

REQUEST FOR QUALIFICATIONS

1. Overview. This Request for Qualifications (“RFQ”) is an invitation to prospective design-build (“D/B”) service providers to submit a proposal for the provision of D/B services as provided herein (“Proposal”).

1.1 Services. The Lawton Economic Development Corporation (“LEDC”) is seeking a D/B service provider to provide D/B services for an approximate \$4.0 million project, the Carter Wind Project (the “Project”), including development of a site of up to ten (10) acres with a pre-engineered metal building of approximately thirty thousand (30,000) square feet with approximately five thousand (5,000) square feet of office space and extensive interior hoisting equipment. The target date for project completion is March 2022 and any D/B service provider submitting a Proposal must demonstrate an ability to meet an aggressive schedule to include fast-tracking.

1.2 Confidentiality. All information concerning this RFQ, including any related information that is subsequently disclosed by LEDC, is LEDC’s confidential information. By accepting any information from LEDC regarding the Project, whether or not it submits a Proposal, the D/B service provider agrees not to disclose the LEDC’s confidential information, or use it for any purpose other than submitting a Proposal without LEDC’s prior written consent, except as required by law. Unless otherwise compelled by law or legal process, LEDC will not disclose any non-public information in a Proposal, provided that such information is clearly identified as non-public and confidential in the Proposal.

1.3 Not Binding. Except for the confidentiality obligations set forth in Section 1.2, this RFQ is a solicitation of a Proposal relating to qualifications only and neither the issuance of this RFQ nor the submission of a Proposal shall be binding on LEDC. LEDC reserves the right to accept or reject any or all Proposals or to cancel this RFQ for any reason or no reason. No binding agreement shall exist with respect to the provision of D/B services unless and until a definitive agreement has been agreed and executed by both LEDC and the selected service provider(s), as described in paragraph 3 below. LEDC will not be liable under any circumstances for any expenses incurred by any bidder in connection with the Proposal submission or selection process.

2. No Contact. The information in this RFQ is all that will be provided regarding Proposals to be submitted. Communications with LEDC about this RFQ are prohibited and will not be answered. Unauthorized communications may result in a Proposal being rejected.

3. Scope of Services. LEDC intends to enter into a Design Build (D/B) Agreement with the selected service provider(s). A template for the agreement, subject to change in LEDC’s discretion and as mutually negotiated by LEDC and the successful D/B service provider, is attached as Exhibit 2.

4. RFQ Timetable. The following table sets out key dates during the RFQ process.

ACTIVITY	DATE
RFQ Issue Date	JULY 26, 2021
Proposal Submission Deadline (proposals must be received, not postmarked, by this date)	AUGUST 9, 2021
Evaluation Period	AUGUST 10, 2021 – AUGUST 13, 2021
Anticipated Selection Date	AUGUST 16, 2021
Agreement Negotiation Period	AUGUST 16, 2021 – AUGUST 27, 2021
Anticipated Agreement Start Date	AUGUST 30, 2021

PROPOSALS SUBMITTED AFTER THE PROPOSAL SUBMISSION DEADLINE WILL NOT BE CONSIDERED.

5. Proposal Submission Requirements. The Proposal must include the following information about the D/B service provider in the following numbered order:

(1) **Experience as a Design-Build Firm.** Provide a list of completed D/B projects with reference contacts, phone numbers, and size and cost of projects.

(2) **Certification as a Design-Build Firm.** Provide a copy of your firm's certification to include certification number.

(3) **Home Office Location.** Indicate location of your firm's home office and nearest branch office, if any, along with the firm's knowledge of and/or experience in the Lawton geographical area and minimum response time to be on site.

(4) **Ability to Work with the Owner.** Provide a list of five (5) contact names and phone numbers of recent projects completed to indicate your firm's cooperation and communication abilities.

(5) **Ability to Meet Budget.** Provide list of projects where value engineering was used to reduced the cost of projects and show examples of what they were and how much they saved.

(6) **Abilty to Create and Meet Schedule.** Describe techniques used by your firm to meet aggreessive schedules to include fast-tracking.

(7) **Direct Time Involvement in This Project.** Indicate if the owner/principal of the company will be available for at least two (2) meetings per month for the duration of the Project along with the superintendent for the Project.

(8) **Safety Records of Your Company.** Provide a list of any citations by OSHA or any other regulatory agency for violations over the past three (3) years and your modifier.

(9) **Project Term to Include Superintendent.** Provide the name and qualifications of your proposed team for this Project and a list of exemplary projects under their direction, including size and costs.

(10) **Unique Qualifications of Your Firm.** Provide any unique qualifications you feel relevant to this Project.

6. Form of Proposal Submission. All Proposals must be submitted to the LEDC at 302 West Gore Boulevard, Lawton, Oklahoma 73501. Proposals may be submitted by hand delivery, U.S. Mail, or commercial carrier but must be received (not merely postmarked) by the Submission Deadline in paragraph 4. Proposals must be in paper form with five (5) identical copies, each appropriately bound on 8.5" x 11" sheets with no later than 11" x 17" sheets folded.

7. Evaluation Criteria. LEDC (or its duly-appointed Selection Committee) will evaluate multiple criteria to select the most appropriate D/B service provider(s) for the Project. The evaluation process may be based on submitted Proposals alone or the LEDC, in its sole discretion, may decide to conduct interviews of one or more D/B service provider(s) who have submitted a Proposal. The Selection Committee Work Sheet to be used by the LEDC is attached as Exhibit 1.

EXHIBIT 1 – SELECTION COMMITTEE WORK SHEET

REQUEST FOR QUALIFICATIONS (RFQ) DESIGN-BUILD FIRM SCORING

Name of Company: _____

Date: _____

Criteria Item Value Score	Value	Score
1. Experience as Design-Build firm	15	
2. Certification in Design-Build	10	
3. Home Office Location	10	
4. Ability to work with the Owner	5	
5. Ability to meet the budget	10	
6. Ability to create and meet schedule	10	
7. Direct involvement in this project	5	
8. Safety record of respondent company	5	
9. Project Team to include superintendent	20	
10. Unique qualifications of respondent firm	10	
Total	100	

Notes:

EXHIBIT 2 – [PROPOSED] DESIGN BUILD (D/B) AGREEMENT

SUBJECT TO REVISION IN LEDC’S DISCRETION

DESIGN BUILD (D/B) AGREEMENT

between

LAWTON ECONOMIC DEVELOPMENT CORPORATION

and

[D/B PROVIDER]

dated as of

[DATE]

Design Build (D/B) Agreement

This Design Build (“D/B”) Agreement (this “Agreement”), dated as of [DATE] (the “Effective Date”), is made by and between [D/B PROVIDER NAME], a [STATE OF ORGANIZATION] [FORM OF ENTITY], with offices located at [ADDRESS] (the “D/B Provider”) and Lawton Economic Development Corporation (“LEDC”), an Oklahoma non-profit corporation, with offices located at 302 West Gore Boulevard, Lawton, Oklahoma 73501.

WHEREAS, LEDC desires to retain D/B Provider to provide certain D/B Services and/or Goods (both as defined herein) upon the terms and conditions hereinafter set forth, and D/B Provider is willing to perform such Services and/or furnish such Goods.

In consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

8. Definitions.

“Action” has the meaning set forth in Section 18.1.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Authorized Service Recipients” means any Persons identified as such in a Statement of Work.

“Change Order” has the meaning set forth in Section 12.2.

“Confidential Information” means any information that is treated as confidential by a party, including but not limited to all non-public information about its business affairs, products or services, Intellectual Property Rights, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether disclosed orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential”. Confidential Information shall not include information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who

is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

“D/B Provider” has the meaning set forth in the preamble.

“D/B Provider Contract Manager” has the meaning set forth in Section 10.1(a)(i).

“D/B Provider Equipment” means any equipment, systems, cabling, or facilities provided by or on behalf of the D/B Provider and used directly or indirectly in the provision of the Services or furnishing of Goods.

“D/B Provider Personnel” means all employees and Permitted Subcontractors, if any, engaged by D/B Provider to perform Services and/or furnish Goods.

“D/B Provider Proposal” means LEDC’s Request for Qualifications for the Services and D/B Provider’s response, attached as Exhibit [REDACTED], describing how D/B Provider proposes to provide the Services and/or furnish the Goods.

“Deliverables” means all documents, work product, and other materials that are delivered to LEDC hereunder or prepared by or on behalf of D/B Provider in the course of performing the Services and/or furnishing Goods, including any items identified as such in any Statement of Work.

“Disclosing Party” means a party that discloses Confidential Information under this Agreement.

“Force Majeure Event” has the meaning set forth in Section 21.

“Goods” means all goods of any type furnished by the D/B Provider in the course of performing its obligations under this Agreement, including any Statement of Work.

“Intellectual Property Rights” means all (a) patents, patent disclosures, and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets, know-how, and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“Key Personnel” means any D/B Provider Personnel who is identified as being key in any Statement of Work.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement, or rule of law of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“LEDC” has the meaning set forth in the preamble.

“LEDC Contract Manager” has the meaning set forth in Section 11.1(a).

“LEDC Materials” means any documents, data, know-how, methodologies, software, and other materials provided to D/B Provider by LEDC.

“Losses” means all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“Permitted Subcontractor” has the meaning set forth in Section 10.1(i).

“Person” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“Pre-Existing Materials” means any pre-existing materials specified in any Statement of Work, such as documents, data, know-how, methodologies, software, and other materials, provided by or used by D/B Provider in connection with performing the Services and/or furnishing the Goods, in each case developed or acquired by the D/B Provider independently of its performance of the Services under this Agreement.

“Project” means the project as described in any Statement of Work.

“Project Milestone” means an event or task described in any Statement of Work which shall be completed by the relevant date set forth in the Statement of Work.

“Receiving Party” means a party that receives or acquires Confidential Information directly or indirectly under this Agreement.

“Services” mean the professional and other services to be provided by D/B Provider under this agreement, as described in more detail in any Statement of Work, and D/B Provider’s obligations under this Agreement.

“Statement of Work” or “SOW” means each Statement of Work entered into by the parties and attached to this Agreement, substantially in the form of Exhibit [REDACTED].

“Term” has the meaning set forth in Section 13.

9. Services and Goods.

9.1 D/B Provider shall provide the Services and furnish the Goods to LEDC and any Authorized Service Recipients as described in more detail in one or more Statements of Work in accordance with the terms and conditions of this Agreement.

9.2 Each Statement of Work shall include the following information, if applicable:

- (a) a detailed description of the Services to be performed and/or Goods to be furnished pursuant to the Statement of Work;
- (b) the date upon which the Services will commence and/or the Goods will be furnished and the term of such Statement of Work;
- (c) the names of the D/B Provider Contract Manager and any Key Personnel;
- (d) the fees to be paid to D/B Provider under the Statement of Work;
- (e) the Project implementation plan, including a timetable;
- (f) Project Milestones and payment schedules;
- (g) any criteria for completion of the Project, provision of the Services, or furnishing of the Goods;
- (h) procedures for the inspection and acceptance of the Services, Goods, and Deliverables by LEDC; and
- (i) any other terms and conditions agreed upon by the parties in connection with the Services to be performed and/or the Goods to be furnished pursuant to such Statement of Work.

10. D/B Provider's Obligations.

10.1 The D/B Provider shall:

- (a) subject to the prior written approval of LEDC, which approval shall not be unreasonably withheld or delayed, appoint:
 - (i) a D/B Provider employee to serve as a primary contact with respect to this Agreement and who will have the authority to act on behalf of D/B Provider in connection with matters pertaining to this Agreement (the "D/B Provider Contract Manager"); and
 - (ii) Key Personnel/D/B Provider Personnel, who shall be suitably skilled, experienced, and qualified to perform the Services and/or furnish the Goods;
- (b) maintain the same D/B Provider Contract Manager and other Key Personnel throughout the Term of this Agreement except for changes in such personnel due to:
 - (i) LEDC's request pursuant to Section 10.1(c); or
 - (ii) the resignation or termination of such personnel or other circumstances outside of D/B Provider's reasonable control;

(c) upon the written request of LEDC, promptly replace the D/B Provider Contract Manager and any other D/B Provider Personnel;

(d) before the date on which the Services are to start, obtain, and at all times during the Term of this Agreement maintain, all necessary licenses and consents and comply with all relevant Laws applicable to the provision of the Services;

(e) procure and/or furnish all D/B Provider Equipment necessary to perform the Services and/or furnish the Goods, with D/B Provider to be solely responsible for all D/B Provider Equipment and with LEDC to have no responsibility for the same (including under any theory of entrustment or bailment). D/B Provider agrees to indemnify LEDC in full for any claim made against LEDC with respect to any D/B Provider Equipment;

(f) prior to any D/B Provider Personnel performing any Services or furnishing any Goods hereunder: (i) ensure that such D/B Provider Personnel have the legal right to work in the United States; and (ii) at its sole cost and expense, conduct background checks on such D/B Provider Personnel, which background checks shall comprise, at a minimum, a review of credit history, references, and criminal record, in accordance with state, federal, and local law;

(g) comply with, and ensure that all D/B Provider Personnel comply with, all rules, regulations, and policies of LEDC that are communicated to D/B Provider in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by LEDC to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures;

(h) maintain complete and accurate records relating to the provision of the Services and furnishing of the Goods under this Agreement, including records of the time spent and materials used by D/B Provider in providing the Services and in furnishing the Goods in such form as LEDC shall approve. During the Term and for a period of two years thereafter, upon LEDC's written request, D/B Provider shall allow LEDC or LEDC's representative to inspect and make copies of such records and interview D/B Provider Personnel in connection with the provision of the Services and the furnishing of the Goods; provided that any such inspection shall take place during regular business hours and LEDC shall provide D/B Provider with at least five (5) business days' advance written notice;

(i) obtain LEDC's written approval, which may be given or withheld in LEDC's sole discretion, prior to entering into agreements with or otherwise engaging any Person, including all subcontractors and Affiliates of D/B Provider, other than D/B Provider's employees, to provide any Services, Goods, and/or Deliverables to LEDC (each such approved subcontractor or other third party, a "Permitted Subcontractor"). LEDC's approval shall not relieve D/B Provider of its obligations under this Agreement, and D/B Provider shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their

compliance with all of the terms and conditions of this Agreement as if they were D/B Provider's own employees. Nothing contained in this Agreement shall create any contractual relationship between LEDC and any D/B Provider subcontractor or supplier; and

(j) require each Permitted Subcontractor to be bound in writing by the confidentiality and intellectual property assignment or license provisions of this Agreement, and, upon LEDC's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to LEDC.

10.2 D/B Provider is solely responsible for all D/B Provider Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, and disability benefits. D/B Provider agrees to indemnify LEDC in full for any claim made against LEDC by any D/B Provider Personnel with respect to any compensation, tax, or benefit payment that is the subject of this paragraph 3.2.

10.3 D/B Provider acknowledges that time is of the essence with respect to D/B Provider's obligations hereunder and that prompt and timely performance of all such obligations, including all timetables, Project Milestones, and other requirements in this Agreement and each Statement of Work, is strictly required.

10.4 [ADD ANY ADDITIONAL D/B PROVIDER OBLIGATIONS.]

11. LEDC's Obligations.

11.1 LEDC shall:

(a) cooperate with D/B Provider in all matters relating to the Services, Goods, and Deliverables and appoint and, in its sole discretion, replace an LEDC employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of LEDC with respect to matters pertaining to this Agreement (the "LEDC Contract Manager");

(b) provide, subject to Section 10.1(g), such access to LEDC's premises and other facilities as may reasonably be requested by D/B Provider and agreed with LEDC in writing in advance, for the purposes of providing the Services, Goods, and/or Deliverables;

(c) respond promptly to any D/B Provider request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for D/B Provider to perform Services and/or furnish Goods in accordance with the requirements of this Agreement;

(d) provide such LEDC information as D/B Provider may reasonably request and LEDC considers reasonably necessary, in order to carry out the Services

and/or furnish the Goods, in a timely manner, and ensure that it is complete and accurate in all material respects; [and]

(e) obtain and maintain all necessary licenses and consents and comply with all applicable Law in relation to the Services, Goods, and Deliverables, to the extent that such licenses, consents, and Law relate to LEDC's business, premises, staff, and equipment, in all cases before the date on which the Services are to start or Goods are to be furnished.

11.2 [ADD ANY ADDITIONAL LEDC OBLIGATIONS.]

12. Change Orders.

12.1 If either party wishes to change the scope or performance of the Services or furnishing of the Goods, it shall submit details of the requested change to the other party in writing in accordance with the notice provisions in Section 22.4. D/B Provider shall, within a reasonable time (not to exceed five (5) days) after receiving an LEDC-initiated request, or at the same time that D/B Provider initiates such a request, provide a written estimate to LEDC of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the fees and other charges for the Services, Goods, and/or Deliverables arising from the change;
- (c) the likely effect of the change on the Services, Goods, and/or Deliverables;
- (d) any other impact the change might have on the performance of this Agreement; and
- (e) any other information requested by the LEDC.

12.2 Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "Change Order"), provided, LEDC may reject a Change Order requested by D/B Provider in its sole discretion. Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 22.10.

13. Term and Termination.

13.1 Term. This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of all Services and furnishing of all Goods under all Statements of Work (the "**Term**"), unless sooner terminated pursuant to this Section 13.

13.2 Termination for Convenience. LEDC, in its sole discretion, may terminate this Agreement or any Statement of Work, in whole or in part, at any time without cause, by providing at least ten (10) days' prior written notice to D/B Provider.

13.3 Termination for Cause. Either party may terminate this Agreement or any Statement of Work, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party:

(a) Materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within ten (10) days after receipt of written notice of such breach; or

(b) (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within ten (10) business days or is not dismissed or vacated within thirty (30) days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

13.4 Effects of Termination or Expiration. Upon expiration or termination of this Agreement for any reason:

(a) D/B Provider shall (i) promptly deliver to LEDC all Goods and Deliverables (whether complete or incomplete) for which LEDC has paid and return all LEDC Materials in its possession, (ii) promptly remove any D/B Provider Equipment located at LEDC's premises, (iii) provide reasonable cooperation and assistance to LEDC upon LEDC's written request in transitioning to a different D/B Provider, and (iv) on a pro rata basis, repay all fees and expenses paid in advance for any Services not performed, Goods not furnished, or Deliverables not provided.

(b) Each party shall (i) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other party's Confidential Information, (ii) permanently delete all of the other party's Confidential Information from its computer systems, and (iii) certify in writing to the other party that it has complied with the requirements of this clause; provided, however, that LEDC may retain copies of any Confidential Information of D/B Provider incorporated in the Deliverables or to the extent necessary to allow it to make full use of the Services, Goods, and any Deliverables.

(c) In no event shall LEDC be liable for any D/B Provider Personnel termination costs arising from the expiration or termination of this Agreement.

13.5 Survival. The rights and obligations of the parties set forth in this Section 6.5 and Section 8, Section 15, Section 16, Section 17, Section 11, Section 19, Section 20,

Error! Bookmark not defined.**Error! Reference source not found.**, and Section 22, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

14. Fees and Expenses; Payment Terms.

14.1 In consideration of the provision of the Services, Goods, and/or Deliverables by the D/B Provider and the rights granted to LEDC under this Agreement, LEDC shall pay the fees set forth in the applicable Statement of Work. Payment to D/B Provider of such fees and the reimbursement of expenses pursuant to this Section 14 shall constitute payment in full for the performance of the Services, Goods, and Deliverables, and, LEDC shall not be responsible for paying any other fees, costs, or expenses, including but not limited to, any payments due any Permitted Subcontractors unless LEDC has otherwise agreed to make such payments in writing.

14.2 Where any part of the Services, Goods, and/or Deliverables are provided on a time and materials basis:

(a) the fees payable for the Services, Goods, and/or Deliverables shall be calculated in accordance with D/B Provider's fee rates set forth in the applicable Statement of Work; and

(b) LEDC shall reimburse D/B Provider, at D/B Provider's actual cost, for any materials, machinery, equipment, and third-party services (collectively, "Materials") reasonably necessary for the provision of the Services, Goods, and/or Deliverables. D/B Provider shall obtain LEDC's written consent prior to the purchase of all Materials; and

(c) D/B Provider shall issue invoices to LEDC monthly in arrears for its fees for time for the immediately preceding month, calculated as provided in this Section 14.2, together with a detailed breakdown of any expenses for such month incurred in accordance with Section 14.4.

14.3 Where Services, Goods, and/or Deliverables are provided for a fixed price, the total fees for the Services, Goods, and/or Deliverables shall be the amount set out in the applicable Statement of Work. The total price shall be paid to D/B Provider in installments, as set out in the Statement of Work, with each installment being conditional on D/B Provider achieving the corresponding Project Milestone. On achieving a Project Milestone and/or at the end of any other period specified in the applicable Statement of Work in respect of which an installment is due, D/B Provider shall issue invoices to LEDC for the fees that are then payable, together with a detailed breakdown of any expenses incurred in accordance with Section 14.4.

14.4 LEDC agrees to reimburse D/B Provider for all actual, documented, and reasonable travel and out-of-pocket expenses incurred by D/B Provider in connection with the performance of the Services that have been approved in advance in writing by LEDC;

provided, that such expenses conform to LEDC's standard travel and expense policy, a copy of which is attached as Exhibit [EXHIBIT].

14.5 D/B Provider shall issue invoices to LEDC only in accordance with the terms of this Section, and LEDC shall pay all properly invoiced amounts due to D/B Provider within [NUMBER] days after LEDC's receipt of such invoice, except for any amounts disputed by LEDC in good faith. All payments hereunder shall be in US dollars and made by check or wire transfer.

14.6 LEDC shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by LEDC hereunder. Any such taxes, duties, and charges currently assessed or which may be assessed in the future, that are applicable to the Services, Goods, and/or Deliverables are for the LEDC's account, and LEDC hereby agrees to pay such taxes; provided, that, in no event shall LEDC pay or be responsible for any taxes imposed on, or with respect to, D/B Provider's income, revenues, gross receipts, personnel, or real or personal property or other assets.

14.7 Without prejudice to any other right or remedy it may have, LEDC reserves the right to set off at any time any amount owing to it by D/B Provider against any amount payable by LEDC to D/B Provider under this Agreement.

15. Intellectual Property Rights; Ownership.

15.1 Except as set forth in Section 15.3, LEDC is, and shall be, the sole and exclusive owner of all right, title, and interest in and to the Deliverables, including all Intellectual Property Rights therein. D/B Provider agrees, and will cause its D/B Provider Personnel to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a "work made for hire" for LEDC. To the extent that any of the Deliverables do not constitute a "work made for hire", D/B Provider hereby irrevocably assigns, and shall cause the D/B Provider Personnel to irrevocably assign to LEDC, in each case without additional consideration, all right, title, and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. The D/B Provider shall cause the D/B Provider Personnel to irrevocably waive, to the extent permitted by applicable Law, any and all claims such D/B Provider Personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Deliverables.

15.2 Upon the request of LEDC, D/B Provider shall, and shall cause the D/B Provider Personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist LEDC to prosecute, register, perfect, or record its rights in or to any Deliverables.

15.3 D/B Provider and its licensors are, and shall remain, the sole and exclusive owners of all right, title, and interest in and to the Pre-Existing Materials, including all Intellectual Property Rights therein. D/B Provider hereby grants LEDC and the Authorized Service Recipients a limited, irrevocable, perpetual, fully paid-up, royalty-free, non-

transferable (except in accordance with Section 22.7), non-sublicenseable, worldwide license to use, perform, display, execute, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell, and otherwise exploit any Pre-Existing Materials to the extent incorporated in, combined with or otherwise necessary for the use of the Deliverables for any and all purposes/solely to the extent reasonably required in connection with LEDC's receipt or use of the Services and Deliverables. All other rights in and to the Pre-Existing Materials are expressly reserved by D/B Provider.

15.4 LEDC and its licensors are, and shall remain, the sole and exclusive owner of all right, title, and interest in and to the LEDC Materials, including all Intellectual Property Rights therein. D/B Provider shall have no right or license to use any LEDC Materials except solely during the Term of the Agreement to the extent necessary to provide the Services, Goods, and/or Deliverables to LEDC. All other rights in and to the LEDC Materials are expressly reserved by LEDC.

16. Confidential Information.

16.1 The Receiving Party agrees:

(a) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its own and its Affiliates' officers, employees, consultants, and legal advisors who have a "need to know", who have been apprised of this restriction, and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 16;

(b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement or, in the case of LEDC, to make use of the Services, Goods, and Deliverables; and

(c) to notify the Disclosing Party within one (1) business day in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.

16.2 If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide:

(a) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and

(b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information,

the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

16.3 Nothing in this Agreement shall prevent either party from using any general methodologies or know-how contained in the unaided memory of such party's personnel or those of its Affiliates developed or disclosed under this Agreement, provided that in doing so it is not in breach of its obligations of confidentiality under this Section or using any Intellectual Property Rights of the other party or any of its Affiliates.

17. Representations and Warranties.

17.1 Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder;

(c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and

(d) when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

17.2 D/B Provider represents and warrants to LEDC that:

(a) it shall perform the Services, furnish the Goods, and provide the Deliverables using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement;

(b) it is in compliance with, and shall perform the Services, furnish the Goods, and provide the Deliverables in compliance with, all applicable Laws;

(c) LEDC will receive good and valid title to all Goods and Deliverables, free and clear of all encumbrances and liens of any kind;

(d) (i) none of the Services, Goods, or Deliverables, and LEDC's use thereof infringe or will infringe any Intellectual Property Right of any third party

arising under the Law of the United States or any other jurisdiction, and, (ii) as of the date hereof, there are no pending or, to D/B Provider's knowledge, threatened claims, litigation, or other proceedings pending against D/B Provider by any third party based on an alleged violation of such Intellectual Property Rights, in each case, excluding any infringement or claim, litigation or other proceedings to the extent arising out of (x) any LEDC Materials or any instruction, information, designs, specifications, or other materials provided by LEDC to D/B Provider, (y) use of the Deliverables in combination with any materials or equipment not supplied or specified by D/B Provider, if the infringement would have been avoided by the use of the Deliverables not so combined, and (z) any modifications or changes made to the Deliverables by or on behalf of any Person other than D/B Provider;

(e) the Services, Goods, and Deliverables will be in conformity in all respects with all requirements or specifications stated in this Agreement and the applicable Statement of Work.

(f) [ADD ADDITIONAL REPRESENTATIONS AND WARRANTIES.]

17.3 EXCEPT FOR THE EXPRESS WARRANTIES IN THIS [AGREEMENT], (A) EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, EXCEPT THAT D/B PROVIDER DOES NOT DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

18. Indemnification.

18.1 D/B Provider shall defend, indemnify, and hold harmless LEDC and LEDC's Affiliates/Authorized Service Recipients and their officers, directors, employees, agents, successors, and permitted assigns (each, an "LEDC Indemnitee") from and against all Losses arising out of or resulting from any third-party claim, suit, action, or proceeding (each, an "Action") arising out of or resulting from:

(a) bodily injury, death of any person, or damage to real or tangible personal property resulting from the willful, fraudulent, or grossly negligent acts or omissions of D/B Provider or D/B Provider Personnel; and

(b) D/B Provider's breach of any representation, warranty, or obligation of D/B Provider set forth in this Agreement.

18.2 D/B Provider shall defend, indemnify, and hold harmless the LEDC Indemnitees from and against all Losses based on a claim that any of the Services, Goods, or Deliverables or LEDC's receipt or use thereof infringes any Intellectual Property Right of a third party arising under the Laws of the United States or any other jurisdiction; provided, however, that D/B Provider shall have no obligations under this Section 18.2 with respect to claims to the extent arising out of:

(a) any LEDC Materials or any instruction, information, designs, specifications, or other materials provided by LEDC in writing to D/B Provider;

(b) use of the Goods or Deliverables in combination with any materials or equipment not supplied to LEDC or specified by D/B Provider in writing, if the infringement would have been avoided by the use of the Goods or Deliverables not so combined; or

(c) any modifications or changes made to the Goods or Deliverables by or on behalf of any Person other than D/B Provider or D/B Provider Personnel.

18.3 LEDC shall defend, indemnify, and hold harmless D/B Provider and D/B Provider's Affiliates and their officers, directors, employees, agents, successors, and permitted assigns from and against all Losses arising out of or resulting from any third-party Action arising out of or resulting from:

(a) bodily injury, death of any person, or damage to real or tangible, personal property resulting from the grossly negligent or willful acts or omissions of LEDC; and

(b) LEDC's material breach of any representation, warranty, or obligation of LEDC in this Agreement.

18.4 The party seeking indemnification hereunder shall promptly notify the indemnifying party in writing of any Action and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party shall not settle any Action in a manner that adversely affects the rights of the indemnified party without the indemnified party's prior written consent which shall not be unreasonably withheld or delayed. The indemnified party's failure to perform any obligations under this Section 18.4 shall not relieve the indemnifying party of its obligations under this Section 18.4 except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

18.5 Notwithstanding anything to the contrary in this Agreement, the indemnifying party is not obligated to indemnify, hold harmless, or defend the indemnified party against any claim (whether direct or indirect) to the extent such claim or corresponding losses arise out of or result from the indemnified party's:

(a) gross negligence or more culpable act or omission (including recklessness or willful misconduct); or

(b) bad faith failure to materially comply with any of its material obligations set forth in this Agreement.

19. Limitation of Liability.

19.1 EXCEPT AS OTHERWISE PROVIDED IN **Error! Bookmark not defined.****Error! Reference source not found.**, IN NO EVENT WILL LEDC BE LIABLE TO D/B PROVIDER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

19.2 EXCEPT AS OTHERWISE PROVIDED IN **Error! Bookmark not defined.****Error! Reference source not found.**, IN NO EVENT WILL THE LEDC'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO D/B PROVIDER PURSUANT TO THIS AGREEMENT AND ANY APPLICABLE STATEMENT OF WORK IN THE TWO YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

20. Insurance.

20.1 At all times during the Term of this Agreement[and for a period of three years thereafter, D/B Provider shall procure and maintain, at its sole cost and expense, at least the following types and amounts of insurance coverage:

(a) Commercial General Liability with limits no less than \$[NUMBER] per occurrence and \$[NUMBER] in the aggregate, including bodily injury and property damage and products and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of D/B Provider under this Agreement;

(b) Worker's Compensation with limits no less than the minimum amount required by applicable law;

(c) Commercial Automobile Liability with limits no less than \$[NUMBER], combined single limit; and

(d) Errors and Omissions/Professional Liability with limits no less than \$[NUMBER] per occurrence and \$[NUMBER] in the aggregate.

20.2 All insurance policies required pursuant to this Section 20 shall:

(a) be issued by insurance companies reasonably acceptable to LEDC with a Best's Rating of no less than A-VII;

(b) provide that such insurance carriers give LEDC at least 30 days' prior written notice of cancellation or non-renewal of policy coverage; provided that, prior

to such cancellation, the D/B Provider shall have new insurance policies in place that meet the requirements of this Section 20;

(c) waive any right of subrogation of the insurers against the LEDC or any of its Affiliates;

(d) provide that such insurance be primary insurance and any similar insurance in the name of and/or for the benefit of LEDC shall be excess and non-contributory; and

(e) name LEDC and LEDC's Affiliates, including, in each case, all successors and permitted assigns, as additional insureds.

20.3 Upon the written request of LEDC, D/B Provider shall provide LEDC with copies of the certificates of insurance and policy endorsements for all insurance coverage required by this Section 20, and shall not do anything to invalidate such insurance. This Section 20 shall not be construed in any manner as waiving, restricting, or limiting the liability of either party for any obligations imposed under this Agreement (including but not limited to, any provisions requiring a party hereto to indemnify, defend, and hold the other harmless under this Agreement).

21. Force Majeure.

21.1 No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including without limitation the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within five (5) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue.

21.2 During the Force Majeure Event, the non-affected party may similarly suspend its performance obligations until such time as the affected party resumes performance.

21.3 The affected party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized and shall resume performance of its obligations as soon as reasonably practicable after the removal of the cause. If the affected party's failure or delay remains uncured for a period of ten (10) days following written notice given by it under this Section 14, the other party may thereafter terminate this Agreement upon ten (10) days' written notice.

22. Miscellaneous.

22.1 Each party shall, upon the reasonable request of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

22.2 The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties or any employees or independent contractors of the other party, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

22.3 Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's trademarks, service marks, trade names, logos, symbols, or brand names, in each case, without the prior written consent of the other party.

22.4 All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission)/email if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this Section 22.4).

If to D/B Provider:

D/B PROVIDER ADDRESS

Facsimile: [FAX NUMBER]

Email: [EMAIL ADDRESS]

Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

If to LEDC:

LEDC ADDRESS]

Facsimile: [FAX NUMBER]

Email: [EMAIL ADDRESS]

Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

22.5 For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires,

references herein: (x) to Sections, Schedules, Exhibits, and Statements of Work refer to the Sections of, and Schedules, Exhibits, and Statements of Work attached to this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules, Exhibits, and Statements of Work referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

22.6 This Agreement, together with all Schedules, Exhibits, and Statements of Work and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Schedule, Exhibit or Statement of Work, the following order of precedence shall govern: (a) first, this Agreement, exclusive of its Exhibits and Schedules; (b) second, the applicable Statement of Work; and (c) third, any Exhibits and Schedules to this Agreement; and (d) fourth, the D/B Provider Proposal.

22.7 Neither party may assign, transfer, or delegate any or all of its rights or obligations under this Agreement, including by operation of law, change of control, or merger, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, that, upon prior written notice to the other party, either party may assign the Agreement to an Affiliate of such party or to a successor of all or substantially all of the assets of such party through merger, reorganization, consolidation, or acquisition. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

22.8 This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

22.9 The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

22.10 This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or

delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

22.11 If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

22.12 This Agreement shall be governed by and construed in accordance with the internal laws of the State of Oklahoma without giving effect to any choice or conflict of law provision or rule (whether of the State of Oklahoma or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Oklahoma. Any legal suit, action, or proceeding arising out of or related to this Agreement or the Services, Goods, or Deliverables provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Oklahoma in each case located in or assigned to the city of Lawton and County of Comanche, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

22.13 Each party acknowledges that a breach by a party of Section 15 (Intellectual Property Rights; Ownership) or Section 16 (Confidentiality) may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

22.14 If any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

22.15 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of

electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

[D/B PROVIDER NAME]

By _____

Name:

Title:

LEDC

By _____

Name:

Title:

EXHIBITS

EXHIBIT A

[D/B Provider Proposal]

EXHIBIT B

[Form of Statement of Work]

EXHIBIT C

[LEDC's Travel and Expense Policy]