

**BEND-LA PINE SCHOOLS
520 NW WALL STREET
BEND, OR 97703
PHONE: 541-355-1137**

**RFP 18-0214-01
WIDE AREA NETWORK CONNECTIVITY**

ADDENDUM #1

The purpose of this addendum is to answer questions that were raised during the clarification process. Listed below are the questions that were asked along with the District's responses. Answers are in bold type underneath each corresponding question. The district received the following contract change requests. Proposed change 1. is found in the General Provisions of the RFP Section II. This change will be incorporated in the final draft of the RFP contract to the awarded vendor. Proposed changes 2. & 3. are found in the Fiber Optic Telecommunications Agreement. The agreed changes are included in a revised version of the Agreement. The following are the proposed changes and the District's response:

1. Proposed change: 10 Indemnification (found in Section II. General Provisions, page 11).

- 10. INDEMNIFICATION:** Except for claims arising out of acts caused by the sole negligence of the District, its agents, servants or employees, the Vendor, and employees of such, agrees to indemnify and hold harmless the District, its agents, servants, and employees, from acts or omissions of any nature whatsoever of the Vendor, its agents, servants, and employees, causing injury to, or death of person (s) or damage to property arising out of services provided and from any expense incident to the defense of the District there from. ~~The Vendor agrees to hold the District harmless from and to defend it against, any and all claims arising out of this Agreement.~~ **"The Vendor agrees to hold the District harmless from and to defend it against, any and all claims arising out of this agreement to the extent such claims are caused by the negligence of Vendor".**

District response: The District agrees and will accept the proposed change. The change will be made in the RFP Section II and incorporated into the final complete contract.

2. Proposed change: 3. Renewal Term (found in Fiber Optic Telecommunications Agreement, page 1).

- 3. Renewal Term.** Prior to the expiration of the Initial Term, if District is not then in default of this Agreement beyond any applicable cure periods, District may elect to either: (a) extend this Agreement for one additional term of 36 months with ~~at least a 50%~~ discount from the current Payment as defined herein, or (b) District may extend this Agreement for one additional term of 60 months ~~with at least a 65% discount~~ from current Payment (the option selected by District shall be referred to herein as the "Renewal Term"). The discounts referred to in this paragraph are the "Renewal Term Discount." The Renewal Term may be exercised by written notice from District to Contractor, provided however if District fails to provide such notice to Contractor prior to the end of the Initial Term, Contractor shall provide written notice to District ("Renewal Notice") and District shall be provided an additional thirty (30) days from the date of the Renewal Notice to exercise the Renewal Term option on the terms provided herein. Giving such notice by District to Contractor within the time periods provided herein shall be sufficient to make this Agreement binding for the Renewal Term without further act of the Parties. The terms and conditions of this Agreement for the Renewal Term shall be identical with the Initial Term except for the payment of the Payments and except that District will no longer have any Renewal Term that has been exercised. **TDS agrees to the following renewal terms: 14% savings on 36-month contract and 13.5% savings on a 60-month term contract.**

District Response: Proposed changes to Paragraph 3 of the form contract are rejected.

The district is requesting 2 proposals for each site. One at a 3-year term and one at a 5-year term. The pricing proposal for each should reflect a price for each term and either a 50% or 65% discount for a second term, exercisable at the discretion of the district. In our review, we determined

that we would like proposers to propose a set term for renewals of 5 years and 10 years. Accordingly, the following paragraph will replace Paragraph 3 of the form contract:

3. Renewal Term. Prior to the expiration of the Initial Term, if District is not then in default of this Agreement beyond any applicable cure periods, District may elect to either: (a) extend this Agreement for one additional term of 5 years with at least a 50% discount from the current Payment as defined herein, or (b) District may extend this Agreement for one additional term of 10 years with at least a 65% discount from current Payment (the option selected by District shall be referred to herein as the "Renewal Term"). The discounts referred to in this paragraph are the "Renewal Term Discount." The Renewal Term may be exercised by written notice from District to Contractor, provided however if District fails to provide such notice to Contractor prior to the end of the Initial Term, Contractor shall provide written notice to District ("Renewal Notice") and District shall be provided an additional thirty (30) days from the date of the Renewal Notice to exercise the Renewal Term option on the terms provided herein. Giving such notice by District to Contractor within the time periods provided herein shall be sufficient to make this Agreement binding for the Renewal Term without further act of the Parties. The terms and conditions of this Agreement for the Renewal Term shall be identical with the Initial Term except for the payment of the Payments and except that District will no longer have any Renewal Term that has been exercised.

3. Proposed Change: 30. Insurance (found in Fiber Optic Telecommunications Agreement, page 7).

30. Insurance. Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below:

Workers Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide workers' compensation coverage in accordance with ORS Chapter 656 for all subject workers. Contractor and all subcontractors of Contractor with one or more employees must have this insurance unless exempt under ORS 656.027 THIS COVERAGE IS REQUIRED. Attach Certificate of Insurance. If Contractor does not have coverage and claims to be exempt, Complete Section 31 in lieu of Certificate.

Commercial General Liability insurance, on an occurrence basis, with a combined single limit of not less than: ☐ \$1,000,000, ☒ \$2,000,000 each occurrence for Bodily/Personal Injury and Property Damage, with an annual aggregate limit of ☐ \$1,000,000, ☒ \$4,000,000. This insurance must include contractual liability coverage. ☒ Required by District ☐ Not required by District

Commercial Automobile Liability insurance with a combined single limit, or the equivalent of not less than: ☐ \$500,000, ☒ \$1,000,000, ☐ \$2,000,000 each occurrence for Bodily Injury / Personal Injury, and Property Damage, including coverage for owned, hired or non-owned vehicles. ☒ Required by District ☐ Not required by District

Additional Requirements. Coverage must be provided by an insurance company admitted to do business in Oregon or rated A- or better by Best's Insurance Rating. Contractor shall pay all deductibles and retentions. A cross-liability clause or separation of insureds condition must be included in all commercial general liability policies required by this Agreement. Contractor's coverage will be primary in the event of loss.

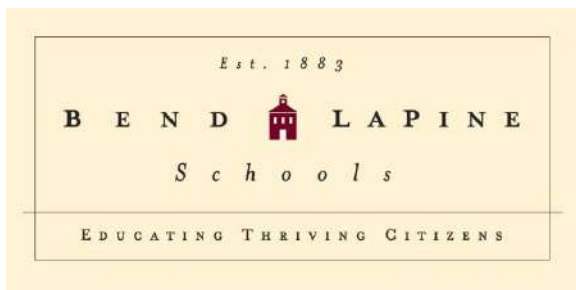
Certificate(s) of Insurance Required. Upon Request of the District, Contractor shall furnish a current Certificate(s) of Insurance to the District within forty eight (48) hours. ~~The Certificate(s) shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days written notice from the Contractor's insurer to the District.~~ The Certificate(s) shall also state the deductible or retention level. For commercial general liability the Certificate shall also provide that the District, its agents, officers, and employees are Additional Insureds with respect to Contractor's services to be provided under this Agreement. If requested, complete copies of insurance policies shall be provided to the District.

Comment: This is a factual situation. We cannot get the insurance company to provide the notice directly to the customer.

District Response: The changes to the insurance certificate requirements are acceptable. Accordingly, the following paragraph will replace the existing last paragraph in Paragraph 30:

Certificate(s) of Insurance Required. Upon Request of the District, Contractor shall furnish a current Certificate(s) of Insurance to the District within forty eight (48) hours. Contractor shall provide 30 days prior written notice to the District of any cancellation, termination, material change, or reduction of limits of the insurance coverage. The Certificate(s) shall also state the deductible or retention level. For commercial general liability the Certificate shall also provide that the District, its agents, officers, and employees are Additional Insureds with respect to Contractor's services to be provided under this Agreement. If requested, complete copies of insurance policies shall be provided to the District.

The following is the revised Fiber Optic Telecommunications Agreement that will be used for this RFP award. Redlines are included for reference.



BUSINESS OFFICE

520 N.W. Wall Street
Bend, Oregon 97701-2699
(541) 355-1137
Fax: (541) 355-1179

BEND-LA PINE SCHOOLS, SCHOOL DISTRICT NO. 1, DESCHUTES COUNTY, OREGON FIBER OPTIC TELECOMMUNICATIONS AGREEMENT

This Agreement is between Bend-La Pine Schools, School District No. 1, Deschutes County, Oregon (District) and ____ (Contractor). The parties agree as follows:

1. [Lease/Service] Subject to the terms and conditions of this Agreement, Contractor agrees to exclusively provide to District, and District agrees to exclusively [Lease Dark Fiber /Use Lit Fiber service] from Contractor, the Fiber between the Facilities and the Demarcation Points defined below.
2. **Initial Term.** The effective date of this Agreement shall be ____ or the date which each party has signed this Agreement, whichever is later. The initial term of this Agreement shall commence upon the completion of the installation and Acceptance Date at all Facilities as defined herein and shall remain in effect until _____ (the "Initial Term"), unless sooner terminated or extended pursuant to the terms and conditions of this Agreement. For purposes of this Agreement, "Term" means the Initial Term and any extensions or renewals thereof.
3. **Renewal Term.** Prior to the expiration of the Initial Term, if District is not then in default of this Agreement beyond any applicable cure periods, District may elect to either: (a) extend this Agreement for one additional term of ~~_____ months~~ 5 years with at least a 50% discount from the current Payment as defined herein, or (b) District may extend this Agreement for one additional term of ~~_____ 10 years months~~ with at least a 65% discount from current Payment (the option selected by District shall be referred to herein as the "Renewal Term"). The discounts referred to in this paragraph are the "Renewal Term Discount." The Renewal Term may be exercised by written notice from District to Contractor, provided however if District fails to provide such notice to Contractor prior to the end of the Initial Term, Contractor shall provide written notice to District ("Renewal Notice") and District shall be provided an additional thirty (30) days from the date of the Renewal Notice to exercise the Renewal Term option on the terms provided herein. Giving such notice by District to Contractor within the time periods provided herein shall be sufficient to make this Agreement binding for the Renewal Term without further act of the Parties. The terms and conditions of this Agreement for the Renewal Term shall be identical with the Initial Term except for the payment of the Payments and except that District will no longer have any Renewal Term that has been exercised.
4. **Price/Payments.** In consideration for the Fiber to be provided by Contractor pursuant to this Agreement, District agrees to make monthly payments ("Payments") to Contractor. The District's obligation to pay Payments shall begin on the later of: 12:01 a.m., Pacific Time, on July 1, 2019 or the Acceptance Date for the elementary school; and March 1, 2021 or the Acceptance Date for the high school. Subject to the terms and conditions of this Agreement, District understands that the Initial Term of this Agreement is non-cancelable, and, therefore, District's obligations for Payments continue through the entire Initial Term, regardless of District's actual usage of the Fiber. The amount of each Payment shall be in accordance with the schedule set forth in this Section as modified by any Renewal Term Discount.
 - a. During the Term, subject to the terms and conditions of this Agreement and after the Acceptance Date for each of the Facilities, District will pay Contractor a payment due on the first day of each month at the rate of \$_____ per month per Facility, prorated monthly if applicable ("Per Facility Fee"). The total Per Facility Fee payable to Contractor on a monthly basis for all Facilities pursuant to the terms of this Agreement is hereinafter referred to as the "Payment." The Payment includes all franchise fees, taxes, duties, impositions, and other costs and expenses of every kind for the Term. During the Extended Term, the Payment and the Per Facility Fee are subject to the Renewal Term Discount as defined herein.
 - b. Charges for maintenance work performed by Contractor personnel during the Term that is billable to District, shall be billed to District at the following per person rates:

Normal Business Hours
(8 am to 5 pm M-F PST)

Non-Business Hours

Minimum call out charge
(1-hour minimum)

\$____.00 /hr

\$____.00 /hr

- c. In addition, Contractor will charge, and District agrees to pay, for all of Contractor's out of pocket costs for any subcontractor support and material required for any maintenance work that is billable to District. Prior to commencing billable maintenance work, Contractor will make a good faith attempt to obtain written approval from District to the estimated maintenance cost. All charges to District shall be commercially reasonable, including without limitation, all charges for subcontractor work. All subcontractors shall abide by the terms of this Agreement and Contractor shall be responsible for any breach of this Agreement by any of its subcontractors.

5. Additional Defined Terms:

- a. "Acceptance Date" shall be the date of the Acceptance Notice (or deemed acceptance) of the Fiber.
- b. "Acceptance Notice" shall be the written notice District provides to Contractor accepting the Fiber after Contractor provides test results of the Fiber Acceptance Testing.
- c. "Alterations to Facilities" shall mean moves or changes to existing Facilities (individually and collectively).
- d. "Business day" means a normal working day (i.e., Monday through Friday of each calendar week, exclusive of Federal and state holidays and one day following each of Thanksgiving, Christmas, and New Year's).
- e. "Demarcation Points" shall be defined as the connection points between the Contractor-owned or installed Fiber and District-owned fiber optic cable or peripheral equipment, generally a fiber distribution panel located within a secure communications equipment room within each Facility. Prior to construction, the Parties shall mutually agree upon the specific location of the Demarcation Points within the Facilities.
- f. "Deadline" shall be the completion of the Installation of Fiber to each Facility on a mutually agreed-upon schedule, provided that, the installation shall be complete on or before 12:01 a.m., Pacific Time, on July 1, 2019 for the elementary school and March 1, 2021 for the high school [may be negotiated].
- g. "Facility" and collectively, the "Facilities" shall be the following locations: 501 NW Bond St. Suite 1, Bend Oregon, 97703, New Elementary School 63558 OB Riley Road Bend, Oregon 97703 and New High School 60925 15th Street Bend, Oregon 97702.
- h. "Fiber" shall be fiber optic cable together with appurtenant hardware and telecommunications equipment, if applicable.
- i. "Fiber Acceptance Testing" shall be the bi-directional OTDR test of the Fiber circuit to verify that circuit performance to and between the Facilities is within industry standards and specifications.
- j. ["Lease" means the lease of dark fiber (8 unmanaged strands minimum per Facility).]
- k. ["Service" means the provision of data via 80 Gigabit lit fiber (8 dedicated 10 Gigabit circuits per Facility)]
- l. "Rejection Notice" shall be the written notice District provides to Contractor rejecting the Fiber after Contractor provides test results of Fiber Acceptance Testing and specifying the defect or failure in the that is the basis for District's rejection of the Fiber.

6. Statement of Work:

- a. Contractor agrees to provide Fiber and to provide fiber optic connectivity services or lease to and between 501 NW Bond St. Suite 1, Bend Oregon, 97703 and each of the following locations, each with a Bend, Oregon mailing address:

New Elementary School 63558 OB Riley Road Bend, Oregon 97703

New High School 60925 15th Street Bend, Oregon 97702

- b. Except for such specialized construction required to be completed by District as described in this Agreement, Contractor shall provide at its sole cost and expense all labor, materials and equipment required to install the Fiber between the Demarcation Points. Contractor shall install two-inch (2") EMT conduit, or such other appropriate sized conduit if approved by District, for all Fiber servicing the interior of the Facilities at Contractor's sole cost. The Fiber installed between the vault and each entrance to the building at each Facility shall be buried. The District must approve the path and location of any Fiber and/or any other components of the installation. This installation of the Fiber will include a fiber optic patch panel at each Facility. All installation of the Fiber and hard conduit shall be completed by Contractor in a good and workmanlike manner, free from all material defects in materials or workmanship in accordance with industry standards, and in accordance with all applicable laws and regulations now enacted or hereinafter promulgated. Any installation at District's Facilities or property owned or used by District must be completed in accordance with the District's policies and procedures regarding construction standards now existing or hereinafter implemented. Installation shall be completed by the Deadline. All installation and construction at the Facilities shall be completed during non-school hours and events to minimize interruption to school and school events. For the installation services described herein, the District shall pay a one-time installation fee of _____).
- c. As part of the services or lease provided under this Agreement, Contractor shall provide, at its sole cost, all maintenance services on Contractor-owned Fiber and other Contractor-owned peripheral equipment not located on District's Facilities,

including, without limitation all repairs required due to cable cuts, fires, or other acts of third parties or a Force Majeure Event, as well as routine scheduled maintenance of Contractor-owned Fiber and other Contractor-owned peripheral equipment located on District's Facilities on Contractor's side of the Demarcation Points, at no cost to District. A Service Level Agreement detailing response times shall be negotiated. All other maintenance of Contractor-owned Fiber and other Contractor-owned peripheral equipment (i.e., repairs required due to cable cuts, fires, other acts of third parties or a Force Majeure Event) located on District's Facilities on Contractor's side of the Demarcation Points shall be provided by Contractor to District at the rates set forth below:

	Normal Business Hours (8 am to 5 pm M-F PST)	Non-Business Hours
Minimum call out charge (1-hour minimum)	\$____.00 /hr	\$____.00 /hr

In addition, Contractor will charge, and District agrees to pay, for all of Contractor's out of pocket costs for any subcontractor support and material required for any maintenance work that is billable to District. Prior to commencing billable maintenance work, Contractor will make a good faith attempt to obtain written approval from District to the estimated maintenance cost. All charges to District shall be commercially reasonable, including without limitation, all charges for subcontractor work. All subcontractors shall abide by the terms of this Agreement and Contractor shall be responsible for any breach of this Agreement by any of its subcontractors.

- d. Contractor will use its commercially reasonable efforts to notify District as each Facility becomes available so that District can have as much time as possible to test the Fiber. On or prior to 11:59 p.m. on the Deadline, Contractor shall perform a Fiber Acceptance Testing and shall promptly provide District with a certified report of such test results. After Contractor provides the test results to District, District shall provide Contractor with an "Acceptance Notice" or a Rejection Notice. If the District fails to notify Contractor with an Acceptance Notice or a Rejection Notice of the final test results with respect to the Fiber within five (5) business days after District's receipt of such notice, District shall be deemed to have accepted the Fiber. In the event of any good faith rejection by District, Contractor shall take such action reasonably necessary and as expeditiously as practicable to correct or cure such defect or failure.
- e. Fiber shall be made available to District for circuit performance and testing as construction is completed at each Facility. District may elect to test and inspect such circuits when they are made available, but no service or billing will begin until on the later of: 12:01 a.m., Pacific Time, on July 1, 2019 or the Acceptance Date for the elementary school; and March 1, 2021 or the Acceptance Date for the high school.
- f. District has the option to make Alterations to Facilities subject to the terms of this Section.
 - i. During the Term, up to three (3) Alterations to Facilities from the Contractor backbone will be done by Contractor at no cost to District. The Per Facility Fee will be abated during any periods of Alterations to Facilities and will be subject to the Per Facility Fee from the date District accepts in writing the Alteration to Facility. All Alterations to Facilities will be complete in accordance with Section 6 (b) unless otherwise agreed in writing by the Parties.
 - ii. Any new construction for additional facilities would be subject to a separate written Agreement between the Parties, the form of which would be at District's sole discretion. Contractor shall negotiate with District in good faith and in a commercially reasonable manner regarding the addition and the per facility fee for any additional facilities.

7. Compliance with Laws. Contractor and District agree that the Fiber shall not be used in a manner that could be construed as a violation of this Agreement, or any laws, regulations, orders, and/or rules of any governmental authority having jurisdiction. District and Contractor agree to take all reasonable actions as may be appropriate to comply with all laws, regulations, orders and/or rules now existing or hereinafter enacted or promulgated that may be applicable to them by reason of the transactions contemplated in this Agreement. As to the portion of Contractor's installation of the Fiber from each Facility's property boundary to that Facility's Demarcation Point, Contractor agrees to treat each construction contract for the installation of those portions of its fiber optic communications system, as a "public work" contract that is subject to Oregon's "prevailing wage" laws, found ORS 279C.800 through 279C.870 (the "Prevailing Wage Laws"), and will comply with the terms and conditions set forth in Exhibit 1 hereto; provided, however, in the event the Oregon Bureau of Labor and Industries makes a ruling or other determination that any installation and/or construction contract for said portions of Contractor's fiber optic communications system are not subject to the Prevailing Wage Laws or exempt therefrom, then this sentence and the provisions of Exhibit 1 shall not be applicable to the extent permitted under the specific ruling until and unless a change in the law and/or a court ruling requires District and/or Contractor's compliance with the Prevailing Wage Laws, which determination will be made by District in District's reasonable discretion.

8. District Responsibilities. District shall, at its own expense, be solely responsible for the purchase, installation and maintenance of all terminals, fiber patch cords, and other peripheral equipment required by District to interconnect with the Fiber and with other fiber and/or copper telecommunications cable located on District's side of the Demarcation Points at each Facility. District shall also be solely responsible for granting to Contractor all easements or rights-of-way necessary to bring the Fiber from each Facility's

Demarcation Point to the property boundary of that Facility. Any easements granted to Contractor pursuant to this Agreement shall automatically terminate on the termination of this Agreement.

- 9. Contract Documents.** This Agreement is the only contract document. The Contract Documents consist of the following documents that are listed in descending order of precedence: This Agreement, Exhibit A - Statement of Work, Exhibit B- RFP and Addendum, and Exhibit C - Proposal.

A conflict in the contract documents shall be resolved in the priority listed above with this Agreement taking precedence over all other documents. The contract documents are the entire contract between the parties and shall supersede any prior representation, written or oral.

CONTRACTOR DATA AND SIGNATURE

Contractor is an independent contractor solely responsible for the work performed under this Agreement. Contractor, its subcontractors and employees shall not be deemed employees of the District. Contractor shall be responsible for all federal state and local taxes and fees applicable to payments for services under this Agreement.

Business Name:
Business Address:

Contractor Phone
Federal Tax ID# or Social Security #:

I certify under penalty of perjury that Contractor is a [check one]:

- ☐ Sole Proprietorship ☐ Partnership
☐ Corporation-for profit ☐ Corporation-non-profit
☐ Other [describe here: _____]

Federal tax ID numbers or Social Security numbers are required pursuant to ORS 305.385 and will be used for the administration of state, federal and local laws. Payment information will be reported to the Internal Revenue Service under the name and Federal tax ID number or, if none, the Social Security number provided above.

I have read this Agreement including, if applicable, the attached Exhibits. I certify that I have the authority to sign and enter into this Agreement. I understand the Agreement and agree to be bound by its terms.

X

Signature
X

Name (please print)

X

Title
X

Date

BEND-LA PINE PUBLIC SCHOOLS, SCHOOL DISTRICT NO. 1, DESCHUTES COUNTY, OREGON SIGNATURE

X

Signature (Deputy Clerk or Designee)

Name (please print)

Title
X

Date

STANDARD TERMS AND CONDITIONS

- 1. Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- 2. Subcontracts and Assignment.** Contractor shall not subcontract any of the work required by this Agreement or assign or transfer any of its interest in this Agreement, without the prior written consent of the District, which may be withheld without cause. In addition to any other provisions the District may require, Contractor shall require of any permitted subcontract under this Agreement, that the Sub-Contractor be bound by all the same terms and conditions of this agreement. Such sub-contracts are solely between the Contractor and the Sub-Contractor and shall not have any binding effect on the District.
This Agreement is not assignable by the Contractor, either whole or in part, unless Contractor has obtained the prior written consent of the District.
- 3. Other Contractors.** The District may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with such other contractors and with any District employees concerned with such additional or related work, and shall coordinate its performance under this Agreement with such additional or related work. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by District employees.
- 4. Independent Contractor Status.** Contractor shall certify status as an independent contractor and nothing herein is to be construed as establishing an employer-employee relationship.
- 5. No Third Party Beneficiaries.** The District and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.
- 6. Successors in Interest.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.
- 7. Nonperformance.** In the event of nonperformance under this Agreement, the District, after seven (7) days written notice, shall have the right to obtain from other sources such products and/or services as may be required to accomplish the work not performed, and it is agreed that the difference in cost, if any, for said work or goods shall be borne by the Contractor. For purposes of this section, nonperformance shall be defined as failure to appear and perform work and/or deliver goods as specified and scheduled.
- 8. Default.**

a. **District Default.** Any of the following shall constitute an event of default of District: (a) District fails to pay any Payment or any other amount owed to Contractor within thirty (30) days after written notice it is due; (b) District fails to perform or observe any other representation, warranty, covenant, condition or agreement with Contractor and fails to cure such breach within thirty (30) days after written notice provided that if the default is of such a nature that it cannot be completely remedied within the thirty-day period, this Section shall be deemed complied with if District begins correction of the default within such thirty (30) days and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable; (c) any representation or warranty made by District hereunder or in any other instrument provided to Contractor by District proves to be incorrect in any material respect when made; (d) a proceeding under any bankruptcy, reorganization, arrangement of debts, insolvency or receivership law or assignment of benefit of creditors is made by or against District; (e) District becomes insolvent or fails generally to pay its debts as they become due; (f) District voluntarily or involuntarily dissolves or is dissolved or terminates or is terminated; and/or (g) District fails to observe or perform any of its representations, warranties, and/or obligations with Contractor and fails to cure such breach within thirty (30) days after written notice by Contractor.

b. **Contractor Remedies.** In the event of a default by District, Contractor shall have the right to exercise any or all of the following remedies to the extent applicable: (a) terminate this Agreement; (b) declare all payments and other amounts under this Agreement immediately due and payable; (c) proceed to enforce the remedies of a secured party under Oregon law; proceed to enforce performance of this Agreement and any remedy provided for herein and/or recover all damages of any default or exercise any other right or remedy available at law or in equity; and/or (e) disconnect and/or remove the fiber optic cable and equipment.

c. **Contractor Default.** Any of the following shall constitute an event of default of Contractor: (a) any representation or warranty made by Contractor hereunder or in any other instrument provided to District by Contractor proves to be incorrect in any material respect when made; (b) a proceeding under any bankruptcy, reorganization, arrangement of debts, insolvency or receivership law or assignment of benefit of creditors is made by or against Contractor; (c) Contractor becomes insolvent or fails generally to pay its debts as they become due; (d) Contractor voluntarily or involuntarily dissolves or is dissolved or terminates or is terminated; (e) Contractor fails to observe or perform any of its representations, warranties, and/or obligations in this Agreement and/or any other agreement between the parties and fails to cure such breach within thirty (30) days after written notice by District.; and/or (f) If service is not installed on or before _____ to all Facilities.

d. **District Remedies.** In the event of a default by Contractor, District shall have the right to exercise any or all of the following remedies to the extent applicable: (a) terminate this Agreement; (b) proceed to enforce performance of this Agreement and any remedy provided for herein and/or recover all damages of any default or exercise any other right or remedy available at law or in equity; (c) any rights and remedies provided in another agreement between the parties; and (d) perform any repairs, maintenance, or other obligations of Contractor and recover from Contractor damages from Contractor. All of District's expenditures incurred to correct any Contractor default will be reimbursed by Contractor on demand at District's actual costs plus interest at the rate of twelve percent (12%) per annum from the date of expenditure by District until paid in full; and/or District may at its election offset any amounts owed by Contractor against its monthly Payments by providing written notice to Contractor.

e. **Removal on Termination.** On a termination of the Agreement for any reason, within thirty (30) days of District's written request, Contractor shall remove at its sole cost the Fiber from the District's Facilities.

f. **Consequences of Termination.** Termination of this Agreement by either Party will not constitute a waiver or termination of any rights, claims, and/or causes of action the Party may have against the other Party.

9. **Liquidated Damages.** In the event that Contractor is unable to provide the services to District on the terms provided in this Agreement to all the Facilities on or before 12:01 a.m., Pacific Time, on the Deadline, District will receive the greater of, as determined by District, the following: (i) Contractor will pay District, on demand, all costs, of whatever nature, to obtain alternative service and the amount of any lost E-Rate rebates and/or reimbursements incurred by District until the Facilities can be migrated to the Contractor network, or (ii) Contractor will pay District per day per Facility until each Facility is fully operational on the Contractor network which period will end on the Acceptance Date for each Facility as follows: \$50.00 per day commencing on the Deadline and continuing through one month, \$100.00 per day commencing on the second month after the Deadline, and continuing through one month, and \$200.00 per day commencing on the third month after the deadline and continuing each day thereafter. The Parties agree that the amount to be paid by Contractor to District under the terms of this Section are reasonable in light of the anticipated or actual harm caused by a delay in the delivery of the services to each Facility, the difficulties of proof of loss, and the inconvenience and nonfeasibility of otherwise obtaining an adequate remedy for District. Notwithstanding anything to the contrary contained in this Agreement, Contractor agrees that a Force Majeure Event will not relieve Contractor of any obligations pursuant to this Section.

10. Payment of Invoices

a. **Method of Payment.** Payment shall be approved monthly by the District, net thirty (30) days.

b. **Payment of Laborers.** The Contractor shall, to the extent that is required by Oregon State, Federal, and Local law:

- (i) Make payment promptly, as due, to all persons supplying to such Contractor labor or material for the prosecution of the work provided for this Agreement;
- (ii) Pay all contributions or amounts due the Industrial Accident Fund by the Contractor or subcontractors, if permitted, incurred in the performance of this Agreement;
- (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; and
- (iv) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any person in connection with this Agreement as such claim becomes due, the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of such Agreement.

The payment of a claim in this manner shall not relieve the Contractor or the Contractor's surety, if any, from obligation with respect to any unpaid claims.

c. **Payment for Medical Care.**

- (i) To the extent any of Contractor's employees are covered by the Oregon employment laws, the Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

d. **Non-Appropriation.**

- (i) If payment for work under this Agreement extends into the District's next fiscal year, District's obligation to pay for such work is subject to approval of future appropriations to fund this Contract by the School Board.

e. **Adequate Funding.**

- (i) Continuation of this Agreement, at specified levels, is conditioned on adequate funding under the Districts budget adopted in June of each year. District reserves the right to adjust the level of services in accordance with funding levels adopted.

11. **Remedies.** If a Party breaches or otherwise fails to perform any of its terms, covenants, conditions, and/or obligations under this Agreement, the non-defaulting Party may, in addition to any other remedy provided to the non-defaulting Party under this Agreement, pursue any and all remedies available to the non-defaulting Party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

12. Hours of Labor. For those employees of Contractor covered or subject to Oregon employment laws:

a. Persons employed under this Agreement shall receive at least time and a half pay for work performed on the legal holidays specified in ORS 279A.055 and for all overtime worked in excess of 40 hours in any one week, except for individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC 201 to 209 from receiving overtime.

b. Except as provided above, no person shall be employed for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or where the District absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055 the laborer shall be paid at least time and a half pay:

- (i) for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
- (ii) for all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; or
- (iii) for work performed on Saturday and on any legal holidays specified in ORS 279B.020.

For those employees of Contractor that are covered or subject to Oregon employment laws, Contractor must, pursuant to ORS 279B.020, give notice to employees who perform work on this Agreement, either at the time of hire or before commencement of work on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

13. Time Limitation on Claim for Overtime. To the extent any of Contractor's employees are covered by the Oregon employment laws, such covered worker employed by the Contractor shall be foreclosed from the right to collect for any overtime under this Agreement unless a claim for payment is filed with the Contractor within 90 days from the completion of the Agreement, providing the Contractor has:

- a. Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the work, and
- b. Maintained such circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.

14. Hazardous Chemicals. Contractor shall notify the District prior to using products containing hazardous chemicals to which the District students or employees may be exposed. Upon the District's request, Contractor shall immediately provide Safety Data Sheets for any such products.

15. Errors. The Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

16. Access to Records. The Contractor agrees that the District and its authorized representatives shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcripts. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. The district shall not have access to any records or information, regardless of form, medium or method of communication, that may identify individual employees, individual employee contact with the Contractor, employee counseling records, diagnoses, prognoses or treatment recommendations by the Contractor. Any information relative to employee use of the Contractor's services given to the District for the purposes of census, statistics or fiscal analysis shall be information in the aggregate and not identifiable or specific to individual employees.

Contractor shall maintain all fiscal records directly relating to this Agreement in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that the District's duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

17. When Work is performed on District Property (Including Schools). Contractor shall comply with the following:

- a. Identification. Contractor performing work on District Property or for District shall be in full uniform at all times. Uniforms shall include shirt with company identification attached. In addition, all such persons shall carry photo identification and will present such, to anyone on request. If such identification cannot be produced by Contractor, or is not acceptable to District, District may provide at its sole discretion, such identification tags to Contractor. Contractor shall bear the entire cost of producing and assigning such identification. Contractors that do not have specific uniforms for employees, shall provide identification tags as described above, and or any other mechanism, the District in its sole discretion determines is required to easily identify Contractors.
- b. Sign-in Required. As required by schools and other District locations, each day of work Contractor's employees shall sign into the Main Office to receive an in-school identification/visitors tag to be displayed on the person at all times they are in the school or other location.
- c. No Smoking. Smoking or other use of tobacco is prohibited on the District property.
- d. No Drugs. District property sites are designated drug-free zones.
- e. No Weapons or Firearms. Except as provided by Oregon Statutes and District policy, weapons and firearms are prohibited on District property.

18. When Work is performed in or on School Sites, Contractor shall comply with the following:

- a. No Unsupervised Contact with Students. Unsupervised contact with students means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Contractor will ensure that Contractor, any subcontractors, and their officers, agents and employees will have no direct unsupervised contact with students while on District property. Contractor will work with the District to ensure compliance with this requirement. If Contractor is unable to ensure through a security plan that none of its officers, agents or employees will have direct, unsupervised, contact with students in a particular circumstance or circumstances, Contractor shall so notify the District prior to beginning any Work that could result in such contact. Contractor authorizes District to obtain information about Contractor and Contractor's history and to conduct a criminal background check, including fingerprinting, of any officer, agent or employee of Contractor that will have unsupervised contact with students. Contractor also agrees to cause Contractor's employees and/or subcontractors, if any, to authorize District to conduct such background checks. Contractor shall pay all fees assessed by Oregon Department of Education and by the District's background check vendor for processing the background check. District may deduct the cost of such fees from a progress or final payment to the Contractor under this Agreement, unless the Contractor elects to pay such fees directly.
- b. Confidentiality. Contractor will not disclose any information or records regarding students or their families that Contractor may learn or obtain in course and scope of Contractor's performance of this Agreement.
- c. Child Abuse Reporting Act. Contractor shall comply with the child abuse reporting law (ORS 491B.005 through 419B.050) as if Contractor were a mandatory abuse reporter. Contractor shall immediately report to the proper state or law enforcement agency circumstances supporting reasonable cause to believe that any child has been abused. Contractor shall report to the Principal or designated school authority the circumstances supporting reasonable cause to believe that any child has been abused.

19. Employment Standards. At the direction of the District, contractor will immediately remove any employee of contractor from all District premises where the District determines, in its sole discretion, removal of such employee would be in the best interests of the District.

20. Security. Any disclosure or removal of any matter and/or property on the part of the Contractor or Contractor's employees shall be cause for immediate cancellation of the Agreement. Any liability, including, but not limited to, attorney fees, resulting from any action or suit brought against the District as a result of the Contractor's or Contractor's employees' willful or negligent release of information, documents or property contained in or on District property shall be borne by the Contractor. All information, documents and property contained within these facilities shall be considered privileged and confidential.

FERPA Re-disclosure. The Parties recognize that the Family Educational Rights and Privacy Act (FERPA) imposes strict penalties for improper disclosure or re-disclosure of confidential student information including but not limited to denial of access to personally identifiable information from education records for at least five years (34 CFR 99.33(e)). Therefore, consistent with the requirements of FERPA, personally identifiable information obtained by the Contractor in the performance of this Agreement: may not be re-disclosed to third parties without written consent of the students' parents/guardians; and must be used only for the purposes identified in this Agreement.

21. Compliance with Applicable Law. Contractor shall comply with all federal, state, and local laws applicable to public contracts and to the work done under this Agreement, and all regulations and administrative rules established pursuant to those laws.

22. Indemnity and Hold Harmless. The Contractor shall defend, indemnify, and hold the District, its officers, agents and employees, harmless against all liability, loss, or expenses, including attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property to the extent caused by any negligent act, error, or omission sustained in any way in connection with the performance of this Agreement or by conditions created thereby, or based upon violation of any statute, ordinance or regulation. This contractual indemnity provision does not abrogate common law or statutory liability and indemnification to the District, but is in addition to such common law or statutory provisions.

23. Waiver. Waiver of any default under this Agreement by the District shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Agreement.

- 24. Governing Law.** The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon and, rules of the District, as they appear at the time of signing or any subsequent addenda. Any legal action involving any question arising under this Agreement must be brought in Deschutes County Circuit Court. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.
- 25. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held invalid.
- 26. Merger Clause.** This Agreement and the attached exhibits constitute the entire agreement between the parties. All understandings and agreements between the parties and representations by either party concerning this Agreement are contained in this Agreement. No waiver, consent, modification or change in the terms of this Agreement shall bind either party unless in writing signed by both parties. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.
- 27. Anti-discrimination Clause.** Contractor must comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or political affiliation in programs, activities, services, benefits or employment. Contractor shall not discriminate against minority-owned, women-owned or emerging small businesses.
- 28. Attorney Fees.** If a suit or action is filed to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees. In the event the prevailing party is represented by "in-house" counsel, the prevailing party shall nevertheless be entitled to recover reasonable attorney fees based upon the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the metropolitan Portland, Oregon area for the type of legal services performed.
- 29. Rule of Construction.** The rule of construction that a Agreement is construed against the drafter shall not apply to any dispute over the interpretation of application of the Agreement.
- 30. Insurance.** Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below:

Workers Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide workers' compensation coverage in accordance with ORS Chapter 656 for all subject workers. Contractor and all subcontractors of Contractor with one or more employees must have this insurance unless exempt under ORS 656.027 THIS COVERAGE IS REQUIRED. Attach Certificate of Insurance. If Contractor does not have coverage and claims to be exempt, Complete Section 31 in lieu of Certificate.

Commercial General Liability insurance, on an occurrence basis, with a combined single limit of not less than: ☐ \$1,000,000, ☒ \$2,000,000 each occurrence for Bodily/Personal Injury and Property Damage, with an annual aggregate limit of ☐ \$1,000,000, ☒ \$4,000,000. This insurance must include contractual liability coverage. ☒ Required by District ☐ Not required by District

Commercial Automobile Liability insurance with a combined single limit, or the equivalent of not less than: ☐ \$500,000, ☒ \$1,000,000, ☐ \$2,000,000 each occurrence for Bodily Injury / Personal Injury, and Property Damage, including coverage for owned, hired or non-owned vehicles.
☒ Required by District ☐ Not required by District

Additional Requirements. Coverage must be provided by an insurance company admitted to do business in Oregon or rated A- or better by Best's Insurance Rating. Contractor shall pay all deductibles and retentions. A cross-liability clause or separation of insureds condition must be included in all commercial general liability policies required by this Agreement. Contractor's coverage will be primary in the event of loss.

Certificate(s) of Insurance Required. Upon Request of the District, Contractor shall furnish a current Certificate(s) of Insurance to the District within forty eight (48) hours. The ~~Certificate(s) shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days~~ Contractor shall provide 30 days prior written notice ~~from the Contractor's insurer~~ to the District ~~of any cancellation, termination, material change, or reduction of limits of the insurance coverage.~~ The Certificate(s) shall also state the deductible or retention level. For commercial general liability the Certificate shall also provide that the District, its agents, officers, and employees are Additional Insureds with respect to Contractor's services to be provided under this Agreement. If requested, complete copies of insurance policies shall be provided to the District.

31. WORKERS' COMPENSATION EXEMPTION CERTIFICATE (To be used ONLY when Contractor claims to be exempt from Workers' Compensation coverage requirements)

Contractor is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (check the appropriate box):

☐ **SOLE PROPRIETOR**

- Contractor is a sole proprietor, and
- Contractor has no employees, and
- Contractor will not hire employees to perform this Agreement.

☐ **CORPORATION - FOR PROFIT**

- Contractor's business is incorporated, and
- All employees of the corporation are officers and directors and have a substantial ownership interest* in the corporation, and
- All work will be performed by the officers and directors; Contractor will not hire other employees to perform this Agreement.

☐ **CORPORATION - NONPROFIT**

- Contractor's business is incorporated as a nonprofit corporation, and
- Contractor has no employees; all work is performed by volunteers, and
- Contractor will not hire employees to perform this Agreement.

☐ **PARTNERSHIP**

- Contractor is a partnership, and
- Contractor has no employees, and
- All work will be performed by the partners; Contractor will not hire employees to perform this Agreement, and
- Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.**

☐ **LIMITED LIABILITY COMPANY**

- Contractor is a limited liability company, and
- Contractor has no employees, and
- All work will be performed by the members; Contractor will not hire employees to perform this Agreement, and
- If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.**

***NOTE:** Under OAR436-50-050 a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation, or if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

****NOTE:** Under certain circumstances partnerships and limited liability companies can claim an exemption even when performing construction work. The requirements for this exemption are complicated. (To be signed ONLY when Contractor claims to be exempt from Workers' Compensation coverage requirements)

Consultant Printed Name

Consultant Signature

Date

Exhibit 1

Prevailing Wage Law Provisions

(1) Workers will be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and ORS 279C.840. Current prevailing wage rates can be viewed at <https://www.oregon.gov/boli/WHD/PWR/Pages/July-1.-2018.aspx>. [ORS 279C.830 (1) (c)]

(2) If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor by any person in connection with the agreement as the claim becomes due, the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this agreement. [ORS 279C.515(1)]

(3) A person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of agreements for personal services as defined in ORS 279C.100, the employee will be paid at least time and a half pay:

(a) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(b) For all overtime in excess of 10 hours in any one day or 40 hours in one week when the work week is for consecutive days, Monday through Friday; and

(c) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.
[ORS 279C.520 (1)]

(4) Contractor will give notice in writing to employees either at the time of hire or before commencement of work on the agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. [ORS 279C.520 (2)]

(5) Contractor will promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any agreement for the purpose of providing or paying for the services. [ORS 279C.530 (1)]

(6) Contractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8), or (9). [ORS 279C.830 (2)]

(7) Contractor will include in each subcontract a requirement that the subcontractor have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (7) or (8). [ORS 279C.830 (2)]

(8) Contractor will not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or materials. [ORS 279C.505(c)]