

MAR 08 2018

West Interactive Services Corporation
100 Enterprise Way
Suite 300-A
Scotts Valley, CA 95066

Attention: Nate Brogan

Reference: Request for Proposal RFP 2000002262 for Mass Notification System – Solution 1

Dear Mr. Brogan:

Acceptance Agreement

Contract Number: 4400008187

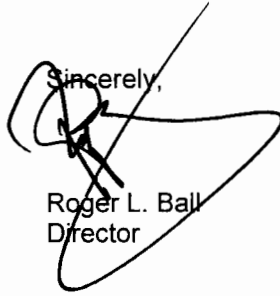
This acceptance agreement signifies a contract award to West Interactive Services Corporation for Mass Notification – Solution 1. The period of the contract shall be from date of award through June 30, 2023. There are five (5) one-year renewal options.

The contract award shall be in accordance with:

1. This Acceptance Agreement;
2. The Terms and Conditions of RFP 2000002262 and all addenda;
3. Your Proposal dated August 16, 2018;
4. The signed Memorandum of Negotiations.

Please note that this is not an order to proceed. A purchase order, which constitutes your notice to proceed, will be issued to your firm.

Sincerely,


Roger L. Ball
Director

RLB/dgl

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3-9-18

**MEMORANDUM OF NEGOTIATION
SOLUTION 1**

RFP 2000002262

The County of Fairfax, Fairfax County Public Schools (hereinafter called the County or FCPS) and West Interactive Services Corporation (hereinafter called the Contractor) hereby agree to the following in the execution of Contract 4400008187. This contract is only for Solution 1. The final contract contains the following items:

- a. Fairfax County's Request for Proposal RFP 2000002262 and all Addenda;
- b. West Interactive Services Corporation Technical and Business proposal as amended by this Memorandum of Negotiations;
- c. West response to clarifications dated September 13, 2017;
- d. West response to clarifications dated September 27, 2017;
- e. West response to clarifications dated October 10, 2017;
- f. West response to negotiation letter dated January 16, 2018;
- g. West Best and Final Offer dated February 21, 2018;
- h. Confidential addendum;
- i. The Memorandum of Negotiations; and
- j. All subsequent amendments to the contract.

FCPS and Contractor mutually agree to not include in the contract the "Proposed Legal Exceptions" listed on pages 5 through 8 of West technical proposal nor the "West Interactive Services Corporation Terms and conditions" submitted along with West's technical proposal.

The following are to be included in the contract:

1. The following paragraphs are added to the contract documents:

RESPONSIBILITY FOR CONTENT, TRANSMITTING MESSAGES, AND ACCOUNTS

District represents and warrants that:

(a) District is solely responsible for Messages; (b) has the legal right to use and send all Messages to the recipients; (c) the timing and purpose of all Messages, campaigns and programs are in compliance with all applicable Federal and Commonwealth of Virginia laws, rules and regulations; (d) Contractor's use of the Messages as directed shall not violate the rights of any third party or any Federal or Commonwealth of Virginia law, rules or regulation.

District has prior express consent to contact each wireless phone number delivered by District to Contractor in connection with the provision of any Services delivering a prerecorded or text message ("Notification Services") and the intended contact Recipient is the current subscriber to, or the non-subscriber customary user of, the wireless phone number. Upon request by Contractor, District shall promptly provide, in writing, proof of prior express consent and District's processes for consent management;

(b) If the Messages are initiated to induce the purchase of goods or services or to solicit a charitable contribution ("Solicitations"), District has incorporated an interactive opt-out mechanism as part of the program;

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(c) District has, unless an exemption applies, obtained from the Recipient of any Solicitation an express written agreement that meets the requirements set forth in Section 310.4(b)(1)(v)(A) of the FTC's Telemarketing Sales Rule and Section 64.1200(f)(8) of the FCC's Telephone Consumer Protection Act Rules; and

(d) The Parties agree that, where Contractor reasonably believes District may not have complied with the provisions of this Section or with all laws, rules and regulations, Contractor may, at its option (i) scrub all numbers against any appropriate database deemed necessary to remove all wireless phone numbers and promptly notify District of such action, (ii) insert an interactive opt-out mechanism and pass the resulting data to District, or (iii) temporarily suspend Services related to the compliance concern.

LIMITATION OF LIABILITY

EXCEPT AS EXPRESSLY PROVIDED HEREIN, CONTRACTOR MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES, AND CONTRACTOR EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR EXPRESSLY DENIES ANY REPRESENTATION OR WARRANTY ABOUT THE ACCURACY OR CONDITION OF DATA OR THAT THE SERVICES OR RELATED SYSTEMS WILL OPERATE UNINTERRUPTED OR ERROR-FREE AS A RESULT OF ACTIONS AND OMISSIONS OF THIRD PARTIES. EXCEPT FOR THE PARTIES' PAYMENT OBLIGATIONS, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OR LOSS OF GOODWILL, PROFITS, OR COST OF COVER. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL LIABILITY OF CONTRACTOR FOR ANY REASON, SHALL BE \$400,000. THE LIMITS ON LIABILITY IN THIS SECTION SHALL APPLY IN ALL CASES INCLUDING IF THE APPLICABLE CLAIM ARISES OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR STRICT PRODUCT LIABILITY, AND EVEN IF THE PARTY HAS BEEN ADVISED THAT SUCH DAMAGES ARE POSSIBLE OR FORESEEABLE.

2. Service Credit

The "compensation model" proposed in West technical proposal is replaced with the following:

Service Credit:

The Hosted Software is accessible 24/7 with a 99.9% guaranteed availability. 99.9% availability means that for 99.9% of the time during the calendar month, the Software as a Service (SAAS) application shall be available to users. Unavailability is a condition during which the SAAS application cannot be accessed as required due to hardware failure or sustained packet loss in excess of fifty percent within the Contractor's hosting facilities for at least 15 consecutive minutes due to a failure of the Contractor to provide services during such period. Unavailability does not include packet loss or network unavailability due to scheduled maintenance, or inability of a user to connect with the application due to internet or telecommunications problems outside the control of the Contractor.

In order to receive any service credit, FCPS must notify the Contractor within seven (7) days from the time FCPS becomes eligible to receive a service credit. Failure to comply with this requirement will forfeit FCPS' right to receive a service credit. The aggregate maximum number of service credits to be issued by the Contractor to FCPS for any and all periods of unavailability and performance problems during any given calendar month shall not exceed one month of service. Service credits shall be issued as follows:

99.9% availability guarantee measured monthly

The Contractor shall provide a credit of monthly hosting fees for the production environment as shown in the table below.

Application Availability*	Credit given per month**
Equal to or greater than 99.9% availability	0%
Between 99.7% and 99.89%	10% of monthly fees
Between 99% and 99.69%	50% of monthly fees
Between 98.01% and 98.9%	75% of monthly fees
Equal to or less than 98.0 %	100% of monthly fees

*Monthly network availability shall be calculated by subtracting the percentage calculation of total aggregate minutes of outage in a given month over the total number of minutes in the same month from 100%.

**Monthly fees for credit calculation are based solely on the annual cost of services divided by 12.

3. Pricing

As per West letter dated January 16, 2018, per student rate is revised to \$1.15 per student. Student count used to calculate the annual fee will be the certified June student enrollment for the previous year as published on FCPS public website on or after July 15 each year. First year annual fee will be due when system go live.

Projected annual fee is as follows:

	Year 1 (SY 2017-18)	Year 2 (SY 2018-19)	Year 3 (SY 2019-20)	Year 4 (SY 2020-21)	Year 5 (SY 2021-22)
Projected student count	185,851	186,547	186,803	187,561	187,752
Estimated amount	\$213,728.65	\$214,529.05	\$214,823.45	\$215,695.15	\$215,914.8

Pricing includes a complimentary custom mobile app and SchoolMessenger SecureFile.

The contractor will charge no implementation fee to FCPS.

The Contractor will provide the following services at no additional costs to FCPS:

- all training, including unlimited onsite training;
- creation and deployment of all FCPS stationery templates;
- version updates and upgrades;
- data migration; and
- customizations during the first year

Labor hourly rates for services outside of scope of work described in the contract documents will be as follows:

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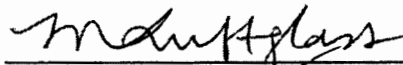
Labor category	Hourly rate
Programming	\$125
Graphic design	\$90
Quality assurance	\$100
Project Management	\$100
Training	\$90

All other prices, terms, and conditions remain the same.

ACCEPTED BY:


Nate Brogan, Senior Vice President, Education Group
West Interactive Services Corporation

March 1, 2018
Date


Maribeth Luftglass, Assistant Superintendent
Department of Information Technology

3/6/2018
Date


Roger L. Ball, Director
Office of Procurement Services


Date