



Brownsville Independent School District

Board of Trustees

Emergency Called Board Meeting August 4, 2020 4:00 PM

BISD Administration Building Boardroom
1900 East Price Road
Brownsville, Texas 78521

A G E N D A

- I. Meeting Called to Order.
- II. Moment of Silence.
- III. Pledge of Allegiance.
- IV. Roll Call:
- V. Recommend approving the **agenda** of the **Emergency Called Board Meeting of Tuesday, August 4, 2020** with any corrections/deletions.
- VI. **Certification of Public Notice:**

An Emergency or urgent public necessity exists that requires immediate action of the Board of Trustees or an imminent threat to public health and safety or a reasonably unforeseeable situation exists as follows: On March 13, 2020 Governor Greg Abbott declared a State Disaster for Texas Counties due to the COVID-19 pandemic. The purpose of this meeting is to discuss and take appropriate action in response to the emerging health emergency.

VII. PUBLIC COMMENT:

VIII. COVID-19

A. General Function Item(s):

- 1. Recommend approval of Resolution No. 019/20-21 for Operation Connectivity Inter-local Acquisition Agreement between Region 4 Education Service Center and Brownsville Independent School District in order to participate in the Operation Connectivity bulk purchase process. The District will be purchasing mobile broadband hotspots and learning devices in the amount not to exceed \$3,467,500.00 3
- 2. Recommend approval to enter into contract with Power School for the implementation of Schoology as the Learning Management System for BISD at no cost to the District for school years 2020-2021 and 2021-2022. 30

IX. Adjournment.



Brownsville Independent School District

Agenda Category: General Function Board of Education Meeting: 08/04/20

Item Title: Approval of Resolution No. 019/20-21 X Action
For Operation Connectivity Interlocal Information
Acquisition Agreement Discussion

BACKGROUND:

The Texas Education Agency has partnered with Region 4 Education Service Center to process a bulk purchase of mobile broadband hotspots and learning devices from different vendors on behalf of school districts. Brownsville Independent School District will be purchasing up to 21,500 hotspots and up to 8,500 learning devices. The total cost of the devices is approximately \$6,935,000 of which TEA will cover 50% of the cost and the District will be responsible for the other 50% (\$3,467,500.00).

FISCAL IMPLICATIONS:

Local and Categorical Funding \$3,467,500

RECOMMENDATION:

Recommend approval of Resolution No. 019/20-21 for Operation Connectivity Interlocal Acquisition Agreement between Region 4 Education Service Center and Brownsville Independent School District in order to participate in the Operation Connectivity bulk purchase process. The district will be purchasing mobile broadband hotspots and learning devices in the amount not to exceed \$3,467,500.00.

Dr. Nereida Cantu *Dr. Nereida Cantu*
Submitted by: Deputy Superintendent

Dr. Nereida Cantu *Dr. Nereida Cantu*
Recommended by: Deputy Superintendent

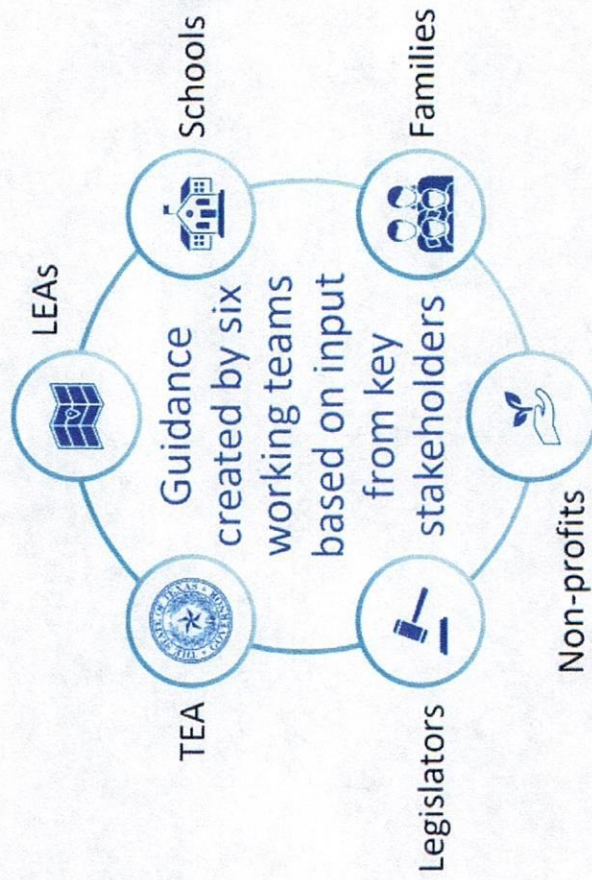
Dr. Nereida Cantu *Dr. Nereida Cantu*
Approved by: Deputy Superintendent

Approved for Submission to Board of Education:

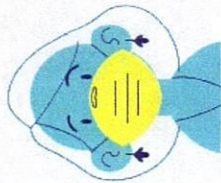
René Gutiérrez
Dr. René Gutiérrez
Superintendent

BUSINESS AND FINANCE – OPERATION CONNECTIVITY

- \$200 Million Allocation under the CARES Act
- Operation Connectivity is a partnership between Governor Greg Abbott, the Dallas Independent School District, and the Texas Education Agency
- The funding intends to connect all of Texas's 5.5 million public school students with a device and reliable internet connection.



TWO FUNDING VEHICLES



Funds will be distributed through two vehicles

1

Bulk order of hotspots and devices with state matching funds

Interlocal Acquisition Agreement included in Emergency Board Agenda 8/4/2020

2

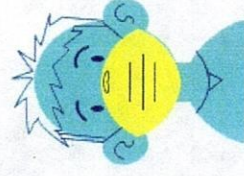
Reimbursement of previously incurred connectivity related expenses

For expenses incurred on or after May 21st, 2020 through July 22nd

BULK ORDER



- TEA will match the funds that LEAs put towards the **bulk order**
- LEA funding (e.g., fund balance) will receive an equal \$1 for \$1 match from TEA and the state and is NOT eligible for reimbursement with other funds
- Extra match funding will be provided if an LEA utilizes local CRF funding from a city or county
- All funding subject to availability and demand



RESOLUTION NO #019/20-21

OPERATION CONNECTIVITY INTERLOCAL ACQUISITION AGREEMENT

*Entered between Region 4 Education Service Center ("Region 4") and Local Education Agency ("LEA")
pursuant to Tex. Gov't Code, Chapter 791.*

Local education agency name: BROWNSVILLE ISD, (031901)
County district number: 31901
Point of contact: Dr. Nellie Cantu
Date: July 29th, 2020

This Operation Connectivity Interlocal Acquisition Agreement ("Agreement") contains key information and terms regarding your LEA's participation in the Operation Connectivity bulk purchase process. The following addendums are incorporated into this Agreement:

1. State Funding Allocation Methodology Addendum (*attached*)
2. EDGAR Certification Addendum (*attached - to be executed by Region 4*)
3. Grant Program Guidelines (*attached*)
4. LEA Order Logistics Confirmation (*separate document*)
5. Additional Quantity Request (*separate document*)

Due the urgency required to maintain our position within our vendors' supply chain, **please submit the completed and signed copy of this Agreement [as well as your Additional Quantity Request Addendum] through DocuSign by COB Tuesday, August 4, 2020.** Should your LEA not be able to provide signed approval of this Agreement by this date, your order will unfortunately have to be cancelled, and this Agreement will automatically terminate without further action by the parties.

Below you will find your LEA's allocated quantities per provider / OEM ("Vendor") and model. These quantities are based on two inputs: 1) your LEA's requested quantities as included in your LEA's bulk order survey / form, 2) the total dollar value for which the state funding program is able to cover 50% of your LEA hotspot / device costs, as based on the state's allocation methodology (see State Funding Allocation Methodology Addendum).

Any change to the quantities allocated below must be requested by emailing customerservice@teabulkorder.com with your revisions. We will then review requested revisions and send you an updated Agreement. Please note that allocated quantities can only be decreased. Any proposed revisions to increase quantities for any Vendor or model will be rejected.

For quantity needs above what the state has allocated your LEA [capped at your LEA's *remaining quantity* as listed in your Additional Quantity Request Addendum], please include this in your LEA's Additional Quantity Request Addendum. If your submitted Additional Quantity Request Addendum is accepted, it will become a binding part of the Agreement. Your Additional Quantity Request Form must be submitted by Tuesday, August 4, 2020. Failure to submit by the deadline will result in your Additional Quantity Request Addendum being rejected.

Mobile broadband hotspots:

| Vendor | AT&T | T-Mobile | Verizon |
|-----------------|------------|------------|------------|
| Data limit | Unlimited | Unlimited | Unlimited |
| Hotspot type | Category 4 | Category 4 | Category 4 |
| Contract length | 1 year | 1 year | 1 year |
| Warranty length | 1 year | 1 year | 1 year |

| | | | |
|---|-------|-------|-----------|
| Device costs/unit | \$60 | \$0 | \$60 |
| Monthly rate/unit | \$15 | \$15 | \$10 |
| Asset tagging cost/unit | \$0 | \$0 | \$5 |
| Custom CIPA filtering enablement monthly rate/unit | \$0 | \$0 | \$2 |
| Total 1-year hotspot costs/unit | \$240 | \$180 | \$209 |
| Original LEA quantity request (through bulk order survey) | 0 | 0 | 21500 |
| Allocated quantity | 0 | 0 | 21500 |
| Total hotspot order costs | \$0 | \$0 | \$4493500 |
| LEA portion of hotspot order costs | \$0 | \$0 | \$2246750 |

Learning devices:

| | Middle & elementary laptops | | | High school laptops | | Chromebooks | | iPad |
|---|-----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|--------------------------------|--------------------------------|---------------------------------|
| Vendor | Dell | HP | Lenovo | Dell | HP | Dell | HP | Apple |
| Model number | 3190 | 9ru44ut | 100e | 3410 | PB11x360 | 3100 Chrome | 1A764UT | iPad 7 th Generation |
| CPU processor | Celeron 4120 | Celeron 4020 | Celeron | I3 | Pentium 5030 | N/A | N/A | N/A |
| RAM | 4 GB | 4 GB | 4 GB | 4 GB | 8 GB | 4 GB | 4 GB | N/A |
| Hard drive size | 64 GB | 64 GB | 64 GB | 500 GB | 128 GB | 16 GB | 32 GB | 32 GB |
| Screen size | 11.6" | 11.6" | 11.6" | 14" | 11.6" | 11.6" | 11.6" | 10.2" |
| Wi-Fi protocol | Standard | Standard | Standard | Standard | Standard | Standard | Standard | Standard |
| Touch Screen | No | Yes | No | No | Yes | No | Yes | Yes |
| Convert to tablet | No | Yes | No | No | Yes | No | No | Yes |
| External keyboard (Y/N) | N/A | N/A | N/A | N/A | N/A | N/A | N/A | Y |
| Warranty | 1 year on-site | 1 year mail in | 1 year mail in | 1 year on-site | 1 year mail in | 1 year on-site | 1 year mail in | N/A |
| Additional features | Windows 10, custom tagging | Windows 10, custom tagging | Windows 10, custom tagging | Windows 10, custom tagging | Windows 10, custom tagging | Google license, custom tagging | Google license, custom tagging | iPadOS, custom engraving |
| Price | \$237 | \$266 | \$205 | \$323 | \$369 | \$228 | \$237 | \$386 |
| Original LEA quantity request (through bulk order survey) | 5000 | 0 | 0 | 1500 | 0 | 0 | 0 | 2000 |
| Allocated quantity | 5000 | 0 | 0 | 1500 | 0 | 0 | 0 | 2000 |
| Total device order costs | \$1185000 | \$0 | \$0 | \$484500 | \$0 | \$0 | \$0 | \$772000 |
| LEA portion of device order costs | \$592500 | \$0 | \$0 | \$242250 | \$0 | \$0 | \$0 | \$386000 |

Total costs:

| | |
|--|------------------|
| Total hotspot order costs | \$4493500 |
| Total device order costs | \$2441500 |
| LEA portion of hotspot order costs | \$2246750 |
| LEA portion of device order costs | \$1220750 |
| Total order costs (hotspots and devices) | \$6935000 |
| Total LEA portion of order costs (hotspots and devices) | \$3467500 |

Payment terms:

Payment for your LEA's portion of the order costs will be due immediately upon receipt of the order invoice that your LEA will be receiving via email. Please note that payment is required before hotspots / devices will be asset tagged and shipped to your LEA. Specific payment instructions will be provided with your issued invoice.

LEA orders will be tagged and shipped in the order in which invoice payment is received. Delay in payment will result in a delay of devices to your LEAs. Any LEA whose payment has not been received by Region 4 within 3 business days from the invoice date will have their order cancelled, resulting in an automatic termination of this Agreement. LEAs must provide a completed LEA Order Logistics Confirmation by Friday, August 7, 2020. Failure to complete and provide this confirmation timely may result in the delay or cancellation of your order and termination of this Agreement.

Matching Funds Allocation:Funding allocation:

You will find below your LEA's state matching award. This allocation is based on two inputs, 1) your LEA's requested quantities as included in your LEA's bulk order survey/form, 2) the state's allocation methodology (see State Funding Allocation Methodology Addendum).

| | |
|--|------------------|
| Total state matching (hotspots and devices) | \$3467500 |
|--|------------------|

Please note that this amount includes only the 1:1 matching of the funds that are expected to be contributed by your LEA. By executing this Agreement, your LEA is committing to pay the amounts set forth herein.

Incorporation of Vendor Warranties and Terms/Disclaimer and Release of Region 4 Liability:

LEA ACKNOWLEDGES AND AGREES THAT ANY PRODUCTS OR SERVICES ACQUIRED THROUGH THIS AGREEMENT ARE SUBJECT TO ANY VENDORS' TERMS AND CONDITIONS ("VENDOR TERMS") PROVIDED SEPARATELY BY VENDOR TO LEA. THIS AGREEMENT SHALL CONTROL IN THE EVENT OF ANY CONFLICT WITH VENDOR TERMS. THE PROVISIONS OF ANY MANUFACTURER OR OTHER VENDOR WARRANTIES AND OBLIGATIONS UNDER THE VENDOR TERMS ARE HEREBY EXTENDED TO LEA. THE LEA'S EXCLUSIVE REMEDY FOR BREACH OF ANY SUCH WARRANTY OR OTHER VENDOR OBLIGATIONS RELATED TO THE PRODUCTS OR SERVICES WILL BE THE ENFORCEMENT OF ANY RIGHTS UNDER THE VENDOR TERMS, AND REGION 4 SHALL HAVE NO LIABILITY TO LEA RELATED TO SAME. THE LEA ACKNOWLEDGES AND AGREES AS A STRICT TERM OF THIS AGREEMENT THAT REGION 4 DOES NOT ASSUME BUT, RATHER, EXPRESSLY DISCLAIMS ALL WARRANTIES OR OTHER OBLIGATIONS SET FORTH IN THE VENDOR TERMS, AND REGION 4 DOES NOT MAKE AND EXPRESSLY DISCLAIMS ANY ADDITIONAL WARRANTIES, OBLIGATIONS OR LIABILITY IN CONNECTION WITH THE

PRODUCTS AND SERVICES. LEA HEREBY RELEASES REGION 4 FROM ALL LIABILITY RELATED TO THE VENDOR PRODUCTS AND SERVICES. LEA IS RESPONSIBLE FOR ENSURING COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, INCLUDING THOSE RELATED TO PROCUREMENT.

Acknowledgement of Federal Funding:

The source of all matching funds pursuant to this Agreement are federal funds made available through the 2020-2021 Remote Learning Operation Connectivity-CV19 grant (“Grant”) awarded to Region 4. All fund matches and other obligations under this Agreement for the acquisition of products or services are subject to appropriation of funds to Region 4. As such, if Region 4 does not receive sufficient Grant funding, Region 4 may immediately terminate this Agreement without penalty or further obligation to LEA upon written notice. This Agreement is further subject to and incorporates all terms of Region 4’s Grant agreement with the TEA, including the Grant Program Guidelines issued by TEA related to the Grant, and LEA is subject to and agrees to follow any relevant terms set forth in the Grant Program Guidelines. The parties acknowledge and agree to follow all applicable federal, state and local laws, rules, ordinances and regulations related to the expenditure of the Grant funds (“Applicable Laws”). Region 4 specifically acknowledges and agrees to all applicable terms contained in the EDGAR Certification Addendum. All participating Vendors will be required to follow Applicable Laws, the applicable conditions in the Grant Program Guidelines and similarly will agree to applicable EDGAR certifications.

Execution:

This Agreement and the listed addendums and Vendor Terms constitute the entire agreement between the parties, and no part of the Agreement may be modified unless expressed in writing and signed by both parties. Neither party waives or relinquishes any immunity or defense that either party is entitled to by law. All payments made pursuant to this Agreement will be made from current revenues. Each party warrants that it has authority to enter into this Agreement and perform its obligations. The signatory below shall have authority to act on all matters related to this Agreement.

By signing below, the parties are binding themselves to the terms of this Agreement, subject only to any necessary approvals and actions by the parties’ governing boards. By execution of this Agreement, the LEA gives Region 4 permission to move forward with purchasing the above quantity of hotspots and devices on the LEA’s behalf.

For LEA

Dr. Nellie Cantu

(Printed name/title)


(Title)

(Signature)

(Date)

For Region 4 Education Service Center

Dr. Pamela Wells, Executive Director



(Signature)

(Date)

ADDENDA

1. State Matching Allocation Methodology
2. EDGAR Certifications
3. Program Guidelines

ADDENDUM ONE

State Matching Allocation Methodology

Overview

On July 17, 2020, Governor Abbott, Lt. Governor Patrick, Speaker Bonnen, Senate Finance, and House Appropriations Committee Chairs announced eLearning funding For Texas students. The State of Texas will allocate \$200 million in Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to the Texas Education Agency (TEA) for the purchase of eLearning devices and home internet solutions to enable remote learning during the COVID-19 pandemic for Texas students that lack connectivity.

The majority of the \$200 million in CARES Act funding will be allocated to LEAs through matching funds for purchases of hotspots (with data plans) and devices through a statewide bulk purchasing event. This document provides the methodology for the allocation of these CARES Act funds. Additional state dollars may be available through a reimbursement program. More details will be released as this is designed. The TEA is the passthrough agency for this grant. Region 4 Education Service Center shall serve as the grant recipient and shall conduct the bulk purchases on behalf of LEAs.

Funding Allocation – Bulk Purchase Matching Funds

LEAs will be eligible for fund matching of 50% of the expenditures incurred through the statewide bulk purchasing event. However, the level of LEA fund matching for purchases made through the statewide bulk purchasing event will be contingent on the number of economically disadvantaged students in the LEA.¹ The amount of fund matching will not exceed 50% of LEA expenditures to purchase device and/or hotspots for the number of economically disadvantaged students in the LEA. The costs associated with device and hotspot purchase volume that exceeds the number of economically disadvantaged students in an LEA will not be eligible for fund matching.²

If an LEA is purchasing a quantity of devices and/or hotspots less than the number of economically disadvantaged students, the LEA will still receive the full 50% fund matching for those expenditures.

¹ The number of economically disadvantaged students in an LEA are calculated as the PEIMS ages 3-21 low income students (eligible for free lunch, reduced price lunch, or federal aid programs), from the October 2019 fall collection, released for 2020-2021 ESSA funding formulas.

² If an LEA orders more devices and/or hotspots than they have economically disadvantaged students, the LEA will still have the opportunity to order at the bulk purchase order's discounted rates, but those expenditures will not be eligible for fund matching.

For example (figures illustrative):

| |
|--|
| <p>District A orders device volume <u>equal</u> to economically disadvantaged (eco dis.) enrollment</p> <ul style="list-style-type: none">• Enrollment: 1000 total students; 500 economically disadvantaged students• District A is capped at 500 total devices for this program (due to percent eco dis.)• Bulk order: 500 devices x \$200 cost per device = \$100,000 LEA spend• LEA spend eligible for fund matching: up to 500 students x \$200 cost per device = up to \$100,000• TEA fund matching: up to \$50,000• LEA responsibility: \$50,000 |
| <p>District B orders device volume <u>greater</u> than economically disadvantaged enrollment</p> <ul style="list-style-type: none">• Enrollment: 1000 total students; 500 economically disadvantaged students• District B is capped at 500 total devices for this program (due to percent eco dis.)• Bulk order: 750 devices x \$200 cost per device = \$150,000 LEA spend• LEA spend eligible for fund matching: up to 500 students x \$200 cost per device = up to \$100,000• TEA fund matching: up to \$50,000• LEA responsibility: \$100,000 |
| <p>District C orders device volume <u>less</u> than economically disadvantaged enrollment</p> <ul style="list-style-type: none">• Enrollment: 1000 total students; 500 economically disadvantaged students• District C is capped at 500 total devices for this program (due to percent eco dis.)• Bulk order: 250 devices x \$200 cost per device = \$50,000 LEA spend• LEA spend eligible for fund matching: up to 250 students x \$200 cost per device = up to \$50,000• TEA fund matching: up to \$25,000• LEA responsibility: \$25,000 |

ADDENDUM TWO

EDGAR CERTIFICATIONS

(TO BE EXECUTED BY REGION 4)

The following certifications and provisions are required and apply when the Local Education Agency ("LEA") expends federal funds for any contract. **Accordingly, the parties agree that the following terms and conditions apply, as applicable, in all situations where Region 4 has been paid or will be paid with federal funds:**

**REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS
APPENDIX II TO 2 CFR PART 200**

(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when LEA expends federal funds, LEA reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (B) above, when LEA expends federal funds, LEA reserves the right to immediately terminate any agreement in excess of \$10,000 in the event of a breach or default of the agreement by Region 4 in the event Region 4 fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract. LEA also reserves the right to terminate the contract immediately, with written notice to Region 4, for convenience, if LEA believes, in its sole discretion that it is in the best interest of LEA to do so. Region 4 will be compensated for work performed and accepted and goods accepted by LEA as of the termination date if the contract is terminated for convenience of LEA. The Contract is not exclusive and LEA reserves the right to purchase goods and services from other vendors when it is in LEA's best interest.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when LEA expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or

subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when LEA expends federal funds during the term of an award for all contracts and subgrants for construction or repair, Region 4 will be in compliance with all applicable Davis-Bacon Act provisions.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when LEA expends federal funds, Region 4 certifies that Region 4 will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by LEA.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by LEA, Region 4 certifies that during the term of an award for all contracts by LEA resulting from this procurement process, Region 4 agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (G) above, when federal funds are expended by LEA, Region 4 certifies that during the term of an award for all contracts by LEA resulting from this procurement process, Region 4 agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by LEA, Region 4 certifies that during the term of an award for all contracts by LEA, Region 4 certifies that neither it nor its principals is presently debarred, suspended,

proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by LEA, Region 4 certifies that during the term and after the awarded term of an award for all contracts by LEA, Region 4 certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

- (1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS

When federal funds are expended by LEA for any contract, Region 4 certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Region 4 further certifies that it will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When LEA expends federal funds for any contract, Region 4 certifies that it will comply, as applicable, with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

CERTIFICATION OF EQUAL EMPLOYMENT STATEMENT

It is the policy of LEA not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs. Region 4 agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Region 4 further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

LEA has a preference for domestic end products for supplies acquired for use in the United States when spending federal funds (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). Region 4 certifies that it is in compliance with all applicable provisions of the Buy America Act.

CERTIFICATION OF ACCESS TO RECORDS – 2 C.F.R. § 200.336

Region 4 agrees that the District's Inspector General or any of their duly authorized representatives shall have access to any books, documents, papers and records of Region 4 that are directly pertinent to Region 4's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Region 4's personnel for the purpose of interview and discussion relating to such documents.

CERTIFICATION OF APPLICABILITY TO SUBCONTRACTRS

Region 4 agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

REGION 4 AGREES TO COMPLY WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, RULES, REGULATIONS, AND ORDINANCES. IT IS FURTHER ACKNOWLEDGED THAT REGION 4 CERTIFIES COMPLIANCE WITH ALL APPLICABLE PROVISIONS, LAWS, ACTS, REGULATIONS, ETC. AS SPECIFICALLY NOTED ABOVE

Printed Name and Title of Authorized Representative:

Dr. Nellie Cantu

Email Address:

drncantu@bisd.us

Signature of Authorized Representative:

Date: _____

ADDENDUM THREE

REQUEST FOR APPLICATION

Program Guidelines

2020-2021 Remote Learning Operation Connectivity-CV19

Authorized by Coronavirus Aid, Relief, and Economic Security
(CARES) Act, Section 5001, Coronavirus Relief Fund (CRF)

Application Closing Date —5:00 p.m., Central Time
Application due date July 23, 2020

PROGRAM GUIDELINES

TEXAS EDUCATION AGENCY

**Office of Information Technology Services
1701 North Congress Avenue
Austin, Texas 78701**

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PROGRAM GUIDELINES

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PROGRAM GUIDELINES

Introduction to the Program Guidelines

TEA, as the pass-through entity¹, is the grantee² from the U.S. Department of Education (USDE) and TEA awards subgrants to non-federal entities³ such as local educational agencies (LEAs), including school districts, charter schools, and education service centers, and to a lesser degree institutions of higher education (IHEs), and nonprofit organizations (NPOs) who are the agency's subgrantees⁴. These guidelines apply to all subgrantees of TEA, regardless of whether referenced herein as subgrantee or grantee. For purposes of this document, TEA may use the terms grantee and subgrantee synonymously for its subrecipients.

This part of the request for application (RFA), Program Guidelines, is to be used in conjunction with the [General and Fiscal Guidelines](#) and any application instructions. The Standard Application System (SAS) consists of Application Part 1 (PDF – narrative schedules) and Application Part 2 (Excel - budget schedules) to be completed in order for the applicant to be eligible for funding.

For applicants selected for funding, all guidelines and instructions will be incorporated by reference into the Notice of Grant Award (NOGA).

Reference to the General and Fiscal Guidelines

The Program Guidelines provide information specifically relevant to this grant program. The [General and Fiscal Guidelines](#) provide information relevant to all TEA grant programs. Throughout the Program Guidelines, cross-references are given to applicable sections of the [General and Fiscal Guidelines](#). It is critical that you review all referenced sections of the [General and Fiscal Guidelines](#) when preparing your application.

¹ Pass-through entity is defined as a non-Federal entity that provides a subaward to a subrecipient to carry out part of a federal program. (2 CFR 200.74)

² Grantee is defined as the legal entity to which a grant is awarded and that is accountable to the federal government for the use of the funds provided. The term “grantee” does not include any secondary recipients, such as subgrantees and contractors that may receive funds from a grantee. (34 CFR 77)

³ Non-federal entity is defined as a state, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a federal award as a recipient or subrecipient. (2 CFR 200.69)

⁴ Subgrantee is defined by TEA to be the same as a subrecipient which is defined as a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. (2 CFR 200.93) Subgrantee is defined in 34 CFR 77 as the legal entity to which a subgrant is awarded and that is accountable to the grantee for the use of the funds provided.

PROGRAM GUIDELINES

Contact for Clarifying Information

Program Contact

Julia Schacherl, Director
Office of Information Technology Services julia.schacherl@tea.texas.gov
Phone: (512) 463-9745

Funding Contact

Sarah Averill, Grant Manager, Grants
Administration Division
sarah.averill@tea.texas.gov Phone: (512) 463-8525

US Department of Education and/or State Appropriations

The following is provided in compliance with the US Department of Education Appropriations Act:

| Category | Amount |
|---|---------------|
| Total funds available for this project | \$200,000,000 |
| Percentage to be financed with federal funds | 100% |
| Amount of federal funds | \$200,000,000 |
| Percentage to be financed from nonfederal sources | 0% |
| Amount of nonfederal funds | \$0 |

Grant Timeline

For all dates related to the grant, including reporting dates, see the [TEA Grant Opportunities](#) page. If a report due date falls on a weekend or holiday, the report will be due the following business day. All dates except the grant ending date may vary slightly as conditions require.

Grant at a Glance

This section provides detailed information about the grant program.

Program Purpose, Goals, and Objectives

The purpose of the Remote Learning Operation Connectivity-CV19 grant is to support Texas LEA purchases of eLearning devices and home internet solutions to enable the remote learning of students during the COVID-19 pandemic. Bulk purchases will require a local match, either from LEA funds or from local Coronavirus Relief Funds (CRF), as defined by TEA. This local match requirement may be waived by TEA in cases of significant hardship.

Eligible Applicants

See the [General and Fiscal Guidelines](#), Eligibility Requirements.

Region 4 Education Service Center is the only eligible applicant for this grant.

Shared Services Arrangement

See the [General and Fiscal Guidelines](#), Shared Services Arrangements.

Shared services arrangements (SSAs) are not allowed.

Cost Share or Matching Requirement

See the [General and Fiscal Guidelines](#), Cost Share/Match Requirement.

There is no cost share or matching requirement imposed on Region 4 Education Service Center for this grant program. Per the Program Purpose, Goals, and Objectives stated above, LEAs who benefit from bulk purchases may be required to match, either from LEA funds or from local CRF funds.

Supplement, Not Supplant

For supplement, not supplant guidance, see the Supplement, Not Supplant Handbook on the Grants Administration Division's [Administering a Grant](#) page.

The supplement, not supplant provision does apply to this grant program.

Limitation of Administrative Funds

See the [General and Fiscal Guidelines](#), Administrative Costs.

NOTE: Administrative funds include **both** direct administrative costs **and** allowable indirect costs.

TEA limits the amount of funds that may be budgeted to administer this grant, including direct administrative costs and indirect costs, to no more than \$1,000,000 of the total grant awarded.

PROGRAM GUIDELINES

To calculate the maximum indirect costs that can be claimed for a grant, complete the [Maximum Indirect Costs Worksheet](#), posted on the Administering a Grant page, under the Handbooks and Other Guidance section.

Pre-Award Costs

See the [General and Fiscal Guidelines](#), Pre-Award Costs.

Pre-award costs are permitted, if requested, from May 21, 2020, to stamp-in date.

Application Requirements and Assurances

This section identifies the two types of requirements in which applicants must comply to be eligible for funding:

- 👤 Statutory requirements (requirements defined in the authorizing statute)
- 👤 TEA program requirements (requirements defined by TEA program staff)

Statutory Requirements

See the [General and Fiscal Guidelines](#), Statutory Requirements.

Per Section 22.0834 of the Texas Education Code (TEC), any person offered employment by any entity that contracts with TEA or receives grant funds administered by TEA (i.e., a grantee or subgrantee) is subject to the fingerprinting requirement. TEA is prohibited from awarding grant funds to any entity, including nonprofit organizations, that fails to comply with this requirement. For details, refer to the [General and Fiscal Guidelines](#), Fingerprinting Requirement.

The following requirements are defined in the statute that authorizes this program. The applicant must comply with each of these requirements in the application to be considered for funding:

1. Necessary expenditures must have been incurred due to COVID-19 pandemic, defined as actions taken to respond to the public health emergency which may include expenditures to respond directly to the emergency, or to second-order effects of the emergency.
2. Allowable costs cannot have been accounted for in the most recently approved budget as of March 27, 2020, defined as (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation; without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to the COVID-19 public health emergency.
3. Allowable costs must be incurred May 21, 2020, through December 30, 2020, defined as when the entity has expended funds to cover the allowable cost.

TEA Program Requirements

See the [General and Fiscal Guidelines](#), TEA Program Requirements.

In addition to the statutory requirements, TEA has established the following program requirements. The applicant must comply with each of these requirements in the application to be considered for funding:

PROGRAM GUIDELINES

1. Grant expenses will be to facilitate and administer the statewide bulk purchase program whereby providing a unique service to Texas LEAs to purchase eLearning devices and home internet solutions to enable the remote learning of students during the COVID-19 pandemic as described in the federal CRF guidance document as facilitating distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
2. Any grant funds not used in the bulk purchase program or administrative costs will be returned to TEA in a time and manner requested by TEA.
3. Grant administrative costs will be reasonable and necessary, not to exceed \$1,000,000, including indirect costs.
4. Grantee, with assistance from consultants, will negotiate the bulk procurement prices and order for the LEAs, provide shipping information to the vendors, and provide LEAs with appropriate guidance for asset tagging and inventorying of purchased equipment so that the LEA retains proper ownership and maintains documentation of the purchase.
5. TEA will make all determinations regarding apportionment of matching funds to LEAs and LEA orders, including vendors, product and service specifications and LEA financial participation. All order information will be provided by Region 4 and approved by TEA to be placed with vendors. TEA shall provide approval to Region 4 specifying any amendments to orders, including any changes to LEA recipients or LEA financial participation. Region 4 may rely on all TEA direction and approvals.
6. On behalf of TEA, Region 4 may, if needed on a temporary basis, enter into purchase agreements with vendors to procure and take title, if and as needed, of all ordered products and services. Region 4 may enter into sale, transfer or other agreements as appropriate with LEAs to transfer or assign any ownership or warranties of products and services.
7. Initial bulk orders shall be made by Region 4 to vendors as specified by TEA, and orders shall be modified as additional data is collected by TEA and Region 4 from LEAs. TEA shall provide funds to Region 4 sufficient to cover the full amount of any order placed that is not covered by funds actually received by Region 4 from LEAs not to exceed the initial total grant award of \$200,000,000. Except for the initial bulk orders, no orders shall be placed or modified by Region 4 until sufficient funds have been received from TEA and LEAs.
8. Region 4 shall not take any permanent ownership of products or services subject to this grant. Region 4 shall not be responsible for issuing asset tags on any devices. Region 4 shall not be responsible for warranting devices and shall have no liability to LEAs for any products or services procured under this grant. LEAs shall be required as a condition of participation to waive any liability against Region 4.
9. Grantee must keep records sufficient to demonstrate the amount of funds expended is in accordance with statute and these grant rules and guidelines.
10. Grantee must provide data and reporting information as required by TEA or the federal government in a time and manner requested by TEA.
11. Any grant funds requested as advanced payment must be placed in an interest-bearing account and must use the interest earned or other proceeds of these investments only to cover expenditures incurred in accordance with section 601(d) of the Social Security Act and the Guidance on eligible expenses herein.
12. Grantee must collaborate and communicate with TEA in the time and manner requested by TEA.
13. Grantee may utilize noncompetitive procurement with these federal funds as authorized by TEA.

PROGRAM GUIDELINES

Program-Specific Assurances

See the [General and Fiscal Guidelines](#), Provisions and Assurances.

The program-specific assurances for this grant program are listed in the Application Part 1.

Allowable Activities and Use of Funds

See the [Administering a Grant](#) page for general guidance on allowable activities and use of funds.

Allowable activities and use of funds for this grant may include but are not limited to the following:

General Allowable Activities and Use of Funds

- Payroll costs
- Professional and contracted services
- Supplies and materials
- Other operating costs that do not require specific approval
- Capital outlay
- Reasonable and necessary administrative costs, including any consulting, legal, and temporary staff expenses.
- Other costs necessary to facilitate and administer the Remote Learning Operation Connectivity-CV19 program, whereby providing a unique service to Texas LEAs to purchase eLearning devices and home internet solutions to enable the remote learning of students during the COVID-19 pandemic, at reduced prices for LEAs.

Unallowable Activities and Use of Funds

In general, refer to the Budgeting Cost Guidance Handbook on the [Administering a Grant](#) page for unallowable costs.

In addition, unallowable activities and use of funds for this grant may include but are not limited to the following:

- Debt service (lease-purchase)
- Student field trips
- Advisory councils
- Cost of membership in any civic or community organization
- Hosting or sponsoring of conferences
- Out-of-state travel
- Travel costs for officials such as Executive Director, Superintendent, or Board Members
- Expenses for the State share of Medicaid.
- Damages covered by insurance

PROGRAM GUIDELINES

- Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency (general ESC/LEA employees)
- Expenses that have been or will be reimbursed under any federal program are not eligible uses of CRF funds
- Reimbursement to donors for donated items or services
- Workforce bonuses other than hazard pay or overtime
- Severance pay
- Legal settlements
- Revenue replacement

Performance Measures

The applicant agrees to collect data and report on the following mandatory performance measures:

1. Number of devices, by type, ordered on behalf of and delivered directly to LEAs.
2. Average number of days for LEAs to respond and complete agreements.
3. Average number of days for LEAs to pay Region 4 for their match on the bulk order.

Federal Grant Requirements

Equitable Access and Participation

See the [General and Fiscal Guidelines](#), Equitable Access and Participation.

This requirement does apply to this federally funded grant program.

Private Nonprofit School Participation

See the [General and Fiscal Guidelines](#), Private Nonprofit School Participation.

This requirement does not apply to this federally funded grant program.

Maintenance of Effort

See the [General and Fiscal Guidelines](#), Maintenance of Effort.

This requirement does not apply to this federally funded grant program.

Attachments

See the following sections of the [General and Fiscal Guidelines](#):

- Required Fiscal-Related Attachments
- Required Program-Related Attachments

This section describes the two types of attachments that may be required to be submitted with the application: fiscal-related attachments and program-related attachments.

Required Fiscal-Related Attachments

See the [General and Fiscal Guidelines](#), Required Fiscal-Related Attachments, for a general description of fiscal-related documents that can be required as attachments to the application.

Required Program-Related Attachments

See the [General and Fiscal Guidelines](#), Required Program-Related Attachments, for a general description of program-related documents that can be required as attachments to the application.

No program-related attachments are required for this grant program.



Brownsville Independent School District

Agenda Category: General Function
Contracts/MOU Board of Education Meeting: 08/04/20

Item Title: Recommend approval of contract X **Action**
with Power School for the implementation Information
of Schoology (LMS) for 2020-2021 & 2021-2022. Discussion

BACKGROUND:

The Texas Education Agency has officially launched the Texas Home Learning 3.0, a comprehensive initiative to support school systems, teachers, parents, and students during the public health crisis and beyond. As part of the Texas Home Learning 3.0, TEA will offer all Texas school systems a Learning Management System (LMS) from Power School’s Schoology for two years at no cost. Schoology will serve as an online learning hub for digital content and communication to help keep students learning and brings together students, parents, and administrators to provide easy access to classes, assignments, grades, curriculum content and progress monitoring. Schoology as being part of PowerSchool’s also allows the teachers to access BISD’s Student Information System to take attendance and will integrate with our approved Classroom Management Systems, Google Classroom and Seesaw.

FISCAL IMPLICATIONS:

At no cost to the district.

RECOMMENDATION:

Recommend approval to enter into contract with Power School for the implementation of Schoology as the Learning Management System for BISD at no cost to the district for school years 2020-2021 and 2021-2022.

Submitted by: Dr. Dora E. Sauced
Asst. Superintendent, Curriculum & Instruction

Recommended by: Dr. Dora E. Sauced
Asst. Superintendent, Curriculum & Instruction

Reviewed by: Miguel Salinas, Staff Attorney

Approved by: Dr. Anysia R. Treviño
Deputy Superintendent, Curriculum & Instruction

Approved for Submission to Board of Education:

Dr. René Gutiérrez, Superintendent

Sara Celis

From: Baltazar Salazar <balsalazar@sbcglobal.net>
Sent: Monday, August 03, 2020 10:36 AM
To: Sara Celis
Subject: Re: PowerSchool

CAUTION: This email originated from outside of Brownsville ISD. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mrs. Celis,

I have reviewed and approve for signature.

Thanks,
Baltazar Salazar

...loyal, faithful, and aggressive representation...

On Aug 3, 2020, at 9:53 AM, Sara Celis <scelis@bisd.us> wrote:

Please see email below.

Thank you! Should you have any questions or comments, please contact me at (956) 698-6379.

Sincerely,

Sara Celis

Sara Celis | Legal Assistant to Miguel Salinas | Staff Attorney | Phone: 956.698.6379
Brownsville Independent School District | 1900 East Price Road | Brownsville, TX 78521

 Go Green! Please do not print unless completely necessary.

CONFIDENTIALITY STATEMENT: This message and all attachments are confidential and may be protected by the attorney-client and other privileges. Any review, use, dissemination, forwarding, printing, copying, disclosure or distribution by persons other than the intended recipients is prohibited and may be unlawful. You must delete this message and any copy of it (in any form) without disclosing it. Unless expressly stated in this e-mail, nothing in this message should be construed as a digital or electronic signature.

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Brownsville Independent School District

Office for Assistant Superintendent Curriculum & Instruction

Phone: (956) 698-2403



Transmittal Form



To: Miguel Salinas
Staff Attorney

Thru: Dr. Dora E. Saucedo
Assistant Superintendent, Curriculum & Instruction

Date: August 3, 2020

RECEIVED

AUG 04 2020

Re: Powerschool
Web-based Learning Management System Subscription Agreement

Superintendent's Office

For Your Approval

For Your Signature

For Your Information

Please Comment

Please Reply

Unable to Approve Request

Comments: Please review and approve for signature by Dr. Gutiérrez.

Thank you!

I have reviewed the agreement and approve it as to form.

Miguel Salinas
8/4/2020

TEA PO#40343

**WEB-BASED LEARNING MANAGEMENT
SYSTEM SUBSCRIPTION AGREEMENT**

THIS SUBSCRIPTION AGREEMENT (this "Agreement"), together with the applicable PowerSchool quote document, TEA PO#40343 and DIR Contract No. DIR-TSO-3475, sets forth the terms and conditions pursuant to which Schoology, Inc. ("Schoology"), using PowerSchool Group LLC, its parent entity, as the Order Fulfiller, provides its end user Customers (each, a "Customer") with access to Schoology's proprietary learning management system and secure academic social network more particularly described on Schoology's website located at www.schoology.com (the "Schoology System"). This Agreement shall be effective upon the Covered License Effective Date (as defined in TEA PO#40343, the "Effective Date").

Grant of Licenses; Subscription. Schoology hereby grants to Customer a limited license to access and use the Schoology System in accordance with the terms of TEA PO#40343 for a two-year period commencing on the Effective Date. Customer hereby accepts the subscription to the Schoology System as of the Effective Date.

1. Number of licenses provisioned:
43,208
2. Projected Covered License Effective Date (as defined in TEA PO#40343): Date PowerSchool receives the executed Agreement plus 30 calendar days.

Billing and Payment. Customer shall not incur any fees hereunder. All fees associated with this subscription license covered under TEA PO #40343 shall be invoiced to and paid by the Texas Education Agency in accordance with the terms of TEA PO #40343.

Ownership. The Schoology System is owned and copyrighted by Schoology and offered through a subscription, not sold, to Customer. All right, title, and interest in and to all images, source code, updates, enhancements, modifications, and improvements contained in or related to the Schoology System, along with all intellectual property rights related thereto, shall remain with Schoology, regardless of the source giving rise to the intellectual property and despite any modifications or adaptations made for the benefit of Customer. The "Schoology" trademark is protected by United States and international trademark laws and treaties, as well as other intellectual property laws. Customer is not granted any license to use any of Schoology's trade or service marks and Schoology retains all right, title, and interest in its trade and service marks. Customer agrees that Schoology may use, without restriction or royalty obligation, any comments, suggestions or contributions provided by Customer with respect to the Schoology System during the course of Customer's use of the Schoology System. Customer hereby grants and assigns to Schoology any intellectual property rights that Customer may incidentally obtain or have with respect to any such comments, suggestions or contributions.

Confidential Information. Customer acknowledges that all underlying ideas, algorithms, item calibrations, test scripts, concepts, procedures, processes, principles, know-how, and methods of operation that comprise the Schoology System, including updates, enhancements, modifications, and improvements, to the extent allowable under the Texas Public Information Act, are confidential and contain trade secrets (collectively, "Confidential Information"), and Customer will respect such confidentiality, and shall keep all Confidential Information confidential. Customer agrees not to use, disclose, or distribute any Confidential Information, directly or

indirectly, without the prior written consent of Schoology, except that Schoology authorizes Customer to disclose Confidential Information to Customer's employees or agents who have signed written confidentiality and nondisclosure agreements before such disclosure.

Customer Information. Customer hereby permits Schoology to use information regarding its schools or district (other than student information) to perform its obligations hereunder.

Renewals; Termination. the Term shall be for twenty-four months commencing on the Effective Date. Notwithstanding any other terms in this Agreement, the Agreement may be terminated in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3475.

Support & Maintenance. Schoology may, from time to time, provide to Customer updates, enhancements, modifications, improvements in and to the Schoology System which shall all be subject to the terms and conditions of TEA PO#40343, DIR Contract No. DIR-TSO-3475 and this Agreement. Schoology has system maintenance periods throughout the year that will affect Customer's ability to interact with the Schoology System. Schoology will use commercially reasonable efforts to notify Customer in advance of any disruptions.

Limited Warranty. Schoology warrants to Customer that: (a) Schoology will comply with all applicable laws, rules and regulations, and (b) the Schoology System will perform substantially in accordance with its specifications. In the event the Schoology System fails to conform to these warranties, Schoology will use its best efforts to correct the Schoology System. If Schoology is unable to correct the error after using its best efforts, Schoology will refund the unused Subscription fees paid by Customer, as depreciated over the Term on a straight line basis, and terminate this Agreement. The limited warranties provided in this Section are void if the failure of Schoology System results from (x) use of the Schoology System in connection with software or hardware not compatible with the Schoology System or not meeting the technical specifications provided by Schoology; (y) improper or inadequate maintenance of Customer's equipment or software; or (z) inadequate Internet connectivity or bandwidth. Customer is responsible for the results obtained and decisions made from its use of the Schoology System. The Schoology System may include open source software components and use of such components may be subject to additional terms and conditions.

Disclaimer. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN SECTION 8, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SCHOOLOGY SYSTEM IS PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, QUALITY, PRODUCTIVENESS OR CAPACITY, OR THAT THE OPERATION OF THE SOFTWARE INCLUDED WITHIN THE SCHOOLOGY SYSTEM WILL BE ERROR FREE. EXCEPT AS PROVIDED HEREIN, THE ENTIRE RISK AND LIABILITY ARISING OUT OF THE USE OF THE SCHOOLOGY SYSTEM REMAINS WITH CUSTOMER, INCLUDING, BUT NOT LIMITED TO, WHEN CUSTOMER'S PRACTICES ARE INCONSISTENT WITH *THE STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTING* (1999) BY THE AMERICAN EDUCATIONAL RESEARCH ASSOCIATION. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY FOR PERFORMANCE ISSUES (A) CAUSED BY FACTORS OUTSIDE

OF SCHOOLGY'S REASONABLE CONTROL; OR (B) THAT RESULTED FROM ANY ACTION OR INACTION OF CUSTOMER OR CUSTOMER'S THIRD PARTIES; OR (C) RESULTING FROM SCHEDULED MAINTENANCE PERIODS.

Additional Disclaimer. SCHOOLGY DOES NOT AND CANNOT CONTROL PERFORMANCE OF THE SCHOOLGY SYSTEM BASED ON THE FLOW OF DATA TO OR FROM SCHOOLGY'S NETWORK AND OTHER PORTIONS OF THE INTERNET, WHICH DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH SCHOOLGY WILL USE COMMERCIALY REASONABLE EFFORTS TO REMEDY AND AVOID SUCH EVENTS, SCHOOLGY CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, SCHOOLGY DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

Limitation. LIMITATION OF LIABILITY SHALL BE HANDLED IN ACCORDANCE WITH APPENDIX A, SECTION 10K OF DIR CONTRACT NO. DIR.TSO-3475.

Indemnification. INDEMNIFICATION SHALL BE HANDLED IN ACCORDANCE WITH APPENDIX A, SECTION 10A OF DIR CONTRACT NO. DIR-TSO-3475.

1. **Publicity.** Schoology may not use and/or make reference to Customer's name, directly or indirectly, in Schoology's marketing and training materials without Customer's prior written consent. Customer may not use Schoology's name or trademark without Schoology's prior written consent.
2. **No Disassembly.** Customer shall not modify, adapt, translate, reverse engineer, decompile, or disassemble the Schoology System or any software consisting thereof.
3. **Force Majeure.** Force Majeure will be handled in accordance with Appendix A, Section 11C of DIR Contract No. DIR-TSO-3475.
4. **Waiver and Severability.** Waiver of any default or breach under this Agreement by Schoology does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. If any part of DIR Contract No. DIR-TSO-3475 or this Agreement shall be held invalid, illegal, in conflict with any law, or otherwise unenforceable by a court of competent jurisdiction, the remainder of this Agreement will nevertheless remain in full force and effect.
5. **Third Party Beneficiaries.** The Texas Education Agency ("TEA") shall have all the rights of an intended third-party beneficiary with respect to this Agreement, and TEA shall be entitled to rely upon, and directly enforce the provisions of this Agreement. The parties do not intend to confer any right or remedy on any other third party.
6. **Entire Agreement.** TEA PO#40343, its attachments, DIR Contract No. DIR-TSO-3475, its appendices and this Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
7. **Assignment.** Assignment will be handled in accordance with Appendix A, Section 4D of DIR Contract No. DIR-TSO-3475.
8. **Notices.** Notices will be handled in accordance to Appendix A, Section 12 of DIR Contract No. DIR-TSO-3475.

9. **Controlling Law and Venue.** This Agreement shall be construed and controlled by the laws of the State of Texas, U.S.A., without giving effect to principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed and shall not apply to this Agreement. State courts located in Travis County, Texas or Customer's home county shall be the exclusive forum for any litigation arising out of this Agreement. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.
10. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, notwithstanding that all of the parties are not signatory to a single original or the same counterpart. The parties may also deliver and accept facsimile or electronically scanned signatures, which shall be binding upon the parties as if the signature were an original.
11. **Independent Contractor.** The parties are acting and shall act as independent contractors. Neither party is, nor will be deemed to be, an agent, legal representative, joint venturer or partner of the other party for any purpose. Neither party will be entitled to (a) enter into any contracts in the name of or on behalf of the other party; (b) pledge the credit of the other party in any way or hold itself out as having authority to do so; or (c) make commitments or incur any charges or expenses for or in the name of the other party. Neither party's personnel are, nor shall they be deemed to be at any time during the term of this Agreement, employees of the other party.

SCHOOLGY, INC.:
POWERSCHOOL GROUP LLC
Signature:



Printed Name: Eric Shander

Title: Chief Financial Officer

Date: 8/7/2020

Brownsville Independent School District

Title:

Date:



PowerSchool Group LLC
 150 Parkshore Dr., Folsom, CA 95630
 Quote #: Q-407486 - 1

Quote Expiration Date: 9/27/2020

Prepared By: Mark Moreno
 Customer Name: Brownsville Independent School District

Customer Contact: Dora Saucedo
 Title: Assistant Superintendent Curriculum, Instruction & Accountability

Enrollment: 43,208
 Contract Term: 24 Months
 Start Date: 8/7/2020
 End Date: 8/6/2022

Address: 1900 East Price Road
 City: Brownsville
 State/Province: Texas
 Zip Code: 78521
 Phone #: 956.548.8121

| Product Description | Quantity | Unit | Extended Price |
|--------------------------------------|-----------|----------|----------------|
| Initial Term 8/7/2020 - 8/6/2021 | | | |
| License and Subscription Fees | | | |
| Schoology LMS Subscription - THL 3.0 | 43,208.00 | Students | USD 0.00 |

| Quote Total | |
|--------------------|---------------------|
| Initial Term | 8/7/2020 - 8/6/2021 |
| Initial Term Total | USD 0.00 |

Annual Ongoing Fees as of 8/7/2021

| | | | |
|--------------------------------------|-----------|----------|-----------------|
| Schoology LMS Subscription - THL 3.0 | 43,208.00 | Students | USD 0.00 |
| Annual Ongoing Fees Total: | | | USD 0.00 |

The Customer hereby acknowledges that the Texas Educational Agency ("TEA") is the intended payor of fees associated with the product SKU listed above and offered to the Customer under an agreement with Schoology, Inc., an affiliated company of the parent company PowerSchool Group LLC. Moreover, the Customer hereby acknowledges TEA's right to receive and grants PowerSchool express permission to disclose data to TEA regarding the Customer and its issuers use of the services, products from PowerSchool. Finally, the Customer acknowledges the existence of a Service Level Agreement ("SLA") with respect to the product SKU listed above which TEA will be monitoring and enforcing on behalf of the Customer.

Any applicable state sales tax has not been added to this quote. Subscription start and expiration dates shall be as set forth above, which may be delayed based upon the date that PowerSchool receives your purchase order. This quote once executed is governed by the attached subscription agreement and grants the Customer a limited subscription license to access and use the Schoology LMS System in accordance with the terms of TEA PO#40343 and DIR Contract No. DIR-TSO-3475 Appendix A for the duration listed above. Customer hereby accepts the subscription to the Schoology System as of the date last signed on the subscription agreement.

THE PARTIES BELOW ACKNOWLEDGE THAT THEY HAVE READ THE AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS.

POWERSCHOOL GROUP LLC
Signature:



Printed Name: Eric Shander

Title: Chief Financial Officer

Date: 7-30-2020

Brownsville Independent School District
Signature:

Printed Name:

Title:

Date:



Brownsville Independent School District

1900 Price Road Brownsville, Texas 78521-2417 (956) 548-8000

Dr. René Gutiérrez
Superintendent

PowerSchool

Company Name

Dr. René Gutiérrez
Superintendent

Date

Minerva M. Peña
Board President

Dr. Prisci Roca Tipton
Board Secretary

Date

BISD does not discriminate on the basis of race, color, national origin, sex, religion, age, disability or genetic information in employment or provision of services, programs or activities.

BISD no discrimina a base de raza, color, origen nacional, sexo, religión, edad, discapacidad o información genética en el empleo o en la provisión de servicios, programas o actividades.