

**REQUEST FOR PROPOSAL
RURAL HEALTHCARE PILOT PROJECT**

**PERMANENT FIBER OPTIC LINKS
WHITEFISH TO MISSOULA, MONTANA
HIEM-06 RFP**

Health Information Exchange of Montana, Inc.
Kip Smith, Executive Director
310 Sunnyview Lane
Kalispell, Montana 59901

March 2011

Project Introduction
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. The HIEM 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 requests proposals for construction of a secure, dedicated broadband network with connections among hospitals, clinics and health education institutions in the region. The network is intended to provide a reliable data transport platform for a wide variety of health-related applications, including rapid transfer of very large digital imaging files, exchange of electronic health records, and real-time high-quality videoconferencing for medical education, telemedicine consults and medical procedures.

The HIEM encourages free and open competition among Bidders. The Bidder's signature on a proposal in response to this RFP guarantees that the prices quoted have been established without collusion and without effort to preclude HIEM from obtaining the best possible solution.

1. General Information

- 1.1 The Health Information Exchange of Montana (HIEM) seeks proposals to construct an unrestricted fiber-based communications path consisting of two parts – a backbone of no less than 24 fiber strands between Whitefish and Kalispell, Montana and Kalispell and Missoula, Montana; and local/LAN connections of at least 6 fibers to each health care and health care education site listed in Attachment A.
- 1.2 The Kalispell, Montana connection point is at Kalispell Regional Medical Center, 310 Sunnyview Lane. The Missoula, Montana connection point is at iConnect Montana, 110 East Broadway Street. The Whitefish connection point is at the BNSF Fiber Building, 480 Railway Street.
- 1.3 The fiber backbone from Whitefish to Kalispell and Kalispell to Missoula must include fiber buildings and signal regeneration points appropriate to support the proposed network design and include:
 - a) Rack space appropriate for the installation of fiber optic transmission, routing, signal regeneration and system monitoring equipment; however the cost of such equipment is not to be included in the proposal.
 - b) Appropriate power infrastructure including DC power distribution, fuse panels and battery backup.
 - c) Climate controlled facilities suitable for the 24/7 operation of communications and supporting equipment.
 - d) Fiber hotels and/or hand holes necessary to support each local connection for the sites included in Attachment A.
- 1.4 Proposals should include pricing to increase the fiber count in the backbone to 48 and 96 strands.
- 1.5 HIEM will consider proposals that utilize fiber or microwave technologies or combinations of both. A purchase or long-term Indefeasible Right of Use (IRU) for dark fiber will be considered on a case-by-case basis as an alternative to new construction.
- 1.6 Detailed drawings of all network elements to be constructed/utilized must be provided with bidder proposal, including:
 - a) Paths
 - b) Fiber Buildings
 - c) Rack Space
 - d) Power Supplies
 - e) Access Points

As-built drawings must be provided upon transfer of the assets to HIEM.

- 1.7 Successful bidder(s) must agree to work closely with HIEM technical and administrative staff on final architecture of HIEM fiber network design.

- 1.8** Bidders must terminate proposed local connections inside the healthcare or healthcare education buildings at the specified demarcation locations indicated in Appendix A as part of the normal installation.
- a) Confirmation of demarcation location details are the responsibility of the Bidder
 - b) Fiber patch panels appropriate for the termination of fiber optic cable runs within each of the locations must be provided
- 1.9** HIEM seeks all necessary ground lease and site lease rights to any existing tower or other structures needed to provide the link. Ideally, any necessary leases will provide HIEM with a term of no less than five years, with options to renew for at least three additional five year terms. Successful bidder will also be responsible to identify, negotiate and secure all rights of way and permits required for successful completion of proposed fiber route.
- 1.10** Beyond the basic elements listed earlier, a successful bidder will submit a maintenance agreement proposal and service level agreement which will include, as separate and distinct line items, ala carte pricing for the following items for one (1), five (5), ten (10) and twenty (20) year periods:
- a) 24/7/365 coverage for fiber maintenance and/or repairs
 - b) Disaster Recovery testing and planning
 - c) Housing for spare equipment
- 1.11** At HIEM's option, we may award a contract for the fiber backbone alone; the backbone and any combination of local connections or the backbone and all local connections. HIEM also reserves the right to not award any contract.
- 1.12** Proposal Format. Bidders are required to submit the Proposal Form (Attachment A) below setting forth their response to this RFP. Additional documentation should be attached to support the proposal.
- 1.13** 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 (10) days after completion of an Agreement for work. 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.

- 1.14 Bidders must provide contact information for a minimum of three references which the bidder has previously had a similar business relationship with and are willing to provide candid feedback on bidder performance.
- 1.15 Bidders must agree to follow and comply with all administrative, invoicing and accounting processes and procedures that are necessary to comply with FCC and USAC requirements. These requirements include, but are not exclusive, to the submitting of detailed invoices in a timely manner.
- 1.16 RFP Process. The RFP process is open to all competitive offers from qualified Bidders (Bidders with SPIN numbers). These competitive offers will be judged by HIEM according to the criteria set forth in Section 2.5 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”).

This project is subject to USAC procurement rules. Bidders must meet all USAC requirements. HIEM has submitted 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-2009.aspx>.

- 2.2 The following considerations apply to the proposal submission/review process:
 - 2.2.1 Bidders interested in receiving any notices related to this RFP are invited to submit a letter of interest to the HIEM at the following email address:

kipsmith@krmc.org

Include the name of the firm, contact person, mailing address, telephone number, fax number and email address. The sole purpose of the letter of interest is to provide HIEM with a single point of contact to receive any notices related to the RFP. Submission of a letter of interest is not a requirement for submitting a proposal.

- 2.2.2 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

310 Sunnyview Lane
Kalispell, MT 59901
406-751-6687
kipsmith@krmc.org

Questions and answers will be emailed to all Bidders who have submitted a letter of interest throughout the bidding process per 2.2.1 above.

Any communications with HIEM or participating site staff members (with exception of verifying demarcation locations) 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.

- 2.2.3** No pre-offer conference is anticipated.
 - 2.2.4** In the event it becomes necessary for HIEM to amend, add to or delete any part of this RFP, the amendment will be distributed to all Bidders who have submitted a letter of interest per 2.2.1 above.
 - 2.2.5** Five (5) hard copies of bid proposals plus an electronic copy in either .doc or .pdf format must be received at the HIEM office (see address at bottom of Proposal Form) no later than 4:00PM Mountain Time on the 28th calendar day following the day of posting of this RFP on the RHCPP website.
 - 2.2.6** Proposal 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.
 - 2.2.7** Electronically transmitted responses (fax, email, etc.) to this RFP will **not** be accepted.
 - 2.2.8** 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 (SPIN).
 - 2.2.9** Bid proposals will be opened at a time to be determined on the first working day following the receipt deadline. The bid proposals and the evaluation documents created by HIEM will remain confidential.
 - 2.2.10** By submitting a bid proposal the Bidder agrees to the terms and conditions contained within this RFP including attached documents.
- 2.3** To be responsive to this RFP, proposals shall:
- 2.3.1** Specifically address all requested information and bid specifications included in this document. A point by point response to each item in Section 1, General Information of this RFP is required.

- 2.3.2** Include company name, contact person, address and contact information.
- 2.3.3** Identify key employees who will be assigned to provide and service the network elements during fiber construction and installation, post deployment broadband link operation and integration/connection of local connections.
- 2.3.4** Specify the number of calendar days required to construct and make ready the network elements.
- 2.3.5** Be valid for a period of 120 days from the date of submission.
- 2.3.6** Include a signed vendor certification form (see page 9 below).
- 2.3.7** Include a signed Proposal Form with any additional attachments to support the proposal.
- 2.4** 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.
- 2.5** Proposals will be evaluated and assigned points based on the judgment of reviewers as to how well the respondent meets each of the following criteria. The categories for evaluation are indicated below:
 - Price (50 points)
 - Technology solution and compatibility with Network design (20 points)
 - Vendor qualifications and experience, including information gathered via reference checks (20 points)
 - Project milestone completion timelines (10 points)
- 2.6** HIEM reserves the right to:
 - 2.6.1** 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.
 - 2.6.2** Obtain information concerning any Bidder or any proposal from any source and to consider such information in evaluating the bid proposal.
 - 2.6.3** Reject any response not in compliance with all FCC pilot project guidelines and procedures.
 - 2.6.4** Reject any response not meeting or differing materially from the specifications set forth herein.

- 2.6.5 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.
- 2.6.6 Consider the competency and responsibility of Bidders in making any award.
- 2.6.7 Reject a selected Bidder if within a reasonable time, determined solely at the discretion of HIEM, the Bidder has not executed an agreement/contract.
- 2.6.8 Extend the deadline for submitting bids.
- 2.6.9 Seek other proposals, if deemed in the best interest by HIEM.
- 2.6.10 Reject all bids and seek other bids, if deemed in the best interest by HIEM.

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 B), 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 B 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.

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 A
PROPOSAL FORM
PERMANENT FIBER OPTIC LINKS; WHITEFISH TO MISSOULA, MT**

Bidder Organization: _____

Contact Person: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

Item 1. Unrestricted Fiber Backbone between BNSF Whitefish Fiber Building and Kalispell Regional Medical Center (KRMC); KRMC and iConnect Montana (Per Section 1.1 through 1.5):

KRMC	iConnect	Number of Fibers	Cost
310 Sunnyview Lane Kalispell, MT 59901	110 East Broadway Street Missoula, MT 59802	24	
		48	
		96	
KRMC	BNSF Fiber Building		
310 Sunnyview Lane Kalispell, MT 59901	480 Railway Street Whitefish, MT 59937	24	
		48	
		96	

Item 2. Local Connections (at least 6 fiber strands) to HIEM Partner Sites (Per Sections 1.1 through 1.5):

Partner Site	Proposed Access Point to Backbone	Cost
Polson Health (KRMC) 102 13 th Avenue East Polson, MT 59860		
Salish Kootenai College 58138 US Highway 93 Charlot Building Pablo, MT 59855		
St Luke Community Hospital 107 6 th Avenue SW Ronan, MT 59864		
Community Medical Center 2827 Fort Missoula Road Missoula, MT 59804		
North Valley Hospital 1600 Hospital Way Whitefish, MT 59937		
University of Montana 32 Campus Drive Social Sciences Building; Room 012 Missoula, MT 59812		
Flathead Lake Biological Station 32125 Bio Station Lane Bigfork, MT 59911		

Item 3. Local Area Network Connections (at least 6 fiber strands):

Partner Site	LAN Host Site	Cost
St. Luke Community Clinic 104 Rufus Lane Polson, MT 59860	St Luke Community Hospital 107 6 th Avenue SW Ronan, MT 59864	
St. Luke Community Clinic 330 6 Tract Lane St. Ignatius, MT 59865	St Luke Community Hospital 107 6 th Avenue SW Ronan, MT 59864	

Community Physician Group 2827 Fort Missoula Road Missoula, MT 59804	Community Medical Center 2827 Fort Missoula Road Missoula, MT 59804	
Community Physician Group – North 2230 North Reserve Street Missoula, MT 59804	Community Medical Center 2827 Fort Missoula Road Missoula, MT 59804	
Community Physician Group – South 1211 South Reserve Street Missoula, MT 59804	Community Medical Center 2827 Fort Missoula Road Missoula, MT 59804	
Community Physician Group – Stevensville 3800 East Side Highway Stevensville, MT 59870	Community Medical Center 2827 Fort Missoula Road Missoula, MT 59804	
Community Medical Center – Palmer 2685 Palmer Street #D Missoula, MT 59808-1709	Community Medical Center 2827 Fort Missoula Road Missoula, MT 59804	

Item 4. Detail Drawings of All Network Elements (Per Section 1.6)

Item 5. Ground and Site Lease; ROW and Permit Proposal (Per Section 1.9)

Item 6. Maintenance Agreement Proposal (Per Section 1.10)

Service	1 year	5 year	10 year	20 year
24/7/365 Fiber Maintenance and Repair				
Disaster Recovery testing and planning				
Housing for spare equipment				

Authorized Signature

Date

RETURN COMPLETED PROPOSAL FORM WITH ATTACHED SUPPORTING DOCUMENTATION TO:

HEALTH INFORMATION EXCHANGE OF MONTANA, INC.
REFERENCE RFP-06
ATTENTION: KIP SMITH
310 SUNNYVIEW LANE
KALISPELL, MT 59901

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

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2011 (“Effective Date”), by and between the Health Information Exchange of Montana (“HIEM”), and _____ (“Contractor”).

1. Conditions. Once signed by HIEM and Contractor, this Agreement becomes effective upon receipt of a Funding Commitment Letter (FCL) from the Federal Communications Commission’s “Universal Service Rural Health Care Pilot Program.” This FCL guarantees direct payment to Contractor of 85% of all costs incurred under this Agreement; HIEM is responsible for the remaining 15% of all costs incurred. Neither Contractor nor HIEM are bound by the provisions of this Agreement until such FCL is received.

2. Work. Contractor shall complete all work (“Work”) as specified in this Agreement, Contractor’s bid proposal and in accordance with the documents and drawings provided for the project known as the Whitefish-Missoula Broadband Links. The bid proposal, request for proposal and all responses to follow up questions are incorporated into this Agreement by reference.

3. 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.

4. Contract Time. The work will commence within ten (10) calendar days after the date of award and all work will be completed and the Broadband Links 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 parties.

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

6. 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 Broadband Link 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 Broadband Link 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

Broadband Link unto HIEM, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

7. Liquidated Damages. The parties agree that if the Work is not completed and 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 Two Hundred Fifty Dollars (\$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.

8. 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 Broadband Link, material and equipment will pass to HIEM.

9. 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 Broadband Link 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 Broadband Link 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 Broadband Link 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. Maintenance of Broadband Link. 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) 24/7/365 coverage for fiber maintenance and/or repairs.
- (b) Disaster Recovery testing and planning
- (c) Housing for spare equipment.

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

15. 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 _____, 2011;

HIEM:

Contractor:

By: _____
Kipman Smith, Executive Director

By: _____

Address for giving notices:
Health Information Exchange of Montana, Inc.
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 bench marks 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 bench marks, 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 Broadband Link. 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.