

Request for Proposal
23-24-240

Telecommunications Services
- Data Circuits and Internet Services

November 13, 2023

National School District
Purchasing Department
1500 N Avenue
National City, CA 91950
(619) 336-7718

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**National School District
Request for Proposal 23-24-240
Telecommunications Services - Data Circuits and Internet Services**

1 INTRODUCTION

National School District (NSD) has ten school sites and one District Office located throughout National City, California. NSD invites interested parties (Vendors) to submit a proposal for RFP 23-24-240 Telecommunications Services – Data Circuits and Internet Services. The District is looking for proposals from vendors who provide both wide area network (WAN) and internet services.

Since NSD will apply for funding through the Universal Service Administrative Company ("USAC"), and/or the Schools and Libraries Division ("SLD"), also known as the "E-Rate program," it will procure all eligible goods and services under the established guidelines of this federal program. Potential Vendors participating in this RFP must familiarize themselves with the terms and conditions of the E-Rate program and regulations, especially as it relates to the acquisition process, including but not limited to the requirements listed in Section 2.2 of this RFP.

In the event that your Proposal necessitates construction work, the Vendor shall be a licensed Vendor pursuant to the Business and Professions Code and shall be licensed in the following classification:

B – General Contractor

NSD invites qualified Vendors to present a proposal for goods and services based on the information outlined in this document.

NSD reserves the right to reject any or all proposals and to waive any irregularities therein.

2 ADMINISTRATIVE GUIDELINES

2.1 SCHEDULE OF EVENTS

Proposal is due to the specified location listed below no later than 12:00 PM on December 11, 2023.

This tentative schedule has been developed to provide National School District sufficient time to make prudent decisions and to ensure timely implementation and cutover of the required systems, applications, goods and services. Any scheduling changes will be negotiated with Vendors.

DATES

November 13, 2023
November 22, 2023
December 11, 2023
TBD

EVENT

Release of Request for Proposal
Question Submittal Due Date, 3:00 PM
Proposal Due Date, 12:00 PM
Award of Contract

All questions should be submitted to jhansen@nsd.us by the question submittal due date listed above. Questions may also be submitted in writing to:

Jon Hansen
Director of Business Support Services
1500 N Avenue
National City, CA 91950

By the date and time specified in the schedule above, three (3) hard copies and one (1) soft copy of the RFP response must be sent to:

Jon Hansen
Director of Business Support Services
National School District
1500 N Avenue
National City, CA 91950

Any proposals submitted after the due date and time of day will be deemed non-responsive and will not be considered in the selection process.

2.2 RFP RESPONSE FORMAT

Appendices A, B, C, E, G and all Quotation sheets in and all information requested in Sections 5 and 6 must be completed, signed (where applicable), and included with the proposal submittal.

Responses to this RFP must be submitted in the format and order outlined below. The proposal should present all information in a concise manner, neatly arranged, legible, and in terms understandable for evaluation. All information requested is to be addressed directly and completely. It is more desirable to give additional information than less when the answer could be misinterpreted. Vendor must submit a complete response to this RFP. It is requested that the Vendor follow the numbering sequence exactly in notating responses to specific sections and questions.

Vendors must respond in a clear and professional manner.

The Vendor must include a quote summary. All hardware, software and services proposed must be contained in the quote summary. The Vendor may use summary sheets in their own format.

There should be no attachments, enclosures, or exhibits other than those considered by the Vendor to be essential to a complete understanding of the proposal submitted. Each section of the proposal must be clearly identified with the following headings, and in the order specified, as detailed in Part I through Part XI:

Part I DESCRIPTION OF FIRM(S)

Provide a brief description of your firm(s), as well as any other firm(s) joining with your firm(s) to provide services. This description should include a history of the firm(s), number of employees, organizational structure of the firm(s), and a recent financial statement.

List and describe the certifications and manufacturer authorizations requested in this RFP.

Submit, under separate cover, an audited financial statement of the last two years of operation.

Part II EXPERIENCE AND QUALIFICATIONS OF FIRM(S)

Vendor must possess all certifications and licenses from manufacturer to sell and provide service for all existing and new equipment and software included in this RFP.

Provide a brief overview of your technical experience, qualifications, and background in providing and maintaining specified hardware for similarly sized customers. Indicate the prior experience of your firm that you consider relevant to this contract. Include sufficient detail to demonstrate the relevance of such experience.

Subcontractor Requirements

Any Subcontractor performing services against this agreement must be fully listed and detailed in the proposal submitted by Vendors. State any work proposed to be provided by a Subcontractor, and provide evidence of each Subcontractor's capability and willingness to carry out the work. For each proposed Subcontractor, include firm name and address, management contact person, and complete description of work to be subcontracted. Include descriptive information concerning Subcontractor's organization and abilities.

Vendor hereby agrees to bind every Subcontractor by the terms and conditions of this Proposal agreement as far as such terms and conditions are applicable to the Subcontractor's work. If Vendor subcontracts any part of this agreement/contract, Vendor shall be as fully responsible to NSD for acts and omissions of his Subcontractor and of persons either directly or indirectly employed by Vendor. Nothing contained in these contract documents shall create any contractual relation between any Subcontractor and NSD.

Part III PROPOSED METHODOLOGY FOR PROVIDING SERVICES

Describe in technical detail the methodology by which you would provide the required services.

Proposals submitted must also address how the Vendor will ensure that NSD will receive accurate invoicing within 60 days of the term commencement date.

Part IV SERVICE LEVELS PROVIDED

Provide your standard installation time frames, response to problems, and restoration time periods for all services proposed.

**Part V
REFERENCES**

Provide at least six (6) references for which your firm provided services of a similar nature. A minimum of three (3) references should be local to the San Diego region, (excluding National School District as a reference). State your role in this project. Provide the name, title, and phone number of an individual at each reference site whom we can contact for information. Inform your references that we may be contacting them to discuss your performance, if you are among those selected for consideration.

**Part VI
SERVICES**

Provide information and answers to the following questions:

1. Is a designated account executive assigned for implementation coordination, account maintenance, and review of problems? If so specify such in detail.
2. How frequently does the account team review accounts, including invoices?
3. Is 24-hour customer service included? If so, please provide methods of access.
4. Do you have a local office for service?
5. Will NSD's account team be located in San Diego for the duration of the contract?
6. Do you have a single point of contact assigned for assistance, such as adds, changes, or billing questions? Also, Vendors must provide contact information for escalation of unresolved account issues.

**Part VII
COSTS AND PRICING**

One (1) price will be accepted per Vendor per proposed solution, and this quoted price should be your best and most competitive price.

Vendors shall complete all sections, answer all questions and fill in the cost matrixes in Section 5.0 of the RFP with all applicable rates, fees, taxes, and surcharges. NSD is exempt from federal excise taxes. Also, NSD does not pay late fees. All pricing offered is to be inclusive of all applicable rates, fees, taxes, surcharges, cutover charges, account set up charges, and all service cancellation/termination fees and charges in the event of cancellation/termination of this agreement.

Also, Vendors shall provide specific reference (i.e., web links) to the relevant price guides that were the basis of the Vendor's proposal. Vendors must delineate between what costs are E-rate eligible and what costs are E-Rate ineligible.

Vendor shall provide list of Trade-In costs and/or credits for existing NSD owned equipment (where applicable). Supporting hardware, software, training, maintenance, documentation, and other goods and services should also be included.

**Part VIII
BILLING**

It is expected that billing will be provided in both paper and electronic format and will contain itemized detail. All billing/invoicing shall be in accordance with rates quoted herein. NSD shall not be subject to charges not detailed or quoted herein.

Other invoice specifications:

- While this RFP includes service at multiple NSD locations, only a single invoice shall be generated and sent to the primary mailing address for NSD.
- NSD may elect to summarize service by each location. Please state any minimum fees per sub account or location with this format.
- State if web-based invoices are available. What are the associated costs, features, and limitations of the program (i.e., bill review, order placement and tracking, etc.)?
- Is a single account representative available for billing assistance? If so specify in detail.
- Vendor agrees to provide California Teleconnect Fund and E-Rate discounts in a timely manner on a monthly basis.

- Vendor shall describe their methodology for resolving billing issues. The Vendor will be responsible for identifying and correcting all errors in a reasonable timeframe. For billing errors identified by NSD, Vendor will provide adjustment of charges within two bill cycles of notification.
- Vendors must provide policy regarding the issuing of credits. Are all credits applied as adjustments on future invoices, or may NSD elect to receive a payment check if desired? Also, Vendor will make adjustments for all verified errors at anytime during the contract, regardless of the timeframe between the original charge and the final resolution.

Upon request by NSD or the E-Rate authorities, the Vendor must provide in a timely manner billing data, component specifications, and other documentation requested in order to comply with E-Rate program rules. If a failure by the Vendor to provide requested E-Rate documentation results in the loss of E-Rate anticipated or approved funding, the Vendor shall compensate NSD an amount no less than the loss.

The successful Vendor shall be responsible for providing NSD the applicable E-Rate discounts in accordance with E-Rate program rules and requirements. NSD specifies that the Service Provider Invoice (SPI) be used so that NSD can take advantage of California Teleconnect Fund (CTF) and E-rate credits. Confirm that your company is certified to offer California Teleconnect Fund (CTF) discounts.

Additionally in this section of the submitted proposal, Vendors are to detail their proposed methodology for providing the E-Rate and CTF discounts to NSD.

Part IX EVIDENCE OF RESPONSIBILITY

The Vendor must demonstrate to NSD's satisfaction that both the Vendor and the manufacturer(s) of the proposed systems are financially sound and are likely to remain strongly committed to the data communications field and the San Diego area for the next ten (10) years.

Vendor must submit, with the proposal, a copy of their most recent annual report. If Vendor is not a public corporation or has no annual report available, verifiable financial information of a comparable nature to an annual report must be provided. NSD shall consider such evidence before making its award decision. Failure to submit adequate evidence of Vendor's responsibility to perform may result in rejection of the proposal.

If the Vendor is currently in a state of bankruptcy, it must provide written verification that it will honor the submitted cost proposal after re-organization.

Part X E-RATE REQUIREMENTS

NSD wishes to apply for Federal Universal Service Fund (E-Rate) discount funding for E-Rate eligible goods and services such as those in this RFP. The Vendor must: (a) provide NSD a valid SPIN** (Service Provider Identification Number) as part of the response to this RFP, (b) file its annual SPAC (Service Provider Annual Certification) form, (c) remain in good standing with the E-Rate authorities (FCC, USAC/SLD) throughout the life of any contract awarded as a result of this RFP, (d) notify NSD if the Vendor has any unresolved delinquent debt with the E-Rate authorities that might invoke the 'red light' rule barring Vendor from full participation in the E-Rate program, and (e) the Vendor must identify an E-Rate knowledgeable single point of contact who can serve as NSD's contact with the Vendor in all matters related to E-Rate.

**If the Vendor does not have a SPIN, the Vendor must acquire a SPIN and include it as part of the response to this RFP. Failure to have a SPIN at proposal opening will disqualify the proposal. Instructions for obtaining a SPIN can be found on the USAC web site <http://www.usac.org/sl/>. Select 'Service Providers,' then select Step 1. Vendor must determine which goods and services it offers are E-Rate eligible.

In the event NSD is applying for E-Rate discount funding on the products and services in this RFP, the Vendor shall guarantee that the products and services it provides are E-Rate eligible for discounting. Vendors must remain aware of changes in eligibility of E-Rate goods and services related to this RFP and adjust their billing or reporting accordingly.

Service providers cannot charge E-Rate applicants a price above the LCP for E-Rate services. See 47 CFR Section 54.511(b). LCP is Lowest Corresponding Price and defined as the lowest price that a service provider charges to nonresidential customers who are similarly situated to a particular E-Rate applicant (school, library, or consortium) for similar services.

Part XI SUBCONTRACTOR

Vendors must provide in their Proposals:

- The complete names and addresses and contractor's license numbers of all Subcontractors proposed to be used;
- The type and percentage of work each proposed Subcontractor will be providing;

- Each proposed Subcontractor's qualifications to perform such work;
- A minimum of three (3) customer references (with contact names, contract amounts, and telephone numbers) for similar scope and magnitude of work that each proposed Subcontractor has performed within the past three years;
- A written statement from each proposed Subcontractor verifying their commitment to perform the goods and services indicated to be completed by them;
- Evidence of all proposed Subcontractor's valid City business and California State Vendors licenses.

Part XII

SUBMISSION OF SEALED PROPOSALS

Once the Proposal and supporting documents have been completed and signed as set forth herein, they shall be placed, along with the required surety and other required materials in an envelope, sealed, addressed and delivered or mailed, postage prepaid to the NSD at the place and to the attention of the person indicated in the Notice Inviting Proposals. No oral or telephonic proposals will be considered. No forms transmitted via the internet, e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by NSD as provided herein. The envelope shall also contain the following in the lower left-hand corner thereof:

(Proposer's Name)
For the National School District RFP 23-24-240
Telecommunications Services – Data Circuits and Internet Services

2.3 INSTRUCTIONS AND GENERAL INFORMATION

2.3.1 Location of Work

Any necessary work will be performed at the National School District locations listed in Appendix F.

2.3.2 NSD Project Manager

NSD will assign a project manager to become the single point of contact once the contract has been awarded.

2.3.3 Proposal Processing

Proposals will be publicly opened.

2.3.4 Questions Regarding Quotes/Project Issues

All questions regarding the project shall be put in writing and directed to jhansen@nsd.us throughout the RFP process up to the due date listed for inquiries.

2.3.5 Review of Project Work

Before submitting a proposal, the Vendor shall consider the magnitude of work to be done and the difficulties involved in its proper execution. Vendor shall include in any proposal all costs necessary to cover all contingencies essential to the proper installation of any system, equipment/hardware or service proposed.

No claims for compensation will be allowed for extra work resulting from ignorance of any existing condition on the part of the Vendor.

2.3.6 No National School District (NSD) Obligation

Receipt of proposals in response to this RFP does not obligate NSD in any way. The right to accept or reject any proposal shall be exercised solely by NSD. NSD shall retain the right to abandon the RFP process at any time prior to the actual execution of a contract with a Vendor, and NSD shall bear no financial or other responsibility in the event of such abandonment.

2.3.7 Warranty and Service Capabilities

Proposals will not be accepted from Vendors who cannot provide full warranty and service capabilities in the San Diego area for all systems being proposed.

2.3.8 Authorized Signature

An individual authorized to legally bind Vendor must sign quotes.

2.3.9 NSD Not Responsible for Preparation Costs

All costs incurred in the preparation, submission and/or presentation of proposal responding to the RFP, including, but not limited to, the Vendor's travel expenses to attend any pre-proposal conferences, oral presentations, equipment demonstrations, long distance charges, and negotiation sessions, shall be the sole responsibility of the Vendor and will not be reimbursed by NSD. As noted above, NSD shall not pay for any costs incurred for proposal or contract preparation as a result of termination of this RFP or termination of the contract resulting from this RFP.

2.3.10 Contract Approval

As noted above, this RFP does not obligate NSD until a contract in a form agreeable to NSD is signed and approved by both parties. If approved, it is effective from the date of approval by NSD. NSD shall not be responsible for work done, even in good faith, prior to approval of a contract by NSD unless NSD and the Vendor execute a Letter of Intent authorizing the work.

2.3.11 Right to Use Ideas

All Proposals (Responses and Quotes) submitted become the property of NSD. NSD reserves the right to use any ideas presented in any response to the RFP, while respecting proprietary information provided by the Vendor. Selection or rejection of the proposal shall not affect this right.

2.3.12 Inclusion of RFP

NSD's Request for Proposal, and the Vendor's response, will be incorporated into the finalized Agreement as Exhibits. Wherever there is variance between the language in Vendor's standard Purchase Agreement and the requirements and commitments stated in NSD's RFP and Vendor's response, those requirements and commitments would take precedence over the Vendor's standard Purchase Agreement. NOTE: See "Conflicts in Terms" clause below for further clarification.

2.3.13 Inclusion of Support Materials

Proposals must be accompanied by brochures, product cut sheets and/or specification sheets providing technical specifications as well as specific descriptions of goods and services and systems referenced in this RFP. If the literature, photographs or drawings differ in any manner from the systems and equipment being proposed, such differences MUST be explained in detail.

2.3.14 Contract Negotiations

Upon preliminary Vendor selection, contract negotiations shall commence. If the selected Vendor fails to provide the necessary information for negotiations in a timely manner, does not negotiate in good faith, or cannot perform the contract for the project, NSD may elect to terminate negotiations, negotiate with another Vendor, or terminate the entire acquisition process.

2.3.15 Evaluation of Proposals

Each proposal response will be reviewed based on the criteria set forth in this RFP. The selection process for the Vendor(s) will include the following evaluation and point assignment/rating criteria:

- **E-Rate Eligible Cost/Pricing (40 points maximum)** - NSD will consider and rate the explanation and detail of rates and fees.
- **Strength of Vendor and References (15 points maximum)** – NSD will consider and rate the financial soundness, stability, qualifications, and depth of knowledge of the Vendor staff. Also, NSD will consider the acceptability of the references presented by the Vendor.
- **Experience and Knowledge (15 points maximum)** - NSD will consider and rate the experience in providing, installing and maintaining specified hardware for customers, knowledge of current state-of-the-art technology, and experience in managing E-Rate projects of similar scope and nature in a regional setting and with large K-12 educational institutions.
- **Methodology (5 points maximum)** - NSD will consider and rate the Vendor's guaranteed response time for onsite service.
- **Service Level (10 points maximum)** - NSD will consider and rate the quality of the Vendor's billing capabilities, account support team, and response time in installation, repair and restoration of service handling and resolution of billing issues/problems.
- **Technology (15 point maximum)** - NSD will consider and rate how the proposed technology benefits the district from aspects of cost, features and management capability and efficiency. How well does the proposed technology integrate with the district's existing infrastructure? Does the proposed technology enhance or inhibit the district's technology?

NSD reserves the right to select, up to, the top three (3) finalists for oral interviews and negotiations based on NSD's analysis and rating of the proposal package. These negotiations will have an additional point rating of up to 15 points. These interviews will be conducted in order to discuss the proposals submitted and to evaluate company expertise, qualifications, operations and services

deemed by NSD to be in its best interests. Different rating criteria will be used to evaluate finalists in the interview process. E-Rate Eligible Cost/Pricing will also be the most heavily weighted criteria in this phase as required by E-Rate regulations.

Clarification of Proposal

NSD reserves the right to contact any and all firms submitting proposals for the purpose of clarifying any issues related to the proposal submitted. Each proposal must identify one contact person authorized to interpret the Vendor's proposal. This contact person must be available to answer questions via telephone between 8:00 AM and 4:00 PM weekdays from December 11, 2023 to January 9, 2024.

2.3.16 Functionally Equivalent Equipment and/or Services

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturer's or Vendors' names, trade names, catalogue number, etc., it is intended merely to establish a standard; and, any material, article, or equipment of other manufacturers and Vendors which are functionally equivalent will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of NSD, of equal substance and function. Substitute items may be rejected at the discretion of NSD.

Providers who have functionally equivalent solutions to this RFP have the same response deadline as all other respondents, but during the evaluation phase NSD may seek additional information or require demonstrations of compatibility or equivalency.

2.3.17 Performance Bond/Payment Bond

A performance bond in the amount of one hundred percent (100%) of the contract price issued by an admitted Surety approved to conduct business in the State of California approved by NSD in the form set forth in the contract documents will be required for this project. In contracts involving an expenditure in excess of \$25,000.00, the successful Vendor, shall file a payment bond issued by an admitted Surety approved to conduct business in the State of California approved by NSD in the form set forth in the contract documents. A payment bond must be filed for a contract involving an expenditure in excess of \$25,000.00 (Civil Code Section 3247(a) and may be required for contracts involving smaller expenditures at the option of NSD.

2.3.18 Delivery of Bonds, Certificates, etc.

Unless otherwise specified herein, the successful Vendor shall, within fourteen (14) calendar days after notice by NSD, sign and deliver all bonds, other than the proposal bond, certificates of insurance, and other required documents. In the event the Vendor to whom an award is made fails or refuses to deliver such documents, NSD may reject the Vendor's proposal and may award the contract to the next responsible Vendor, or may reject all Proposals and call for new Proposals.

2.3.19 Filing of Protests

Vendors may file a "protest" of a Proposal with NSD's Director of Business Support Services. In order for a Vendor's protest to be considered valid, the protest must:

- A. Be filed in writing within five (5) calendar days after date the review is completed and the successful vendor is announced;
- B. Clearly identify the specific irregularity or accusation;
- C. Clearly identify the specific NSD staff determination or recommendation being protested;
- D. Specify, in detail, the grounds of the protest and the facts supporting the protest; and
- E. Include all relevant, supporting documentation with the protest at time of filing.

If the protest does not comply with each of these requirements, it will be rejected as invalid.

If the protest is valid, NSD's Director of Business Support Services, or other designated NSD staff member, shall review the basis of the protest and all relevant information. The Director of Business Support Services will provide a written decision to the protestor. The protestor may then appeal the decision of the Director of Business Support Services to the Assistant Superintendent of Business Services.

2.3.20 Registration with Department of Industrial Relations

Pursuant to Labor Code Section 1725.5, contractors and all subcontractors must be registered with the Department of Industrial Relations (DIR) in order to perform work on, to be listed in a Proposal for a public works project or to engage in the performance a public works contract. A complete list of DIR registration numbers of all second and third tier subcontractors included on the project will be due at Proposal opening. Failure to provide the complete list may result in a determination of non-responsiveness. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Contractor and any subcontractors engaging in work on the Project are required to review and comply with the provisions of the California Labor Code, Division 2, Part 7, Chapter 1, beginning with Section 1720, and the regulations of the Department of Industrial Relations implementing those provisions. These statutory and regulatory provisions contain specific requirements concerning, for example, the determination and payment of prevailing wages, retention, inspection, and auditing of payroll records, use of apprentices, payment of overtime compensation, and various penalties or fines which may be imposed for violations of the requirements of the chapter. Submission of a

Proposal constitutes the Vendor's representation that it has thoroughly reviewed these statutory and regulatory requirements and agrees to bind every subcontractor performing work on the Project to these requirements to the extent such requirements are applicable to the subcontractor's work.

2.4 CONTRACT INFORMATION / TERMS AND CONDITIONS

NSD believes terms and conditions presented in this RFP to be reasonable and necessary to protect NSD's best interests. NSD assumes a proposal implicitly agrees to meet all terms and conditions unless the proposal includes specific exceptions, with proposed alternatives. Therefore, NSD expects the selected Vendor to accept them as an integral part of any contract resulting from this RFP. In the event Vendor disagrees with or cannot comply with any provisions listed herein, Vendor must provide a full explanation of their objection to the specific item (identifying it by specific Section number, title and page), and provide alternative verbiage that they deem acceptable.

Vendors recognize that any exceptions taken may result in Proposal disqualification and that the absence of Proposal disqualification does not imply NSD acceptance of any alternative verbiage.

2.4.1 Contract Resulting from the RFP

NSD intends to enter into a thirty-three (36) month contract awarded under this RFP.

This contract will be for described and proposed goods and services within this RFP which cover the period from July 1, 2024 to June 30, 2027. The contract may be renewable at the sole discretion of NSD for up to two (2) additional years. The contract should also cover turnkey implementation of all proposed electronics and associated management software implementation (with adds/deletes made under an agreed pricing schedule).

NSD's plans to procure services provided under this contract are contingent upon NSD receiving a fully-funded E-Rate Funding Commitment Decision Letter (FCDL) for each year of eligible services, but the receipt of an FCDL does not obligate NSD to procure any service or item. No termination liability penalties will apply if the E-Rate monetary discounts are denied, reduced, or discontinued.

When E-Rate discount funding is sought for a project, 'Notice to Proceed' may not be issued unless specifically authorized by NSD. In some cases due to costs or budget, notices to proceed may be withheld until E-Rate discount funding acceptable to NSD is confirmed from E-Rate sources outside of NSD's control. If E-Rate discount funding is not confirmed, NSD reserves the right to determine if the project will continue without E-Rate funding or terminate the contract at no cost and with no penalty to NSD. Alternatively, NSD reserves the right to reduce the scope of work and contract amount if E-Rate discount funding is below the desired funding level or it is not in the best interests of the District.

Confirmation of E-Rate funding normally commences near May of each year, and may occur any time thereafter. In the event E-Rate funding is to be used, project work may not start before the funding year begins, which is July 1 of any year. However, if the service depends on the installation of the infrastructure; program rules permit applicants to request E-Rate program discounts for non-recurring charges incurred up to six months prior to the July 1 start of the funding year (i.e., on or after January 1), provided that: (1) Construction begins after selection of a service provider pursuant to a valid competitive bidding process; (2) The Category One recurring service depends on the installation of the infrastructure; (3) The service start date is on or after the start of the funding year; and (4) No invoices can be dated prior to July 1 of the funding year.

2.4.2 Contract Termination

NSD will reserve the right to terminate any contract signed without penalty, due to non-compliance of any products and or goods and services listed in the contract, of which this request for proposal all marketing materials and the response to the RFP have become a part.

While NSD will provide a 30-day written notice for contract termination, NSD reserves the right to grant the Vendor a grace period of 30 days to resolve noncompliance issues. Application of this and additional grace periods will be granted at the discretion of NSD.

NSD will not waive its future rights of contract termination should they decide to waive their rights due to any 'non-compliance' issue.

If E-Rate discount funding is not confirmed, NSD reserves the right to determine if the project will continue without E-Rate funding or terminate the contract at no cost and with no penalty to NSD.

2.4.3 Term Service Costs

Vendor agrees that costs shall not be increased during the initial term or any renewal thereof for any reason whatsoever, except to the extent such increase is in any underlying prices for identical goods and services. In addition to the foregoing, Vendor agrees that such costs shall be decreased during the initial term or any renewal thereof if the underlying prices for similar goods and services are decreased and such decrease shall be proportionate to the decrease in the underlying prices.

2.4.4 New Technologies

Should NSD move to new technologies in the future, no penalties should apply if the new goods and services are provided by the same Vendor, or if the new goods and services are provided by a new Vendor because the contracted Vendor does not provide the new technology. The volume discount must remain constant for the goods and services originally offered.

2.4.5 Semi-Annual Vendor Service Review

On a periodic basis but not less than semi-annually, Vendor shall describe to NSD any new rate plans and service options, including additional discount plans, that become available and that may be useful to NSD. Vendor shall also provide NSD with written notice and copies of any revisions of the tariffs pursuant to which NSD obtains service.

2.4.6 Right to Competitive Goods and Services from other Providers

NSD shall at all times during the term of this agreement, have the right to obtain similar goods and services from other providers.

2.4.7 RFP and Quote as Part of the Contract

The successful Quote, this RFP (specifications & drawings) and any NSD generated Amendments and Addendums to this RFP shall all become an integral part of any Vendor / NSD contract resulting from this RFP.

2.4.8 Previous Contracts with Vendor

Any contract or agreement reached with Vendor will supersede any existing agreement(s) with Vendor for goods and services covered under the contract or agreement.

2.4.9 Funding of the Contract

A contract or agreement resulting from this RFP is subject to the availability of E-Rate funding appropriations to pay for the goods and services received under the contract.

2.4.10 Warranties

Vendor must warrant that all project components including associated labor referenced in any Agreement resulting from this RFP shall, under normal use and service, be free from defects and faulty workmanship for a minimum of one (1) year from the date of total Service Acceptance ("Warranty Period").

2.4.11 Indemnification

Vendor shall defend (with counsel of NSD's choosing), indemnify and hold NSD, its officials, officers, agents, employees, and representatives free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, to the extent arising out of or incident to any acts, omissions or willful misconduct of Vendor, its officials, officers, employees, agents, consultants and Vendors arising out of or in connection with the performance of the Work or this Contract, including claims made by Subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Vendor shall defend, at Vendor's own cost, expense and risk, with counsel of NSD's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against NSD, its officials, officers, agents, employees and representatives. To the extent of its liability, Vendor shall pay and satisfy any judgment, award or decree that may be rendered against NSD, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Vendor shall reimburse NSD, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code Section 2782.

2.4.12 Standards for Equipment and Materials

All purchased equipment and materials shall be new. All purchased equipment and materials shall be the latest models and versions of all hardware/software/firmware as approved by NSD, and shall conform to the highest current applicable industry standards. Defective or damaged equipment and materials shall be replaced or repaired, in a manner which meets the approval of NSD and at no additional cost to NSD.

During the Warranty Period (after Service Acceptance) and during any subsequent Vendor provided maintenance period, Vendor may provide replacement of defective equipment/components with new equipment/components. Such replacement equipment/components shall be of equal or greater performance characteristics, engineering/design levels, and appearance than replaced equipment/components. Integrity of existing warranty must be maintained.

2.4.13 Delivery and Risk of Loss

Vendor and its insurers, shall bear responsibility for all risk of loss or damage to Customer Premise Equipment (CPE) systems and all ancillary equipment until such systems are accepted, except to the extent such damage or loss is directly caused by NSD. NSD shall promptly notify Vendor of any loss or damage and cooperate in the processing of any claims made by Vendor.

2.4.14 Business Licenses

Vendor and all Subcontractor are required to hold valid Vendor and business licenses that may be required by the City of National City, County of San Diego, and/or the State of California.

2.4.15 Permits, Ordinances and Regulations

Any and all fees required by Federal, State, County, Municipal, NSD and any other applicable laws, codes and/or tariffs that pertain to equipment being supplied or work being performed by the Vendor will be paid by the Vendor.

All applicable permits required by law, codes, ordinances, tariffs and/or regulations will be obtained by and paid for by the Vendor, and Vendor shall give all notices that are required in connection therewith.

Vendor shall comply with all applicable licensing requirements, and applicable Federal, State and local laws, regulations, ordinances and codes which are in effect at the time of execution of any contract resulting from this RFP and which place obligations on the Vendor with respect to its performance under any subsequent contractual agreement. No claims for additional payment will be approved for changes required to comply with laws, codes, ordinances, tariffs or regulations in effect on the date of execution of any contracts that result from this RFP.

2.4.16 Work Performance and Standards

Vendor warrants and represents to NSD that the installation of all contracted goods and services shall be completed in a good and workmanlike manner and in accordance with the highest standards of the industry.

2.4.17 Vendor Project Management

Vendor warrants that all contracted work shall be managed, to NSD's satisfaction, by a qualified and designated Vendor project manager, who shall: a) attend all scheduled project status meetings (including responsibility for generating and distributing meeting minutes); b) be available to NSD at all reasonable times; c) be responsive to NSD's questions, problems and/or concerns; d) be on-site at scheduled times to inspect work progress; and, e) be on-site during critical phases of work, including proposed goods and services systems testing, cutover and first day in service.

The designated Vendor project manager for this project, whose name and phone numbers (office, cellular, home and pager) shall be provided to NSD prior to initiation of any on-site work under any contractual Agreement, shall: a) be Vendor's single-point-of-contact to NSD; b) have overall responsibility for all contracted work until total project Acceptance; and, c) have the authority to make necessary decisions and enlist necessary resources to ensure successful completion of all contracted work in the required timeframes.

Vendor's project manager, or appropriate Vendor designee, shall be trained in and responsible for identification of any hazardous materials relative to any construction portion of this project.

2.4.18 Liaison and Coordination

Vendor agrees to provide necessary liaison and coordination functions and activities, in a timely and professional manner, with the local telephone company, other Service Providers (SP's), the General and its Subcontractor, and other involved Vendors and systems Vendors on behalf of NSD during the entire implementation period.

2.4.19 Premium and Overtime

It is anticipated that a majority of the work contemplated by this RFP will occur during normal business hours. However, Vendor shall be responsible for any required premium time and/or overtime work at no charge beyond the Price provided in Vendor's proposal if such work is required to complete any phase of this project per the contract or agreed upon schedule that results from this RFP.

2.4.20 Prevailing Wage

NSD will pay the prevailing wage rate which is the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification or type of work within the locality and in the nearest labor market area (if a majority of such workers are paid at a single rate). If there is no single rate paid to a majority, then the single rate being paid to the greater number of workers is prevailing.

2.4.21 Vendor Personnel

NSD reserves the right to accept or not accept the Vendor's proposed Project Manager, lead supervisor/technician. Any change in Vendor's selected and approved project team members must be approved in advance, in writing, by NSD. This is to assure that persons with vital experience and skill are not arbitrarily removed from the project by Vendor. Vendor personnel changes not approved by NSD may be cause for NSD to terminate the contract.

2.4.22 Subcontractor

Vendor must agree that all installation, warranty, and post-warranty maintenance of the acquired systems resulting from this RFP shall be performed by fully qualified, Vendor-employed personnel unless otherwise stipulated by mutual agreement in the finalized sales contract.

Vendor shall not contract for or permit any subcontract work to be performed without prior written authorization of NSD. The selection of Subcontractor must be acceptable to NSD; such acceptance shall not be unreasonably withheld.

If, in NSD's reasonable judgment, any Subcontractor fail to perform the Work in strict accordance with the Agreement, Vendor, after due notice from NSD, shall discharge the same, but this discharge shall in no way release Vendor from its obligations and responsibilities under the Agreement.

Every Subcontractor performing work on the Project or goods and services on behalf of Vendor shall be bound by the conditions and provisions of the Agreement as applicable to its work. Nothing contained in any Vendor/ NSD Agreement shall create any contractual relations between the Subcontractor and NSD.

Vendor shall be fully responsible to NSD for the acts and omissions of its Subcontractor.

Any Subcontractor Vendor proposes to utilize must be able to demonstrate to NSD's satisfaction that it has successfully completed a minimum of three (3) projects within the past three (3) years in which similar scope and magnitude of work was performed.

Substitution of any proposed Subcontractor will only be allowed after prior written permission is received from NSD. NSD reserves the right to reject any proposed Subcontractor for reasonable cause.

The use of any Subcontractor(s) will not relieve Vendor from total responsibility for design, engineering, order, delivery, installation, cutover, maintenance and support services of all hardware, software, equipment and materials proposed.

2.4.23 Contract Changes

During the course of performing the Work, Vendor may be required to perform additional work within the general scope of the contract.

At such time when additional work is required, NSD shall forward to Vendor a description of the work to be accomplished and request that a proposal be offered within a given time period.

No additional work shall commence by Vendor without a valid NSD purchase order, amendment of the original purchase order, or written authorization from NSD's Project Manager.

2.4.24 Insurance

1. Minimum Requirements and Limits. Vendor shall, at its expense, procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Vendor, its agents, representatives, employees or Subcontractor. Vendor shall also require all of its Subcontractor to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:
2. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (3) Workers' Compensation and Employers' Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
3. Minimum Limits of Insurance. Vendor shall maintain limits no less than: (1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage; (3) Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the Labor Code of the State of California.

4. Insurance Endorsements. The insurance policies shall contain the following provisions, or Vendor shall provide endorsements on forms supplied or approved by NSD to add the following provisions to the insurance policies:
 - a. General Liability. The general liability policy shall be endorsed to state that: (1) NSD, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Vendor, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects to NSD, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Vendor's scheduled underlying coverage. Any insurance or self-insurance maintained by NSD, its directors, officials, officers, employees, agents and volunteers shall be excess of the Vendor's insurance and shall not be called upon to contribute with it in any way.
 - b. Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) NSD, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible; and (2) the insurance coverage shall be primary insurance as respects to NSD, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Vendor's scheduled underlying coverage. Any insurance or self-insurance maintained by NSD, its directors, officials, officers, employees, agents and volunteers shall be excess of the Vendor's insurance and shall not be called upon to contribute with it in any way.
 - c. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against NSD, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Vendor.
5. All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to NSD; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to NSD, its directors, officials, officers, employees, agents and volunteers.
6. Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to NSD, its directors, officials, officers, employees, agents and volunteers.
7. Acceptability of Insurers. With the exception of Workers' Compensation Insurance, all insurance required hereunder is to be placed with insurers with a current A.M. Best's rating no less than A-, which are licensed to do business in California, and which maintain an agent for process within the state. Workers' Compensation insurance required under this Agreement must be offered by an insurer meeting the above standards with the exception that the A.M. Best's rating condition is waived at the discretion of NSD.
8. Verification of Coverage. Vendor shall furnish NSD with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to NSD. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by NSD if requested. NSD reserves the right to require complete, certified copies of all required insurance policies, at any time.

See Articles 33, 34, 35 and 36 of the General Conditions for further requirements.

2.4.25 Ownership of Documents

All designs, drawings, specifications, notes and other work developed in the performance of any contract resulting from this RFP are the sole property of NSD and may be used by NSD for any purpose without additional compensation to the Vendor.

2.4.26 Staging and Storage

NSD will not provide secure space for the Vendor to store and stage his/her equipment. The Vendor should have product shipped to their location for transport to various NSD locations. It is the Vendor's responsibility to provide a haul-a-way or other storage facility if needed. Security of said equipment is the responsibility of the Vendor.

2.4.27 Materials and Appliances

Vendor shall verify conditions of the new building, particularly door openings and passages, to avoid building any items too large for openings. Any pieces too bulky for existing facilities shall be hoisted or otherwise handled with apparatus as required. All special handling and equipment charges shall be paid by Vendor.

2.4.28 Related Equipment and Labor

Nothing in this RFP or any contract resulting from this RFP shall prohibit NSD from acquiring and installing any data systems, communications (LAN/MEN/MAN/WAN) -related equipment or materials from another source, provided such equipment, materials and/or labor do not interfere with the proper functioning of the Vendor's goods and services.

2.4.29 Conduct and Identification

Vendor shall not perform work in a manner, which unreasonably impedes NSD's business or any aspect of building construction.

Eating or drinking will NOT be allowed in NSD buildings, other than those specifically designated by NSD for these activities.

Smoking is NOT allowed anywhere on NSD property.

Vendor and Subcontractor personnel are not permitted to interact in any way with students at any time.

Vendor's employees and Subcontractor will be required to wear, at all times while on NSD property, identification cards acceptable to NSD which clearly identify the person by name and company affiliation. Vendor and Subcontractor personnel must also abide by all NSD security policies and procedures.

2.4.30 Safety

Vendor shall be solely and completely responsible for the public safety and convenience of all persons and property where work related to this RFP is being performed, during all phases of the work. This requirement shall apply continuously during the term of the contract period and shall not be limited to normal working hours. No act or review by NSD or its representatives is intended to include review of the adequacy of Vendor's safety measures in, on or near NSD premises.

2.4.31 Clear Away

Throughout the progress of the work, Vendor shall keep the working areas free from debris of all types, and remove from the premises in a manner reasonably acceptable to NSD; all refuse resulting from any work being done by it. At the completion of the work under the contract, Vendor shall leave the premises in a clean and finished condition to the reasonable satisfaction of NSD.

2.4.32 Building Damages

Vendor shall be liable and responsible for any building damages caused by reason of its work. Repairs of any kind required will be made and charged to Vendor. Vendor shall take reasonable precautions to protect NSD property adjacent to the work. No cutting, notching, drilling or altering of any kind shall be done to NSD property by Vendor without first obtaining written permission from NSD.

2.4.33 News Releases / Publicity

News releases or any other external or internal publicity pertaining to NSD, this RFP or the project to which it relates shall not be made without prior written approval of NSD, and then only in coordination with designated NSD personnel.

2.4.34 Cooperation and Collateral Work

NSD, its workers and Vendors, and others, have the right to operate within or adjacent to the worksite to perform required work. NSD shall require that all such workers, Vendors and others and the Vendor coordinate their operations to cooperate in minimizing interference with one another.

2.4.35 Inspections

NSD and/or its representative shall have the right to inspect contracted work at any time. In the event of questionable work, NSD's reasonable decisions with respect to necessary corrective action shall be final. A joint inspection shall be made of the systems or service by NSD and Vendor representatives before Acceptance. The inspection shall be of such character and extent as to disclose any unsatisfactory condition of apparatus, equipment or service.

Upon discovery and validation of the existence of any unacceptable conditions, Vendor shall act to rectify such conditions as quickly as possible so as not to negatively impact the project implementation schedule. NSD shall be notified in writing of the correction of all unacceptable conditions as soon as they are completed. NSD reserves the right to re-inspect corrected work.

2.4.36 Patent Infringement

Vendor agrees, as part of its contract with NSD, to indemnify NSD with respect to any suit, claim, or proceeding brought against NSD alleging that NSD's use of any equipment, systems, goods and/or services provided by Vendor constitutes a misuse of any proprietary or trade secret information or an infringement of any United States patent or United States copyright. Vendor agrees to defend NSD against any such claims and to pay all litigation costs, reasonable attorney's fees, settlement payments and any damages awarded or resulting from any such claim.

In the event that an injunction is obtained against NSD's use of any Vendor provided equipment, systems goods and/or services arising from such a patent suit, claim or proceeding, in whole or in part, Vendor shall, at its option, either: a) procure for NSD the right to continue using the portion of the equipment, systems, goods and/or services enjoined from use; or b) replace or modify the same so that NSD's use is not subject to any such injunction.

In the event that Vendor cannot perform under this Section, NSD shall have the right to return the System to Vendor upon written notice to Vendor and in the event of such return, neither party shall have any further liabilities or obligations under this Agreement or any related maintenance agreements, except that Vendor shall refund the depreciated value of the affected System at the time of such return, based on a mutually agreed depreciation schedule.

2.4.37 Required Payments

Vendor shall make all payments to its employees, agents and/or Subcontractor in accordance with the applicable requirements of unemployment, old age, prevailing wage, workers compensation, and other insurance and social security provisions of the Federal, State and municipal governments and all other governing bodies, whether enacted at the time or prior to the execution of any Agreement resulting from this RFP or during the progress of the work, and shall assume all liability for the compliance with the requirements thereof, with respect to its employees, agents and/or Subcontractor.

2.4.38 Liens

Vendor shall indemnify, defend and hold NSD, and its equipment and other property, forever free and clear from all liens for labor and material furnished by or on behalf of Vendor.

2.4.39 Force Majeure

If the Vendor's performance under any contract resulting from this RFP is interfered with by reason of any circumstances beyond their reasonable control, including without limitation, fire, explosion, acts of God; war, revolution, civil commotion, or acts of public enemies; labor disputes or strikes; or shortage of materials; then the Vendor shall be excused from such performance on a day-for-day basis to the extent of such interference (and NSD shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such obligations relate to the performance so interfered with); provided that: a) the Vendor shall notify NSD in writing within three (3) business days after becoming aware of such an occurrence; b) NSD does not notify the Vendor in writing within three (3) business days after receipt of Vendor's written notification of a Force Majeure occurrence that it has determined Vendor's claimed occurrence not to be a legitimate circumstance covered by this section; and c) Vendor uses their best efforts to remove such causes of nonperformance as quickly as possible.

A delay caused by shortage of materials shall not qualify under this section unless the Vendor furnishes to NSD documentary proof that the Vendor has made every effort to obtain such materials from all known sources within the continental United States in a diligent and timely manner, and further proof in the form of supplementary progress schedules that the inability to obtain such materials when originally planned did in fact cause a delay in the Cutover/Acceptance of the phase effected which could not be compensated for by revising the sequence of the Vendor's operations. Delays in obtaining materials due to priority in filling orders will not constitute a shortage of materials.

Except for any additional compensation provided for under any contract resulting from this RFP, Vendor shall have no claim for damage or compensation for any delay or hindrance.

2.4.40 Judicial Process

Notwithstanding anything to the contrary contained herein, Vendor may not, under any circumstances, proceed after Cutover/Acceptance to take or dispose of any portion of the System or require NSD to return any portion of such to Vendor except pursuant to judicial process and may not, under any circumstances, render any portion of the System unusable while still being used by NSD, except pursuant to judicial process. In the event that NSD notifies Vendor in writing that NSD contests or disagrees with a determination by Vendor that NSD is in default hereunder, Vendor shall under no circumstances be excused from or cease performance of its obligations hereunder except upon a judicial determination that NSD is, in fact, in default hereunder. Vendor hereby acknowledges and agrees that the provisions of this subsection are necessary to prevent NSD from suffering severe and irreparable damage in the event that a bona fide dispute arises between Vendor and NSD regarding the performance of their respective obligations hereunder and Vendor, despite the bona fide nature of such dispute, chooses to take any actions prohibited by the provisions of this subsection.

2.4.41 Termination for Default

If Vendor fails to deliver, install, and implement goods and services contracted for in accordance with the description thereof set forth in any Agreement resulting from this RFP, within the time limits specified in said Agreement, or pursuant to any other parts of said Agreement that provide for termination or define a default, NSD may, upon ten (10) calendar days written notice to Vendor specifying the default, terminate this Agreement or, at NSD's option, such portion of this Agreement as to which there has been default. If Vendor corrects the default, and provides NSD a written confirmation describing how the default was corrected, within such 10-calendar-day period, and NSD reasonably agrees in writing that the default has been corrected, this Agreement shall continue as if the termination notice had not been given.

In the event of activation of this Section, NSD, at its sole discretion, may require Vendor to transfer title and deliver to NSD any completed elements of the goods and services, any partially completed elements of the goods and services, and any materials, equipment, plans, drawings, information, and contract rights as Vendor has specifically produced or specifically acquired for the performance hereof. Payment for completed Service elements delivered to and accepted by NSD shall be at contract price.

In the event of termination for cause, Vendor shall assist and cooperate with NSD in effectuating such termination in an orderly fashion in order to minimize disruption to NSD's business and to minimize the cost of discontinuing implementation of the goods and services.

2.4.42 Assignment

No contract resulting from this RFP may be assigned by the Vendor without the prior written consent of NSD.

2.4.43 Severability

In the event of invalidation of any portion of any Agreement resulting from this RFP, Vendor and NSD agree that such invalidity shall not affect the validity of the remaining portion of said Agreement. Vendor and NSD agree to substitute for the invalid portion a valid provision that most closely approximates the economic effect and intent of the invalid provision.

2.4.44 Conflicts in Terms (Precedence)

If conflict arises from the RFP, Vendor proposal, or any Agreement resulting therefrom, NSD shall be entitled to unilaterally remedy the conflict in its own best interests, as follows: Wherever there is variance between the language in Vendor's standard Agreement and the requirements and commitments stated in this RFP and Vendor's RFP response, those requirements and commitments will take precedence over language of Vendor's standard Purchase Agreement. Whenever there is a variance between the language in the final negotiated Agreement and other documents including the RFP the final agreement takes precedence.

2.4.45 Notices

All notices which either party to any contract resulting from this RFP is required or may desire to give the other party hereunder shall be deemed given upon receipt thereof when in writing sent by certified or registered mail, return receipt requested, postage prepaid, by telegram or facsimile, or by hand delivery with receipt acknowledged. All such notices to NSD shall be as set forth in the contract between the parties or such other address as either party may specify from time to time by written notice delivered in accordance herewith. Any notice given pursuant to this Section shall be effective three (3) days after the day it is mailed, upon receipt as evidenced by the U.S. Postal Service return receipt card, or by written acknowledgement of hand delivery, whichever is earlier. The inability to deliver because of a changed address of which no notice was given, or the rejection or other refusal to accept any notice, demand or other communication shall be deemed to be the receipt of the notice, demand or other communication as of the date of such inability to deliver or the rejection or refusal to accept.

2.4.46 Additional Terms and Conditions

NSD reserves the right to determine, formulate and include additional terms and conditions during final contract negotiations with the selected Vendor. These terms and conditions shall be within the general scope of the RFP.

2.4.47 Governing Law

The formation, interpretation and performance of any Agreement resulting from this RFP shall be governed by the laws of the State of California, provided that no provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties. Both parties agree to submit to binding arbitration as to any and all disputes arising out of the execution of this agreement subject to the rules of the American Arbitration Association and the laws and regulations of the State of California.

2.4.48 Governing Regulations

All work and materials shall be in full accord with the requirements of all public safety and building codes, the State Fire Marshal, the National Electric Code and other applicable state laws or regulations. Nothing in the plans or specifications shall be construed to permit work not conforming to these codes and orders.

2.4.49 Audit and Inspection Records

NSD shall have the audit and inspection rights described in this section.

If the Vendor submitted cost or pricing data in connection with the pricing of this contract or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of the commercial items sold in substantial quantities to the general public, or prices set by law or regulation, NSD's representative(s) shall have the right to examine all books, records, documents and other data of the Vendor related to the negotiation pricing or performance of such contract, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.

The materials described above shall be made available at the office of the Vendor, at all reasonable times, for inspection, audit or reproduction, until the expiration of three (3) years from the date of final payment under this contract, or by (a) and (b) below:

- a. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.
- b. Records which relate to appeals under this contract, or litigation or the settlement of claims arising out of the performance of this contract, shall be made available until such appeals, litigation, or claims have been disposed of, or three (3) years after contract completion, whichever is longer.

2.4.50 FINGERPRINTING

NSD Determination of Fingerprinting Requirement Application is set forth in the Special Conditions.

A. Contracts For Construction, Reconstruction, Rehabilitation Or Repair Of A School Facility Involving More Than Limited Contact With Students.

If NSD determines, based on the totality of the circumstances concerning the Project, that the Vendor and Vendor's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have contact other than limited contact with pupils, by execution of the Contract, the Vendor acknowledges that Vendor is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Vendor and/or Vendor's employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code section 45125.2 the Vendor shall, at Vendor's own expense, (a) install a physical barrier to limit contact with students by Vendor and/or Vendor's employees, or (b) provide for the continuous supervision and monitoring of the Vendor and/or Vendor's employees by an employee of the Vendor who has received fingerprint clearance from the California Department of Justice, or (c) provide for the surveillance of the Vendor and Vendor's employees by a NSD employee.

B. Contracts For Construction, Reconstruction Rehabilitation Or Repair Of A School Facility Involving Only Limited Contact With Students.

If NSD determines based on the totality of the circumstances concerning the Project that the Vendor and Vendor's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have only limited contact with pupils, by execution of the Contract, the Vendor acknowledges that Vendor is entering into a contract for the construction, reconstruction, rehabilitation or repair of a school facility involving only limited contact with students. Accordingly, the parties agree that the following conditions apply to any work performed by the Vendor and/or Vendor's employees on a school site: (1) Vendor and/or Vendor's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Vendor and/or Vendor's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location Vendor and/or Vendor's employees shall not change locations without contacting the school office; (4) Vendor and Vendor's employees shall not use student restroom facilities; and (5) If Vendor and/or Vendor's employees find themselves alone with a student, Vendor and Vendor's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

NSD has considered the totality of the circumstances concerning the project and has determined that the Vendor and Vendor's employees:

- a. X are subject to the requirements of Education Code section 45125.2 and Paragraph (a) of Section 2.4.52 of the RFP.
- b. are not subject to the requirements of Education Code section 45125.2 and are subject to Paragraph (b) of Section 2.4.52 of the RFP.

2.5 COSTS FOR PROPOSAL RESPONSE PREPARATION

Any costs associated with the preparation of the response to this Proposal shall be borne by the responding Vendor. NSD will not accept any charges for response preparation, regardless of whether or not a Vendor is selected to provide the described goods and services and products.

2.6 EQUIPMENT RELEASED FOR CUSTOMER SHIPMENT

The Vendor shall provide information as to the first day of “customer release shipment” for each product proposal. In the event the Vendor is proposing products that are not currently shipping, the Vendor must identify this and fully explain how they will accommodate NSD schedule. All equipment must be shipped with the latest software/firmware releases unless NSD determines that not to be in their best interests. As the implementation timeframe is expected to be as long as several months, NSD requires that all software releases installed are compatible. Should proposed equipment be replaced with newer comparable manufacturer models during the implementation period, NSD reserves the right to substitute the newer products for those proposed here. NSD expects the Vendor to provide favorable terms for this substitution.

2.7 REGULATORY COMPLIANCE

All hardware and software proposed must be compliant with American (US) regulatory standards for electrical and communications equipment.

3.0 GENERAL CONDITIONS

ARTICLE 1. DEFINITIONS

- a. Acceptable, Acceptance or words of similar import shall be understood to be the acceptance of NSD Representative and/or NSD.
- b. Act of God an Act of God is an earthquake of magnitude 3.5 on the Richter scale and tidal waves.
- c. Approval means written authorization by NSD Representative and/or NSD.
- d. Contract Documents includes all documents as stated in the Contract.
- e. Day shall mean calendar day unless otherwise specifically designated.
- f. NSD and Vendor are those stated in the Contract. The terms NSD and Owner may be used interchangeably.
- g. NSD Representative shall mean the Director of Management Information Systems, or his/her designee, acting either directly or through properly authorized agents, such as agents acting within the scope of the particular duties entrusted to them. Also sometimes referred to as the “NSD’s Representative” or “Representative” in the Contract Documents.
- h. Equal, Equivalent, Satisfactory, Directed, Designated, Selected, As Required and similar words shall mean the written approval, selection, satisfaction, direction, or similar action of NSD Representative and/or NSD.
- i. Indicated, Shown, Detailed, Noted, Scheduled or words of similar meaning shall mean that reference is made to the drawings, unless otherwise noted. It shall be understood that the direction, designation, selection, or similar import of NSD Representative and/or NSD is intended, unless stated otherwise.
- j. Install means the complete installation of any item, equipment or material.
- k. Material shall include machinery, equipment, manufactured articles, or construction such as form work, fasteners, etc., and any other classes of material to be furnished in connection with the Contract. All materials shall be new unless specified otherwise.
- l. Perform shall mean that the Vendor, at Vendor’s expense, shall take all actions necessary to complete The Work, including furnishing of necessary labor, tools, and equipment, and providing and installing Materials that are indicated, specified, or required to complete such performance.
- m. Project is The Work planned by NSD as provided in the Contract Documents.
- n. Provide shall include provide complete in place, that is furnish, install, test and make ready for use.

- o. Recyclable Waste Materials shall mean materials removed from the Project site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include asphalt, concrete, brick, concrete block, and rock.
- p. Specifications mean that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work. Except for Sections 1-9 of the Standard Specifications for Public Works Construction ("Greenbook"), 2003 Edition or most current edition, which are specifically excluded from incorporation into these Contract Documents, the Work shall be done in accordance with the Greenbook, including all current supplements, addenda, and revisions thereof. In the case of conflict between the Greenbook and the Contract Documents, the Contract Documents shall prevail.
- q. The Work means the entire improvement planned by NSD pursuant to the Contract Documents.
- r. Work means labor, equipment and materials incorporated in, or to be incorporated in the construction covered by the Contract Documents.

ARTICLE 2. CONTRACT DOCUMENTS

- a. **Contract Documents.** The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all.
- b. **Interpretations.** The Contract Documents are intended to be fully cooperative and to be complementary. If Vendor observes that any documents are in conflict, the Vendor shall promptly notify NSD Representative in writing. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:
 - 1. Change Orders or Work Change Directives
 - 2. Addenda
 - 3. Special Provisions (or Special Conditions)
 - 4. Technical Specifications
 - 5. Plans (Contract Drawings)
 - 6. Contract
 - 7. General Conditions
 - 8. Instructions to Vendors
 - 9. Notice Inviting Proposals
 - 10. Vendor's Proposal Forms
 - 11. Greenbook
 - 12. Standard Plans
 - 13. Reference Documents

With reference to the Drawings, the order of precedence shall be as follows:

- 1. Figures govern over scaled dimensions
 - 2. Detail drawings govern over general drawings
 - 3. Addenda or Change Order drawings govern over Contract Drawings
 - 4. Contract Drawings govern over Standard Drawings
 - 5. Contract Drawings govern over Shop Drawings
- c. **Conflicts in Contract Documents.** Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard shall always apply.
- d. **Organization of Contract Documents.** Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Vendor in dividing The Work among Subcontractor or in establishing the extent of Work to be performed by any trade.

ARTICLE 3. DETAIL DRAWINGS AND INSTRUCTIONS

- a. **Examination of Contract Documents.** Before commencing any portion of The Work, Vendor shall again carefully examine all applicable Contract Documents, the Project site and other information given to Vendor as to materials and methods of construction and other Project requirements. Vendor shall immediately notify NSD Representative of any potential error, inconsistency, ambiguity, conflict or lack of detail or explanation. If Vendor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Vendor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Vendor or any Subcontractor proceed with Work if uncertain as to the applicable requirements.

- b. **Additional Instructions.** After notification of any error, inconsistency, ambiguity, conflict or lack of detail or explanation, NSD Representative will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.
- c. **Quality of Parts, Construction and Finish.** All parts of The Work shall be of the best quality of their respective kinds and the Vendor must use all diligence to inform itself fully as to the required construction and finish. In no case shall Vendor proceed with The Work without obtaining first from NSD Representative such Approval may be necessary for the proper performance of Work.
- d. **Vendor's Variation from Contract Document Requirements.** If it is found that the Vendor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, NSD Representative may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Vendor at the Vendor's expense.

ARTICLE 4. EXISTENCE OF UTILITIES AT THE WORK SITE

- a. NSD has endeavored to determine the existence of utilities at the Project site from the records of the owners of known utilities in the vicinity of the Project. The positions of these utilities as derived from such records are shown on the Plans.
- b. No excavations were made to verify the locations shown for underground utilities. The service connections to these utilities are not shown on the plans. It shall be the responsibility of the Vendor to determine the exact location of all service connections. The Vendor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities. The Vendor shall immediately notify NSD in writing of any utility discovered in a different position than shown on the Plans or which is not shown on the Plans.
- c. All water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by the Vendor. Locations of existing utilities shown on the Plans are approximate and may not be complete. The Vendor shall be responsible for coordinating its Work with all utility companies during the construction of The Work.
- d. Notwithstanding the above, pursuant to Section 4215 of the Government Code, NSD has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the RFP, NSD shall assume the responsibility for their timely removal, relocation, or protection.
- e. Vendor, except in an emergency, shall contact the appropriate regional notification center, Southern California Underground Service Alert at 1-800-216e-2600 at least two working days prior to commencing any excavation if the excavation will be performed in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by NSD, and obtain an inquiry identification number from that notification center. No excavation shall be commenced or carried out by the Vendor unless such an inquiry identification number has been assigned to the Vendor or any Subcontractor of the Vendor and NSD has been given the identification number by the Vendor.

ARTICLE 5. SUBSTITUTIONS AFTER CONTRACT IS AWARDED

- a. Pursuant to Public Contract Code Section 3400(b) NSD may make a finding that is described in the RFP that designates certain products, things, or services by specific brand or trade name.
- b. Unless specifically designated in the Contract Documents, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal." Vendor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in the Contract Documents. However, NSD may have adopted certain uniform standards for certain materials, processes and articles.
- c. Vendor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Vendor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with the Vendor. NSD has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted.

- d. Data required to substantiate requests for substitutions of an “or equal” material, process or article data shall include a signed affidavit from the Vendor stating that, and describing how, the substituted “or equal” material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted “or equal” material, process or article, and substantiates that it is an “or equal” to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted “or equal” material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to NSD in a timely fashion will result in the rejection of the proposed substitution.
- e. The Vendor shall bear all of NSD’s costs associated with the review of substitution requests.
- f. The Vendor shall be responsible for all costs related to a substituted “or equal” material, process or article.
- g. Vendor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

ARTICLE 6. SHOP DRAWINGS

- a. Vendor shall check and verify all field measurements and shall submit with such promptness as to provide adequate time for review and cause no delay in his own Work or in that of any other Vendor, Subcontractor, or worker on the Project, six (6) copies of all shop or setting drawings, calculations, schedules, and materials list, and all other provisions required by the Contract. Vendor shall sign all submittals affirming that submittals have been reviewed and approved by Vendor prior to submission to NSD Representative. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.
- b. Vendor shall make any corrections required by NSD Representative, and file with NSD Representative six (6) corrected copies each, and furnish such other copies as may be needed for completion of the Work. NSD Representative’s approval of shop drawings shall not relieve Vendor from responsibility for deviations from the Contract Documents unless Vendor has, in writing, called NSD Representative’s attention to such deviations at time of submission and has secured NSD Representative’s written Approval. NSD Representative’s Approval of shop drawings shall not relieve Vendor from responsibility for errors in shop drawings.

ARTICLE 7. SUBMITTALS

- a. Vendor shall furnish to NSD Representative for approval, prior to purchasing or commencing any Work, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the specifications. The log shall indicate whether samples will be provided in accordance with other provisions of this Contract.
- b. Vendor will provide samples and submittals, together with catalogs and supporting data required by NSD Representative, to NSD Representative within a reasonable time period to provide for adequate review and avoid delays in the Work.
- c. These requirements shall not authorize any extension of time for performance of this Contract. NSD Representative will check and approve such samples, but only for conformance with design concept of work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples and submittals.

ARTICLE 8. MATERIALS

- a. Except as otherwise specifically stated in the Contract Documents, Vendor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- b. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.
- c. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of The Work and shall be stored properly and protected as required by the Contract Documents. Vendor shall be entirely responsible for damage or loss by weather or other causes to materials or Work.
- d. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or Vendor. Vendor warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the Project, to NSD free from any claims, liens, or charges.

- e. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of NSD or any independent Vendor.

ARTICLE 9. VENDOR'S SUPERVISION

Vendor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent approved by NSD. Superintendent must be able to proficiently speak, read and write in English. Vendor shall continuously provide efficient supervision of the Project.

ARTICLE 10. WORKERS

- a. Vendor shall at all times enforce strict discipline and good order among its employees. Vendor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.
- b. Any person in the employ of the Vendor whom NSD may deem incompetent or unfit shall be dismissed from The Work and shall not be employed on this Project except with the written Approval of NSD.

ARTICLE 11. SUBCONTRACTOR

- a. Vendor agrees to bind every Subcontractor to the terms of the Contract Documents as far as such terms are applicable to Subcontractor's portion of The Work. Vendor shall be as fully responsible to NSD for the acts and omissions of its Subcontractor and of persons either directly or indirectly employed by its Subcontractor, as Vendor is for acts and omissions of persons directly employed by Vendor. Nothing contained in these Contract Documents shall create any contractual relationship between any Subcontractor and NSD.
- b. NSD reserves the right to Approve all Subcontractor. NSD's Approval of any Subcontractor under this Contract shall not in any way relieve Vendor of its obligations in the Contract Documents.
- c. Prior to substituting any Subcontractor listed in the Proposal Forms, Vendor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

ARTICLE 12. PERMITS AND LICENSES

Permits and licenses necessary for prosecution of The Work shall be secured and paid for by Vendor, unless otherwise specified in the Contract Documents.

- a. Vendor shall obtain and pay for all other permits and licenses required for The Work, including excavation permit and for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than NSD.
- b. The Vendor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as NSD's responsibility pursuant to the Contract Documents.
- c. Before Acceptance of the Project, the Vendor shall submit all licenses, permits, certificates of inspection and required approvals to NSD.

ARTICLE 13. UTILITY USAGE

- a. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Vendor. Vendor shall Provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on The Work where the utility is needed. Upon completion of The Work, Vendor shall remove all temporary distribution systems.
- b. Vendor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Project.
- c. All permanent meters Installed shall be listed in the Vendor's name until Project Acceptance.
- d. If the Contract is for construction in existing facilities, Vendor may, with prior written Approval of NSD, use NSD's existing utilities by compensating NSD for utilities used by Vendor.

ARTICLE 14. INSPECTION FEES FOR PERMANENT UTILITIES

All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by NSD. Vendor shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by NSD. Vendor may either request reimbursement from NSD for such fees, or shall be responsible for arranging and coordination with NSD for the payment of such fees.

ARTICLE 15. TRENCHES

- a. Trenches Five Feet or More in Depth. The Vendor shall submit to NSD, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. If the plan varies from shoring system standards, the plan shall be prepared by a registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations.
- b. Excavations Deeper than Four Feet. If work under this Contract involves digging trenches or other excavation that extends deeper than four feet below the surface, Vendor shall promptly, and before the following conditions are disturbed, notify NSD, in writing, of any:
- 1) Material that the Vendor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - 2) Subsurface or latent physical conditions at the site differing from those indicated.
 - 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

NSD shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Vendor's cost of, or the time required for, performance of any part of The Work, shall issue a change order under the procedures described in the Contract Documents.

In the event that a dispute arises between NSD and the Vendor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Vendor's cost of, or time required for, performance of any part of The Work, the Vendor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Vendor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

ARTICLE 16. REMOVAL OF HAZARDOUS MATERIALS

Should Vendor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes and hazardous materials which have not been rendered harmless at the Project site, the Vendor shall immediately stop work at the affected Project site and shall report the condition to NSD in writing. NSD shall contract for any services required to directly remove and/or abate PCBs and other toxic wastes and hazardous materials, if required by the Project site(s), and shall not require the Vendor to subcontract for such services. The Work in the affected area shall not thereafter be resumed except by written agreement of NSD and Vendor.

ARTICLE 17. SANITARY FACILITIES

Vendor shall provide sanitary temporary toilet buildings for the use of all workers. All toilets shall comply with local codes and ordinances. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by CAL-OSHA regulation. The toilets shall be maintained in a sanitary condition at all times. Use of toilet facilities in The Work under construction shall not be permitted. Any other Sanitary Facilities required by CAL-OSHA shall be the responsibility of the Vendor.

ARTICLE 18. AIR POLLUTION CONTROL

Vendor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

ARTICLE 19. COMPLIANCE WITH STATE STORM WATER PERMIT

- a. Vendor shall be required to comply with all conditions of the State Water Resources Control Board ("State Water Board") National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Vendor shall be responsible for filing the Notice of Intent and for obtaining the Permit. Vendor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan ("SWPPP") prior to initiating Work. In proposalding on this Contract, it shall be Vendor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. Vendor shall comply with all requirements of the State Water Resources Control Board. Vendor shall include all costs of compliance with specified requirements in the Contract amount.
- b. Vendor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Vendor shall provide copies of all reports and monitoring information to NSD Representative.
- c. Vendor shall comply with the lawful requirements of any applicable municipality, NSD, drainage NSD, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- d. Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Vendor, by submitting a Proposal, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Proposal accordingly, and assumes any and all risks and liabilities arising therefrom.
- e. Failure to comply with the Permit is in violation of federal and state law. Vendor hereby agrees to indemnify and hold harmless NSD, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which NSD, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of NSD, its officials, officers, agents, employees or authorized volunteers. NSD may seek damages from Vendor for delay in completing the Contract in accordance with the Contract Documents, caused by Vendor's failure to comply with the Permit.

ARTICLE 20. CLEANING UP

- a. Vendor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Vendor shall not store debris under, in, or about the premises. Upon completion of Work, Vendor shall clean the interior and exterior of the building or improvement including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Vendor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and Vendor shall also remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site. Vendor shall also clean all buildings, asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Vendor operations or equipment.
- b. Vendor shall fully clean up the site at the completion of The Work. If the Vendor fails to immediately clean up at the completion of The Work, NSD may do so and the cost of such clean up shall be charged back to the Vendor.

ARTICLE 21. LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out The Work and establishing grades for earthwork operations shall be furnished by the Vendor at its expense. Layout shall be done by a registered civil engineer Approved by NSD Representative. Any required "as-built" drawings of the Work shall be prepared by the registered civil engineer.

ARTICLE 22. EXCESSIVE NOISE

- a. The Vendor shall use only such equipment on the work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.
- b. The Vendor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Vendor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to

the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Vendor.

ARTICLE 23. TESTS AND INSPECTIONS

- a. If the Contract Documents, NSD Representative, or any instructions, laws, ordinances, or public authority require any part of The Work to be tested or Approved, Vendor shall provide NSD Representative at least two (2) working days notice of its readiness for observation or inspection. If inspection is by a public authority other than NSD, Vendor shall promptly inform NSD of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Vendor. Costs for NSD testing and NSD inspection shall be paid by NSD. Costs of tests for Work found not to be in compliance shall be paid by the Vendor.
- b. If any Work is done or covered up without the required testing or approval, the Vendor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Vendor's cost in compliance with the Contract Documents.
- c. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by NSD, and not by Vendor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- d. In advance of manufacture of materials to be supplied by Vendor which must be tested or inspected, Vendor shall notify NSD so that NSD may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into The Work.
- e. If the manufacture of materials to be inspected or tested will occur in a plant or location outside the geographic limits of NSD, the Vendor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.
- f. Reexamination of Work may be ordered by NSD. If so ordered, Work must be uncovered or deconstructed by Vendor. If Work is found to be in accordance with the Contract Documents, NSD shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Vendor shall pay all costs.

ARTICLE 24. PROTECTION OF WORK AND PROPERTY

- a. The Vendor shall be responsible for all damages to persons or property that occur as a result of The Work. Vendor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final Acceptance by NSD. All Work shall be solely at the Vendor's risk. Vendor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Vendor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Vendor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.
- b. In an emergency affecting safety of life or of work or of adjoining property, Vendor, without special instruction or authorization from NSD Representative, is hereby permitted to act to prevent such threatened loss or injury; and Vendor shall so act, without appeal, if so authorized or instructed by NSD Representative or NSD. Any compensation claimed by Vendor on account of emergency work shall be determined by and agreed upon by NSD and the Vendor.
- c. Vendor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.
- d. Vendor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Vendor shall repair any damage thereto caused by The Work operations. Vendor shall:
 - 1) Enclose working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
 - 2) Provide substantial barricades around any shrubs or trees indicated to be preserved.
 - 3) Deliver materials to the Project site over a route designated by NSD Representative.

- 4) Provide any and all dust control required and follow the Applicable air quality regulations as appropriate. If the Vendor does not comply, NSD shall have the immediate authority to provide dust control and deduct the cost from payments to the Vendor.
- 5) Confine Vendor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of NSD Representative. Vendor shall not unreasonably encumber the Project site with its materials.
- 6) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer or land surveyor, at no cost to NSD.

ARTICLE 25. VENDORS MEANS AND METHODS

Vendor is solely responsible for the means and methods utilized to Perform The Work. In no case shall the Vendor's means and methods deviate from commonly used industry standards.

ARTICLE 26. AUTHORIZED REPRESENTATIVES

NSD shall designate representatives, who shall have the right to be present at the Project site at all times. NSD may designate an inspector who shall have the right to observe all of the Vendor's Work. The inspector is not authorized to make changes in the Contract Documents. The inspector shall not be responsible for the Vendor's failure to carry out The Work in accordance with the Contract Documents. Vendor shall provide safe and proper facilities for such access.

ARTICLE 27. HOURS OF WORK

- a. Eight (8) hours of work shall constitute a legal day's work. The Vendor and each Subcontractor shall forfeit, as penalty to NSD, twenty-five dollars (\$25) for each worker employed in the execution of Work by the Vendor or any Subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.
- b. Work shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m.
- c. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on NSD-observed holidays, unless otherwise Approved by NSD Representative:
 - 1) Powered Vehicles
 - 2) Construction Equipment
 - 3) Loading and Unloading Vehicles
 - 4) Domestic Power Tool.

ARTICLE 28. PAYROLL RECORDS

- a. Pursuant to Labor Code Section 1776, the Vendor and each Subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the work. Vendor shall certify under penalty of perjury that records maintained and submitted by Vendor are true and accurate. Vendor shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.
- b. The payroll records described herein shall be certified and submitted by the Vendor at a time designated by NSD. The Vendor shall also provide the following:
 - 1) A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - 2) A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the Department of Industrial Relations ("DIR").

- c. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
- d. Any copy of records made available for inspection and furnished upon request to the public shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Vendor or any Subcontractor shall not be marked or obliterated.
- e. In the event of noncompliance with the requirements of this Section, the Vendor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this section. Should noncompliance still be evident after such ten (10) day period, the Vendor shall, as a penalty to NSD, forfeit Twenty-five Dollars (\$25.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the DIR, such penalties shall be withheld from contract payments.

ARTICLE 29. PREVAILING RATES OF WAGES

- a. The Vendor is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Vendor agrees to fully comply with such Prevailing Wage Laws. The Vendor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the Vendor may view a copy of the prevailing rates of per diem wages at NSD. Vendor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Vendor's principal place of business and at the Project site. Vendor shall defend, indemnify and hold NSD, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.
- b. The Vendor and each Subcontractor shall forfeit as a penalty to NSD not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Vendor.
- c. Vendor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

ARTICLE 30. EMPLOYMENT OF APPRENTICES

The Vendor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Vendor or any Subcontractor. The Vendor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Section 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

ARTICLE 31. NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Labor Code Section 1735 and other applicable provisions of law, the Vendor and its Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Project. The Vendor will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

ARTICLE 32. LABOR/EMPLOYMENT SAFETY

The Vendor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4.

ARTICLE 33. WORKERS' COMPENSATION INSURANCE

The Vendor shall Provide, during the life of this Contract, workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Project site, and, in case any of sublet Work, the Vendor shall require the Subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of

employee or employees not covered by a Subcontractor's insurance shall be covered by the Vendor's insurance. In case any class of employees engaged in work under this Contract, on or at the Project site, is not protected under the Workers' Compensation Statutes, the Vendor shall provide or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Vendor is required to secure payment of compensation to his employees in accordance with the provisions of Section 3700 of the Labor Code. The Vendor shall file with NSD certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to NSD, if in the form and coverage as set forth in the Contract Documents.

ARTICLE 34. EMPLOYER'S LIABILITY INSURANCE

Vendor shall provide during the life of this Contract, Employer's Liability Insurance, including Occupational Disease, in the amount of, at least, one million dollars (\$1,000,000.00) per person per accident. Vendor shall provide NSD with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of NSD.

ARTICLE 35. BUILDER'S RISK ["ALL RISK"]

- a. It is the Vendor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures which are a part of the Contract and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. NSD accepts no responsibility until the Contract is formally accepted by the Governing Board for the work. The Vendor is required to file with NSD a certificate evidencing fire insurance coverage.
- b. Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.
 - 1) Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
 - 2) Coverage shall include all materials stored on site and in transit.
 - 3) Coverage shall include Vendor's tools and equipment.
 - 4) Insurance shall include boiler, machinery and material hoist coverage.
- c. Such insurance shall comply with the provisions of the Contract Documents.

ARTICLE 36. FORM AND PROOF OF CARRIAGE OF INSURANCE

- a. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by NSD Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A-. Insurance deductibles or self-insured retentions must be declared by the Vendor, and such deductibles and retentions shall have the prior written consent from NSD. At the election of NSD the Vendor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- b. Vendor shall cause its insurance carrier(s) to furnish NSD with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in writing by NSD Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. NSD, its Director's and officers, employees, agents or representatives are named as Additional Insureds and Provide a Waiver of Subrogation in favor of those parties. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that shall provide no less than thirty (30) days written notice be given to the NSD prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, NSD may terminate or Stop Work pursuant to the Contract Documents, unless NSD receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. Vendor shall not take possession, or use the Project site, or commence operations under this Agreement until NSD has been furnished original Certificate(s) of Insurance and certified original copies of Endorsements or policies of insurance including all Endorsements and any and all other attachments as required in this Section. The original Endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.
- c. It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary, and NSD's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

- d. NSD reserves the right to adjust the monetary limits of insurance coverage's during the term of this Contract including any extension thereof-if in NSD's reasonable judgment, the amount or type of insurance carried by the Vendor becomes inadequate.
- e. Vendor shall pass down the insurance obligations contained herein to all tiers of sub-Vendors working under this Contract.

ARTICLE 37. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- a. **Time for Completion/Liquidated Damages.** Work shall be commenced within ten (10) days of the date stated in NSD's Notice to Proceed and shall be completed by Vendor in the time specified in the Contract Documents. NSD is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by NSD's receipt or acceptance of the Vendor's proposed earlier completion date. Furthermore, Vendor shall not, under any circumstances, receive additional compensation from NSD (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Vendor and the Contract completion date. If The Work is not completed as stated in the Contract Documents, it is understood that NSD will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine the amount of actual damage, it is agreed that Vendor shall pay to NSD as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each day of delay until The Work is fully completed. Vendor and its surety shall be liable for any liquidated damages. Any money due or to become due the Vendor may be retained to cover liquidated damages.
- b. **Inclement Weather.** Vendor shall aproposale NSD Representative's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule.
- c. **Extension of Time.** Vendor shall not be charged liquidated damages because of any delays in completion of The Work due to unforeseeable causes beyond the control and without the fault or negligence of Vendor (or its Subcontractor or Vendors). Vendor shall within five (5) Days of identifying any such delay notify NSD in writing of causes of delay. NSD shall ascertain the facts and extent of delay and grant extension of time for completing The Work when, in its judgment, the facts justify such an extension. Time extensions to the Project shall be requested by the Vendor as they occur and without delay. No delay claims shall be permitted unless the event or occurrence delays the completion of the Project beyond the Contract completion date.
- d. **No Damages for Reasonable Delay.** NSD's liability to Vendor for delays for which NSD is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall NSD be liable for any costs which are borne by the Vendor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable NSD delay, including delays caused by items that are the responsibility of NSD pursuant to Government Code section 4215, shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

ARTICLE 38. COST BREAKDOWN AND PERIODIC ESTIMATES

Vendor shall furnish on forms Approved by NSD:

- a. Within ten (10) Days of award of the Contract a detailed estimate giving a complete breakdown of the Contract price;
- b. A monthly itemized estimate of Work done for the purpose of making progress payments. In order for NSD to consider and evaluate each progress payment application, the Vendor shall submit a detailed measurement of Work performed and a progress estimate of the value thereof before the tenth (10th) Day of the following month.
- c. Vendor shall submit, with each of its payment requests, an adjusted list of actual quantities, verified by NSD Representative, for unit price items listed, if any, in the Quotation Page.
- d. Following NSD's Acceptance of the Work, the Vendor shall submit to NSD a written statement of the final quantities of unit price items for inclusion in the final payment request.
- e. NSD shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

Vendor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

ARTICLE 39. MOBILIZATION

- a. When any item is included in the RFP for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific proposal item will be included in the progress estimate ("Initial Mobilization"). When no proposal item is provided for "Initial Mobilization," payment for such costs will be deemed to be included in the other items of The Work.
- b. Payment for Initial Mobilization based on the lump sum provided in the RFP, which shall constitute full compensation for all such Work. No payment for Initial Mobilization will be made until all of the listed items have been completed to the satisfaction of NSD Representative. The scope of the Work included under Initial Mobilization shall include, but shall not be limited to, the following principal items:
 - 1. Obtaining and paying for all bonds, insurance, and permits.
 - 2. Moving on to the Project site of all Vendor's plant and equipment required for first month's operations.
 - 3. Installing temporary construction power, wiring, and lighting facilities.
 - 4. Establishing fire protection system.
 - 5. Developing and installing a construction water supply.
 - 6. Providing and maintaining the field office trailers for the Vendor and NSD Representative, complete, with all specified furnishings and utility services including telephones, telephone appurtenances, computer and printer, and copying machine.
 - 7. Providing on-site communication facilities for the Owner and NSD Representative, including telephones, radio pagers, and fax machines.
 - 8. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.
 - 9. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.
 - 10. Arranging for and erection of Vendor's work and storage yard.
 - 11. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.
 - 12. Full-time presence of Vendor's superintendent at the job site as required herein.
 - 13. Submittal of Construction Schedule as required by the Contract Documents.

ARTICLE 40. PAYMENTS WITHHELD AND BACK CHARGES

In addition to amounts, which NSD may retain under other provisions of the Contract Documents NSD may withhold payments due to Vendor as may be necessary to cover:

- a. Stop Notice Claims.
- b. Defective work not remedied.
- c. Failure of Vendor to make proper payments to its Subcontractor or Vendors.
- d. Completion of the Contract if there exists a reasonable doubt that the work can be completed for balance then unpaid.
- e. Damage to another Vendor or third party.
- f. Amounts which may be due NSD for claims against Vendor.

- g. Failure of Vendor to keep the record ("as-built") drawings up to date.
- h. Failure to provide updates on the construction schedule.
- i. Site clean up.
- j. Failure of the Vendor to comply with requirements of the Contract Documents.
- k. Liquidated damages.
- l. Legally permitted penalties.

Upon completion of the Contract, NSD will reduce the final Contract amount to reflect costs charged to the Vendor, back charges or payments withheld pursuant to the Contract Documents.

ARTICLE 41. CHANGES AND EXTRA WORK

a. Change Order Work.

- 1) NSD, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, the Contract amount and Contract time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Vendor indicates the Vendor's agreement therewith, including any adjustment in the Contract amount or the Contract time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.
- 2) All claims for additional compensation to the Vendor shall be presented in writing before the expense is incurred and will be adjusted as provided herein. No work shall be allowed to lag pending such adjustment, but shall be promptly executed as directed, even if a dispute arises. No claim will be considered after the work in question has been done unless a written contract change order has been issued or a timely written notice of claim has been made by Vendor. Vendor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions and provisions of the original Contract.
- 3) Owner Initiated Change. The Vendor must submit a complete cost proposal, including any change in the Contract time, within seven (7) Days after receipt of a scope of a proposed change order, unless NSD requests that proposals be submitted in less than seven (7) Days.
- 4) Vendor Initiated Change. The Vendor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) Days of discovery of the facts giving rise to the proposed change order.
- 5) Whenever possible, any changes to the Contract amount shall be in a lump sum mutually agreed to by the Vendor and NSD.
- 6) Price quotations from the Vendor shall be accompanied by sufficiently detailed supporting documentation to permit verification by NSD.
- 7) If the Vendor fails to submit the cost proposal within the seven (7) Day period (or as requested), NSD has the right to order the Vendor in writing to commence the work immediately on a force account basis and/or issue a lump sum change to the contract price in accordance with NSD's estimate of cost. If the change is issued based on NSD estimate, the Vendor will waive its right to dispute the action unless within fifteen (15) Days following completion of the added/deleted work, the Vendor presents written proof that NSD's estimate was in error.
- 8) Estimates for lump sum quotations and accounting for cost-plus-percentage work shall be limited to direct expenditures necessitated specifically by the subject extra work, and shall be segregated as follows:
 - (a) Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessment or benefits required by lawful collective

bargaining agreements. The use of a labor classification that would increase the extra work cost will not be permitted unless the Vendor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

- (b) Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials cost shall be based upon Vendor or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then NSD Representative shall determine the materials cost, at its sole discretion.
- (c) Tool and Equipment Use. No payment will be made for the use of small tools, tools which have a replacement value of \$1,000 or less. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed.
- (d) Overhead, Profit and Other Charges. The mark-up for overhead (including supervision) and profit on work added to the Contract shall be according to the following:
 - i. "Net Cost" is defined as consisting of costs of labor, materials and tools and equipment only excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Vendor and Subcontractor at cost only, without mark-up.
 - ii. For Work performed by the Vendor's forces the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work.
 - iii. For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work to which the Vendor may add five (5%) percent of the Subcontractor's Net Cost.
 - iv. For Work performed by a sub-Subcontractor the added cost for overhead and profit shall not exceed fifteen (15 %) percent of the Net Cost for Work to which the Subcontractor and general Vendor may each add an additional five (5 %) percent of the Net Cost of the lower tier Subcontractor.
 - v. No additional mark up will be allowed for lower tier Subcontractor, and in no case shall the added cost for overhead and profit payable by NSD exceed twenty-five (25%) percent of the Net Cost as defined herein.
- 9) For added or deducted Work by Subcontractor, the Vendor shall furnish to NSD the Subcontractor's signed detailed estimate of the cost of labor, material and equipment, including the Subcontractor markup for overhead and profit. The same requirement shall apply to sub-Subcontractor.
- 10) For added or deducted work furnished by a Vendor or Vendor, the Vendor shall furnish to NSD a detailed estimate or quotation of the cost to the Vendor, signed by such Vendor or Vendor.
- 11) Any change in The Work involving both additions and deletions shall indicate a net total cost, including subcontracts and materials. Allowance for overhead and profit, as specified herein, shall be applied if the net total cost is an extra; overhead and profit allowances shall not be applied if the net total cost is a credit. The estimated cost of deductions shall be based on labor and material prices on the date the Contract was executed.
- 12) Vendor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the change order for work. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Vendor may not change or modify NSD's change order form in an attempt to reserve additional rights.
- 13) If NSD disagrees with the proposal submitted by Vendor, it will notify the Vendor and NSD will provide its opinion of the appropriate price and/or time extension. If the Vendor agrees with NSD, a change order will be issued by NSD. If no agreement can be reached, NSD shall have the right to issue a unilateral change order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Vendor fails to submit a claim in writing

to NSD within fifteen (15) Days of the issuance of the unilateral change order, disputing the terms of the unilateral change order.

- 14) No dispute, disagreement or failure of the parties to reach agreement on the terms of the change order shall relieve the Vendor from the obligation to proceed with performance of the work, including extra work, promptly and expeditiously.
- 15) Any alterations, extensions of time, extra work or any other changes may be made without securing consent of the Vendor's surety or sureties.

ARTICLE 42. OCCUPANCY

NSD reserves the right to occupy or utilize any portion of The Work at any time before completion, and such occupancy or use shall not constitute Acceptance of any part of Work covered by this Contract. This use shall not relieve the Vendor of its responsibilities under the Contract.

ARTICLE 43. RECORD ("AS BUILT") DRAWINGS

- a. Vendor shall prepare and maintain a complete set of record drawings (herein referred to as "as-builts") and shall require each trade to prepare its own as-builts. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire alarm, gas and plumbing. Vendor shall mark the as-builts to show the actual installation where the installation varies from the Work as originally shown. Vendor shall mark whichever drawings are most capable of showing conditions fully and where shop drawings are used, Vendor must record a cross-reference at the corresponding location on the contract drawings. Vendor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Vendor shall use colors to distinguish variations in separate categories of The Work.
- b. Vendor shall note related change order numbers where applicable. Vendor shall organize as-builts into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set. Vendor to also provide an electronic version of the as-builts. The suitability of the as-builts will be determined by NSD Representative.

ARTICLE 44. RESOLUTION OF CONSTRUCTION CLAIMS

- a. In accordance with Public Contract Code Sections 20104 *et seq.* and other applicable law, public works claims of \$375,000 or less which arise between the Vendor and NSD shall be resolved under the following the statutory procedure unless NSD has elected to resolve the dispute pursuant to Public Contract Code Section 10240 *et seq.*
- b. **All Claims:** All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract. "Claim" means a separate demand by the claimant for (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of the claimant and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled, or (3) an amount the payment of which is disputed by NSD.
- c. **Claims Under \$50,000.** NSD shall respond in writing to the claim within 45 days of receipt of the claim, or, NSD may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims NSD may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of NSD and the claimant. NSD's written response shall be submitted 15 days after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.
- d. **Claims over \$50,000 but less than or equal to \$375,000.** NSD shall respond in writing within 60 days of receipt, or, may request in writing within 30 days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims NSD may have against the claimant. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between NSD and the claimant. NSD's response shall be submitted within 30 days after receipt of the further documents, or within the same period of time taken by the claimant to produce the additional information or documents, whichever is greater. The Vendor shall make these records and documents available at all reasonable times, without any direct charge.
- e. The Vendor will submit the claim justification in the following format:
 - 1) Summary of claim merit and price, and Contract clause pursuant to which the claim is made.
 - 2) List of documents relating to claim

- (a) Specifications
 - (b) Drawings
 - (c) Clarifications (Requests for Information)
 - (d) Schedules
 - (e) Other
- 3) Chronology of events and correspondence
 - 4) Analysis of claim merit
 - 5) Analysis of claim cost
 - 6) Analysis of time impact analysis in CPM format
 - 7) Cover letter and certification of validity of the claim
- f. If the claimant disputes NSD's response, or if NSD fails to respond within the statutory time period(s), the claimant may so notify NSD within 15 days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, NSD shall schedule a meet and confer conference within 30 Days.
 - g. If following the meet and confer conference, the claim or any portion thereof remains in dispute, the claimant may file a claim pursuant to Government Code 900 et seq. and Government Code 910 et seq. For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the claimant submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.
 - h. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by NSD, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Vendor.

ARTICLE 45. NSD'S RIGHT TO TERMINATE CONTRACT

- a. **Termination for Cause:** NSD may, without prejudice to any other right or remedy, serve written notice upon Vendor of its intention to terminate this Contract if the Vendor: (i) refuses or fails to prosecute The Work or any part thereof with such diligence as will ensure its completion within the time required; (ii) fails to complete The Work within the required time; (iii) should file a bankruptcy petition or be adjudged a bankrupt; (iv) should make a general assignment for the benefit of its creditors; (v) should have a receiver appointed; (vi) should persistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials to complete the work; (vii) should fail to make prompt payment to Subcontractor or for material or labor; (viii) persistently disregard laws, ordinances, other requirements or instructions of NSD; or (ix) should violate any of the provisions of the Contract Documents.

The notice of intent to terminate shall contain the reasons for such intention to terminate. Unless within ten (10) Days after the service of such notice, such condition shall cease or satisfactory arrangements (acceptable to NSD) for the required correction are made, this Contract shall be terminated. In such case, Vendor shall not be entitled to receive any further payment until the Project has been finished. NSD may take over and complete The Work by any method it may deem appropriate. Vendor and its surety shall be liable to NSD for any excess costs or other damages incurred by NSD to complete the Project. If NSD takes over The Work, NSD may, without liability for so doing, take possession of and utilize in completing The Work such materials, appliances, plant, and other property belonging to the Vendor as may be on the Project site.

- b. **Termination For Convenience:** NSD may terminate performance of The Work in whole or, in part, if NSD determines that a termination is in NSD's interest.

The Vendor shall terminate all or any part of The Work upon delivery to the Vendor of a Notice of Termination specifying that the termination is for the convenience of NSD, the extent of termination, and the effective date of such termination.

After receipt of Notice of Termination, and except as directed by NSD, the Vendor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

- 1) Stop Work as specified in the Notice.

- 2) Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - 3) Leave the property upon which the Vendor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 - 4) Terminate all subcontracts to the extent that they relate to the portions of The Work terminated.
 - 5) Place no further subcontracts or orders, except as necessary to complete the remaining portion of The Work.
 - 6) Submit to NSD, within ten (10) Days from the effective date of the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the Vendor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Vendor solely as a result of NSD's exercise of its right to terminate this Contract pursuant to this clause, which costs the Vendor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by NSD no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by NSD's Termination for Convenience."
 - 7) These provisions are in addition to and not in limitation of any other rights or remedies available to NSD.
- c. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, NSD may immediately order Vendor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of NSD or the Contract is terminated.

ARTICLE 46. WARRANTY AND GUARANTEE

- a. Vendor warrants that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Contract Documents; and that all Work conforms to the Contract Document requirements and is free of any defect whether performed by the Vendor or any Subcontractor or Vendor.
- b. Unless otherwise stated, all warranty periods shall begin upon the filing of the Notice of Completion. Unless otherwise stated, the warranty period shall be for one year.
- c. The Vendor shall remedy at its expense any damage to NSD-owned or controlled real or personal property.
- d. Vendor shall furnish NSD with all warranty and guarantee documents prior to final Acceptance of the Project by NSD.
- e. NSD shall notify the Vendor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Vendor shall within ten (10) Days after being notified commence and perform with due diligence all necessary Work. If the Vendor fails to promptly remedy any defect, or damage; the county shall have the right to replace, repair, or otherwise remedy the defect, or damage at the Vendor's expense.
- f. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Vendor not in accordance with the Contract requirements, NSD may undertake at Vendor's expense, and without prior notice, all Work necessary to correct such condition.
- g. With respect to all warranties, express or implied, from Subcontractor, manufacturers, or Vendors for Work performed and Materials furnished under this Contract, the Vendor shall:
 - 1) Obtain for NSD all warranties that would be given in normal commercial practice;
 - 2) Require all warranties to be executed, in writing, for the benefit of NSD; and
 - 3) Enforce all warranties for the benefit of NSD, unless otherwise directed in writing by NSD.

This Article shall not limit NSD's rights under this Contract or with respect to latent defects, gross mistakes, or fraud. NSD specifically reserves all rights related to defective work, including but not limited to the defect claims pursuant to California Code of Civil Procedure Section 337.15.

ARTICLE 47. DOCUMENT RETENTION & EXAMINATION

- a. In accordance with Government Code Section 8546.7, records of both NSD and the Vendor shall be subject to examination and audit by the State Auditor General for a period of ten (10) years after final date on any contract.
- b. Vendor shall make available to NSD any of the Vendor's other documents related to the Project immediately upon request of NSD.
- c. In addition to the State Auditor rights above, NSD shall have the right to examine and audit all books, estimates, records, contracts, documents, proposal documents, subcontracts, and other data of the Vendor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to NSD, for a period of ten (10) years after final date on any contract.

ARTICLE 48. SOILS INVESTIGATIONS

When a soils investigation report for the Project site is available, such report shall not be a part of the Contract Documents. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock, is approximate only and is not guaranteed. Vendor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Vendor is required to examine the site before submitting its proposal and must make whatever tests it deems appropriate to determine the underground condition of the soil.

ARTICLE 49. REQUIRED CERTIFICATIONS

Vendor shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification" and a "Recycled Content Certification." These forms are included in the Contract Documents and must be signed under the penalty of perjury and dated prior to commencing work on this Project.

In addition to the above listed certifications, Vendor shall, for all contracts involving state funds, execute and submit an "Asbestos-Free Materials Certification." Vendor, further, is aware of the following:

- a. Should asbestos containing materials be installed by the Vendor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:
 1. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
 2. The asbestos removal Vendor shall be an EPA accredited Vendor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
 3. The asbestos consultant shall be chosen and approved by NSD, which shall have sole discretion and final determination in this matter.
 4. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- b. If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal Vendor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by NSD shall be borne entirely by the Vendor.
- c. Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the Vendor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Contract, the Vendor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless NSD, its Governing Board, employees, agents, representatives, including its architect and assigns, for all asbestos liability which may be associated with this work. The Vendor further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risk and liabilities.

ARTICLE 50. SEPARATE CONTRACTS

- a. NSD reserves the right to let other contracts in connection with this Work or on the Project site. Vendor shall permit other Vendors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.
- b. To ensure proper execution of its subsequent Work, Vendor shall immediately inspect work already in place and shall at once report to NSD Representative any problems with the work in place or discrepancies with the Contract Documents.
- c. Vendor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by NSD in prosecution of the Project to the end that Vendor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Vendor exclusive occupancy at site of the Project. Vendor shall not cause any unnecessary hindrance or delay to any other Vendor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, NSD Representative shall decide which Vendor shall cease Work temporarily and which Vendor shall continue or whether work can be coordinated so that Vendors may proceed simultaneously. NSD shall not be responsible for any damages suffered or for extra costs incurred by Vendor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project site.

ARTICLE 51. NOTICE AND SERVICE THEREOF

All notices shall be in writing and either served by personal delivery or mailed to the other party as designated in the Proposal Forms. Written notice to the Vendor shall be addressed to Vendor's principal place of business unless Vendor designates another address in writing for service of notice. Notice to NSD shall be addressed to NSD as designated in the Notice Inviting Proposals unless NSD designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

ARTICLE 52. NOTICE OF THIRD PARTY CLAIMS

Pursuant to Public Contract Code Section 9201, NSD shall provide Vendor with timely notification of the receipt of any third-party claim relating to the Contract.

ARTICLE 53. STATE LICENSE BOARD NOTICE.

Vendors are required by law to be licensed and regulated by the Vendors' State License Board which has jurisdiction to investigate complaints against Vendors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a Vendor may be referred to the Registrar, Vendors' State License Board, P.O. Box 26000, Sacramento, California 95826.

ARTICLE 54. INTEGRATION

- a. Oral Modifications Ineffective. No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.
- b. Contract Documents Represent Entire Contract. The Contract Documents represent the entire agreement of NSD and Vendor.

ARTICLE 55. ASSIGNMENT

Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of NSD. Any assignment without the written consent of NSD shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

ARTICLE 56. CHANGE IN NAME AND NATURE OF VENDOR'S LEGAL ENTITY

Should a change be contemplated in the name or nature of the Vendor's legal entity, the Vendor shall first notify NSD in order that proper steps may be taken to have the change reflected on the Contract.

ARTICLE 57. ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Section 7103.5 of the Public Contract Code, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Vendor or Subcontractor offers and agrees to assign to NSD 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. Section 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 the purchase of goods, services, or materials pursuant to this Contract or any subcontract. This assignment shall be made and become effective at the time NSD makes final payment to the Vendor, without further acknowledgment by the parties.

ARTICLE 58. PROHIBITED INTERESTS

No NSD official or representative who is authorized in such capacity and on behalf of NSD to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

ARTICLE 59. LAWS AND REGULATIONS

- a. Vendor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. If Vendor observes that drawings and specifications are at variance therewith, he shall promptly notify NSD Representative in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Vendor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to NSD Representative, he shall bear all costs arising there from.
- b. Vendor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 11271 et seq.). The Work will be performed in compliance with ADA regulations.

ARTICLE 60. PATENT FEES OR ROYALTIES.

The Vendor shall include in its proposal amount the patent fees or royalties on any patented article or process furnished or used in the Work. Vendor shall assume all liability and responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices or processes used in or incorporated with The Work, and shall defend, indemnify and hold harmless NSD, its officials, officers, agents, employees and representatives from and against any and all liabilities, demands, claims, damages, losses, costs and expenses, of whatsoever kind or nature, arising from such use.

ARTICLE 61. OWNERSHIP OF DRAWING

All Contract Documents furnished by NSD are NSD property. They are not to be used by Vendor or any Subcontractor on other work nor shall Vendor claim any right to such documents. With exception of one complete set of Contract Documents, all documents shall be returned to NSD on request at completion of The Work.

ARTICLE 62. NOTICE OF TAXABLE POSSESSORY INTEREST

In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Vendor will be responsible.

ARTICLE 63. COMPLIANCE WITH DTSC GUIDELINES—IMPORTED SOILS

If the Project requires the use of imported soils, the Vendor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. NSD reserves the right to reject any imported material that has come from agricultural or commercial land uses. Vendor must notify NSD of the source of material and comply with the San Diego Regional Water Quality Control Board Resolution 95-63 and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).

ARTICLE 64. NSD'S INSPECTOR

- a. One or more inspectors employed by NSD in accordance with requirements of title 19, 21 and/or 24 of the California Code of Regulations will be assigned to the work. His duties are specifically defined in the California Code of Regulations.
- b. Inspector SHALL have access to all plant operations involving work under this contract and shall be provided reasonable advance notice of the time and place of operations, which the inspector desires to observe. Inspector shall be provided with all necessary samples of materials and work for testing purposes. All work shall be under the observation of said inspector. He shall have free access to any or all parts of work at any time. Vendor shall furnish inspector reasonable facilities for obtaining such information as may be necessary to keep him fully informed respecting progress and manner of work and character of materials. Inspection of work shall not relieve Vendor from any obligation to fulfill this contract.

Inspector, after consultation with the construction manager and architect, together, shall have authority to stop work whenever the provisions of the contract documents are not being complied with and Vendor shall instruct his employees accordingly.

ARTICLE 65. INSPECTOR'S FIELD OFFICE

- a. The Vendor shall be responsible for providing the inspector's field office. The office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key-type lock or padlock hasp. The inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, a telephone answering machine, and a fax machine at Vendor's expense.
- b. A table satisfactory for the study of plans and two chairs shall be provided by Vendor. Vendor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.
- c. The provisions of this section are intended to be complementary to any requirements provided elsewhere in these Contract Documents, however in the event of conflicts between this section and other provisions of these Contract Documents, this section shall prevail.

4.0 SPECIAL CONDITIONS

- A. **Time of Performance.** At no time will work be performed during regular school hours when school is in session. Exact dates will be scheduled with Vendor as soon as E-Rate funding is awarded and NSD's school year calendar has been released.
- B. Work under this contract shall be scheduled and coordinated in compliance with the following:
 - 1. **Substitutions to Specified Materials, Processes, or Articles Prior to Proposal Submittal:** Any proposals for substitutions of equipment, materials, or products other than what is specified in the proposal documents must be submitted, in writing, to the NSD within **six (6) days** of the initial mandatory pre proposal meeting/mandatory walkthrough scheduled start time. After reviewing the request, the NSD will respond with it's decision to all parties who attended the pre proposal meeting/walkthrough. The District has the right to reject any or all requests for substitutions of equipment, materials, or products other than what is specified in the proposal documents. The Vendor shall bear all of the District's costs associated with the review of substitution requests.

5.0 SPECIFICATIONS

INTRODUCTION

The goal of this RFP is to obtain the services of a qualified telecommunications services provider to provide the current and future data circuit services requirements of National School District. NSD would also like pricing for an Internet connection from District Office.

5.1 Data Circuit Services Requested

NSD currently receives data circuit service from one provider, COX California Telcom, LLC. Services proposed must be at least equivalent to existing services.

Vendors shall state any excluded features, as well as specify any capabilities above and beyond the minimum requirements

5.2 California Teleconnect Fund (CTF)

Vendor must participate in the California Teleconnect Fund. All circuits must be discounted in accordance with CTF rules and regulations.

5.3 Management Reports

Vendor shall provide management reports as requested (i.e., Line utilization, Circuit up-time, etc.). Sample reports must be provided with Response.

5.4 Bringing Circuits from Demarc to MPOE

All costs associated with bringing circuits from demarc to MPOE are borne by the respondent and are not to be included in the pricing of this proposal.

5.5 Circuit Specifications and Minimum Requirements

Circuit 1 = A point-to-point link with a MINIMUM 10GBS (Gigabit/second) committed information rate of guaranteed capacity, that creates a point to point link for data traffic between the National NSD Office (DO) Data Router (1500 N Ave National City, CA 91950) and the SDCOE router (6401 Linda Vista Rd. San Diego, CA 92161). This link's capacity should be able to be increased to a MAXIMUM of 100 GBS capacity.

Circuits 2 through 10 = Nine WAN links with a MINIMUM 1GBS (Gigabit/second) committed information rate of guaranteed capacity, to a MAXIMUM of 10 GBS for each school supported by the National DO.

Each data connection will create a point to point link for data traffic between the National DO Core Switch and School site router. The WAN connection must be architected in a manner that will allow private IP addressing between the School site WAN interface and the WAN interface of the Core Router at the National DO, so that all School WAN interfaces and the National DO Core Router WAN Interface reside on the same IP subnet. A 1GBS WAN link, upgradeable to 10GBS adhering to the requirements above, must reside between each location listed under the Circuit Locations section below. The district is not interested in a dark or managed fiber design. A reference diagram, depicting the current logical network is listed as the Circuit Diagram on Page 42.

5.6 Circuit Numbering and Locations

CIRCUIT 1 - National NSD Office (DO) Data Router (1500 N Ave National City, CA 91950) and the SDCOE router (6401 Linda Vista Rd. San Diego, CA 92161)

CIRCUIT 2 - National DO Core Switch (1500 N Ave National City, CA 91950) and the Central School (933 E Ave. National City, CA 91950)

CIRCUIT 3 - National DO Core Switch (1500 N Ave National City, CA 91950) and the El Toyon School (2000 E. Division St. National City, CA 91950)

CIRCUIT 4 - National DO Core Switch (1500 N Ave National City, CA 91950) and the Ira Harbison School (3235 E. 8th St. National City, CA 91950)

CIRCUIT 5 - National DO Core Switch (1500 N Ave National City, CA 91950) and the Kimball School (302 W. 18th St. National City, CA 91950)

CIRCUIT 6 - National DO Core Switch (1500 N Ave National City, CA 91950) and the Las Palmas School (1900 E. 18th St. National City, CA 91950)

CIRCUIT 7 - National DO Core Switch (1500 N Ave National City, CA 91950) and the Lincoln Acres School (2200 Lanoitan Ave National City, CA 91950)

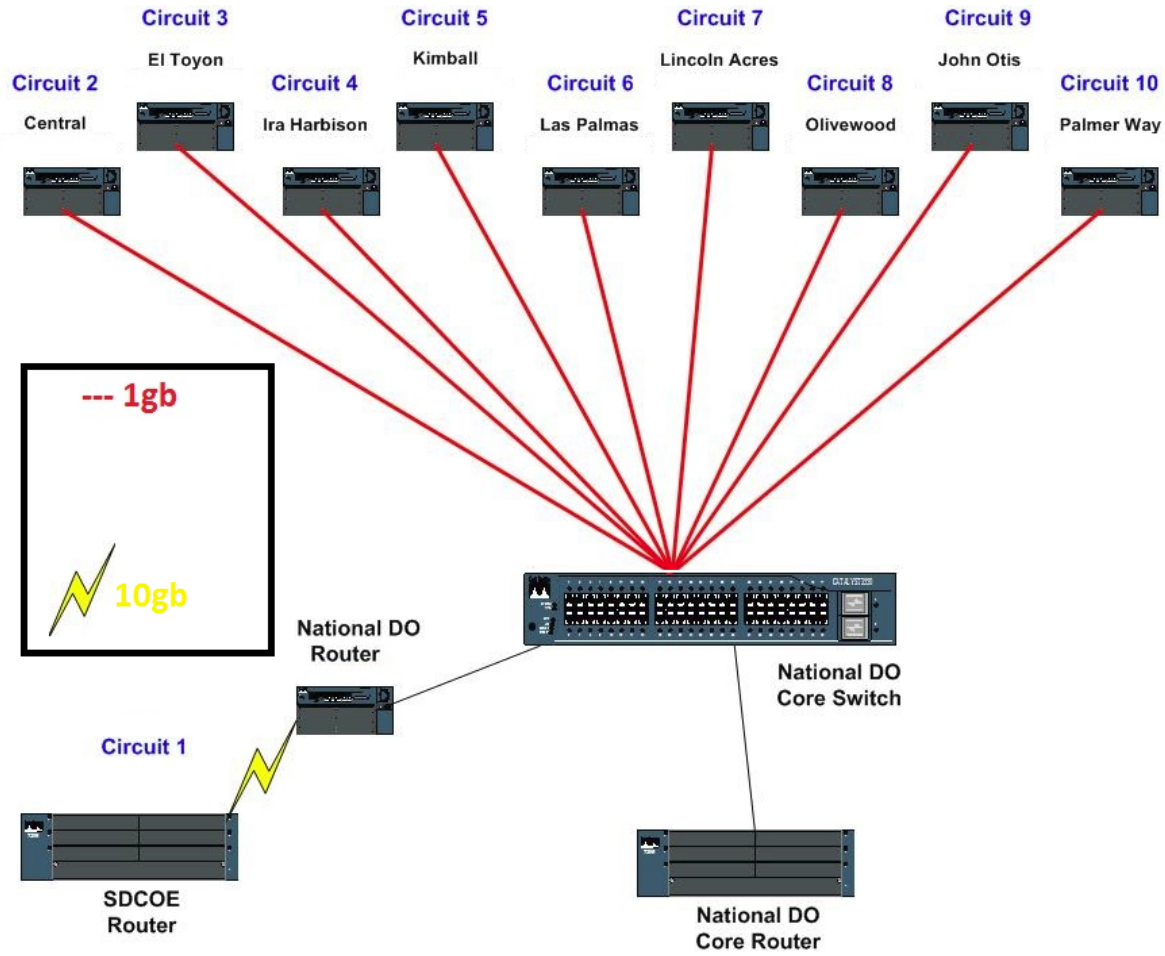
CIRCUIT 8 - National DO Core Switch (1500 N Ave National City, CA 91950) and the Olivewood School (2505 "F" Ave National City, CA 91950)

CIRCUIT 9 - National DO Core Switch (1500 N Ave National City, CA 91950) and the John Otis School (621 E. 18th St National City, CA 91950)

CIRCUIT 10 - National DO Core Switch (1500 N Ave National City, CA 91950) and the Palmer Way School (2900 Palmer St National City, CA 91950)

The equipment listed is for demonstrative purposes only and all hardware within the scope of this RFP needed to facilitate any circuits shall be covered/hosted by the circuit provider.

5.7 Circuit Diagram



5.8 Circuit Testing Methodology

Provide methodology outlining the process for activation and testing of the data circuits, including but not limited to the following:

1. Specific plan to test point to point fiber optic connections across all sites on WAN to verify circuit as error-free and carrying no latency (delay) above levels deemed as industry-standard acceptable for media used/deployed:
 - a. WAN terminals to be tested
 - b. Verification and results of test for each point on WAN to all other points on WAN.
 - c. Measured bandwidth per site per connection point to all other WAN connection points.
2. Simulation of National School District network router uplink to verify connectivity of WAN. (Terminus to Router)
3. Test schedule of activation.

Report detailing results of 1 and 2 with signature of tester for each site.

National School District will accept work as completed after the following parameters have been monitored and accepted by National School District technical staff for a period of 30 days from date of service activation:

1. Verification of contracted bandwidth per site to all sites and points on internal and external network.
2. Measurement of Quality of service factors (all sites and connection to SDCOE):
 - a. Continuity of connection
 - b. Speed/Latency of connection
 - c. Response to reported service problems (as applicable)

5.9 Internet Service

Provide internet service description and cost for 10Gb/s upgradeable to 100Gb/s

The equipment listed is for demonstrative purposes only and all hardware within the scope of this RFP needed to facilitate any circuits shall be covered/hosted by the circuit provider.

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6.0 QUOTATIONS

Quotation Page – PRICING

State the Itemized Pricing for Installation, Monthly Recurring Charges (**MRC**), Additional Work, Taxes, Fees and Surcharges for each circuit:

Circuit 1

Installation MRC

\$ _____ \$ _____

Itemized Taxes, Fees, Surcharges and Additional Work:

_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Circuit 2

Installation MRC

\$ _____ \$ _____

Itemized Taxes, Fees, Surcharges and Additional Work:

_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Circuit 3

Installation MRC

\$ _____ \$ _____

Itemized Taxes, Fees, Surcharges and Additional Work:

_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Installation MRC

\$ _____ \$ _____

Circuit 4

Itemized Taxes, Fees, Surcharges and Additional Work:

_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Installation MRC

\$ _____ \$ _____

Circuit 5

Itemized Taxes, Fees, Surcharges and Additional Work:

_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Circuit 6

Installation MRC

\$ _____ \$ _____

Itemized Taxes, Fees, Surcharges and Additional Work:

_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Installation MRC

\$ _____ \$ _____

Circuit 7

Itemized Taxes, Fees, Surcharges and Additional Work:

_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Installation MRC

\$ _____ \$ _____

Circuit 8

Itemized Taxes, Fees, Surcharges and Additional Work:

_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Circuit 9

Installation MRC

\$ _____ \$ _____

Itemized Taxes, Fees, Surcharges and Additional Work:

_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Installation MRC

\$ _____ \$ _____

Circuit 10

Itemized Taxes, Fees, Surcharges and Additional Work:

_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Installation MRC

\$ _____ \$ _____

Internet

Itemized Taxes, Fees, Surcharges and Additional Work:

_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Narrative Description of Proposed Services

Identify any specifications for the proposed service.

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APPENDIX A

PROPOSAL FORM

National School District
Business Services Department
1500 N Avenue
National City, CA 91950

Re: Request for **Proposal No. 23-24-240**
To: Members of the Governing Board

The undersigned, doing business under the full and complete legal firm name as set forth below, having examined the Request for Proposal, Proposal Form, Instructions and General Information, the Specifications, the Agreement, and all other documents forming a part of the Proposal package for the above-referenced proposal, hereby proposes to perform the Agreement, including all of its component parts, and to furnish all materials called by them for the entire order for the prices set forth in the quotation sheets contained in said proposal package. The entire proposal package is submitted, together with this Proposal Form.

Name of Company _____

Legal Status _____
(i.e., Sole Proprietorship, Partnership, Corporation)

Tax I.D. Number _____
(Sole Proprietorship only)

Service Provider Ident. No. (SPIN) _____

Address: _____

Authorized Representative: _____

Signature

Name (print or type)

Title

Date:_____

Telephone: _____

APPENDIX B

BID BOND

KNOW ALL PERSONS BY THESE PRESENTS:
THAT

_____, as
Principal, and _____, as
Surety, are held firmly bound unto the **NATIONAL SCHOOL DISTRICT** (hereinafter called the
DISTRICT) in the sum of _____

_____ DOLLARS (\$_____), being not less than
ten percent (10%) of the Total Proposal Price; for the payment of which sum will and truly to be
made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly
and severally, firmly by these presents.

WHEREAS, said Principal has submitted a proposal to the DISTRICT to perform all Work
required for the construction of the **23-24-240 Telecommunications – Data Circuits and
Internet Services** as set forth in the Notice Inviting Proposals and accompanying Proposal
Documents, dated **November 13, 2023**.

5 NOW, THEREFORE, if said Principal is awarded a Contract for the Work by the
DISTRICT and, within the time and in the manner required by the above- referenced Proposal
Documents, enters into the written form of Contract bound with said Proposal Documents,
furnishes the required bonds (one to guarantee faithful performance and the other to guarantee
payment for labor and materials) furnishes the required insurance certificates and
endorsements, and furnishes any other certifications as may be required by the Contract, then
this obligation shall be null and void; otherwise it shall remain in full force and effect. In the
event suit is brought upon this bond by the DISTRICT and judgment is recovered, said Surety
shall pay all costs incurred by the DISTRICT in such suit, including reasonable attorneys' fees to
be fixed by the court.

SIGNED AND SEALED, this _____ day of _____, 20_____.

Principal

Surety

By: _____
Signature

By: _____
Signature

(SEAL)

(SEAL)

APPENDIX C

LIST OF PROPOSED SUBCONTRACTORS

In compliance with the "Subletting and Subcontracting Fair Practices Act," Sections 4100 through 4114 of the California Public Contract Code, and any amendments thereto, each Vendor shall provide the information requested below for each Subcontractor who will perform work, labor or render service to Vendor in or about the construction of the Work in an amount in excess of one-half of one percent (greater than 0.5 %) of the Vendor's Total Proposal Price, or, in the case of proposals or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the Vendor's total proposal or ten thousand dollars (\$10,000), whichever is greater, and shall further set forth the portion of the Work which will be done by each Subcontractor. Vendor shall list only one Subcontractor for any one portion of the Work.

If the Vendor fails to specify a Subcontractor for any portion of the Work to be performed under the Contract, it shall be deemed to have agreed to perform such portion itself, and shall not be permitted to subcontract that portion of the Work except under the conditions hereinafter set forth below.

Subletting or subcontracting of any portion of the Work in excess of one half of one percent (greater than 0.5%) of the Total Proposal Price or, in the case of proposals or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the Vendor's total proposal or ten thousand dollars (\$10,000), whichever is greater, for which no Subcontractor was designated in the original proposal shall only be permitted in cases of public emergency or necessity, and then only after District approval.

(Duplicate page if needed for listing additional Subcontractors)

Name and Location of Subcontractor

Description of Work to be Subcontracted

Name: _____

Address: _____

Ph: _____ Fax: _____

License No. _____

Name and Location of Subcontractor

Description of Work to be Subcontracted

Name: _____

Address: _____

Ph: _____ Fax: _____

License No. _____

Name and Location of Subcontractor

Description of Work to be Subcontracted

Name: _____

Address: _____

Ph: _____ Fax: _____

License No. _____

APPENDIX D

RECYCLED CONTENT CERTIFICATION

The undersigned declares that he or she is the person who executed the proposal for the _____ (hereinafter referred to as the "Project"), and submitted it to the **National School District** (hereinafter referred to as the "District") on behalf of _____ hereinafter referred to as the "Vendor").

Pursuant to Public Contract Code Section 10308.5, all Vendors are required to certify in writing under penalty of perjury the minimum (if not exact) percentage of recycled content in materials, goods, or supplies offered or products used in the performance of their contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The recycled content shall include both post consumer material and secondary material as defined in Public Contract Code Sections 12161 and 12200 shall apply.

I declare under penalty of perjury under the laws of the State of California that the following percentages of Postconsumer Material and Secondary Material is in the materials, goods or supplies offered for, or products used in, the performance of the Contract for the Project:

_____ % Postconsumer Material _____ % Secondary Material.

Executed on this _____ day of _____, 20____ at _____.

Name of Vendor (Print or Type)

By

Signature

Print Name

Title

Subscribed and sworn before me this _____ day of _____, 20____

Notary Public in and for the State of California

My Commission Expires: _____

APPENDIX E

NON-COLLUSION AFFIDAVIT

In accordance with Public Contract Code Section 7106, the undersigned, being first duly sworn, deposes and says that he or she holds the position listed below with the Vendor, the party making the foregoing proposal, that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Vendor has not directly or indirectly induced or solicited any other Vendor to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Vendor or anyone else to put in a sham proposal, or that anyone shall refrain from proposaling; that the Vendor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Vendor or any other Vendor, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Vendor, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and, further, that the Vendor has not, directly or indirectly, submitted his or her proposal price or 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, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

Signature

Typed or Printed Name

Title

Vendor

Subscribed and sworn before me

This ____ day of _____, 20____

Notary Public in and for
the State of California

(Seal)

My Commission Expires: _____

APPENDIX F

Asbestos-Free Materials Certification

The undersigned declares that he or she is the person who executed the RFP for the **Telecommunications Services - Data Circuits and Internet Services, RFP No. 23-24-240** (hereinafter referred to as the "Project", and submitted it to the **NATIONAL SCHOOL DISTRICT** (hereinafter referred to as the "Owner" on behalf of

(hereinafter referred to as the "Vendor").

To the best of my knowledge, information and belief, in completing the Vendor's Work for the Project, no material furnished, installed or incorporated into the Project will contain, or in itself be composed of, any materials listed by the federal or state EPA or federal or state health agencies as a hazardous material.

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

Executed on this _____ day of _____, 20____ at _____.

Name of Vendor (Print or Type)

By:

Signature

Print Name

Title

Subscribed and sworn before me

this _____ day of _____, 20____

Notary Public in and for
the State of California

My Commission Expires: _____

APPENDIX G

Drug-Free Workplace Certification

This Drug-Free Workplace Certification form is part of the Contract made by and between the **NATIONAL SCHOOL DISTRICT** (hereinafter referred to as the "Owner" and (hereinafter referred to as the ("Vendor") for the **Telecommunications Services for Data Circuits and Internet Services, RFP No. 23-24-240** Project (hereinafter referred to as the (Project). This form is required from all successful Vendors pursuant to the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. It addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination, and the Vendor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in their workplace and specifying actions which will be taken against employees for violations of the prohibition;
- B. Establishing a drug-free awareness program to inform employees about all of the following:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The person's or organization's policy of maintaining a drug-free workplace;
 - 3. The availability of drug counseling, rehabilitation and employee-assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations.
- C. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision ☐ A, ☐ and that, as a condition of employment on the contract or grant, the employee agrees to aproposale by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of the Drug-Free Workplace Act as it now exists or may hereinafter be amended. Particularly, I shall aproposale by Government Code Section 8355 when performing the Contract for the Project by:

- A. Publishing a statement notifying employees concerning the prohibition of controlled substance at my workplace;
- B. Establishing a drug-free awareness program; and
- C. Requiring that each employee engaged in the performance of the contract be given a copy of the statement required by Section 8355(a) and agree to aproposale by the terms of that statement.

I also understand that if the Owner determines that I have either: (a) made a false certification herein; or (b) violated this certification by failing to carry out the requirements of Section 8355, the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that if I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of the Act.

I acknowledge that I am aware of the provisions of Government Code Section 8350 et seq., and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

Executed on this _____ day of _____, 20____ at _____.

Name of Vendor (Print or Type)

By _____
Signature

Print Name

Title

Subscribed and sworn before me
this ____ day of _____, 20____

Notary Public in and for
the State of California

(Seal)

My Commission Expires _____

APPENDIX H

NSD LOCATIONS

Location	Address
NSD Office	1500 N Avenue National City, CA 91950
Central School	933 E Avenue National City, CA 91950
El Toyon School	2000 East Division Street, National City, CA 91950
Ira Harbison School	3235 East 8 th Street National City, CA 91950
Kimball School	302 West 18 th Street, National City, CA 91950
Las Palmas School	1900 East 18 th Street National City, CA 91950
Lincoln Acres School	2200 Lanoitan Avenue National City, CA 91950
Olivewood School	2505 F Avenue National City, CA 91950
John Otis School	621 East 18 th Street, National City, CA 91950
Palmer Way School	2900 Palmer Street, National City, CA 91950
Rancho de la Nacion	1830 East Division Street National City, CA 91950

APPENDIX I

FINGERPRINTING CERTIFICATIONS

VENDOR FINGERPRINTING REQUIREMENTS

VENDOR CERTIFICATION

With respect to the Contract dated _____ 20____ by and between the National School District ("District") and _____ ("Vendor"), Vendor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code Section 45125.1 and that none of its employees that may come in contact with District's pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Vendor's Representative

Date

~~VENDOR EXEMPTION (Not Applicable)~~

~~_____ Pursuant to Education Code sections 45125.1 and 45125.2, the National School District ("District") has determined that ("Vendor") is exempt from the criminal background check certification requirements for the contract dated _____ 20____ by and between the District and Vendor ("Contract") because:~~

- ☐ ~~The Vendor's employees will have limited contact with District students during the course of the Contract;~~
- ☐ ~~Emergency or exceptional circumstances exist; or~~
- ☐ ~~With respect to Vendors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, the Vendor has agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Section 45125.2:~~

~~_____ Installation of physical barrier at the work site to limit contact with pupils.~~

~~_____ Surveillance of employees of the Vendor by school personnel.~~

~~_____ Continual supervision and monitoring of all employees of the Vendor by an employee of the Vendor whom the DOJ has ascertained has not been convicted of a violent or serious felony.~~

~~Supervisor's Name: _____~~

~~Sec. Sec. No. _____~~

School District Official

Date

APPENDIX I (Cont)

SUBCONTRACTOR'S CERTIFICATION (Required for all Subcontractors)

The National School District ("District") entered into a contract for services with _____ ("Vendor") on or about _____, 20____ ("Contract"). This certification is submitted by _____, a Subcontractor to the Vendor for purposes of that Contract ("Subcontractor"). Subcontractor hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Vendor's Representative

Date

~~SUBCONTRACTOR'S EXEMPTION (Not Applicable)~~

~~The National School District ("District") entered into a contract for services with ("Vendor") on or about _____, 20____ ("Contract"). Pursuant to Education Code sections 45125.1 and 45125.2, the District has determined that _____, a Subcontractor to the Vendor for purposes of that Contract ("Subcontractor"), is exempt from the criminal background check certification requirements for the Contract because:~~

- ☐ ~~The Subcontractor's employees will have limited contact with District students during the course of the Contract;~~
- ☐ ~~Emergency or exceptional circumstances exist; or~~
- ☐ ~~With respect to Vendors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, the Vendor and/or Subcontractor have agreed to ensure the safety of pupils at the school facility by the following method(s) specified in Section 45125.2:~~

~~_____ Installation of physical barrier at the work site to limit contact with pupils.
_____ Surveillance of employees of the Vendor by school personnel.
_____ Continual supervision and monitoring of all employees of the Vendor by an employee of the Vendor whom the DOJ has ascertained has not been convicted of a violent or serious felony.~~

~~Supervisor's Name: _____~~

~~Sec. Sec. No. _____~~

School District Official

Date