

**REQUEST FOR PROPOSAL
RURAL HEALTHCARE PILOT PROJECT**

**ENGINEERING FIBER CONNECTIONS
WHITEFISH TO CONRAD, MONTANA
HIEM RFP-03**

Health Information Exchange of Montana, Inc.
Kip Smith, Executive Director
c/o Northwest Healthcare
310 Sunnyview Lane
Kalispell, Montana 59901

February 2009

Project Abstract
Health Information Exchange of Montana, Inc.

The Health Information Exchange of Montana, Inc. (HIEM) is a rural health consortium of seven Northwest Montana healthcare organizations – five hospitals and two federally-funded Community Health Centers who have formally come together to address their shared unique geographic and technological challenges in order to exchange basic medical information and expand telehealth applications in northwest and north central Montana. It is a non-profit organization comprised solely of 501(c)(3) healthcare organizations and supported by dozens of affiliate partners within our service area, across our region and throughout Montana.

The HIEM has successfully deployed several notable telehealth applications in the past seven years. Each hospital is linked into a common Picture Archiving & Communications System (PACs) and work with centralized radiologists in the network hub of Kalispell. Three of the hospitals share hospital information systems. Video conferencing is available throughout most of the network, and a number of telemedicine patient-care examination facilities have been implemented. This has been accomplished through collaborative governance of shared objectives and by ensuring financial sustainability through each participant paying appropriate fees for these services.

In 2006, the Founding Members of the HIEM, who had worked together on an informal basis for so long, decided to formalize the network into its own 501(c)(3) organization. Today HIEM member organizations represent dozens of healthcare providers in each of their respective communities. Healthcare goals presently underway include growth of the PACs system and telemedicine exam facilities, implementation of telepharmacy, teledentistry, telemental health services and expansion of shared electronic health records throughout the network region.

Unfortunately, access to affordable, reliable bandwidth has been a serious constraint in the accomplishment of these objectives. With financial assistance from the Federal Communications Commission and the University of Montana, the HIEM will establish a secure broadband network to ensure future expansion of network services within the region.

1. General Information

- 1.1** The Health Information Exchange of Montana (HIEM) seeks proposals to provide written specifications and schematics necessary to connect healthcare facilities to the HIEM’s fiber optic backbone from Whitefish to Conrad, Montana. This RFP addresses the engineering of new fiber optic routing to participating HIEM members.
- 1.2** This project is a “site by site” approach for infrastructure build-out from the newly constructed HIEM fiber optic network, consisting of 12 pairs of fiber optic strands. At each telecommunications hotel facility, HIEM has a secure fiber access point and/or handhold in close proximity to the hotel facility. HIEM seeks to extend 12 pairs of unrestricted fiber optic strands from each fiber access point to designated healthcare facilities as identified below. Proposals to service more than one healthcare facility location from the same fiber optic spur may be submitted, but should reflect the potential cost benefit of this approach versus providing dedicated lines to each facility.

Fiber Hotel/Access Point	Latitude (n) Longitude (w)	Connect to	Healthcare Facility
Whitefish M/W Bldg 480 Railway Street Whitefish, MT 59937	48.24-49.3 -114.20-12.8		North Valley Hospital 1600 Hospital Way Whitefish, MT 59937
Whitefish M/W Bldg 480 Railway Street Whitefish, MT 59937	48.24-49.3 -114.20-12.8		Kalispell Regional Medical Center 310 Sunnyview Lane Kalispell, MT 59901
Browning Fiber Bldg South Heart Butte Road Browning, MT 59417	48.32-02.2 -113.00-47.8		Blackfeet Community Hospital 760 Government Square Browning, MT 59417
Browning Fiber Bldg South Heart Butte Road Browning, MT 59417	48.32-02.2 -113.00-47.8		Heart Butte Health Station 81 Disney Street Heart Butte, MT 59448
Cut Bank New Fiber Bldg 2 nd & 1 st Street NW Cut Bank, MT 59427	48.38-20.8 -112.19-56.8		Glacier Community Health Center 519 East Main Cut Bank, MT 59427
Cut Bank New Fiber Bldg 2 nd & 1 st Street NW Cut Bank, MT 59427	48.38-20.8 -112.19-56.8		Northern Rockies Medical Center 802 2 nd Street SE Cut Bank, MT 59427
Shelby New Fiber Bldg 1981/2 Right of Way Shelby, MT 59474	48.30-25.2 -111.51-26.8		Marias Medical Center 640 Park Avenue Shelby, MT 59474
Conrad New Fiber Bldg 403 South Front Conrad, MT 59425	48.10-10.4 -111.56-40.7		Pondera Medical Center 805 Sunset Blvd Conrad, MT 59425

- 1.3** This RFP does NOT include any hardware or software needs at either the backbone demarcation points nor at the individual healthcare facilities.
- 1.4** Contractor is responsible for identifying and securing all necessary right-of-way (ROW) procurement and resolution of ROW issues and acquiring city, county, state and tribal permits necessary for the construction of desired fiber spurs. Ideally, any necessary leases or ROW agreements will provide HIEM with a term of no less than three years, with options to renew for at least five additional three year terms.
- 1.5** Other major duties of the contractor include submitting red-lined construction drawings per site, staking the preferred route, estimating construction costs per site based on drawings and staked route, documenting all fiber testing and coordinating other related issues with the HIEM's Executive Director and healthcare facility technical staff.
- 1.6** In addition, the successful bidder must provide draft vendor evaluation criteria for actual construction of required connectivity components.
- 1.7** Proposal Format. Bidders are required to submit the Proposal Form below setting forth their response to this RFP. Additional documentation should be attached to support the proposal.
- 1.8** The successful final Bidder shall furnish 100% performance and payment bonds payable to HIEM conditioned upon compliance with and fulfillment of all the terms and provisions of the agreement, plans and specifications, all applicable laws and the prompt payment, as due, to all persons supplying labor and/or materials for the processing of the work provided for in the specifications.

The bond shall be executed by a surety company authorized to transact business in the State of Montana within ten days after notice of intent to award the Agreement. The bonds are to be furnished by the company who will build and provide the network elements proposed.

An alternative to bonds as allowed by state statute and subject to the approval of HIEM may be considered. The performance security includes the preparation and completion of design and related professional services as specified in the Agreement.

- 1.9** RFP Process. The RFP process is open to all competitive offers from qualified Bidders (Bidders with SPIN numbers) including independent telephone companies, local exchange carriers, cable operators, cabling and construction contractors or others who are able to provide bids for the requested connectivity. These competitive offers will be judged by HIEM according to the criteria set forth in Section 2.6 of this document.

2.0 Administrative and Procedural Information

- 2.1** The Rural Health Care Pilot Program (“RHCPP”) of the Universal Service Fund is administered by the Universal Service Administrative Company (“USAC”) – as authorized by Congress and regulated by the Federal Communications Commission (“FCC”) – to encourage development of rural broadband networks to advance healthcare telecommunications capabilities and services to rural health care providers (“HCP”).
- 2.2** This project is subject to USAC procurement rules. Bidders must meet all USAC requirements. HIEM will submit a USAC Form 465 to USAC who will review the documentation and will post the RFP on the USAC website. More information on bidding and posting rules can be found at <http://www.usac.org/rhc-pilot-program/tools/search-postings-2008.aspx>.
- 2.3** The following considerations apply to the proposal submission/review process:
- 2.3.1** Bidders are expected to raise any questions, noted errors, discrepancies, ambiguities, exceptions, additions or deficiencies they have concerning this bid in writing to:

Kip Smith
Executive Director
Health Information Exchange of Montana
c/o Northwest Healthcare
310 Sunnyview Lane
Kalispell, MT 59901
406-751-6687
kipsmith@krmc.org

Questions and answers will be emailed to all bidders throughout the bidding process. Interested bidders should provide an email contact for notification of any Q&A and clarification.

Any communications with HIEM or participating site staff members other than via the method described above should not be considered authoritative, are not binding on HIEM and may be disavowed without notice or explanation.

- 2.3.2** There will be no pre-offer conference.
- 2.3.3** In the event it becomes necessary for HIEM to amend, add to or delete any part of this RFP, the amendment will be posted on the USAC website as required by the Order and by the USAC-mandated bidding procedures.

- 2.3.4 Three (3) copies of bid proposals must be received at the HIEM office (see address on cover page) no later than 4:00PM Mountain Time on the 30th day following the day of posting of this RFP on the RHCPP website. This receipt deadline is a mandatory requirement and is not subject to waiver by HIEM, unless the deadline is extend by HIEM for all interested Bidders. Accordingly, no bid proposals will be accepted after the date and time specified. A late bid proposal will be returned unopened to the bidder.
 - 2.3.5 Electronically transmitted responses (fax, email, etc.) to this RFP will **not** be accepted. However, submitted responses must be accompanied by a CD-ROM electronic copy of any documents submitted in either .doc or .pdf format.
 - 2.3.6 HIEM will not consider a proposal unless the Bidder is determined eligible by the Universal Service Administrative Company and holds a valid Service Provider Identification Number.
 - 2.3.7 Bid proposals will be opened at 9:00AM Mountain Time the first working day following the receipt deadline. The bid proposals and the evaluation documents created by HIEM will remain confidential.
 - 2.3.8 By submitting a bid proposal the Bidder agrees to the terms and conditions contained within this RFP including attached documents.
- 2.4 To be responsive to this RFP, proposals shall:
- 2.4.1 Specifically address all requested information and bid specifications included in this document.
 - 2.4.2 Not exceed 25 pages printed on 8.5” x 11” paper with 1” margins on all sides.
 - 2.4.3 Include company name and contact, address and contact information
 - 2.4.4 Identify key employees who will be assigned to the project during engineering of fiber connections between the fiber hotel/access points and specified healthcare facilities,
 - 2.4.5 The number of calendar days required to complete all aspects of this RFP.
 - 2.4.6 Be valid for a period of 120 days from the date of submission.
- 2.5 Under no circumstances will HIEM be responsible for any of the Bidder’s costs or expenses incurred in submitting a proposal. Each prospective bidder responding to this RFP does so solely at its own cost and expense.

- 2.6 All RFP responses will be evaluated on the basis of quality, understanding of project needs and goals and overall cost effectiveness.
- 2.7 HIEM reserves the right to:
 - 2.7.1 Contact a Bidder after submission of bid proposals for the purpose of clarifying a bid proposal to ensure mutual understanding. This information may be used to evaluate the bid proposal.
 - 2.7.2 Obtain information concerning any Bidder or any proposal from any source and to consider such information in evaluating the bid proposal.
 - 2.7.3 Reject any response not in compliance with all FCC pilot project guidelines and procedures.
 - 2.7.4 Reject any response not meeting or differing materially from the specifications set forth herein.
 - 2.7.5 Waive any and all minor irregularities and informality in the response submitted when, in the opinion of HIEM, it is in its best interest to do so.
 - 2.7.6 Consider the competency and responsibility of Bidders in making any award.
 - 2.7.7 Reject a selected Bidder if within a reasonable time, determined solely at the discretion of HIEM, Bidder has not executed a project agreement.
 - 2.7.8 Extend the deadline for submitting bids.
 - 2.7.9 Seek other proposals, if deemed in the best interest by HIEM.
 - 2.7.10 Reject all bids and seek other bids, if deemed in the best interest by HIEM.
- 2.8 Solicitation/award protests must be submitted in writing within seven (7) calendar days of solicitation/award posting on the RHCPP website to Kip Smith, HIEM Executive Director (see address on cover page).

3.0 Agreement Terms Generally

- 3.1 The Agreement, which the HIEM expects to award, will be based upon the bid proposal submitted by the successful Bidder and this solicitation. The Agreement between HIEM and the Bidder shall be a combination of the specifications, terms and conditions of this RFP, including those contained in the Sample Agreement (Attachment 1), the offer of the Bidder contained in its bid proposal, written clarifications or changes made in accordance with the provisions herein, and any other terms deemed necessary by the HIEM.

- 3.2** The Agreement terms contained in Attachment 1 (Sample Agreement) are not intended to be a complete listing of all Agreement terms but are provided only to enable Bidders to better evaluate the costs associated with the RFP and the potential resulting Agreement. Bidders should plan on such terms being included in any Agreement awarded as a result of this RFP. All costs associated with complying with these requirements should be included in any pricing quoted by the Bidder.
- 3.3** By submitting a bid proposal, each Bidder acknowledges its acceptance of these specifications, terms and conditions without change except as otherwise expressly stated in their bid proposal. If a Bidder takes exception to a provision, it must state the reason for the exception and set forth in its bid proposal the specific Agreement language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the RFP may be deemed non-responsive by the HIEM, in its sole discretion, resulting in possible disqualification of the bid proposal.
- 3.4** The HIEM reserves the right to either award an Agreement without further negotiation with the successful bidder or to negotiate Agreement terms with the selected Bidder if the best interests of the HIEM would be served.

Proposal Form

Health Information Exchange of Montana
c/o Northwest Healthcare
310 Sunnyview Lane
Kalispell, MT 59901
kipsmith@krmc.org

This proposal is submitted to Kip Smith, Executive Director, Health Information Exchange of Montana (HIEM), c/o Northwest Healthcare, 310 Sunnyview Lane, Kalispell, MT 59901.

1. The undersigned Bidder proposes and agrees, if this proposal is accepted, to enter into an Agreement with HIEM in the form included in the Sample Agreement document and to complete the work and/or provide all network elements as specified or indicated in the Agreement documents for the bid price and within the time indicated in this proposal and in accordance with the Agreement documents.
2. Bidder accepts all of the terms and conditions of the Request for Proposal. The bid proposal may not be amended or withdrawn and is subject to acceptance for one hundred and twenty (120) days after the date of proposal opening. Selected Bidder will sign the Agreement and submit the security and other documents required by the Agreement documents within ten (10) days after the date of HIEM's notice of intent to award.

In submitting this bid, Bidder represents as more fully set forth in the Agreement, that:

(a) Bidder has examined copies of the Agreement documents and the following addenda:

Date: _____
Date: _____
Date: _____
Date: _____

and also copies of any advertisement or Request for Proposal ;

(b) Bidder has examined the legal site and locality where the work is to be performed and/or network elements are required, the requirements (federal, state, and local ordinances, rules, and regulations) and the conditions affecting cost, progress, or performance of work, and has made such independent investigation as Bidder deems necessary;

(c) Bidder is solely responsible for obtaining on behalf of HIEM all governmental authority, including rights of way, easements, building permits and permits needed to comply with all environmental and zoning laws;

(d) This proposal is genuine and not made in the interest or on behalf of any undisclosed person, firm, or corporation, and is not submitted in conformity with any Agreement or rules of any group, association, organization, or corporation; proposer has not directly or indirectly induced or solicited any other proposer to submit a false or sham proposal; proposer has not solicited or induced any person, firm, or corporation to refrain from bidding and proposer has not sought by collusion to obtain for himself any advantage over any other Bidder or HIEM ;

(e) HIEM does not have to award any Agreement based on the bid proposals submitted. Any award which HIEM makes will be on the basis of quality, understanding of project needs & goals and overall cost effectiveness of the bid response as determined by HIEM.

3. Bidder will complete the work and/or provide required network elements for the following price: \$_____.00
4. Bidder will complete the work and/or provide required network elements within _____ days of the bid award.
5. Bidder acknowledges that he has reviewed the provisions of the Sample Agreement as to liquidated damages and the event of failure to complete the work or provide the network elements on time and has considered those potential damages in formulating this proposal.
6. Bidder acknowledges that if they are unable to complete the project and deliver network components on schedule, due to an act of God, HIEM may at its discretion extend the dates of delivery and project completion.
7. Bidder acknowledges that HIEM, at any time the need arises, may order changes in the scope of work without invalidating the Agreement. If such changes increase or decrease the amount due under the Agreement documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order. HIEM or its representative may also, at any time, by issuing a field order, make changes in the details of the work. Unless the Bidder reasonably believes the field order is in error or it jeopardizes the work; the health, safety and welfare of workers; or HIEM's future use of the new facilities, the Bidder shall proceed with the performance of any changes in the work so ordered, even in the absence of Agreement on adjustment, if any, in the Agreement amount or time lines. If the Bidder believes such field order entitled the Bidder to a change in Agreement price or time, or both, or that the field order is in error as described above, Bidder shall give HIEM's representative written notice thereof within ten (10) days after receipt of the field order. Thereafter, the Bidder shall document the basis for the change in Agreement price or time within ten (10) days.

8. The following documents are attached to and made a condition to the proposal:

(a) Vendor Certification

9. Bidder agrees and certifies as follows:

(a) The Bidder has not discriminated against minorities, women or emerging small business enterprises in obtaining any sub-agreements required under this Agreement.

(b) The Bidder has complied with all federal, state and local laws with respect to any and all work and/or network elements required in order to fulfill this Agreement.

10. Communications concerning this bid proposal shall be addressed to:

Bidder Contact: _____

Bidder Address: _____

Submitted this ____ day of _____, 2009.

Corporate/Company Name & Seal

By: _____

Business Address: _____

Phone: (____) ____ - _____

State of Incorporation: _____

ATTEST:

Secretary of Proposing Corporation

Vendor Letterhead

Certification of [Vendor]

I, _____ [name of corporate officer], on behalf of _____ [Vendor name] (SPIN _____) certify and swear under the penalty of perjury, that to the best of my knowledge, information and belief, all federal Rural Health Care Pilot Program support provided to us will be used only for eligible Pilot Program purposes for which the support is intended, as described in the Pilot Program Order (WC Docket 02-60; FCC 07-498, released November 19, 2007), and consistent with related FCC orders, section 254(h)(2)(A) of the Telecommunications Act of 1934, as amended, and Parts 54.601 *et. seq.* of the FCC's rules.

_____ (signature)

Name: _____

Title: _____

Date: _____

NOTARIZED BY: _____

Attachment 1
Health Information Exchange of Montana, Inc.
Sample Agreement

THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2009 (“Effective Date”), by and between the Health Information Exchange of Montana (“HIEM”), and _____ (“Contractor”).

1. Work. Contractor shall complete all work as specified in the bid proposal and agreement documents and in accordance with the documents and drawings provided for the project known as the <Project Name>.

2. Materials. Contractor will furnish all materials, permits, supplies, tools, equipment, labor and other services necessary for the construction and completion of the project described herein.

3. Contract Time. The work will commence within ten (10) calendar days after the date of award and all work will be completed and network elements will be provided by the Contractor within _____ () days unless the period for completion is extended otherwise by the Agreement documents or by written agreement of the.

4. Work Price. HIEM shall pay Contractor for the Work, including transfer of title of and performance of the network elements provided in accordance this Agreement, the sum of \$ _____ as shown in the bid proposal.

5. Transfer of Title. Contractor agrees that for and in consideration of the Work Price provided in the Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Contractor does by these presents grant, sell, assign, convey, transfer, deliver, set over to, and vest in HIEM, its successors and assigns, subject to and upon the terms and conditions of the Agreement, all the right, title, and interest of Contractor in and to the <Project Name> owned and used by the Contractor. This Agreement shall be construed as an instrument of transfer and conveyance. Contractor warrants Contractor’s title to the <Project Name> to the full extent of Contractor’s representations and warranties in the Agreement, and Contractor, to the full extent of Contractor’s representations and warranties in the Agreement, does hereby bind itself and its successors and assigns to warrant and forever defend the right, title, and interest to the <Project Name> unto HIEM, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

6. Liquidated Damages. The parties agree that if the Work is not completed and/or the network elements are not provided within the Contract Time, except as expressly permitted in this Agreement, the Contractor will be responsible to HIEM for the sum of \$250.00 for each day or part day that the project is not completed. The parties agree that the liquidated damages provision in this Agreement has been considered by the Contractor in establishing the amount of

the Contractor's proposal and, as such, is part of the negotiations of this Agreement. The parties further agree that the amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to accurately estimate. The parties further agree that the damages stated herein are not a penalty. Contractor agrees to be subjected to the Liquidated Damages requirement set forth in this Agreement to ensure timely delivery of the Work to HIEM.

7. Payment of Work Price. HIEM and USAC will disburse funds based on monthly or greater time period submissions (i.e. invoices) of actual incurred eligible expenses and will respond to Contractor invoices in accordance with the USAC invoicing payment process. This invoice process will permit disbursement of funds to ensure that the Contractor's work proceeds, while allowing USAC and the FCC to monitor expenditures in order to ensure compliance with the RHCPP program and prevent waste, fraud and abuse. Note: 15% of payment to Contractor will originate with HIEM; 85% of payment will originate with USAC/FCC.

(a) HIEM will be responsible for promptly and correctly submitting the necessary forms and documents required by USAC for release of payment to Contractor. HIEM represents and warrants that it has familiarized itself the Telecommunications Act of 1934, the Federal Communications Commission regulations, and the rules of governance and process as dictated by the Universal Service Administration Company ("USAC") and the Rural Healthcare Pilot Program, and determined that the Work Price and the provisions of this Agreement are in substantial compliance with such laws, rules, and regulations; provided, however, the parties acknowledge that the Agreement is subject to USAC approval.

(b) Prior to substantial completion, progress payments will be an amount equal to not more than 95% of the work completed and 95% of the materials and equipment not incorporated in the work, but delivered and suitably stored, less in each case the aggregate of payments previously made.

(c) Upon substantial completion, payment shall be an amount sufficient to increase total payments to Contractor to 95% of the Work Price, less the aggregate of payments previously made.

(d) Final payment shall be upon final completion and acceptance of the work and network elements. Upon final acceptance, Contractor shall submit an invoice to HIEM requesting payment of the remaining 5% of the Work Price with sufficient documentation to support the fee included on the invoice.

(e) If HIEM in good faith determines that the Contractor has failed to perform or deliver any service or product as required by the Agreement, the Contractor shall not be entitled to any compensation under this Agreement until such service or product is completed or delivered. In the event of partial performance, the HIEM may withhold that portion of the Contractor's compensation which represents payment for the unsatisfactory services.

(f) HIEM shall audit invoices presented to the HIEM to ensure that they are proper, current and correct. The HIEM shall notify the Contractor of any and all discrepancies

that the audit(s) reveals. The Contractor has 30 days from the date of invoice to present and resolve any discrepancies with the HIEM.

(g) Upon project completion and final sign off by HIEM, title to the <Project Name>, material and equipment will pass to HIEM.

8. Contractor's Representations. In order to induce HIEM to enter into this agreement, Contractor makes the following representations:

(a) Contractor has familiarized himself with the Agreement document, including the General Conditions attachment, work, locality, and applicable federal, state, and local laws, ordinances, rules, and regulations which could be reasonably expected to affect cost, progress, or performance of the Work;

(b) Contractor has had the opportunity to study reports, investigations, and tests of subsurface and latent physical conditions at the site affecting cost, progress, or performance of Work which were relied upon in the preparation of the drawings and specifications;

(c) Contractor has made or has caused to be made any additional examinations, investigations, tests and studies of reports and related data, which Contractor deems necessary for the performance of the work, determination of the price, and completion within the contract time in accordance with the other terms and conditions of this Agreement. No other examinations, investigations, tests, reports, or similar data are of will be required by Contractor for such purposes;

(d) Contractor has reconciled the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Agreement;

(e) Contractor has given HIEM's representative written notice of all conflicts, errors or discrepancies which he has discovered in the Agreement and the written resolution thereof by HIEM's representative is acceptable to the Contractor.

(f) Contractor is qualified to do business in Montana.

(g) Contractor represents that workmanship of the <Project Name> shall be the best grade and shall conform in all respects to the best practices in the industry.

(h) Contractor guarantees all workmanship on the Work and network elements provided under this Agreement by Contractor or its subcontractors.

(i) Contractor warrants all Work, including the network elements and other improvements, shall be free from defects in design, construction and workmanship for a period of two (2) years after the Effective Date of this Agreement and Contractor shall, at its own cost and expense, promptly repair or replace, at the discretion of HIEM, all parts of the <Project Name> or other improvement that fails on account of defective design, materials, construction or workmanship.

(j) Contractor warrants the major components installed in, on and around the <Project Name> and other improvements furnished by Contractor shall be free from defects in construction and workmanship for a period of two (2) years after the Effective Date and Contractor shall, at its own cost and expense, promptly furnish to HIEM all parts necessary for the repair or replacement of any defective parts. Contractor shall also reimburse HIEM for necessary labor expenses HIEM incurs to complete the repair. Costs for such work shall be based upon HIEM's actual labor cost plus 50% overhead and actual material cost.

9. Insurance. Before undertaking Work, Contractor or Contractor's Subcontractors shall provide HIEM with certificates of insurance, including comprehensive general liability, workers compensation and other insurance coverage as required by the General Conditions.

10. Liability. Contractor shall defend against any and all suits and assume all liability for the use of any patented process, device or article forming a part of the Work furnished and constructed under the Agreement. Contractor acknowledges and agrees that it is the intent of this Section that HIEM, its officers, directors, personnel, representatives and associates are to receive indemnification from the Contractor for any failure to perform, including professional errors and omissions, negligence, design warranties, construction operations and faulty work claims.

11. Responsibilities for Elements. Contractor shall promptly remedy damage and loss and shall assume all costs and be responsible for all the work, materials, equipment, other real or personal property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavement, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction, and all improvements associated with the Work, prior and up to the transfer of ownership and possession to HIEM, upon completion of the Work.

12. No Waiver of Legal Rights. HIEM shall not be precluded or estopped by any measure, completion or acceptance of the Work and partial payment therefor from showing that any such measurement, estimate or certificate is untrue or incorrectly made or that the Work or materials do not conform in fact to the Agreement. HIEM shall not be precluded or estopped, notwithstanding any measurement, estimate or certificate and payment in accordance therewith, from recovering from the Contractor for its failure to comply with the terms of the Agreement. Neither acceptance by HIEM or any representative of HIEM, nor any payment for acceptance of the whole or any part of the Work on any extension of time, or any possession taken by HIEM shall operate as a waiver of any portion of the Agreement or of any power herein reserved of any right to damages herein provided. A waiver of any breach of the Agreement shall not be held as a waiver of any other subsequent breach of the Agreement.

13. Maintenance of <Project Name>. Contractor shall provide to HIEM, for so long as this Agreement remains in effect, at HIEM's expense based on the actual cost of the time and materials incurred by Contractor, the following services:

- (a) Disaster Recovery testing and planning related to the <Project Name>.
- (b) Housing for spare equipment necessary to use the <Project Name>.
- (c) Repair and maintenance of the <Project Name>.

HIEM shall only bear the expenses associated with maintenance of HIEM's portion of the <Project Name> and shall not be responsible for maintenance expenses associated with portions of any <Project Name> not owned by HIEM. Contractor shall maintain the <Project Name> and related network elements in a good and workmanlike condition consistent with generally accepted industry standards.

14. Miscellaneous.

(a) No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party to this Agreement without the written consent of the parties sought to be bound; and specifically but without limitation, monies which may become due and monies which are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law); and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.

(b) This Agreement shall be binding upon all parties to the Agreement and their respective partners, successor, heirs, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Agreement documents.

THIS AGREEMENT is effective on the ___ day of _____, 2009;

HIEM:

Contractor:

By: _____
Kip Smith, Executive Director

By: _____

Address for giving notices:
Health Information Exchange of Montana, Inc.
c/o Northwest Healthcare
Attn: Executive Director
310 Sunnyview Lane
Kalispell, MT 59901
Tel: 406.752.1724
Fax: 406.756.2703

Address for giving notices:

ATTEST:

ATTEST:

General Conditions

Section 1. Definitions - Whenever used in these General Conditions or in the Agreement, the following terms have the meanings indicated which are applicable in both the singular and plural or masculine or feminine thereof:

1. Addenda - Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the Agreement documents, drawings and specifications by additions, deletions, clarifications, or corrections.
2. Bid Proposal - The offer or proposal of the Contractor submitted on the prescribed Proposal Form setting forth the prices for the work to be performed.
3. Bonds - Performance and payment bonds and other instruments of security.
4. Change Order - A written order to the Contractor signed by HIEM authorizing an addition, deletion or revision in the work, or an adjustment in the contract price or the contract time issued after the effective date of the Agreement.
5. Contract Time - The number of calendar days stated in the Agreement documents for completion of the work.
6. Contractor - The person, firm, or corporation with whom HIEM has executed the Agreement.
7. Drawings - The part of the Agreement documents which show the characteristic and scope of the work to be performed and are referred to in the Agreement documents.
8. HIEM Representative - That person appointed by the Board of Directors of HIEM to act as HIEM's representative in all matters relating to this Agreement.
9. Field Order- A written order issued by the HIEM representative which orders minor changes in work not involving an adjustment in the work price or an extension of the contract time.
10. Substantial Completion - The date certified by the HIEM representative when the construction of the project or a specified part thereof is sufficiently completed in accordance with the Agreement documents so that the project or a specified part can be utilized for purposes for which it is intended.
11. Subcontractor - An individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the work at the site.

12. Supplier - Any person or organization who supplies materials or equipment for the work, including that fabricated to a special design but who does not perform labor at the site.
13. Work - All labor necessary to produce the construction required by the Agreement documents and all materials and equipment incorporated or to be incorporated in the project.
14. Work Price - The total monies payable to the Contractor under the terms and conditions of the Agreement documents.
15. Written Notice - Any notice to any party to the Agreement or relative to any part of this agreement in writing and considered delivered and the service thereof completed when posted by certified mail or registered mail to the party at his last given address as shown on the Agreement, or when delivered in person to the party or his authorized representative on the work.

Section 2. Preliminary Matters

1. Copies of Bonds – When the Contractor delivers the executed Agreement to HIEM, Contractor shall also deliver to HIEM such bonds as the Contractor may be required to furnish.
2. Copies of Documents - HIEM shall furnish to Contractor up to three (3) copies of the Agreement documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished upon request at the cost of reproduction.
3. Insurance - Before undertaking any work on the project, Contractor or Contractor's Subcontractors shall provide HIEM with certificates of insurance including a comprehensive general liability, workers compensation and other insurance as will provide protection for the claims set out below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under this Agreement whether such performance is by Contractor or any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
 - (a) Claims under workers compensation or workers compensation disability benefits or other similar employee benefits;
 - (b) Claims for damages because of bodily injury, occupational sickness or disease or death of Contractor's employees;
 - (c) Claims for damages because of bodily injury, sickness or disease of any person other than Contractor's employees;
 - (d) Claims for damages insured by personal injury liability coverage which is sustained by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor or by any other person for any other reason;
 - (e) Claims for damages other than to the work itself because of injury or destruction of tangible property, including loss of use resulting there from;

- (f) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
 - (g) The limits of such liability shall be comprehensive general liability, \$5,000,000; automobile, \$500,000; bodily injury \$500,000; and property damage \$50,000.
- 4. HIEM Insurance - HIEM shall be responsible for purchasing and maintaining its own liability insurance. All other risk of loss at the work site shall be borne by Contractor until acceptance of work and network elements by HIEM.
 - 5. Subrogation Waiver – HIEM and Contractor waive all rights against each other and the Subcontractors and their agents and employees for damages caused by fire or other perils to the extent covered by insurance provided in the above paragraphs. The Contractor shall require similar written waivers from each Subcontractor and each such waiver shall be in favor of all other parties enumerated in this paragraph.

Section 3. Agreement Documents

- 1. The Agreement documents comprise the entire agreement between HIEM and Contractor concerning work and network elements. They may be altered only by written modification signed by both HIEM and Contractor.
- 2. If, during the performance of the work, Contractor or HIEM finds a conflict, error or discrepancy in the Agreement documents, the finding party shall report it to the other party's representative in writing in a timely manner.
- 3. It is the intent of the specifications and drawings to describe the complete project to be constructed in accordance with the Agreement documents. Any work which may reasonably be inferred from the specifications or drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual or code in effect at the time of the opening of the proposal, except as may be otherwise specifically stated. However, no provision of any reference, standard, specification, manual or code shall change the duties and responsibilities of HIEM, Contractor, or any of their agents or employees from those set forth in the Agreement documents. Clarifications and interpretations of the Agreement documents shall be issued by HIEM representative.
- 4. Re-use of Documents – Neither Contractor nor any Subcontractor, manufacturer, fabricator, supplier or distributor shall have or acquire any title to nor ownership rights in any of the drawings, specifications or other documents which are a part of this Agreement. They may not be re-used by any party without the express written consent of the owner and of the preparer of the drawings.

Section 4. Materials, Service and Facilities

1. It is understood that, except as otherwise specifically stated in the Agreement documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, supervision, temporary construction and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.
2. Materials and equipment shall be stored so as to ensure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
3. All materials and equipment shall be of good quality and new except as otherwise provided in the Agreement documents.
4. Equivalent Materials and Equipment - Whenever materials or equipment are specified or described in drawings or specifications by using the name of proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the name of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other manufacturers, fabricators, suppliers, or distributors may be accepted by HIEM representative if sufficient information is submitted by Contractor to allow HIEM representative to determine that the material proposed is equivalent to that named.
5. Contractor shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons or organizations for whose acts any of them may be liable to the same extent Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in these documents creates any obligation on the part of HIEM to pay or to see to the payment of any monies due any Subcontractor or other person or organization except as may otherwise be required by law.
6. Contractor shall be responsible for obtaining on behalf of HIEM all governmental authority, including but not limited to rights of way, easements, building permits, and permits needed to comply with all environmental and zoning laws except as agreed to by the parties.

Section 5. Fees, Taxes and Permits

1. Contractor shall pay all applicable royalties and license fees for the equipment incorporated into the Work. Contractor shall defend all suits or claims for infringement of any patent rights for equipment incorporated into the Work and save HIEM harmless from loss on account thereof.
2. All permits and licenses, including SDC or other governmental fees, licenses and inspections required for construction shall be obtained by the Contractor. HIEM shall assist the Contractor when necessary in obtaining such permits and licenses. Contractor shall pay all governmental charges

and inspection fees necessary for the prosecution of the work, and which are applicable at the time of opening the proposals. Contractor shall pay, and be reimbursed as part of the Work Price, all charges of utility service companies for connections to the work. Contractor shall pay, and be reimbursed as part of the Work Price, all sales, consumer, use and other similar taxes required to be paid by him in accordance with the laws of the place of the project.

Section 6. Survey, Permits and Regulations

1. HIEM shall furnish all boundary surveys and establish all base lines for locating principal component parts of the work together with a suitable number of benchmarks adjacent to the work as shown in the Agreement documents. From the information provided by HIEM, unless otherwise specified in the Agreement document, Contractor shall develop and make all detailed surveys needed for construction such as slope stakes, stakes for piling locations, and other working points, lines, elevations and cut sheets.
2. The Contractor shall carefully preserve benchmarks, reference points and stakes and, in case of willful or careless destruction, Contractor shall be charged with the resulting expense and shall be responsible for any mistakes which may be caused by unnecessary loss or disturbance.

Section 7. Supervision by Contractor

Contractor will be responsible for the means, methods, techniques, sequences, and procedures of construction of the <Project Name>. The Contractor will employ and maintain on the work site a qualified supervisor who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

Section 8. Limitations on Liquidated Damages

The Contractor shall not be charged with liquidated damages when the delay in completion of the work is due to the following and the Contractor has promptly given written notice of such delay to HIEM or its representative:

1. Unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to acts of God or of the public enemy, acts of HIEM, fires, floods, epidemics, quarantine restriction, strikes, freight embargoes, abnormal and unforeseen weather; or
2. Any delays of Subcontractors occasioned by any of the causes specified above.

Section 9. Subsurface Conditions

The Contractor shall promptly and before such conditions are disturbed, except in the event of an emergency, notify HIEM by written notice of:

1. Subsurface or latent physical conditions at the site differing materially from those in the Agreement documents, if indicated.
2. Unknown physical conditions at the site of an unusual nature, differing markedly from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement.

Section 10. Equal Opportunity

The Contractor agrees to comply with the applicable provisions of the Equal Opportunity Act of 1972 and the Civil Rights Act of 1964 as amended. The Contractor shall have the obligation to ensure that the employees and applicants for employment are not discriminated against because of race, creed, color, sex, or national origin.

Section 11. Requirements

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the Agreement, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
2. Contractor shall not permit a lien or claim to be filed or prosecuted against HIEM due to Contractor's failure to pay any amounts as they come due for any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
3. The Contractor must give notice to employees who perform work under this Agreement in writing, either at the time of hire or before commencement of work on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
4. Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors nor has it discriminated against any employee or applicant for employment because of race, religion, color, sex, national origin, or any other protected class, recognized by state and/or federal law. Contractor has taken affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to race, religion, color, sex, national origin, or any other protected class, recognized by state and/or federal law, including but not limited to, during employment, promotion, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
5. Contractor shall comply with the applicable Montana tax laws and all appropriate Federal, State and Local laws with respect to any and all Work and/or network elements required in order to fulfill this Agreement.

Section 12. Warranty and Guarantee

1. Contractor warrants and guarantees to HIEM that all work will be in accordance with the Agreement documents. Prompt notice of all defects shall be given to Contractor. All defective work, whether or not in place,

may be rejected, corrected or accepted. Contractor understands that in Montana, its various departments, and agencies, might have to be consulted and be allowed to inspect the work and sign off in each particular area where work is performed or network elements are provided. At all times HIEM representative and appropriate inspectors shall have reasonable access to the work for inspection and testing. Contractor shall provide proper and safe conditions for such access promptly and without delay.

2. Where any law, ordinance, rule, regulation, code, or other order of any public body having jurisdiction requires any work or part thereof to be specifically inspected, tested or approved, Contractor shall assume full responsibility therefore and pay all costs in connection therewith and furnish HIEM representative the required certificates of inspection, testing or approval.
3. Neither observation by HIEM representative nor inspection tests or approvals by others shall relieve the Contractor from Agreement's obligations to perform the work in accordance with the Agreement documents.
4. If, within two (2) year(s) after the date of final completion and sign-off and payment of any retainage by HIEM to the Contractor, there is any defect in materials or workmanship, the Contractor shall promptly, without cost to HIEM and in accordance with HIEM's written instructions, either correct such defective work or, if it has been rejected by HIEM, remove it from the site and replace it with non-defective work.
5. Contractor shall deliver all work, materials, and equipment covered by the application for payment, whether incorporated in the project or not, to HIEM at the time of payment, free and clear of all liens, claims, security interests and encumbrances of any kind and by any party whatsoever. Contractor makes no warranty as to title to the real property where such material and equipment will be attached.

Section 13. Arbitration

1. All claims, disputes, and other matters in question between HIEM and Contractor arising out of, or relating to the Agreement documents, including rescission, reformation, enforcement, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by arbitration in accordance with any rules mutually agreed to by both parties.
2. No demand for arbitration of any claimed dispute or other matter shall be effective until after a claim or demand is made to the HIEM Board of Directors and the Board of Directors within 30 days of receiving such claim or demand has rendered a written decision with respect thereto denying the claim or demand and served such written decision on the Contractor.
3. Notice of demand for arbitration shall be filed in writing with the other party to the agreement. The parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court

having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Montana law.

4. If HIEM and the Contractor cannot agree upon the person to act as an impartial arbitrator, the Federal Mediation and Conciliation Service shall be requested to submit a list of five arbitrators. HIEM and the Contractor shall alternatively strike two names. The right to strike first shall be determined by lot or as otherwise agreed by the parties. After each party has exercised its right to strike two names, the one remaining on the list shall be designated as the impartial arbitrator.
5. The authority of the arbitrator shall be limited to determining only questions involving the interpretation or application of an expressed provision of this Agreement and all other matters are excluded from arbitration. The arbitrators shall have no authority to add to, subtract from, or to change any of the terms of the agreement, to change any existing wage/contract rate, to establish a new wage/contract rate or to attempt to interpret or apply in any manner whatsoever any alleged implied obligations as against either HIEM or the Contractor, nor shall such arbitrator have the power to award punitive or exemplary damages. The decision of the arbitrator shall be final and binding on each of the parties, and they will abide thereby subject to such laws as may apply. The fee charged by the arbitrator shall be borne equally by HIEM and the Contractor. Any issue or dispute not presented or carried forward by either party in a timely manner shall be considered settled in the favor of the party that presents the last written answer accepted by the arbitrator. If either party decides to pursue the case this decision will be without prejudice to position of either party.

Section 14. Attorney's Fees.

If suit, action or arbitration is brought either directly or indirectly to rescind, interpret or enforce the terms of this Agreement, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements.