



FORT HAYS STATE UNIVERSITY

Forward thinking. World ready.

Addendum

Date: October 2, 2017

Number: 2

Contract Number: 17016

Mail to: Fort Hays State University Purchasing Office
601 Park Street, Sheridan Hall 318, Hays, KS 67601

Telephone: 785-628-4251

Fax: 785-628-4046

E-Mail Address: purchasing@fhsu.edu

Web Address: <http://www.fhsu.edu/purchasing/bids/>

Item: **Campus-Wide Hosted VoIP Solution**

Agency: Fort Hays State University

Location(s): Hays, KS

Term of Contract: **Per unit charge established during phased implementation. Once full implementation, the Ten (10) Year Contract Period begins.**

Contractors: **Nex-Tech, LLC**
2418 Vine Street
Hays, KS 67601
Phone: 785-625-7070
Contact Person: Amanda Rohleder
Email: arohleder@nex-tech.com

Prices: See Attached

Payment Terms: Net 30

Conditions:

Initial install of Cloud Fax will include 10 Concurrent Fax lines priced at \$21.59 each and 80 Fax DIDs priced at \$1.00 each. Any additional Concurrent Faxes or DIDs will follow the same pricing structure throughout the term of the Agreement.

ADDENDUM TO THE FHSU CONTRACT AWARD AGREEMENT

Addendum #2 Dated September 19, 2017

THIS ADDENDUM TO THE FHSU CONTRACT AWARD AGREEMENT (the "Addendum") is made and entered into this 19th day of September, 2017 (the "Effective Date"), by and between Nex-Tech, LLC, a Kansas Limited Liability Corporation, with headquarter offices at 145 N. Main, Lenora, KS 67601 (hereinafter "Nex-Tech") and Fort Hays State University, a public, co-education university with a mailing address of 600 Park Street, #1, Hays, KS 67601 (hereinafter, "FHSU"). Individually, each may be referred to as a "Party" and collectively as the "Parties".

WHEREAS, Nex-Tech and FHSU entered into a ten (10) year FHSU Contract Award Agreement (the "Agreement") for a Campus Wide Hosted VoIP Solution commencing May 18, 2017; and

WHEREAS, Nex-Tech and FHSU wish to modify said Agreement to amend the agreement to allow for the addition of a Cloud Fax solution to the Pricing details on page 11 of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contains in the Agreement and herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed that Page 11 "Pricing" of the FHSU Contract Award Agreement shall be modified as follows:

1. Additional pricing information will be added as follows:

Initial install of Cloud Fax will include 10 Concurrent Fax lines priced at \$21.59 each and 80 Fax DID's priced at \$1.00 each. Any additional Concurrent Faxes or DID's will follow the same pricing structure throughout the term of the Agreement.

Cloud Fax Terms and Conditions can be found at www.nex-tech.com/terms

IN WITNESS WHEREOF, the parties have caused this Addendum to be duly executed as of the effective date above written.

FORT HAYS STATE UNIVERSITY

By:  _____

Printed Name: Michael W. Barnett


Title: VP for Administration and Finance

NEX-TECH, LLC

By:  _____

Printed Name: Steve Riat

Title: Director of Sales

Approved as to Form
Fort Hays State University
General Counsel
10/2/17 

CONTRACT

This contract addendum is entered into this 2nd day of October 2017, by and between Fort Hays State University and Nex-Tech, LLC, 2418 Vine Street, Hays, KS 67601 (Contractor).

The parties agree as follows:

1. Subject to the terms and conditions of this contract and companion Contract Award document, Fort Hays State University hereby accepts Contract Addendum 2 as expressed by Contractor's pricing submitted on September 19, 2017.
2. It is understood and agreed by the parties that pursuant to the bid, Nex-Tech, LLC is providing a Campus-Wide Hosted VoIP Solution to Fort Hays State University. Addendum 2 provides a Cloud Fax solution. Fort Hays State University agrees to pay on delivery of the item(s) the amount(s) billed by Contractor in accordance with the pricing offered as shown on delivery invoice(s) of the Contractor to Fort Hays State University. Payment will be made as soon after receipt of the invoice(s) as possible in accordance with state law.
3. Failure of Contractor to furnish the item(s) in accordance with the bid specifications incorporated into this contract by reference, or failure of Contractor to deliver the item(s) in accordance with any time schedules prescribed in this contract or any documents incorporated by reference into this contract shall result in forfeiture of any performance bond of Contractor and/or in termination of this contract at the option of Fort Hays State University.
4. It is understood and agreed that the provisions set out in the Contract Award document (Contract Number 17016) and the Fort Hays State University Request for Proposals for this contract are incorporated and made a part of this contract by reference as though fully set forth herein.
5. The provisions found in Contractual Provisions Attachment (DA-146a), shown on the reverse side of this Contract, is incorporated and made a part of this contract by reference.
6. The prospective contractor signature below certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any transaction by any Federal, State, or Local Department or Agency.
7. In the event of any disputes regarding the terms and conditions of this Contract or payments alleged to be due and owing, Contractor's sole remedy shall be with Fort Hays State University.

Nex-Tech, LLC

By: Steve Riat
Printed Name: Steve Riat
Title: Director of Sales
Date 1/29/18

Fort Hays State University

By: Mike Barnett
Printed Name: Mike Barnett
Title: Vice President for Administration
Date 10/2/17

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07/17), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being 2 October 2017.

1. **Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require Fort Hays State University or any of its affiliates ("University") to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The terms, conditions, and limitations of liability of the State of Kansas, the University, and their employees are defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, the University may terminate this agreement at the end of its current fiscal year. The University agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided under the contract for which it has not been paid. The University will pay contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement under this provision, title to any such equipment shall revert to contractor at the end of the University's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Kansas Law and Venue:** All matters arising out of or related to this agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit arising out of or related to this agreement shall reside only in courts located in the State of Kansas.
5. **Required Non-Discrimination Provision:** Contractor agrees to comply with all applicable state and federal anti-discrimination laws. Contractor specifically agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or if it is determined that the contractor has violated applicable provisions of ADA, such violation(s) shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the University. The provisions of this paragraph (except the provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the University cumulatively total \$5,000 or less during the fiscal year.

Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance individuals in employment without regard to race, color, religion, sex, national origin, protected veteran status or disability.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the University has agreed to binding arbitration, or the payment of damages or penalties. Further, the University does not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages or rights of action available to the University at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The University shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The University shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require the University to establish a "self-insurance" fund to protect against any such loss or damage.
11. **Information/Confidentiality:** As a state agency, the University's contracts are generally public records. Accordingly, no provision of this contract shall restrict the University's ability to produce this contract in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215 et seq.). Moreover, no provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** The Eleventh Amendment is an inherent and incumbent protection of the State of Kansas and need not be reserved, but the University here reiterates that nothing in or related to this contract shall be deemed a waiver of the Eleventh Amendment.
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.
14. **Privacy of Student Records:** Contractor understands that the University is subject to FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g) and agrees to handle any student education records it receives pursuant to this Agreement in a manner that enables the University to be compliant with FERPA and its regulations. Contractor agrees to protect the privacy of student data and educational records in a commercially reasonable manner and shall not transmit, share, or disclose any data about a student without the student's written consent, except to other University officials who seek the information within the context of his/her professionally assigned responsibilities and used within the context of official University business. Contractor shall promptly report to the University any disclosure of University's student educational records.
15. **Boycotts of Israel Prohibited:** Kansas 2017 HB 2409 generally prohibits the University from entering into a contract with an individual or company to acquire or dispose of services, supplies, information technology or construction, unless such individual or company submits a written certification that such individual or company is not currently engaged in a boycott of Israel. For the purposes of this Section 15, "company" means a sole proprietorship, organization, association, corporation, partnership, venture or other entity, its subsidiary or affiliate that exists for profitmaking purposes or to otherwise secure economic advantage. Accordingly, if Contractor is an individual or company, by executing this contract, Contractor hereby certifies that it is not currently engaged in a boycott of Israel.