

For leased dark fiber, the following additional conditions apply:

- DISTRICT prefers underground fiber.
- DISTRICT requires 2 strands of fiber for sites listed
- DISTRICT requires single-mode fiber.
- DISTRICT requires LC termination at patch panel.
- DISTRICT does not require diverse entry into each site or MPOE.
- DISTRICT does not expect any site or building in this solution to be connected via an aerial feed. Bidder must enter MPOE using underground conduit from curb.
- If the existing conduit is suitable (meets all industry and code standard requirements) and has available capacity at a location, it should be available for the vendor to use. Otherwise, bidder must develop a pathway to provide service to the MPOE.
- DISTRICT requires BIDDER to provide distance between node endpoints in order that the DISTRICT can configure node endpoints with correct optics.

BIDDER must describe how the proposed leased dark fiber solution meets the above requirements.

SCHEDULE B

**PRICING SCHEDULE FOR SPECIAL CONSTRUCTION, NON-RECURRING,
AND RECURRING SERVICES, AND UPGRADES**

(must include pricing for up to three 5-year voluntary extensions)

BIDDERS MUST COMPLETE THE PRICING SCHEDULE USING BID FORM (PAGE 14-15)

<p><i>Please note, per Schedule A, Description of Services, the DISTRICT desires pricing for 10Gbps for Years 1-5, 40Gbps for Years 6-10 and 100Gbps for Years 11-20.</i></p>	<u>Total annual recurring costs (by year)</u>	
	Dark Fiber Lease	Lit Fiber Lease
	Bid Item 1	Bid Item 2
	40Gbps Years 1-3	40Gbps Years 1-3
	100Gbps Years 4-10	100Gbps Years 4-10
	200Gbps Years 11-20	200Gbps Years 11-20

<u>Year Number</u>		
1		
2		
3		
4		
5		
Special Constr./Nonrecurring		
Electronics/Optics*	n/a	

**District Owns Equipment*

Sub-Total Initial Term \$ _____ \$ _____

<u>Year Number</u>		
6		
7		
8		
9		
10		
Special Constr./Nonrecurring		
Electronics/Optics*	2,000.00	

**District Owns Equipment*

Sub-Total First Option Term \$ _____ \$ _____

11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
Electronics/Optics*	\$4,000.00	

**District Owns Equipment*

Sub-Total Second Option Term \$ _____ \$ _____

Total of all Sub-Total Sections \$ _____ \$ _____
(Transfer Total to Bid Form)

SCHEDULE B
(Continued)

Instructions for **SCHEDULE B AND BID FORM (PAGE 14-15)**:

1. Total bid price is the sum of the 20-years fiber lease, special construction cost (if applicable) and District Owned Electronics/Optics. Please note: District requests upgrade to 100Gbps beginning in Year 4 of the 20 years and upgrade to 200Gbps beginning in Year 11 of the 20 years.
2. In the event of a calculation error by BIDDER, District will add each individual item to determine the Correct Total Bid amount. The Corrected Total bid amount will be used as the BIDDERS bid response amount; otherwise bid will be rejected as non-responsive.
3. BIDDER may bid both or any one solution for leased dark and lit fiber. If not providing a bid for either bid item, indicate "N/A" or "NO BID" or "LEAVE BLANK". **Do not indicate \$0.00.**

SCHEDULE C

SERVICE LEVEL AGREEMENT and VENDOR REQUIREMENTS

SERVICE LEVEL AGREEMENT

1. DEFINITIONS

“Deficient Minutes” shall be calculated on a circuit by circuit basis and shall be the total number of minutes in a calendar month that are in excess of the number of minutes of path non-availability permitted by the terms of the Services Level Standards that CONTRACTOR is required to meet under the terms of this Agreement. Deficient Minutes shall be calculated separately for each circuit where deficiencies occurred.

“Deficiency Credit” shall mean an amount equal to the total number of Deficient Minutes in the calendar month for which such Deficiency Credit is sought multiplied by a fraction of which the numerator is the Monthly Service Fee, and the denominator is the number of minutes in the relevant month.

“Outage Event” shall mean any outage or other loss of the Services, other than any outage that (i) is not reported by DISTRICT to CONTRACTOR within five (5) days of occurrence; (ii) is less than one (1) hour in duration; (iii) is attributable to CONTRACTOR's scheduled fiber connection maintenance, which in no event shall include substitutions to or modifications of the Infrastructure described in paragraph 3.f., below, (iv) is due to failure or outage of related telephone circuits (whether ordered by CONTRACTOR or DISTRICT), (v) results from DISTRICT's applications, equipment or facilities, (vi) results from any act or omission of DISTRICT or any user of DISTRICT's equipment or account, or (vii) is due to or occasioned by any riots, wars, acts of enemies, national emergency, acts of vandalism, strikes, floods, fires, hurricanes, tornados, acts of God, or by any other cause not within the control of CONTRACTOR that by the exercise of reasonable diligence CONTRACTOR is unable to prevent, (viii) results from CONTRACTOR not having been granted site access by the DISTRICT, or (ix) results from DISTRICT's unauthorized use of the Services.

2. DISTRICT SUPPORT AND SERVICES. CONTRACTOR shall, at its option, repair or replace any Infrastructure not functioning in accordance with CONTRACTOR's contracted specifications for the Services. CONTRACTOR shall not provide technical support, maintenance, repair, or deployment service for DISTRICT's software, hardware, or equipment unless CONTRACTOR, in its sole discretion, agrees to do so in a separate written contract. CONTRACTOR shall provide DISTRICT support for the use of the Services. Such support from the CONTRACTOR shall be available on a commercially reasonable basis via telephone, via electronic mail, and through CONTRACTOR's Internet site (“Internet Site”). Telephone numbers for such DISTRICT support shall be posted on the CONTRACTOR Internet Site. DISTRICT may contact CONTRACTOR for support and service at [TELEPHONE NUMBER]. If DISTRICT's use of the Services requires that CONTRACTOR visit DISTRICT's premises for assistance, repair, deployment or connection, CONTRACTOR shall be entitled to charge DISTRICT the CONTRACTOR's labor rates and related costs for each such visit if the assistance, repair, deployment or connection resulted from DISTRICT negligence or problems with DISTRICT-owned equipment, and DISTRICT agrees to pay

CONTRACTOR such charges. CONTRACTOR does not undertake to correct or repair and shall have no responsibility for the correction or repair of, software, hardware, or equipment that CONTRACTOR does not supply. CONTRACTOR will undertake commercially reasonable fiber connection management, traffic analysis, operational procedures, and user policies to support the service level standards provided in this Agreement.

CONTRACTOR LABOR RATES
for Support Outside the Scope of the Agreement

Type of Technician	Title	Hourly Rate

3. SERVICE LEVELS COMMITMENTS AND SERVICE CREDITS

The CONTRACTOR shall provide the Services in conformance to standard industry requirements. These requirements shall, at a minimum, ensure that the following Operation and Maintenance objectives are met:

- Fiber Connection Availability – 99.99%
- Packet Delivery Rate – 99.99%
- Mean Time to Repair 4 Hours, end-to-end

- a. Availability Commitment. CONTRACTOR custom engineers each fiber connection solution up to 99.99% availability. CONTRACTOR shall maintain Services availability for the DISTRICT 100% of the time, except during Outage Events. CONTRACTOR shall calculate the Deficiency Credit for any calendar month. CONTRACTOR shall credit to DISTRICT’s account as a refund the Deficiency Credit with a multiple of two times the calculated sum relative to the outage time.
- b. Sites and Bandwidth Commitment Levels. Bandwidth Requirements Years 1-20 for Lit Leased Fiber. Each of the 11 sites must support 40GB in years 1-10 and 100GB in years 11-20.
- c. Latency and Jitter Commitment. CONTRACTOR’s fiber connection, including the Infrastructure, shall provide round-trip transmissions between circuit endpoints with an average ten (10) milliseconds or less except during Outage Events (“Latency Commitment”). The foregoing Latency Commitment is measured by averaging sample measurements taken during the Service Window between hub routers. Upon written request of DISTRICT, for each minute in the Service Window during a calendar month for which CONTRACTOR fails to satisfy its Latency Commitment, CONTRACTOR shall credit to DISTRICT’s account as a refund the total number of latency minutes divided by the total number of minutes during the Service Window in that month. CONTRACTOR’s Jitter commitment is < 2 milliseconds one way.
- d. Packet Loss Commitment. CONTRACTOR’s fiber connection packet loss between circuit endpoints shall be limited to 0.1% or less each day except during Outage Events (“Packet Loss Commitment”). CONTRACTOR shall measure packet loss using standard, industry-accepted methods during the Service Window between designated endpoints. Upon written request of DISTRICT, for each minute in the Service Window for which CONTRACTOR fails to satisfy its Packet Loss Commitment during a calendar month, CONTRACTOR shall refund the total number of minutes where there was a packet loss of more than .1% divided by the total number of minutes during the Service Window in that month.

- e. Procedure for Notification of Deficiency. The Parties agree to the following procedures: (1) Customer notifies Contractor Commitment level is exceeded for Latency, Jitter or Packet Loss indicating location and initial time notified; (2) Customer provides relevant timestamped logs and/or test results indicating start of deficiency; (3) Contractor must remedy deficiency or provide timestamped log or test results indicating Infrastructure does not have such Deficiency.
- f. CONTRACTOR Response Times. CONTRACTOR shall provide a DISTRICT support service contact point. CONTRACTOR shall respond within two (2) hours to any DISTRICT notification, made to this contact point, of any failure of any Infrastructure to meet the requirements of this Agreement. or CONTRACTOR's published specifications for the Services.
- g. DISTRICT Reporting Commitment. CONTRACTOR shall provide DISTRICT at least forty-eight (48) hours advance notice of scheduled outages for fiber connection maintenance. The standard weekly maintenance window is Monday through Sunday from 1:00 a.m. to 6:00 a.m. local time. Notice of other scheduled maintenance outages will be provided to DISTRICT's designated point of contact by telephone or e-mail.
- h. Service Credit Limit. DISTRICT's total service credits for any calendar month may exceed the Monthly Service Fee. True outage is defined as set forth in the SLA in the BID. CONTRACTOR and DISTRICT may true up on a twelve-month basis.

II. VENDOR REQUIREMENTS

CONTRACTOR will comply with the following requirements:

- 1. CONTRACTOR, at Service Start Date, shall have fiber connection infrastructure, colocations, and ALL facilities in service between FUSD locations set forth in Schedule A.
- 2. CONTRACTOR has a dedicated Service Manager whose responsibilities include service delivery for FUSD's Fiber Connection Services. Provide name and position title.

Name: _____

Title: _____

- 3. CONTRACTOR will have an enterprise level staff and/or subcontractor(s), technicians and service vehicles in the FUSD service area to support FUSD Fiber Connection Services to provide prompt resolution to a service affecting incident including the diagnosis and repair of damaged fiber upon Service Start Date.
- 4. CONTRACTOR will monitor all Services 24 hours per day, seven days per week, and 365 days per year.
- 5. CONTRACTOR will provide, at no additional charge, immediate notification to FUSD network department point of contact, upon discovery of any telecommunication service outages or anomalies which affect the use of the facilities, circuits, or network within FUSD.
- 6. CONTRACTOR service center will be available 24 hours, 7 days a week, 365 days per year upon Service Start Date.
- 7. In the event of a managed lit fiber solution, CONTRACTOR will provide network management tool(s), and/or APIs to support such tools, providing for the proactive monitoring of network infrastructure and network services.

8. CONTRACTOR has a web portal that provides FUSD personnel with services such as the ability to review billing, review outages, etc.
9. CONTRACTOR will provide, at no additional charge, a monthly report to FUSD network department point of contact, which includes information explaining all service outages or anomalies for the previous month which affected the use of the facilities, circuits, or network within FUSD.
10. CONTRACTOR will maintain compliance with any and all legal requirements set forth under the California Public Utilities Commission, Federal Communications Commission, and the Universal Service Administrative Company's E-rate Program.
11. CONTRACTOR will provide a projected dB loss table for fiber runs.

SCHEDULE D

DEPLOYMENT SCHEDULE

OUTLINE OF DEPLOYMENT DEADLINES FOR SCHEDULING

Data Transport service must be available no later than 120 calendar days from issuance of DISTRICT Purchase Order.

Permitted access to site during full workdays “Service Window” shall mean Monday through Sunday, 24-hours per day (12am to 11:59pm) local time where the Services are being provided, subject to DISTRICT site availability, local conditions, and DISTRICT requirements and policy. In the event DISTRICT site(s) are unavailable due to DISTRICT requirements, events, local conditions, or policy, an extension of time shall be granted CONTRACTOR commensurate with duration of unavailability.

Awarded BIDDER shall conduct an on-site preliminary design review with DISTRICT within 5 days from the date of Staff Recommendation of Award.

Awarded BIDDER shall submit a final design to DISTRICT within 10 days after completion of the preliminary design review.

Project Initiation

Awarded BIDDER shall conduct a project kickoff meeting with DISTRICT prior to issuance of a Purchase Order to review project objectives, schedule, share relevant documentation, review status reporting methodologies, finalize the requirements, and introduce key personnel. Scheduling of the kickoff meeting will be determined after final design accepted by the DISTRICT. Purchase Order shall be issued upon confirmation of funding availability.

Final Acceptance

DISTRICT shall grant final acceptance upon delivery of services, and the system is proven functional to DISTRICT’S satisfaction.