

REQUEST FOR PROPOSAL #10-09 – TELECOMMUNICATION SERVICES
ATTACHMENT D – PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2009, by and between SCHOOL BOARD OF ALACHUA COUNTY, Florida, ("SBAC"), and _____ ("Contractor").

WHEREAS, SBAC desires to engage Contractor to render telecommunication services in strict accordance with RFP #10-09, which is incorporated herein by reference ("Services");

NOW, THEREFORE, for and in consideration of the foregoing recitals, the undertakings and agreements hereinafter provided, the parties agree as follows:

ARTICLE 1 - SERVICES

SBAC hereby engages Contractor to perform the Services contained in Attachment A, "Scope of Services," and Contractor hereby agrees to provide the Services to SBAC.

ARTICLE 2 - TIME OF COMMENCEMENT AND COMPLETION

Contractor shall commence performance of the Services on or about July 1, 2010, and the Services shall be completed on or about June 30, 2011. Thereafter, the Agreement may be extended for two additional one-year periods upon mutual agreement of the parties.

ARTICLE 3 - COMPENSATION

SBAC shall compensate Contractor for successful performance of the Services in accordance with Attachment B, "Price for Services."

ARTICLE 4 - METHOD OF PAYMENT

Terms are Net 30 days after receipt of an acceptable invoice reflecting satisfactory completion of the Services in accordance with this Agreement. Invoices shall be submitted in duplicate to SBAC at the following address: Accounts Payable Department, 620 East University Avenue, Gainesville, FL 32601. All invoices shall, at a minimum, include the following information:

- Purchase Order #
- Description of services provided;

ARTICLE 5 – JESSICA LUNSFORD ACT - CONTRACTOR CERTIFICATION

SBAC is required to conduct background screening of Contractor (including its employees, agents, and sub-contractors) (go to www.sbac.edu for finger printing and Level 2 screening procedures). Background screening includes submission of Contractor's fingerprints to the FDLE and FBI. The standards for screening depend on the nature of the work to be performed by Contractor.

a) If Contractor's performance either **is** anticipated to result in direct contact with students, or will give Contractor access to or control of school funds, then the screening standard is that Contractor may not have been convicted of a crime involving moral turpitude. The School Board has defined "crimes involving moral turpitude" to include, but not be limited to the following: felony sexual-related crimes, felony child abuse crimes, murder, lewd and lascivious crimes, indecent exposure (if sexual in nature), and felony distribution or sale of controlled substances.

b) If Contractor's performance **is not** anticipated to result in direct contact with students, then the screening standard is that Contractor may not have been convicted of any of the following offenses: Any offense listed in s. [943.0435\(1\)\(a\)1.](#), relating to the registration of an individual as a sexual offender; Section [393.135](#), relating to sexual misconduct with certain developmentally disabled clients and the reporting of such sexual misconduct; Section [394.4593](#), relating to sexual misconduct with certain mental health patients and the reporting of such sexual misconduct; Section [775.30](#), relating to terrorism; Section [782.04](#), relating to murder; Section [787.01](#), relating to kidnapping; Any offense under chapter 800, relating to lewdness and indecent exposure; Section [826.04](#), relating to incest; Section [827.03](#), relating to child abuse, aggravated child abuse, or neglect of a child.

"Convicted" means that there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. Conviction of a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

Exemptions from fingerprint based background screening: If Contractor's work is non-instructional in nature, then Contractor may be exempt from the background screening requirements above if Contractor meets one of the following criteria: **1)** Contractor is under the direct supervision of a School Board employee or contractor or one or more Contractor employees who have had a criminal history check and meets the screening requirements under s. 1012.32, s. 1012.465, s. 1012.467, or s. 1012.56. "Direct supervision" means that a School Board employee or contractor or one or more Contractor employees are physically present with Contractor when Contractor has access to a student and the access remains in the School Board employee's or the contractor's or the Contractor's employees' line of sight; **2)** Contractor is required by law to undergo a level 2 background screening pursuant to s. 435.04 for licensure, certification, employment, or other purposes and Contractor submits evidence of meeting the following criteria: a) Contractor meets the screening standards in s. 435.04, b) Contractor's license or certificate is active and in good standing, if Contractor is a licensee or certificate-holder, c) Contractor has completed the criminal history check within 5 years prior to seeking access to school grounds when students are present; **3)** Contractor is a law enforcement officer, as defined in s. 943.10, who is assigned or dispatched to school grounds by Contractor's employer; **4)** Contractor is an employee or medical director of an ambulance provider, licensed pursuant to chapter 401, who is providing medical transportation services; **5)** Contractor remains at a site where students are not permitted and the site is separated from the remainder of the school grounds by a single chain-link fence of 6 feet in height; **6)** Contractor provides pick-up or delivery services and those services involve brief visits on school grounds when students are present.

However, even if Contractor is exempt as defined above, Contractor will be subject to a search against the FDLE's registration information regarding sexual predators and sexual offenders and the Department of Justice national sex offender public registry. There is no charge for this search.

Certification: By executing this Agreement, Contractor swears and affirms under penalty of perjury that all of its employees, agents, and subcontractors will comply with this form, the requirements of the Jessica Lunsford Act, SBAC's finger printing procedures, and the laws of the State of Florida. Failure to comply with this form, the requirements of the Jessica Lunsford Act, SBAC's finger printing procedures, and the laws of the State of Florida shall constitute a material breach of the contract, and SBAC may avail itself of all remedies pursuant to law. Contractor agrees to indemnify and hold harmless the School Board, its officers, employees, and agents, from and against any and all claims or causes of action, including without limitation those for personal injury, death, property damages, and attorney fees, arising out of or relating to Contractor's failure to comply with this form, the requirements of the Jessica Lunsford Act, SBAC's finger printing procedures, and the laws of the State of Florida.

ARTICLE 6 – PERMITS AND LICENSES

Contractor shall, at its expense, obtain all necessary governmental permits, licenses, approvals, and documents required for the performance of the Services.

ARTICLE 7 - COMPLIANCE WITH LAWS

(a) Contractor agrees to be bound by, and at its own cost, comply with all federal, state, and local laws, ordinances and regulations applicable to the Services.

(b) In the performance of the Services, Contractor shall comply, at its expense, with all health and safety programs required by law, including, but not limited to, requiring its employees to attend health and safety training workshops and to use safety equipment and procedures.

ARTICLE 8 - STANDARD OF CARE, WARRANTY

(a) Contractor will perform the Services in a thorough, efficient, and professional manner, promptly and with due diligence and care, and in accordance with the best practices of the profession, utilizing qualified and suitable personnel, equipment and materials.

(b) If all or any part of the Services is found by SBAC to be defective (regardless of whether or not payment for such Services has been made by SBAC to Contractor) for reasons attributable to Contractor, Contractor shall refund that portion of compensation made by SBAC for that aspect of the Services found to be defective or, at the sole discretion of SBAC, shall reperform the defective Services at no cost to the SBAC.

(c) Contractor warrants and represents to SBAC that it possesses the expertise, capability, equipment and personnel to properly perform the Services and that it is properly and legally licensed to perform the Services. Contractor acknowledges that SBAC is relying on the warranties and representations made by Contractor.

ARTICLE 9 - WORK CONDITIONS

Contractor shall become familiar with any work conditions that may, in any manner, affect the work to be performed under this Agreement. The failure or omission of Contractor to become familiar with local work conditions shall in no way relieve it of its obligations with respect to this Agreement.

ARTICLE 10 - CONFLICT OF INTEREST

This Agreement is subject to the provisions of 112, F.S. Contractor shall disclose the name of any officer, director, or agent who is also an employee of SBAC. Further, Contractor shall disclose the name of any SBAC employee who owns, directly or indirectly, an interest of 5% or more in Contractor's firm or any of its branches.

ARTICLE 11 - DELIVERABLES

(a) All Project deliverables (the "Deliverables"), including, but not limited to, any and all reports, drawings, plans, designs, software, and specifications prepared by Contractor pursuant to this Agreement are part of the Services contracted for by SBAC and are SBAC's property. Upon request of SBAC, Contractor shall deliver to SBAC all Deliverables which are within Contractor's possession and control. Contractor may retain one (1) set of all Deliverables for its files.

(b) Deliverables may be used or reused by SBAC without further authorization from Contractor.

ARTICLE 12 - CONTRACTOR INSURANCE

Contractor shall, at Contractor's sole expense, procure and maintain during the term of this Agreement, at least the following minimum insurance coverage, which shall not limit the liability of Contractor:

Applicable Not Applicable
Workers Compensation – Coverage A
Statutory
Comprehensive General Liability
\$1,000,000 Each Occurrence
\$1,000,000 Per Project Aggregate
\$1,000,000 Products and Completed Operations
Aggregate
Premises operations
Blanket Contractual Liability
Personal Injury Liability
Expanded Definition of Property Damage
Comprehensive Automobile Liability
(Combined Single Limit)
\$1,000,000 Each Occurrence

All policies of insurance shall be rated "A" or better by the most recently published A.M. Best Rating Guide and shall be subject to SBAC approval as to form and issuing company. SBAC shall be named as an *additional insured* in the comprehensive general (including property damage) liability policy within five (5) days after execution of this Agreement. Contractor shall furnish SBAC copies of insurance certificates evidencing that it maintains at least the insurance coverage required hereunder, and which contain the following or equivalent clause:

“Before any reduction, cancellation, modification or expiration of the insurance policy, thirty (30) days prior written notice thereof shall be given to SBAC.” **Contractor is NOT authorized to proceed with the services until all the insurance certificates have been received and accepted.**

Receipt of certificates or other documentation of insurance or policies or copies of policies by SBAC, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of Contractor’s obligation to fulfill the insurance requirements herein.

ARTICLE 13 - CONTRACTOR'S INDEMNIFICATION OF SBAC

(a) Contractor shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless SBAC, its elected officials, employees, and agents from and against any and all claims, actions, liabilities, losses (including economic losses), costs, including attorney’s fees, arising out of any actual or alleged: (a) bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged act or omission of Contractor, subcontractor, anyone directly or indirectly employed by any of them, of anyone for whose acts any of them may be liable in the performance of the work; or (b) violation of law, statute, ordinance, rule, regulation, or infringement of patent rights by Contractor in performance of the work described herein; or (c) liens, claims or actions made by Contractor or any subcontractor or other party performing the work. The indemnification obligations hereunder shall not be limited to any type of damages, compensation or benefits payable by or for Contractor or any subcontractor under worker’s compensation acts; disability benefit acts, other employee benefit acts or any statutory bar. Any costs or expenses, including attorney’s fees, incurred by SBAC to enforce this agreement shall be borne by Contractor.

(b) Notwithstanding the foregoing, the liability herein shall be limited to ten million dollars (\$10,000,000) and Contractor recognizes that and covenants that is has received consideration for indemnification provided herein.

(c) Contractor recognizes the broad nature of this indemnification and hold harmless article, and voluntarily makes this covenant and expressly acknowledges the receipt of TEN DOLLARS payable upon receipt of the first invoice and other good and valuable consideration provided by SBAC in support of this indemnification in accordance with the laws of the State of Florida. This article shall survive the termination of this Agreement.

ARTICLE 14 - INVENTIONS AND DISCOVERIES

SBAC has the right to require that Contractor assign to SBAC all rights of Contractor to procure a patent or copyright on any discovery, work, or invention of Contractor, developed or discovered by Contractor in direct connection with the Services, and on request by SBAC, Contractor shall promptly execute and deliver to SBAC any and all documents requested by SBAC. Contractor expressly covenants and agrees to promptly communicate and disclose to SBAC all such inventions and discoveries. Proprietary Contractor information and professional tools, such as other information that might compromise the Contractor’s professional business, are exempt from this article.

ARTICLE 15 - COMPLIANCE WITH SAFETY STANDARDS AND WORK RULES

(a) At a minimum, Contractor warrants that the supplies/services provided to SBAC shall conform in all respects to the standards set forth in the Occupational Safety and Health Act 1970, as amended, and the failure to comply with this condition will be considered a breach of this Agreement.

(b) Contractor will also observe and comply with all safety requirements mandated by SBAC policy, as well as any specific school and department practices. Failure to comply with these minimum safety requirements will be considered a breach of this Agreement. Further, Contractor may be disbarred from participating in any SBAC procurement of goods and services made by SBAC for a period of 12 months.

(c) Material Safety Data Sheets (MSDS) shall be provided for any substances used in performance of Services that are found on the current State of Florida Toxic Substances List must, in accordance with F.S. 442.106.

ARTICLE 16 - MODIFICATIONS TO AGREEMENT

SBAC reserves the right at any time to make changes in the scope of or specifications for the Services. Any difference in price or time for performance resulting from such changes shall be equitably adjusted by mutual agreement and the Agreement shall be modified in writing accordingly.

ARTICLE 17 - FORCE MAJEURE

Neither Contractor nor SBAC shall hold the other responsible for damages or delays in performance caused by Force Majeure or other events beyond the control of the other party and which could not reasonably have been anticipated or prevented. For purposes of this Agreement, Force Majeure shall include, but not necessarily be limited to, adverse weather conditions, floods, epidemics, war, riot, strikes, lockouts and other industrial disturbances; unknown site conditions, accidents, sabotage, fire, loss of permits, failure to obtain permits, unavailability of labor, materials or services; court orders; acts of God; acts, orders, laws or regulations of the Government of the United States or the several states, or any foreign country, or any governmental agency. Should such acts or events occur, the parties to this Agreement shall mutually agree on the terms and conditions upon which the Services may be continued.

ARTICLE 18 - PROJECT DELAYS

Contractor shall notify SBAC, in writing, within five (5) days of when Contractor knew or reasonably should have known of the impact of an occurrence of an event that may result in a delay of the performance of the Services. Thereafter, Contractor and SBAC shall immediately enter into discussions to arrive at a mutually satisfactory revision to the time of completion of the Services and/or compensation for the Services.

ARTICLE 19 – TERMINATION FOR CONVENIENCE

(a) SBAC shall have the right to terminate this Agreement at any time, without cause, for its convenience upon ten (10) days advance written notice to Contractor.

(b) Upon termination, SBAC shall compensate Contractor for Services satisfactorily rendered through the date of termination in accordance with the terms and provisions of this Agreement.

(c) SBAC shall not be obligated hereunder nor likewise liable to pay Contractor any

other costs, losses, damages or expenses arising out of or related to the termination of this Agreement or any services performed hereunder.

- (d) Upon termination of this Agreement, Contractor shall provide and turn over to SBAC all Deliverables prepared up to and including the date of such termination.

ARTICLE 20 - TERMINATION FOR DEFAULT

SBAC reserves the right to terminate this Agreement for failure of Contractor to adhere to the terms and conditions as specified herein, upon ten (10) days advance written notice to Contractor. In the event of termination for cause, SBAC may re-procure the supplies and/or services from any other source or sources and the defaulting Contractor shall reimburse SBAC any excess costs incurred thereby.

ARTICLE 21 - SPECIAL RESTRICTIONS

Contractor warrants it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor to solicit or secure this Agreement, and it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor, any fee commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

ARTICLE 22 - CONTRACTOR REPRESENTATIVE

Contractor shall designate a person to act as the Contractor's representative with respect to the Services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Contractor's policies and decisions with respect to the Services.

ARTICLE 23 - INDEPENDENT CONTRACTOR

Contractor, while acting for SBAC under this Agreement, shall have the status of an independent contractor, not that of an agent or employee. Contractor shall have no right or power to enter into any contract or commitment on SBAC' behalf. Contractor shall be solely responsible for the compensation, benefits, contributions and taxes, if any, of its employees, agents and Contractors. If SBAC shall be required by law to pay any contribution, tax or penalty because of Contractor's failure to do so, Contractor shall forthwith reimburse SBAC for the entire amount so paid by it.

ARTICLE 24 - CONTRACTOR PERSONNEL

- (a) Contractor shall have an adequate number of qualified personnel, who are thoroughly trained and experienced in accordance with industry standards and the requirements of this Agreement, to provide the goods and/or services described herein.

- (b) Personnel performing services on any SBAC site shall be permanent (full or part-time) employees of Contractor, unless written permission to use temporary employees is provided by the Purchasing Agent or their designee, who are 18 years or older.

(c) Personnel performing Services on any SBAC site shall adhere to SBAC rules and regulations regarding appropriate attire, prohibition of smoking, usage of proper language, prohibition of use and possession of controlled substances and alcoholic beverages, including tobacco and tobacco products, prohibition of the possession of fire arms – either on their person or in their personal or company-owned vehicle, and any other restrictions that may apply.

(d) When accessing any SBAC site, Contractor shall notify department or school personnel and follow customary sign-in procedures. All Contractor personnel shall wear clothing identifying them as an employee of Contractor (name/logo) and have in their possession at all times a form of picture identification (drivers license, company ID card), which shall be presented immediately upon request of SBAC personnel.

ARTICLE 25 - NON-DISCRIMINATION IN EMPLOYMENT

(a) Contractor certifies that it is in compliance with the non-discrimination clause contained in Executive Order 11246, as amended by Executive Order 11375, regarding equal employment opportunity for all persons without regard to race, color, religion, sex or national origin.

(b) An entity or affiliate who has been placed on the State of Florida discriminatory bidder list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

ARTICLE 26 - PUBLIC ENTITY CRIMES AFFIDAVIT

A person or affiliate who has been placed on the convicted Bidder list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted Bidder list.

ARTICLE 27 - SUBCONTRACTS

Contractor shall not delegate the performance of Services in whole or in part, nor retain any contractor to perform any Services, without first obtaining the written consent of SBAC.

ARTICLE 28 - NOTICES

Any notice to be given under this Agreement shall be in writing and shall be deemed given and received when delivered in person or within three days after deposit in the United States mail, certified mail, with postage prepaid, return receipt requested, addressed to the appropriate party at the address set forth for such party on the last page of this Agreement.

ARTICLE 29 - ENTIRE AGREEMENT

This Agreement constitutes the entire understanding and agreement between the parties relating to the provision of the Services by Contractor to SBAC and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding the Services. This Agreement may be amended only by written instrument signed by each party.

ARTICLE 30 - GOVERNING LAW

This Agreement is subject to and is to be construed according to the laws of the State of Florida and venue shall be in Alachua County, Florida.

ARTICLE 31 - ASSIGNMENT, SUCCESSORS AND ASSIGNS

This Agreement shall not be assigned by Contractor without first obtaining the written consent of SBAC. Assignment of the Agreement or any portion thereof without such written permission shall be grounds for immediate termination.

ARTICLE 32 - SEVERABILITY

If any provision of this Agreement is deemed invalid, illegal, or unenforceable in any jurisdiction, (i) such provision will be deemed amended to conform to applicable laws of such jurisdiction so as to be valid and enforceable, or if it cannot be so amended without materially altering the intention of the parties, it will be stricken, (ii) the validity, legality and enforceability of such provision will not in any way be affected or impaired thereby in any other jurisdiction, and (iii) the remainder of this Agreement will remain in full force and effect.

ARTICLE 33 - SURVIVAL

All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Contractor and SBAC shall survive the completion of Services hereunder and the termination of this Agreement.

ARTICLE 34 - WAIVER OF CONTRACT BREACH

The waiver by SBAC of any breach of this Agreement, or the failure by SBAC to enforce at any time, or for any period of time, any of the terms and conditions of this Agreement, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.

ARTICLE 35 - PRECEDENCE

This Agreement shall take precedence over any inconsistent or contradictory provisions contained in any SBAC-issued purchase order, requisition, notice to proceed, or like document regarding the Services.

ARTICLE 36 - RECORDS

Contractor shall retain in legible form all logs, field data, bills, results of analyses, notes and other records relating to the Services hereunder for a period of five (5) years following completion or termination of the Services.

ARTICLE 37 - SAFETY

Safe practices are to be considered a priority requirement in the performance of this Agreement. Contractor shall comply with all applicable Federal, state and local health and safety requirements and standards including but not limited to the Occupational Safety and Health Act of 1970 and the standards and regulations issued thereunder. Contractor shall comply with the requirements of SBAC' Safety Handbook.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized agents as of the day and year first above written.

CONTRACTOR

SCHOOL BOARD OF ALACHUA COUNTY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Contractor's
FEID No.: _____

ATTACHMENT A – SCOPE OF SERVICES

ATTACHMENT B – FEE FOR SERVICES