

FARMINGTON PUBLIC SCHOOLS
Large Area AV RFP

Appendix B
DRAFT AGREEMENT

MONTH / YEAR

Large Area AV Sample Agreement

This Large Area AV Agreement ("the Agreement") is made on the Effective Date, between [**Vendor**], (hereinafter called "the Contractor") whose address is [**Vendor Address**], Farmington Public Schools (hereinafter called "the District") whose address is 32500 Shiawassee, Farmington, Michigan 48336.

RECITALS

- A. The Contractor shall provide the District with all of the necessary equipment/devices, implementation, installation, testing and all other related Services required for a fully functioning "Large Area AV" (herein called "the System(s)") upon the terms and conditions set forth herein and in the other Agreement Documentation.
- B. The District desires to obtain the devices and associated Services, from the Contractor upon the terms and conditions set forth herein and in the other Agreement Documentation.
- C. Parties agree that where there is a conflict between terms of this Agreement and the other Agreement Documentation, this Agreement shall take precedence. The parties also agree that where there is not a conflict between this Agreement and the other Agreement Documentation, to the extent accepted by District, all terms and conditions in the other Agreement Documentation shall be incorporated by reference into this Agreement and shall be binding upon all parties to this Agreement.
- D. The order of precedence has been set forth in Paragraph 1.1 below.
- E. The District and the Contractor each binds themselves, their partners, successors, and other legal representatives to all covenants, agreements, and obligations contained in this Agreement.
- F. It is expressly agreed that the Contractor is not an agent or employee of the District but an independent contractor. Where the term "Contractor" is used, it includes all employees, subcontractors, consultants and agents of the Contractor. The Contractor shall not pledge or attempt to pledge the credit of the District or in any other way attempt to bind the District.

NOW, THEREFORE, IN CONSIDERATION FOR THE FOREGOING AND THE MUTUAL COVENANTS SET FORTH HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

1 DEFINITIONS AND EXHIBITS

- 1.1 Agreement Documentation. "Agreement Documentation" shall mean (i) this Agreement including any and all Exhibits (ii) the District's Request for Proposal (RFP) dated [Date], (iii) bid bulletins attached hereto, and (iv) the Contractor's Response and clarifications to the RFP dated [Date]. Said documents shall take precedence in the order set forth in this Paragraph.
- 1.2 Documentation. "Documentation" shall mean (i) all written materials or information relating to the System(s) or its operation, including without limitation, user-oriented and technical operation, reference, and training manuals and (ii) the documentation as outlined in the Agreement Documentation.

- 1.3 Effective Date. "Effective Date" shall mean the last date on which both parties hereto have executed this Agreement.
- 1.4 Purchase Price. "Purchase Price" shall mean the aggregate amount payable by the District for (i) the purchase of the System(s) and (ii) the services to be provided by the Contractor in accordance with the RFP and to the extent accepted by the District, the Contractor's response to the RFP. The Purchase Price is inclusive of all taxes, shipping, handling, material bond(s), payment bond(s), performance bond(s), insurance, and all options as listed on the Price Schedule in Appendix A.
- 1.5 Systems: Shall include, but not limited to, any and all devices, projectors, audio systems, carts, stationary storage, cabling, connectors, operating systems, miscellaneous items, and materials necessary for a fully functioning solution to achieve the requirements contained in the Agreement Documentation.
- 1.6 Services. "Services" shall include, but shall not be limited to, any and all labor, implementation, imaging, installation, testing, documentation, training, debugging, and acceptance testing activities
- 1.7 Sites. Sites shall mean the locations set forth in the Agreement Documentation.
- 1.8 Term: The term of this Agreement is 12 months. District reserves the right to terminate this Agreement at any time for any reason upon thirty (30) days written notice to Contractor.
- 1.9 All provisions contained in of the Recitals of this Agreement are binding upon the parties to this Agreement.

2 TURNKEY SOLUTION

- 2.1 Turnkey Solution. This Agreement and the other Agreement Documentation set forth the terms and conditions upon which the Contractor will provide a "turnkey" solution for installation and operation of the System(s) for use by the District. The Contractor agrees that it will provide a complete "Turnkey Solution" to the District. The Contractor shall be responsible for the successful installation and operation of the System(s) in all phases of design, acceptance testing and Documentation of the System(s), as detailed in the Agreement Documentation.
- 2.2 The Contractor's Obligation. In consideration of the payment of the Purchase Price, it is agreed and understood that the Contractor shall be obligated to provide the devices, Systems and Services in accordance with the terms and conditions contained in the Agreement Documentation. Guarantee. Contractor shall guarantee its design, operation, and functionality of the System(s), in accordance with the Agreement Documentation
- 2.3 Complete Solution. Contractor will supply all labor, devices/equipment, and services necessary to provide the System(s) in accordance with the Purchase Price set forth in Section 3.1. The Contractor represents and warrants that the purchase of the System(s) and installation and implementation services provided to the District will constitute a fully operational solution as contemplated by the Agreement Documentation.

3 PAYMENT

- 3.1 Purchase Price. The Contractor agrees to sell to the District and the District agrees to purchase the System(s) and Services upon the terms and conditions set forth in this Agreement at a price not to exceed:
\$_____.

3.2 Payment Terms: Payment shall be in accordance with the following schedule:

- (A) Progress billing can be submitted monthly for equipment that is delivered and installed, based on a mutually agreed-upon percentage of completion between the District and the Contractor. Total progress payments shall not exceed 90 percent of the total Purchase Price. Progress billings shall reflect the 10 percent retainage referenced below.
- (B) Ten percent of the total Purchase Price will be held as retainage and will be payable within (30) thirty days of final acceptance of the completed System(s) by the District or its designated representative. Fifty percent of the retainage will be payable upon delivery of Documentation. The remaining 50 percent of the retainage shall be payable based upon the final acceptance of all Sites.

3.3 Request for Payment. The Contractor shall submit to the District's project coordinator the standard AIA Application for Payment forms upon completion of the Payment Terms referenced in Paragraph 3.2 above. Approved invoices shall be paid within thirty (30) days from date of approval of the invoice. In the event of disputes an invoice is not approved, the District shall notify the Contractor within ten (10) days of receipt of the invoice.

3.4 Performance Bonds. The Contractor shall provide a Performance Bond and a labor and materials payment bond upon award of this Agreement in the form acceptable to the District. The bonds shall be equal in amount to the total Purchase Price. The Surety of the bond shall remain in effect for one year after all acceptance of the entire project has been executed by the District. Said bonds shall be provided by a Surety having a rating of A- or better from A. M. Best and Co., and said Surety shall be authorized to do business in the State of Michigan. In the event that the Contractor fails to perform its obligations under any contract between the Contractor and the District, the performance bond shall be paid to the District. The Contractor further agrees to save and hold harmless the District and its agents from all liability and damages of every description in connection with any subsequent contracts with any third parties. The Contractor shall submit the performance bond to <<<Client Name>>> within two weeks of the Effective Date of this Agreement or prior to the start of work, whichever comes first. This Agreement shall be unenforceable by the Contractor against the District until the terms of this section have been satisfied. The cost of said bonds is included in the Purchase Price referenced in Section 3.1.

3.5 Taxes. The Purchase Price is *inclusive* of any applicable taxes. The District, however, is a tax-exempt entity except if the project makes additions and/or enhancements to real property.

3.6 Purchase Quantities. The District reserves the right to adjust upward, or downward the quantities of items purchased without altering the unit Purchase Price upon award and throughout the term of this Agreement.

3.7 Payment Disputes. Disputes regarding requests for payments will be communicated to Contractor by the District, in writing, within thirty (30) days of the receipt of invoice. Payments will not be delayed unless Contractor is unable to resolve the matter to the District's satisfaction ten (10) days prior to payment due date.

4 SYSTEM DEPLOYMENT

- 4.1 Project Manager. The Contractor will designate a Project Manager for each project involving services for the duration of this Agreement. Project Management will be within the guidelines as defined in the RFP or as subsequently amended and mutually agreed to by both parties.
- 4.2 Legal Compliance. The Contractor shall comply fully with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations and codes as well as all applicable provision of the Occupational Safety and Health Act. These include, but are not limited to, all policies concerning the use of the Sites and appropriate behavior of persons in or on the Sites, such as the prohibitions of sexual harassment or the use or possession of tobacco or alcohol.
- 4.3 Employee Qualification. All Contractor's employees shall be thoroughly experienced in the particular class of work in which they are employed. In the event the District determines that Contractor's employees are unqualified, unresponsive, or otherwise unacceptable, Contractor will remove and replace said employees from the project in consultation with the District.
- 4.4 Status Meetings. The Contractor shall coordinate and participate in regular status meetings between the District Project Coordinator (Plante & Moran) and the Contractor Project Manager as identified in the RFP, at which time a list of open items with targeted responsibility and due dates will be established.
- 4.5 Access to Sites. The Contractor will coordinate access to the Sites per the procedures outlined by the District.
- 4.6 Documentation. The Contractor shall provide all Documentation as required in the RFP and applicable bulletins.
- 4.7 Testing. The Contractor shall perform all testing as to meet the specifications identified in the RFP and applicable bulletins.
- 4.8 Site Damage. Contractor shall be responsible for restoring the physical Site to its original status for any damage resulting from the actions or omissions of the Contractor, its employees, subcontractors, and consultants. The District shall determine whether the Contractor shall remedy the damage, or a third party shall remedy the damage, to be compensated by the Contractor. The District shall have the authority to back-charge the contract amount or receive reimbursement from the Contractor related to remedying such damage.

5 5. WARRANTY

- 5.1 Warranties on System.
 - A. The Contractor shall provide all warranties as identified in its the RFP and, to the extent as accepted by the District, the Contractor's Response to the RFP and all applicable bulletins and clarifications. All warranties are effective from the date of the Final Acceptance of the System(s).
- 5.2 The Contractor Representations and Warranties. In addition to the warranties set forth above, the Contractor represents and warrants that:

- A. The Contractor possesses full power and authority to enter into this Agreement and to fulfill its obligations hereunder.
- B. The performance of the terms of this Agreement and of the Contractor's obligations hereunder shall not breach any separate agreement by which the Contractor is bound; and
- C. The Contractor is financially sound to perform its obligations hereunder and agrees that any material adverse change in such status shall be immediately communicated in writing to the District.

5.3 Contractor Warranty. Contractor-branded Devices will conform to the Contractor specifications current when the Device is shipped and will be free from defects in materials and workmanship for a period of three years [or five years if alternate is selected], depending upon a variety of factors, including the Device purchased and where the Device is shipped and used. Unless the parties otherwise agree in writing, Chromebook batteries that are included with Contractor-branded Devices will carry a minimum of a three (3) year limited warranty. Contractor shall provide to District a description of the available warranty for any particular Device in any location at District's request. The limited warranty period for Devices begins on the date of Final Acceptance. Services provided by Contractor shall be performed in a good and workman like manner.

5.4 Warranty. The Contractor warrants that all components provided under this Agreement, whether installed initially or under subsequent purchase orders, shall be: newly manufactured equipment or assembled from newly manufactured parts; approved by Underwriter's Laboratories; and, will be free from defects in workmanship or material for a period as specified in the RFP, and, to the extent accepted by the District, in Contractor's Response to the RFP, and all bulletins and clarifications from the date of Final System(s) Acceptance. During this warranty period, the Contractor shall furnish all new replacement parts, shipping costs, repaired parts, service labor, travel costs, and other repair costs at no cost to the District. At the conclusion of the warranty period, the District will consider Contractor support under a separate maintenance agreement. Contractor shall pass-through to the District all warranties of the third party manufacturers of any such components.

Final Acceptance of the System(s). The System(s) proposed shall be defined to be finally accepted by the District after meeting all requirements of this Agreement and the other Agreement Documentation. The District or District's representative shall be the sole judge of whether all conditions for Final Acceptance have been met. Where no installation services are performed, acceptance shall after delivery and verification that systems are in working order.

6 TERMINATION

6.1 Right to Terminate on Breach. Each party shall have, in addition to all other remedies available to it, the right to terminate this Agreement immediately upon written notice to the other party that the other party has committed a material breach of any of its obligations herein and such material breach shall not have been cured or corrected within ten (10) days following written notice of the same. Furthermore, if the District must regularly request that the Contractor cure breaches of this Agreement, such circumstances shall be grounds for termination of this Agreement for cause, even if each breach on its own would not be material.

6.2 5.6 Events upon Termination. Upon termination of this Agreement by either party for breach or default of the other party, each party shall be entitled to exercise any other right, remedy or privilege which may be available to it under applicable law or proceed by appropriate court action to enforce the terms of this Agreement or to recover damages for the breach of this Agreement. In the event of termination, title to all equipment purchased by the Contractor for integration into the project shall pass to the District, and Contractor shall deliver possession of said equipment to the District at a location to be designated by the District.

7 GENERAL

7.1 Risk of Loss. The Contractor assumes all risk of loss or damage to the Equipment prior to acceptance. Title to the Equipment will pass at that time.

7.2 Governing Law. This Agreement shall be construed in accordance with, and its performance governed by, the laws of the State of Michigan. The parties hereby agree to the exclusive jurisdiction and venue of courts sitting in Oakland County, Michigan.

7.3 Assignment. This Agreement and any interest herein may not be assigned or transferred, in whole or in part, by either party to any third party without the prior written consent of the other party, and any assignment or transfer without such consent shall be null and void.

7.4 Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

7.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties, supersedes all previous agreements, written or oral, and there are no understandings, representations, or warranties of any kind, express, implied or otherwise, not expressly set forth herein.

7.6 Non-Waiver and Modification. Waiver by either party of any default or breach of any provision of this Agreement by the other party shall not be construed as a waiver of any subsequent default or breach. No extension of time for payment or other accommodation granted to a party shall operate as a waiver of any of its rights under this Agreement. No provision of this Agreement may be modified by a party without the prior written consent of the other party.

7.7 Insurance. The Contractor agrees that it shall maintain Insurance as specified in **the Contractor's Response to the RFP** throughout the term of this Agreement. Contractor will name the District as an additional named insured under Contractor's commercial general liability insurance policy. Contractor agrees to deliver to the District either a duplicate original or certificate of all policies procured by Contractor in compliance with its obligations hereunder, together with evidence of payment thereof. Upon modification to Contractor's policy, Contractor shall provide thirty (30) days written notice to the District.

7.8 Survival. All provisions of this Agreement which, by their nature, should survive termination shall survive termination of this Agreement.

- 7.9 General Indemnification. The Contractor agrees to indemnify, hold harmless and defend the District, its Board and its Board members in their official and individual capacities, its successors, assignees, employees, contractors and agents from and against any and all claims, costs, expenses, damages, and liabilities, including reasonable attorney's fees, arising out of the (i) negligent acts or willful misconduct of the Contractor, its officers, directors, employees, subcontractors, consultants and agents, (ii) any breach of the terms of this Agreement by the Contractor, its officers, directors, employees, subcontractors, consultants and agents or (iii) any breach of any representation or warranty by the Contractor, its officers, directors, employees subcontractors, consultants and agents under this Agreement.. The District agrees to notify Contractor by certified mail, return receipt requested, of any claim, suit, action, or proceeding for which it may be entitled to indemnification under this Agreement. Contractor shall have the sole right, but not the obligation, to control the defense of any such claim. The District agrees to provide reasonable assistance to Contractor, at Contractor's expense, in defense of same.
- 7.10 Shipping of Equipment. All shipping and insurance costs to and from the Site are included in the Purchase Price. All payments to shipping agents and for insurance fees shall be made directly by the Contractor. The District shall make no payments to any firm concerning the shipment, installation, implementation, and delivery of Equipment which is not a part of this Agreement and for which exact payments are not described. Contractor shall be responsible for all arrangements for the shipment and receipt of equipment to the District's Site. The Contractor shall provide all properly trained representatives to unpack all items of Equipment and place this Equipment in the proper locations. The Contractor shall also be responsible for removal of all debris and packing materials from the Site resulting from the installation of the equipment. The District shall be named as an additional insured and as the Certificate Holder for all work under this Agreement.
- 7.11 Non-Waiver of Agreement Rights. It is the option of any party to this Agreement to grant extensions or provide flexibilities to the other party in meeting scheduled tasks or responsibilities defined in the Agreement. Under no circumstances, however, shall any parties to this Agreement forfeit or cancel any right presented in this Agreement by delaying or failing to exercise the right or by not immediately and promptly notifying the other party in the event of a default. In the event that a party to this Agreement waives a right, this does not indicate a waiver of the ability of the party to, at a subsequent time, enforce the right. The payment of funds to the Contractor by the District should in no way be interpreted as acceptance of the System(s) or the waiver of performance requirements.
- 7.12 Patents, Copyrights and Proprietary Rights Indemnification. The Contractor agrees to indemnify, hold harmless and defend, at its sole cost and expense, the District from any claim or suit brought against the District arising from claims of violation of United States patents or copyrights or claims of misappropriation or misuse of trade secrets resulting from the Contractor or the District use of any equipment, technology, Documentation, and/or data developed in connection with the Services and devices described in this Agreement. The District will provide the Contractor with a written notice of any such claim or suit. The District will also assist the Contractor, in all reasonable ways, in the preparation of information helpful to the Contractor in defending the District against this suit.

In the event that the District is required to pay monies, in defending such claims, resulting from the Contractor being uncooperative or unsuccessful in representing the District's interest, or in the event that the District is

ordered to pay damages as a result of a judgment arising out of an infringement of patents and/or copyrights, Contractor agrees to fully reimburse for all monies expended in connection with these matters. The District retains the right to offset against any amounts owed Contractor any such monies expended by the District in defending itself against such claims.

Should a court order be issued against the District restricting the District's use of any device, and should the Contractor determine not to further appeal the claim issue, at the Contractor's sole option the Contractor shall provide, at the Contractor's sole expense, the following:

- A. Purchase for the District the rights to continue using the contested device(s), or
- B. Provide substitute devices to the District which are, in the District's sole opinion, of equal or greater quality.

If (A) or (B) are not commercially feasible, Contractor will refund all monies paid to the Contractor for the device(s) subject to the court action. Subject to the Limitation of Liability set forth herein, the Contractor shall also pay to the District all reasonable related losses related to the installation and conversion to the device(s) and for all reasonable expenses related to the new device(s).

- 7.13 Nondiscrimination By Contractor Or Agents Of Contractor. Neither the Contractor nor anyone with whom the Contractor shall contract shall discriminate against any person employed or applying for employment concerning the performance of the Contractor responsibilities under this Agreement. This discrimination prohibition shall apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, sex, religion, age, national origin, or ancestry. A breach of this covenant may be regarded as a default by the Contractor of this Agreement.
- 7.14 Subcontractors. When using any subcontractors not stated in the Contractor's Response to the RFP, the Contractor must obtain written prior approval from the District for activities or duties to take place at the District's Site. In using subcontractors, the Contractor agrees to be responsible for all their acts and omissions to the same extent as if the subcontractors were employees of the Contractor.
- 7.15 Effect of Regulation. Should any local, state, or national regulatory authority having jurisdiction over the District enter a valid and enforceable order upon the District which has the effect of changing or superseding any term or condition of this Agreement, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, this Agreement shall remain in effect, unless the effect of the order is to deprive the District of a material part of its Agreement with the Contractor. In the event this order results in depriving the District of materials or raising their costs beyond that defined in this Agreement, the District shall have the right to rescind all or part of this Agreement (if such a rescission is practical) or to end the Agreement term upon thirty (30) days written prior notice to the Contractor. Should this Agreement be terminated under such circumstances, the District shall be absolved of all penalties and financial assessments related to cancellation of this Agreement.
- 7.16 Non-Collusion Covenant. The Contractor hereby represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement. In addition, the Contractor agrees that a duly authorized Contractor representative will sign a non-collusion

affidavit, in a form acceptable to the District acknowledging that the Contractor has not received any incentive or special payments, or considerations related to the provision of System(s) and Services described in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first set forth above.

DISTRICT: Farmington Public Schools

CONTRACTOR:

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____