

Coop Committee Meeting
Tuesday, October 4, 2016 4:00 PM
Technology Committee Meeting Country Inn
and Suites 5353 North 27th Street Lincoln, NE
68521 NO DL Available
6949 South 110th Street
LaVista, NE 68128

1. Call to Order
Committee Chair - Paul Tedesco
2. Roll Call
Committee Chair - Paul Tedesco
3. Agenda Item
Committee Chair - Paul Tedesco
 - 3.1. ESM Mediation Agreement
Committee Chair - Tedesco
 - 3.2. Coop Data
Executive Director Ludwig
 - 3.3. Consent Items
Committee Chair Tedesco
 - 3.3.1. Approve Lighting Ballast contract with Voss Lighting
Committee Chair - Tedesco
 - 3.4. Program Updates
Committee Chair - Paul Tedesco
 - 3.4.1. Annual/Paper Buy
Committee Chair - Paul Tedesco
 - 3.4.2. AEPA
Committee Chair - Paul Tedesco
 - 3.4.3. Program Yearly Review
Committee Chair - Tedesco
 - 3.5. Future Efforts
Committee Chair - Paul Tedesco
 - 3.5.1. Advisory Meeting September 2016
 - 3.6. Statewide Communications
Committee Chair - Paul Tedesco
 - 3.7. Coop Strategic Plan
Committee Chair Tedesco
4. Next Meeting Agenda Items
Committee Chair - Paul Tedesco
5. Executive Session
6. Adjournment
Committee Chair - Paul Tedesco

Release and Settlement Agreement

This Release and Settlement Agreement (“Agreement”) is made and entered into this ____ day of October, 2016, by and between **ESM SOLUTIONS CORPORATION** (“ESM”) and **NEBRASKA EDUCATIONAL SERVICE UNIT COORDINATING COUNCIL** (“NESUCC”).

RECITALS

This Agreement is made with respect to the following facts and objectives:

(a) ESM and NESUCC are Parties to a certain Subscription Agreement dated June 8, 2012 (the “Subscription Agreement”).

(b) On or about March 27, 2014, the Parties entered into an Addendum to the Subscription Agreement (the “Addendum”).

(c) On or about April 6, 2016, ESM filed a Complaint against NESUCC in the United States District Court for the District of Nebraska entitled *ESM Solutions Corporation v. Nebraska Educational Service Unit Coordinating Council*, Case No. 8:16-CV-00143 (the “Lawsuit”).

(d) Within the Lawsuit, NESUCC has filed a Counterclaim against ESM.

(e) Each party denies the allegations and claims asserted against them within the Lawsuit by the other.

(f) In order to avoid the time and expense of further litigation, the Parties now desire to resolve all claims between them arising from or in any way related to the Subscription Agreement and Addendum.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals, which are incorporated herein by this reference and in further consideration of the mutual covenants and agreements hereinafter contained, the Parties hereto agree, subject to the terms and conditions hereinafter set forth, as follows:

1. Payment. NESUCC shall pay to ESM the sum of two hundred twenty thousand dollars (\$220,000) as follows:

- a) Upon execution and delivery of this Agreement, NESUCC shall make a cash payment to ESM in the sum of one hundred twenty thousand dollars (\$120,000).

- b) NESUCC shall pay ESM an additional sum of one hundred thousand dollars (\$100,000) payable in three (3) equal annual installments of thirty-three thousand three hundred thirty-three dollars and thirty-three cents (\$33,333.33) beginning on September 30, 2017 with like payments due on September 30, 2018 and September 30, 2019. All payments shall be made by check and sent by regular United States mail to ESM at 2700 Kelly Road, Suite 100, Warrington, Pennsylvania 18976.

2. Dismissal of Lawsuit. The Parties agree to file a Joint Stipulation for Dismissal with Prejudice of all Claims and Counterclaims asserted in the Lawsuit.

3. Mutual Release. In consideration of the terms contained herein and other good and valuable consideration exchanged between the Parties, the Parties, for themselves and for their affiliates, successors, agents and assigns, hereby agree to mutually release and discharge each other, together with their respective past and present members, managers, officers, directors, agents, employees, representatives, heirs, executives, administrators, successors, assigns and insurers (the "Releases") from any and all causes of action, suits, debts, accounts, charges, obligations, controversies, contracts, liability, damages, claims and demands whatsoever, in law or equity, which they now have or which may hereafter accrue, whether known or unknown, with regard to the incidents alleged in the Lawsuit or in any way relating to any acts or omissions which form the basis for the Parties' claims in the Lawsuit. This release shall be construed liberally, and shall encompass all claims and counterclaims that have been asserted, or that could have been asserted, by the Parties arising out of the Subscription Agreement and/or Addendum and any other related claims and counterclaims that have been or could have been asserted in the Lawsuit.

4. Costs and Attorney Fees. The Parties shall each be responsible for their own attorney fees, litigation expenses, and costs incurred in connection with the Lawsuit.

5. Binding Agreement. The Parties to this Agreement expressly certify that they have entered into this Settlement and Release on mature consideration and upon independent advice of counsel of their own choosing. Their execution of this Settlement and Release has not been obtained by duress, fraud, or undue influence of any person, and each Party has carefully read and fully understands all the provisions of this Agreement. This Settlement and Release shall be binding upon the undersigned, and their representatives, their successors and assigns forever.

6. Entire Understanding and No Reliance. This Agreement constitutes the entire understanding of the Parties. No Party is relying upon any statements or representations not contained in this Agreement. Any modifications to this Agreement must be made in writing and signed by all Parties.

7. Applicable Law. This Settlement and Release shall be governed and construed according to the laws of the State of Nebraska. If, for any reason, any portion of this Settlement and Release is found to be unlawful, in violation of public policy or invalid, such portions shall

be stricken and severed from the terms of this Settlement and Release so as to give effect to the remainder of the Agreement.

8. Venue. The Parties agree that any enforcement of this Agreement shall be resolved in a Court of competent jurisdiction in Douglas County, Nebraska.

9. Construction. This Agreement shall not be construed against the Party initially preparing or implementing revisions, but shall be construed as if the Parties jointly prepared it, and any uncertainty or ambiguity shall not, on the grounds of authorship, be interpreted against any Party.

10. Counterpart Documents. This Settlement and Release may be executed in counterparts, each of which shall be deemed an original, and all of which when taken together shall be deemed one and the same Agreement. Facsimiles or electronic copies of executed counterparts shall be accepted as executed originals. Whether in counterparts or otherwise, this Agreement shall not be binding on, and shall not be effective against, any Party who has signed it unless and until all Parties have signed it.

11. Authority. Each Party warrants that the individual executing this Settlement and Release on behalf of their respective parties is duly and expressly authorized to do so. The Parties further represent and warrant that they have not caused or suffered any assignment of any claim which they agreed to release pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year set forth herein.

ESM SOLUTIONS CORPORATION

**NEBRASKA EDUCATIONAL
SERVICE UNIT COORDINATING
COUNCIL**

By: _____
Title: _____

By: _____
Title: _____

ESUCC Cooperative Purchasing Program September 2016

- ESUCC Cooperative Purchasing is a member of the national organization Association of Educational Purchasing Agencies (AEPA). Membership includes 26 states (including California, Colorado, Connecticut, Florida, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, Texas, Virginia, Washington, West Virginia, Wisconsin and Wyoming).
- Number of Vendors
 - 2015-2016: 69 vendors
- Number of Catalogs
 - 2015-2016: 70 different catalogs
- Savings
 - 2014-2015 \$4,586,967.70
 - Savings by Program Category
 - Annual Buy \$862,412.31
 - Paper \$324,035.37
 - Food \$733,039.49
 - Custodial \$198,566.22
 - AEPA Buys \$2,364,478.80
 - Special Buys \$104,435.51
- Yearly Sales
 - 2014-2015 \$17,638,748.90
 - 2015-2016 \$16,687,333.59 (10 month data)
- Number of Districts using Coop
 - Food: 109 school districts
 - Custodial: 134 school districts
 - All Other Programs - We serve all School Districts in the state and have Interlocals with 3 cities, 1 County, 1 County run Hospital
- List of Buys by Category
 - Student Information Systems (5 vendors)
 - Athletic Floors, Running Tracks, Synthetic Turf, Tennis Courts (6 vendors)
 - Athletic Lighting (1 vendor)
 - Athletic Scoreboards (1 vendor)
 - Cafeteria Furniture (1 vendor)
 - Custodial Supplies (3 vendors)
 - Digital Resources (6 vendors)
 - Facility Management (1 vendor)
 - Food (1 vendor)
 - Industrial Supplies (1 vendor)
 - Interactive Classroom (1 vendor)

- Learning Management Systems (3 vendors)
- Lighting-Bulbs-Ballasts (1 vendor)
- Medicaid Software (1 vendor)
- Musical Instruments (1 vendor)
- Office/School Supplies (5 vendors)
- Photo Copiers/Printers (2 vendors)
- Roofing (2 vendors)
- School Security Systems (3 vendors)
- Software (3 vendors)
- Technology (4 vendors)
- Number of SKU's - 197,199 searchable in the Marketplace (Doesn't include Punchout catalogs for CDW-G, Brown & Saenger, Independent Stationers, MNJ Technologies, Insight, Staples, and SupplyWorks)
 - JourneyEd - 3,700
 - Quill - 48,990
 - ESUCC Annual Buy - 2,856
 - ETA Hand2mind - 5,116
 - School Specialty - 76,653
 - Midwest Technology Products - 10,281
 - Peripole - 828
 - CDW-G - 300,000
 - Brown & Saenger 100,000 plus
 - Staples -800,000
 - Independent Stationers - 20,000
 - MNJ Technologies
 - Insight Public Sector - 2,080,713
 - SupplyWorks 589,750 (Not including FSM items, this would be in the millions)
 - Sysco - 13,000
- Marketplace Data (from 08/15/2015 to 08/12/2016)
 - Dollars spent in Marketplace - \$4,015,368.15
 - Number of Purchasers - 59,788
 - Number of Orders placed - 61,659
 - Number of Items ordered - 385,345
- [Coop Brochure](#)

Nebraska Educational Service Units



Annual Member Savings

Program	Total Savings
Annual Buy	\$862,412.31
Paper Buy	\$324,035.37
Food Program	\$733,039.49
Custodial	\$198,566.22
AEPA	\$2,364,478.80
Special Buy	\$104,435.51
Total Savings	\$4,586,967.70



About Us

The goal of ESUCC Cooperative Purchasing is to provide eligible members the opportunity to purchase quality products & services at the lowest possible prices.

ESUCC Cooperative Purchasing Staff

Craig Peterson
Director

Priscilla Quintana
Business Manager

Colleen Lentz
Programs Assistant



For More Information Visit
www.neesucoop.org

Ainsworth, NE 69210
 Phone: 402-387-1245
 Fax: 402-387-2530
 Email: coop@esucc.org



Cooperative Purchasing
 “United We Save”

Membership Guide

- Prime Vendor Programs
- Special Buys
- Annual Buy
- Year Round Buys
- AEPA Buys



The Marketplace

The ESUCC Cooperative Purchasing online Marketplace provides your best value for supplies and services by purchasing through ESUCC Cooperative Purchasing contracts. The Marketplace provides members the ease and convenience of ordering from multiple vendors, and programs through one site, while knowing that the contracts you are purchasing from comply with state purchasing regulations. Visit www.neesucop.org for more information and how to register.

“United We Save”

Athletics

Athletic Floors
Athletic Lighting
Scoreboards/Marquees
Running Tracks
Synthetic Turf
Tennis Courts
Athletic & PE Supplies

Buildings & Grounds

Air Filters
Custodial Supplies/Equipment
Facility Management
Furniture
Lamps/Bulbs/Ballasts
Furniture
School Security Solutions

Food Service

Cafeteria Design
Food
Small Wares
Kitchen Supplies

Office & Classroom

Art & Teaching Supplies
Classroom Supplies
Copiers & Printers
Curriculum & Instruction
Digital Resources
Furniture
Industrial Arts/Tech Supplies
Interactive Classroom Devices
Musical Instruments
Office Supplies
Paper

Technology

Catalog Discounts
Software Licensing
Device Management
Line-Item Catalog
Learning Management Systems

Annual Buy (Line Item Bid)

Electronics
General Supplies
Furniture
Maintenance/Shop Supplies
Health & Safety Supplies
Athletic Supplies
Hot Lunch Supplies
Science Equipment/Supplies
Art Supplier
Copier Paper

Program Descriptions

Prime Vendor Buys: A bid-approved vendor's full product line at discounted pricing. All merchandise is ordered, delivered and billed directly to the schools or members. Current Prime Vendor Buy Programs include food & custodial contracts.

Special Buys: The term "Special Buys" refers to programs contracted by ESUCC Cooperative Purchasing. These purchase opportunities are available during the school budget year to provide timely delivery of product and services.

Annual Buy: Nebraska ESUCC Cooperative Purchasing coordinates purchases from annual bid awarded vendors on behalf of qualifying members. The objective is to obtain quality merchandise for the lowest possible price.

Year Round Buys: Participating vendors provide year round contracted discounted pricing to qualifying members through our online Marketplace

AEPA: The association of Educational Purchasing Agencies (AEPAs) is a group of Educational Service Agencies/Political Subdivisions organized through a Memorandum of Understanding between participating states for the purpose of securing combined volume purchasing contracts based on potential sales by qualifying customers in participating states.

Region	# Agencies	# Agencies w/ Orders	# of Purchasers	Orders	Items	Total Value	Avg. Value
ESU 07	39	32	146	719	57,723	\$464,317.35	\$ 645.78
ESU 13	30	25	151	782	37,655	\$461,045.94	\$ 589.57
ESU 03	21	15	100	227	38,394	\$436,365.30	\$1,922.31
ESU 10	45	35	209	911	44,103	\$427,612.21	\$ 469.39
ESU 01	32	28	126	647	28,801	\$366,009.64	\$ 565.70
ESU 08	39	30	170	763	36,377	\$362,971.77	\$ 475.72
ESU 06	35	23	40	305	20,543	\$268,059.90	\$ 878.88
ESU 11	15	15	192	678	17,846	\$227,039.56	\$ 334.87
ESU 02	27	22	61	395	25,827	\$223,428.00	\$ 565.64
ESU 16	23	17	97	444	17,267	\$158,816.21	\$ 357.69
ESU 04	16	15	65	269	12,828	\$148,823.87	\$ 553.25
ESU 09	23	14	60	282	20,212	\$137,617.28	\$ 488.00
ESU 05	16	11	65	278	10,831	\$120,506.33	\$ 433.48
ESU 15	11	10	62	313	9,107	\$112,405.19	\$ 359.12
ESU 17	8	6	44	232	8,120	\$100,407.93	\$ 432.79
Higher Ed	2	2	2	4	184	\$ 15,841.78	\$3,960.45
Private	83	1	2	12	192	\$ 5,600.17	\$ 466.68
Cities	3	1	1	1	11	\$ 3,529.83	\$3,529.83
ESUCC	1	1	3	31	357	\$ 3,225.47	\$ 104.05
ESU 18	2	1	1	1	1	\$ 331.00	\$ 331.00

Last Order Date

8/11/2016

8/12/2016

8/8/2016

8/15/2016

8/11/2016

8/15/2016

8/10/2016

8/8/2016

8/12/2016

8/10/2016

8/11/2016

8/11/2016

8/10/2016

8/5/2016

8/12/2016

3/21/2016

4/19/2016

3/4/2016

6/16/2016

5/12/2016

AGREEMENT FOR RFP-Lighting-Bulbs-Ballasts-2016

THIS AGREEMENT is entered into by and between the Nebraska Educational Service Unit Coordinating Council ("ESUCC"), and Voss Electric Co. ("Contractor").

In consideration of mutual covenants, the parties agree as follows:

- 1. Scope of the Contract.** The Contractor shall provide to the ESUCC and members the goods and/or services as defined in **Exhibit A** which is attached hereto and incorporated herein by this reference.
- 2. Payment Terms/Payment Schedule.** The ESUCC member shall pay for services rendered and for accepted goods on the terms and payment schedule as set forth in **Exhibit B** which is attached hereto and incorporated herein by this reference.
- 3. Term.** This Agreement is effective on the 1st day of September 2016 ("Effective Date") and shall continue until 12:00 midnight (CST) on the 31st day of August 2019, unless terminated earlier as provided by this Agreement or by law.
- 4. Governing Law; Designation of Forum.** This Agreement is governed by and construed in accordance with the laws of the State of Nebraska. Any action to enforce this Agreement must be brought in the state or federal courts of the State of Nebraska. Mandatory and exclusive venue for any disputes shall be in Douglas County, Nebraska.
- 5. Termination.**
 - A.** The ESUCC may terminate this Agreement in whole or part if funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the good and/or services in the indicated quantities or term. The ESUCC shall notify the Contractor as soon as practicable if funds to meet the ESUCC's obligations become unavailable. The determination of the ESUCC as to the insufficiency of funds is conclusive.
 - B.** Each party may terminate this Agreement if the other party breaches or is in default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within 30 days after receipt of written notice of such default or such additional cure period as the nondefaulting party may authorize in writing.

- C. Each party may terminate this Agreement by written notice if federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- D. The ESUCC may terminate this Agreement, in whole or in part, by written notice to the Contractor and may regard the Contractor in default of this Agreement if the Contractor becomes:
 - (1) Insolvent;
 - (2) Makes a general assignment for the benefit of creditors;
 - (3) Files a voluntary petition of bankruptcy;
 - (4) Suffers or permits the appointment of a receiver for its business or assets;
 - (5) Becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign; or
 - (6) Has wound up or liquidated, voluntarily or otherwise.
- E. The ESUCC may terminate this Agreement, in whole or in part, immediately, without notice, if the Contractor is debarred or suspended from performing services on any public contracts.
- F. The parties may terminate this Agreement without cause by mutual written consent.
- G. Upon the termination for any reason or expiration of this Agreement, the Contractor promptly must return to the ESUCC all papers, materials and other property of the ESUCC then in its possession, including but not limited to all work in progress as is appropriate in its then existing form to the ESUCC.

6. Indemnification.

- A. The Contractor hereby waives and agrees to indemnify and save harmless the ESUCC and its officials, agents, employees, volunteers, and members (hereinafter collectively referred to as "Indemnities"), against any and all claims of injuries, death, damage to property, liabilities, judgments, costs and expenses which may otherwise accrue against Indemnities in consequence

of the granting of this Agreement or which may otherwise result therefrom.

- B. The Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith.
- C. If any judgment shall be rendered against the ESUCC in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same.
- D. Any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify and save harmless and defend the Indemnities as herein provided.
- E. The Contractor's obligation to indemnify and save harmless any Indemnities will survive the expiration or termination of this Agreement by either party for any reason.

7. Insurance. Contractor shall secure and keep in force during the term of this Agreement the following insurance coverages from insurance companies or government self-insurance pools authorized to do business in Nebraska:

- A. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per person and \$5,000,000 per occurrence.
- B. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$1,000,000 per person and \$5,000,000 per occurrence.
- C. Workers compensation coverage meeting all statutory requirements.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or other similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible is subject to approval by the ESUCC.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or

catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage Less than an "A-" rating must be approved by the ESUCC. The policies shall be in form and terms approved by the ESUCC.

- 3) The insurance required in this agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned ESUCC representative.
- 4) The Contractor shall furnish a certificate of insurance to the undersigned ESUCC representative prior to commencement of this Agreement.
- 5) Failure to provide insurance as required in this agreement is a material breach of contract entitling the ESUCC to terminate this Agreement immediately.

8. **Public Records.** The Contractor acknowledges that the ESUCC and/or members must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.
9. **Publicity.** The ESUCC or members does not endorse the goods or services of the Contractor. Except for listing the ESUCC and members as a client during the term of this Agreement, news releases or other publicity concerning this Agreement must not be made by the Contractor without the prior written approval of the ESUCC.
10. **Drug/Alcohol/Tobacco/Weapons Free Workplace.** The Contractor and all Subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on ESUCC or member premises or at ESUCC or member related functions. The Contractor and all Subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on ESUCC or member property or at ESUCC or member related functions. The Contractor and all Subcontractors, if any, also shall adhere to all ESUCC's or member's policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on ESUCC or member premises or at ESUCC or member related functions. Failure to comply with this provision may be considered a material breach. The ESUCC or member may suspend or

terminate the Contractor, Subcontractor, or both if it violates these laws, regulations, or policies or this provision.

- 11. Nondiscrimination.** The Contractor and all Subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
- 12. Independent Contractor.** Contractor is an independent contractor under this contract and is not a ESUCC or member employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
- 13. Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any Subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the Subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
- 14. Taxpayer Identification.** Contractor's federal employer identification number is: 47-0582038.
- 15. Sales Tax.** The ESUCC and members is exempt from sales tax and shall not pay any sales tax under this Agreement. The ESUCC or members will provide the Contractor with applicable sales tax exemption certificates upon written request.
- 16. Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

ESUCC: ESU Coordinating Council
Attn: Craig Peterson
1292 East 4th Street
Ainsworth, NE 69210

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With copy to:

Steve Williams, Legal Counsel
KSB School Law, PC, LLO
301 S. 13th, Suite 210
Lincoln, NE 68508

Contractor: Voss Electric Co
1601 Cushman Dr
Lincoln, NE 68512

Notice is effective only if the party giving the Notice has complied with this section.

17. Entire Agreement. The Agreement is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

18. Order of Preference.

In the case of any inconsistency or conflict among the specific provisions of this Agreement (including any amendments accepted by both the ESUCC or members and the Contractor attached hereto), the RFP (including any subsequent addenda) (Exhibit C), and Contractor's Response (Exhibit D), any inconsistency or conflict shall be resolved as follows:

- A. First, by giving preference to the specific provisions of this Agreement, any accepted amendments, Exhibit A and Exhibit B;
- B. Second, by giving preference to the specific provisions of the RFP, Exhibit C;
- C. Third, by giving preference to the specific provisions of Contractor's Response, Exhibit D, except that objections or amendments by a Contractor that have not been explicitly accepted by the ESUCC in writing shall not be included in this Agreement and shall be given no weight or consideration.

19. Amendments and Modifications. The parties may amend or modify this Agreement only by a signed, written agreement by both parties that

identifies itself as an amendment or modification to this Agreement. No other alternations in the terms of this agreement shall be valid or binding.

20. Waivers.

- A. The parties may waive any provision in this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced.
- B. No failure or delay:
 - (1) In exercising any right or remedy, **or**
 - (2) In requiring the satisfaction of any condition under this Agreement, **and**
 - (3) No act, omission, or course of dealing between the parties operates as a waiver or estoppel of any right, remedy or condition shall constitute a waiver or estoppel of any right, remedy or condition.
- C. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.

21. Severability. If any provision of this Agreement is determined to be unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain enforceable.

22. Counterparts. The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

23. Force Majeure. Neither party shall be liable for any loss or damage suffered by the other party, directly or indirectly, as a result of the non performing party's failure to perform, or delay in performing, any of its obligations contained in this contract (except any obligations to make

payments for services rendered or accepted goods received before the failure to perform or the delay in performance), where, in the opinion of the ESUCC or member, such failure or delay is caused by circumstances beyond the non performing party's control or which make performance commercially impracticable, including but not limited to fire, flood, storm or other natural disaster, explosion, accident, war, riot, civil disorder, government regulations or restrictions of any kind or any acts of any government, alien enemy, judicial action, power failure, acts of God, or other natural circumstances. This Force Majeure provision excludes economic hardship, changes in market conditions, and insufficiency of funds on the part of Contractor.

24. **Assignment.** This Agreement binds the parties and their respective successors and assignees. The Contractor shall not assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other person without the previous written consent of the ESUCC.
25. **Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of the ESUCC or member.
26. **Third Party Beneficiaries.** This Agreement does not and is not intended to confer any rights or remedies upon any person other than the signatories.
27. **Captions.** The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.
28. **Rights and Remedies Cumulative.** Any enumeration of the ESUCC's or member's rights and remedies set forth in this Agreement is not exhaustive. The ESUCC's or member's exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy. All of the ESUCC's or member's rights and remedies are cumulative and are in addition to any other right or remedy set forth in this Agreement, any other agreement between the parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.
29. **Time is of the Essence.** Time is of the essence with regard to performance of any services under this Agreement, unless the parties agree otherwise in writing.

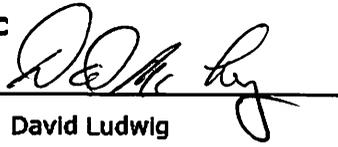
- 30. Relationship Among Parties.** This Agreement creates no relationship of joint venture, partnership, limited partnership, agency, or employer-employee between the parties, and the parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither party has any right or authority to assume or to create any obligation or responsibility on behalf of the other party except as may from time to time be provided by written instrument signed by both parties.
- 31. Rules of Construction.** The parties hereto have each been represented by counsel, or had the opportunity to be represented, during the negotiation and execution of this Agreement, and therefore waive application of any law or rule of construction providing that ambiguities in the contract will be construed against the party drafting such contract.
- 32. Warranties and Maintenance.** The Contractor shall provide to the District the warranties and maintenance as set forth in **Exhibit E**.
- 33. Attachments.** Attachments to this Agreement include the following:
- Exhibit A – Scope of Good or Services to be provided to ESUCC or Members
 - Exhibit B – Payment Terms & Schedule
 - Exhibit C – Request for Proposal or Invitation for Bids ("RFP")
 - Exhibit D – Contractors Proposal or Bid
 - Exhibit E – Warranties and Maintenance

IN WITNESS WHEREOF the parties have executed this Agreement on the date last date written below.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

ESUCC

By: _____



Name: David Ludwig

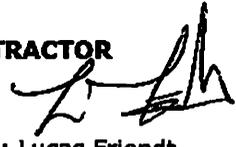
Title: Executive Director

Date: _____

9-13-16

CONTRACTOR

By: _____



Name: Lucas Friendt

Title: Branch Manager

Date: 8/29/16

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EXHIBIT "A"

SCOPE OF GOODS OR SERVICES TO BE PROVIDED TO ESUCC

Catalog of Interior/Exterior Lighting fixtures, Bulbs, and Ballasts to be offered through the ESUCC Marketplace where by members can place orders electronically to the vendor. This should include all types of bulbs, ballasts, and fixtures and not limited to only the following; Incandescent, CFLs, LEDs, Fluorescent, HIDs, Halogen, Miniature Lamp, Fluorescent Light Ballasts, Electronic Ballasts, Ceiling fixtures, Relight/Retrofit fixtures, Exit/Emergency lighting and Lighting controls.

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EXHIBIT "B"

1. Payment Terms/ Payment Schedule

- A. ESUCC members will pay for the goods and/or services identified in Exhibit A and provided by Contractor under this Agreement as follows:

Net 30

See attached pricing schedule "ESUCC_RFP_2016-Lighting-Bulbs-Ballasts_-_Pricing_Form_Voss_Lighting"

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- B. The ESUCC members agree to pay Contractor for all undisputed amounts within thirty (30) days of receipt of invoice, provided that services have been accepted by the ESUCC member as hereinafter provided.
- C. The procedure for billing and payment for services or products and deliverables shall be as specified in this exhibit.

2. Acceptance of Services or Products:

- A. The Contractor shall deliver any goods, perform any services or both in accordance with the schedule set forth in the RFP, the time specified in a purchase order issued by the ESUCC member, or this Agreement (whichever is later).
- B. Unless otherwise agreed to by the parties, the Contractor shall provide written notification of completion of any deliveries, or performances of services or both, to the ESUCC member ("Delivery Notice").
- C. The ESUCC member shall have thirty (30) days from the date of receipt of the Delivery Notice to provide the Contractor with written notification of acceptance or rejection due to unsatisfactory performance or nonconforming goods.
- D. If the ESUCC member issues a rejection notice, the Contractor shall as quickly as is practicable, correct or replace all deficiencies at its expense. The ESUCC member shall not unreasonably withhold or delay its acceptance or rejection.

3. Title and Risk of Loss:

- A. Title and risk of loss for goods shall remain with the Contractor until goods are accepted by the ESUCC member.
- B. Insurance during shipment and until the goods are accepted

by the ESUCC member is the responsibility of the Contractor.

EXHIBIT "C"
Request for Proposal

REQUEST FOR PROPOSALS (RFP)

ESUCC

2016-Lighting-Bulbs-Ballasts

1. OVERVIEW. The Educational Service Unit Coordinating Council (ESUCC) is a Nebraska political subdivision tasked with coordinating statewide efforts to provide the most cost-effective services for the students, teachers, and school districts in each educational service unit (ESU). The ESUCC is composed of one administrator from each of the 17 ESUs that provide a statewide network of educational opportunities to approximately 245 school districts and more than 300,000 students. The ESUCC's duties include, but are not limited to: (a) Preparation of strategic plans to assure the cost-efficient and equitable delivery of services across the state; (b) Administration of statewide initiatives and provision of statewide services; and (c) Coordination of distance education. More information about the ESUCC can be found at <http://www.esucc.org>.

2. SPECIFICATIONS. The ESUCC is requesting proposals from qualified vendors (Vendor) to provide a catalog listing of Interior/Exterior Lighting fixtures, Bulbs, and Ballasts to be offered through the ESUCC Marketplace where by members can place orders electronically to the vendor. This should include all types of bulbs, ballasts, and fixtures and not limited to only the following; Incandescent, CFLs, LEDs, Fluorescent, HIDs, Halogen, Miniature Lamp, Fluorescent Light Ballasts, Electronic Ballasts, Ceiling fixtures, Relight/Retrofit fixtures, Exit/Emergency lighting and Lighting controls. ESUCC has contracted with Equal Level to provide an online procurement site for vendors to host the awarded offering if vendor does not have capabilities of providing this.

A. Required Specifications

- i. Brand names, trade names, model numbers, and/or catalog numbers are used to indicate the character, quality, and/or performance characteristics of the materials desired.
- ii. Use of the name of a manufacturer, brand, make or catalog number does not restrict bidder from offering suitable alternates.
- iii. ESUCC reserves the right to decide whether alternatives to the identified manufacturer and brand are equal to the materials or equipment described in the solicitation.
- iv. ESUCC will be the sole judge on the question of equal quality, and ESUCC's decision shall be final.
- v. Energy Star rated products are preferred when applicable.

B. Technical Requirements - Describe your ability to provide the following:

- i. Bidder must be capable of creating and supporting a punch out website exclusively for ESUCC members as a means to place orders online at the contracted prices through ESUCC's contracted eProcurement solution (currently Equal Level) and meeting the terms and conditions of this solicitation. Bidder (s) shall be able to demonstrate this ability to the satisfaction of ESUCC prior to any award.
- ii. Bidder agrees to provide a cXML punch-out site or provide a spreadsheet containing all of the items under the potential contract within 90 days of contract signature (a template file will be provided by ESUCC).
- iii. The successful bidder(s) shall be responsible for providing all necessary personnel, materials, equipment, supervision, insurance and services, as outlined to accomplish the work in accordance with the specifications contained in this bid.

C. Pricing - Please provide the following cost elements in the attached pricing worksheet:

- i. Catalog listing of Interior/Exterior Ballast, Bulbs, and Lighting fixtures.

- ii. Bidder should complete all Line Items (the Market basket) for evaluation purposes.
- iii. Contract pricing under the RFP should be based upon: Catalog List price minus bid discount percentage for a Net Effective Bid price (Delivered Price).
- iv. ESUCC's 3.5% administration fee shall be included in bidder's net price. Contractor shall not add the administration fee to approved contract prices.
- v. Bidder will submit a Response Attachment "ESUCC RFP 2016-Lighting-Bulbs-Ballasts - Pricing Form" for pricing that will be effective for the September 1, 2016 contract year.
- vi. Bidder agrees all prices, terms, warranties, and benefits granted by bidder to members through this contract are comparable to or better than the equivalent terms offered by bidder to any present customer meeting the same qualifications or requirements.
- vii. Fixed price offers may include prices for any items. Fixed prices shall be firm until each anniversary date of contract, August 31st. Fixed price update requests must be submitted in writing by contractor, not less than thirty (30) days prior to effective date and be approved by ESUCC.

3. PRESENTATION. Presentations are not scheduled at this time, but may be scheduled during the evaluation of proposals if needed.

4. PROPOSAL SUBMISSION. Proposals will be collected and accepted using the ESUCC IonWave procurement system. Interested vendors must register with the system at <https://esucc.ionwave.net> to receive and respond to the request for proposal. Proposals will be received by the IonWave system until 8:00 a.m. Central Daylight Time on August 31, 2016. Proposals shall include the following:

- A.** Information as required by paragraph 2 above;
- B.** Complete catalog pricing of offering (attached ESUCC RFP 2016-Lighting-Bulbs-Ballasts - Pricing Form);
- C.** Market basket (Line Items) cost proposal for evaluation purposes.

- D.** An indication of the vendor's experience in similar or equivalent offerings;
- E.** References (including contact person, address, and telephone number); and
- F.** A signed copy of the contract if no proposed contract modifications are requested. (See Attached ESUCC Contract-Lighting-Bulbs-Ballasts template)

5. Administrative Fee. Vendor shall make Administrative Fee payment of 3.5% of invoice amounts to ESUCC on a monthly basis for all invoices it has received payment from ESUCC members for that month. Reports and payments must be received by the end of the following month.

6. WITHDRAWAL OF PROPOSAL. Proposals may be withdrawn by the vendor at any time prior to the specified due date and time, bidder may withdraw their proposal through ESUCC's sourcing solution IonWave. No proposal may be withdrawn following the closing or opening time and date of proposals.

7. CONTACT WITH BIDDERS. ESUCC reserves the right to conduct discussions with any or all vendors for the purpose of clarification and modification. Discussion and negotiation may include, but is not limited to, the scope of the work, delivery schedule, and pricing.

8. DISQUALIFICATION OF BIDDERS. Vendors may be disqualified and their proposals disregarded for reasons which include but are not limited to the following:

- A. The ESUCC has reason to believe that vendors have engaged in collusion.
- B. The vendor being involved in any litigation against the ESUCC or any of its ESUs, member school districts or other members.
- C. The vendor is in arrears on any existing contract or has defaulted on a previous contract.
- D. The vendor has uncompleted work which, in the judgment of the ESUCC, will prevent or hinder its ability to complete this project, if it were awarded to the vendor.
- E. The ESUCC reserves the right to reject any or all applications, in whole or in part.

9. SELECTION PROCEDURE. The ESUCC reserves the right to award to multiple bidders in whole or in part. The ESUCC reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal and do not improve the bidders competitive position. The ESUCC will award contract(s) to bidders who provide the best proposal to meet the ESUCC's needs and requirements.

10. OPENING OF PROPOSALS. Proposals will be opened publicly and simultaneously in the presence of the proposer and/or their representatives beginning at the set opening time or as soon as possible thereafter, in the office of Craig Peterson, ESU 11, 412 W. 14th Ave, Holdrege, NE 68949.

11. CONTRACT. The ESUCC will negotiate the terms of a contract with the selected vendor. If an agreement is reached, the vendor will enter into a written contract and will perform all work pursuant to that contract. Please see attached. Any proposed changes or modifications to the contract document must be presented in the bidder's proposal. An award does not constitute an agreement or

contract with the ESUCC, and the ESUCC reserves the right to not enter into any agreement with any vendor.

12. NON-RESPONSIVE PROPOSALS. A vendor that fails to respond to any request for information may be deemed non-responsive and its proposal may not be considered for the award.

13. CONTACT/CONFERENCE WITH PROPOSERS. ESUCC reserves the right to contact, conduct discussions, or to hold conferences with any or all proposers for the purpose of clarification, modification, and refinement of any proposals.

14. NOTICE. By submitting a proposal, the vendor agrees to waive any claim it has, or may have, against ESUCC and its employees, arising out of, or in connection with, the administration, evaluation, or recommendation of any proposal; waiver of any requirements under the proposal documents or the contract documents; acceptance or rejection of any proposals; and award of the contract.

15. DEBARMENT. Submission of a proposal in response to this RFP is certification that you, your company, and any subcontractor is not currently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from submitting proposals to any State or Federal department or agency or any political subdivision of the State of Nebraska.

16. REJECTION OF PROPOSALS. ESUCC reserves the right (a) to terminate the proposal process at any time; (b) to reject any or all proposals; and (c) to waive formalities and minor irregularities in the proposals received. ESUCC further reserves the right to conduct a pre-award survey of any vendor under consideration to confirm any of the information furnished by the firm or to require other evidence of managerial, financial, technical and other capabilities, the positive establishment of which is determined by ESUCC to be necessary for the successful performance of the contract. ESUCC further reserves the right to cancel or amend this RFP at any time and will notify all recipients accordingly.

17. INQUIRIES. Submit all questions, inquiries, or requests for clarification in writing via e-mail to Craig Peterson at craig.peterson@esucc.org. The subject of the e-mail should be "RFP-Lighting-Bulbs-Ballasts-2016 Questions".

**Exhibit "D"
Contractor's Proposal**

[INSERT CONTRACTOR'S PROPOSAL] Voss Lighting is proposing pricing discounts as defined in the RFP to include the following categories with discounts listed in the attached ESUCC RFP 2016-Lighting-Bulbs-Ballasts - Pricing Form Voss Lighting.xlsx

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<u>PHILIPS LAMPS</u>	<u>77%</u>	-
<u>PHILIPS LED LAMPS</u>	<u>80%</u>	-
<u>TCP LED LAMPS</u>	<u>88%</u>	-
<u>GREEN CREATIVE</u>	<u>88%</u>	<u>LED LAMPS</u>
<u>LIGHT EFFICIENT DESIGN</u>	<u>88%</u>	<u>LED LAMPS TO REPLACE HID LAMPS</u>
<u>LUNERA</u>	<u>88%</u>	<u>LED LAMPS TO REPLACE HID AND CFL LAMPS</u>
<u>PHILIPS/ADVANCE BALLAST</u>	<u>80%</u>	-
<u>FIXTURES</u>	<u>87%</u>	-
<u>VEOLIA RECYCLING</u>	<u>84%</u>	-
<u>PHILIPS LED RETROFITS FOR FLUORESCENT FIXTURES</u>	<u>88%</u>	-
<u>MISC.</u>	<u>88%</u>	<u>MISC. LAMPS, MINIATURE LAMPS, STTV LAMPS, BALLAST, SOCKETS, TUBE GUARDS</u>

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Exhibit "E"
Warranties and Maintenance Agreements

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