

## CONTRACT

SAMPLE

## ***Agreement for Installation of Technology Hardware and Software Equipment***

Between \_\_\_\_\_ (Contractor)  
and \_\_\_\_\_ (Owner)  
for \_\_\_\_\_ (the work)

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## AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2004, between \_\_\_\_\_, (“Contractor”), with its principal offices located at \_\_\_\_\_, and \_\_\_\_\_, (“Owner”), with its principal offices located at \_\_\_\_\_.

### RECITALS

- A. The Contractor is involved in the design, supply, installation, documentation, training, and warranty of \_\_\_\_\_ (*describe work*) as described in the Request for Proposal (“RFP”) and the associated Addenda, as issued by the Owner.
- B. The purpose of this Agreement is consistent with and in accordance with the Request for Proposal (RFP) and associated materials.

In consideration of the facts stated above, the mutual covenants and agreements of the parties, and other valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, IT IS AGREED:

### ARTICLE 1 – CONTRACT DOCUMENTS

1.0 Contact Documents. The Contract Documents consist of and, in case of conflict, shall be interpreted in this order:

1. Agreement for Installation of Hardware and Software Equipment
2. Addenda (*listed separately in included documents*)
3. Request For Proposal (RFP) including Appendices and Blueprints (*if applicable*)
4. Contractor’s Bid Response
5. Performance & Labor Bond
6. Required Insurance
7. Payment Schedule

These documents form the Contract, and are as fully a part of the Contract as if repeated herein. The contract represents the entire integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral.

### ARTICLE 2 – SCOPE OF WORK

2.0 Contract Work. The Contractor shall execute the entire work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

2.0.1. Contract Initiation. The Contractor is authorized to proceed with the work, as outlined in the project documents, upon complete execution of this agreement. This contract **is not** subject to the Universal Service Fund (E-rate) reimbursement program and, as such, the contractor may proceed with the work and invoicing accordingly.

2.0.2. The Owner is not obligated to compensate the Contractor for any fee, expense, or other cost incurred prior to the execution of this contract, unless stated otherwise under a separate authorized document (either a Letter of Intent or a valid Purchase Order). All work performed by the Contractor from here forward will be compensated according to this agreement.

2.0.3. If the USF program expands eligible items to include services and components performed under this agreement, the Contractor agrees to amend this Agreement in order to take full advantage of the expanded discounts.

2.1. Labor and Equipment. The Contractor shall provide all labor, equipment, materials, transportation, inspections, permits, fees, testing, and supervision necessary to provide the installation of the “system” as specified in the RFP.

2.2. Owner’s Right to Stop the Work. If the Contractor fails to correct work which is not in accordance with the requirements of this contract document as stated herein, or fails to carry out work in accordance with the contract documents, the Owner may issue a written order to the Contractor to stop the work or any portion thereof until the cause for such order as been eliminated.

2.3. Owner’s Right to Carry Out the Work. If Contractor defaults or neglects to carry out the work in accordance with the contract documents and fails, within a seven day period after receipt of written notice from the Owner, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may carry out the work themselves or hire others. In such case, an appropriate change order shall be issued deducting the costs of correcting such deficiencies, including the Owner’s expense and compensation for the Owner’s Representative(s)’s work. Additional services may be necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner and/or the Contractor’s bonding company.

### **ARTICLE 3 – ADMINISTRATION OF THE CONTRACT**

#### 3.0 Owner’s Representative(s)

3.0.1 Contract Administration, Project Management, and final system testing / acceptance may be carried out by the Owner, the Technology Designer, the Construction Manager, or a combination thereof – see Amendment A for specific responsibilities pertaining to this Agreement. From hereafter, the term “Owner’s Representative” means the appropriate party(ies) that have direct responsibility in supervising the Contractor’s work.

3.0.2 The Owner’s Representative will provide contract administration through final acceptance.

3.0.3 The Owner’s Representative(s) will accept all payment applications, visit the job site, track progress, and review the quality of installation to verify payment requests as needed.

3.0.4 The Owner’s Representative(s) have no control over and are not in charge of, or responsible for, the construction means, methods, techniques, sequences or procedures or for the safety precautions and programs in connection with the work. These are solely the Contractor’s rights and responsibilities.

3.0.5 The Owner’s Representative(s) will not be responsible for the Contractor’s failure to perform the work in accordance with the requirements of the contract documents. The Owner’s Representative(s) will not have control over, will not be in charge of, and will not be responsible for acts or omissions of the Contractor, Subcontractor, their agents or employees, or any other persons or entities performing portions of the work.

3.0.6 Based on receipt and verification of the Contractor’s applications for payment, the Owner’s Representative(s) will recommend payment to the Owner in such amounts.

3.0.7 The Owner’s Representative(s) will have authority to reject work that does not conform to the contract documents.

3.0.8 The Owner’s Representative(s) will review and approve, or take other appropriate action, on the Contractor’s submittals.

3.0.9 The Owner’s Representative(s) will prepare field change orders and recommend acceptance to the Owner. The change order becomes part of the Agreement upon signature of all parties.

3.0.10 The Owner's Representative(s) will conduct final testing of the "system" to determine final system acceptance. The Warranty period begins upon system acceptance or as stated in Amendment A.

3.0.11 The Owner's Representative(s) will interpret matters concerning performance under and requirements of the contract documents upon written request of either the Owner or Contractor. The Owner's Representative will respond within 30 days of all requests.

#### **ARTICLE 4 – CONTRACT SUM**

4.0 Purchase Price. The Purchase Price for the work described in the RFP and associated project documents shall be as follows:

**NOT TO EXCEED:**

**(\$xxx,xxx,xxx.xx)**

Breakdown of the award is as follows:

Base Bid: \$

Adjustments / Add Alternates:

PLM Bond:

Total:

4.1 A final schedule of contract values (breakdown of labor and materials costs on a building-by-building basis) will be prepared by the Contractor, and made part of this contract. The Contractor is required to submit the schedule of values to the Owner's Representative(s) for review and approval prior to submittal of the first invoice.

4.1.1 The District reserves the unrestricted right to reduce, or increase, the contract amount, via the change order process, by deducting the scope of work. Unit pricing, as specified in the bid proposal, will be used to control contract adjustments. Any such action will be taken before specific work on a building or on a project component has commenced.

4.1.2 No restocking fees, additional administrative fees, etc. will be permitted associated with work reduction.

4.1.3 In the event this work becomes eligible for USF reimbursements, the Contractor agrees to amend this Agreement as needed to fully comply with the USF program.

4.2. Application for Payment. The Owner shall make progress payments up to 90% of all components installed or materials stored – 10% will be retained/withheld until system final acceptance.

4.3. Amendment A contains a payment schedule. The vendor must submit the invoice by the stated date in order to receive funds in the following month. Absence of meeting the established date will delay the payment until the following month. All invoices must be submitted to the Owner's Representative for review and verification.

4.4. Applications for payment / invoices shall not be deemed received until the Contractor has provided the required supporting documentation (waivers of liens, packing slips, warehouse insurance, etc.).

4.5. The required invoice method (AIA G702/G703 form, invoice, etc.) is defined in Amendment A.

4.6. Universal Service Fund. If the Owner is approved by the Schools and Libraries' Universal Service Fund ("USF") Program, all invoices shall be subject to the applicable discount and other requirements set forth for the USF program in the RFP. In such cases, the vendor shall follow the program's guidelines and act on the Owner's behalf in good faith.

## **ARTICLE 5 – PERFORMANCE OF WORK**

5.0 The Contractor shall provide (as applicable) and pay for labor, materials, equipment, tools, shipping, storage, applicable taxes, etc. needed for a fully operational “System.”

5.1 The Contractor may make substitutions only with the consent of the Owner after evaluation by the Owner’s Representative(s) and in accordance with the change order.

5.2 The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

5.3 Inspection of the Site. The Contractor represents that it has visited and obtained all pertinent information concerning the site locations, surrounding conditions and accessibility for delivery of materials. The Contractor represents that it has paid particular attention to limitations imposed on its operations by the existing activities and has taken such into account in preparing its Contract Price. Failure on the part of the Contractor to have obtained all information necessary to complete all work in connection with the “System” does not release the contractor of its responsibilities.

5.4 Review of Contract Documents. It is the contractor’s responsibility to identify all field conditions that may impact the contract scope and materials provided. Any field changes or inconsistencies discovered by the Contractor shall be reported promptly to the Owner’s Representative(s).

5.5 Any system design errors or omissions are the Contractor’s responsibility to correct at no cost to the Owner or the Owner’s Representative(s). The Contractor is required to ascertain that the contract documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations of all applicable local, state, and Federal codes. Any non-conformity discovered or made known to the Contractor shall be reported promptly to the Owner’s Representative(s).

5.6 The Contractor shall supervise and direct the work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract unless the contract documents give other specific instructions.

5.7 Omissions. The Contractor shall be responsible for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the work for or on behalf of the Contractor or any of its subcontractors.

5.8 Laws. The Contractor shall comply with all federal, state and municipal laws, rules, regulations, ordinances, or orders governing or affecting in any way the work under this contract and shall give all notices and obtain all permits necessary and required for this work and shall pay all costs and fees for the same, except as otherwise set forth in this Agreement.

5.9 Non-Compliance with Laws. If the Contractor performs work that is contrary to the laws, statutes, ordinances, building codes, and rules and regulation, the Contractor shall assume appropriate responsibility for such work and shall bear the costs attributable to the correction.

5.10 Staffing. The Contractor shall employ a qualified Project Manager, System Engineer(s), certified installers, etc. as needed in carrying out the work. The Project Manager will be the only contact with the Owner’s Representative(s) and is responsible for the overall project.

5.11 Prevailing Wage. If applicable to the work being performed, prevailing wage laws shall be followed by all parties associated with the construction, installation, and maintenance of the System.

5.12 Protection of Persons and Property. The Contractor agrees to exercise special precautions to avoid damage to facilities of the Owner and each of its participants and of others. The Contractor assumes

responsibility for any and all damages to such facilities arising out of or caused by the conduct or property of the Contractor whether by the negligence of the Contractor, its employees, or agents.

5.13 Contractor's Responsibility For Injury. The Contractor shall assume 100% responsibility for bodily injury to persons (including death or damages sustained or claimed by the Contractor's employees, Subcontractor employees, Owner's employees, students, or individuals), damage to property (including property of the Owner, other Contractors, Subcontractors, individual, etc.), and theft or vandalism that occur due to direct or indirect action of the Contractor. The Contractor shall assume all responsibility for and shall indemnify and hold harmless the Owner, Owner's Representative(s), and its participants from and against all losses, liabilities, claims, demands, payments, actions, legal proceedings, recoveries, costs, expenses, attorney fees, settlements, judgments, orders, and decrees.

5.14 Notwithstanding the foregoing, the Contractor shall not be required to indemnify the Owner against liability for damages arising out of bodily injury to persons, damage to property, or interruptions to service caused by or resulting from the sole negligence of the Owner or their agents or employees.

5.15 Scheduling of Work. The Contractor, promptly after the date of commencement of construction, shall prepare and submit to the Owner's Representative(s) a detailed construction schedule for the work. The schedule shall not exceed time limits currently under the contract documents, shall be revised at appropriate intervals as required by the conditions of the work and project, shall be related to the entire project to the extent required by the contract documents, and shall provide for expeditious and practicable execution of the work. The Contractor shall update the timeline as required to reflect approved construction delays.

5.16 Industry Standards. All work must meet applicable established industry codes (NESC, American Society For Testing Materials, IEEE, TIA/EIA, BICSI, MicTA, UL, FCC, MPSC, Utility Companies, etc.).

5.17 Safety. The Contractor is responsible for job safety and will exercise precautions at all times for the protection of persons and of property. The Contractor shall follow the safety provisions of applicable laws, rules, regulations, safety standards, and building and construction codes. The Contractor shall guard against safety hazards in accordance with the safety provisions of the manual of accident prevention in construction, published by the Associated General Contractors of America, to the extent that such provisions are not in conflict with applicable laws.

5.18 ACM. Under no circumstances may the Contractor use or bring on site any harmful agents, asbestos containing materials (ACM), or disturb an existing ACM area. The vendor is required to review the MSDS and MIOSHA sheets prior to start of work. All cost associated with "clean up" of Contractor's actions will be corrected at the Contractor's expense.

5.19 Fire Protection. The Contractor will comply with all applicable laws, rules, and regulations of the Michigan Department of State Police, Fire Marshall Division, the State Fire Safety Board, and local agencies.

5.20 **NO SMOKING** will be allowed on the Owner's premises.

5.21 Cleaning Up. The Contractor shall breakdown and remove all boxes, packing materials, and installation debris from the site at the end of each shift. If needed, the vendor will make arrangements for a dumpster. Location of the dumpster must be approved prior to placement.

5.22 Use of Subcontractors

5.22.1 The Contractor may use a subcontractor for a portion of the work. The Owner's Representative has the authority to remove any individual, a crew, or a firm from the project based on inappropriate behavior, lack of performance, or past problems.

5.22.2 The Contractor shall remove the person / Subcontractor within eight (8) hours of a written complaint by the Owner's Representative(s) as directed by the Owner. The Contractor shall replace the person / Subcontractor within 72 hours of the complaint. No delay in the project will be permitted.

5.22.3 The Contractor will require all Subcontractors to sign an agreement that binds them to all the terms and conditions as stated in this Agreement.

5.23 Termination by the Owner For Cause.

5.23.1 The Owner may terminate the contract if the Contractor: 1) repeatedly refuses or fails to meet timelines and/or supply enough properly skilled workers or materials, 2) fails to make payments to Subcontractors or suppliers, 3) disregards laws, ordinances, or rules, or 4) commits a breach of a provision of the Contract Documents.

5.23.2 When any of the above conditions exist, the Owner may, without prejudice to any other rights or remedies and after giving seven (7) days written notice to the Contractor's surety company, terminate employment of the Contractor and may:

- a) Take possession of the site, of all materials, and of the Contractor's equipment and tools
- b) Accept assignment to Subcontractors
- c) Finish the Work by whatever reasonable method the Owner deems expedient. Upon request of the Contractor, the Owner shall furnish a detailed accounting of the costs incurred by the Owner in finishing the work.

5.23.3 When the Owner terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment until the Work is finished.

5.23.4 If the unpaid balance of the Contract Sum exceeds the costs of finishing the work (including compensation for additional Owner Representative(s) services and expenses and other damages incurred by the Owner), such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days.

5.23.5 Absence of the Contractor to cover the costs associated with finishing the work will warrant a claim against the Contractor's PLM bond and recovery of damages as permitted by Law.

## **ARTICLE 6 – TESTING AND TRANSFER OF OWNERSHIP**

6.0 Time of Completion. The Contractor shall achieve Substantial Completion of the Work with final system acceptance per the attached timeline – see Amendment A.

6.1 Substantial Completion. Substantial Completion shall be defined as the complete installation of the system with all contractor testing and documentation responsibilities completed, but prior to final system acceptance.

6.2 Testing. Depending on the "System" being installed, either Stage 1 or Stage 2 testing will be performed. Stage 1 involves physical verification of components. Stage 2 involves the performance and operational testing of the "System" upon completion.

6.2.1 Stage 1 - Physical Inventory Testing. Responsibility for physical loss or theft of components (i.e., computers, monitors, LAN switches, phone instruments, etc.) will transfer to the Owner upon receipt of an authorized signature. The Contractor is required to notify the Owner's Representative prior to delivery of product to the site. The Owner's Representative will make arrangements to inventory the Bill of Materials at the Owner's site or the Contractor's warehouse. Upon verification and documentation of serial numbers (provided by the Contractor), the Owner's Representative will sign a receipt indicating all items are present. Verification only transfers the physical loss or theft of the product to the Owner's General Insurance.

6.2.2 Stage 2 - Performance Testing. The Owner's Representative(s) will conduct the final system testing within thirty (30) days upon written notification of substantial completion and receipt of final documentation. A meeting will be scheduled with all parties to review the documentation, warranty information, and perform a final system test.

6.2.3 If it is determined that the work is completed, the Owner's Representative will recommend final payment. Final payment represents the start of warranty for all Contractor provided components and systems for both parts and labor. Note: All Owner direct purchases (i.e., computers) will have a start of warranty (parts only) based on the ship date. Warranty for labor on Owner direct purchases begins upon system acceptance.

6.2.4 If the Owner, or the Owner's Representative(s), determine that the System does not meet the specifications, a written report of any deficiencies will be provided to the Contractor within fourteen (14) working days from the date of inspection.

6.2.4.1 The Contractor shall have fourteen (14) working days from receipt of the punch list to correct all deficiencies. When the deficiencies have been corrected, the Contractor shall notify the Owner's Representative(s) whom will return within fourteen (14) working days to verify the correction.

6.2.4.2 Absence of correcting the punch list items within the 14 days places the Contractor on notice for non-performance – see Article 5.23 Termination by the Owner For Cause for additional information. Conditions outside of the Contractor's control will be reviewed by the Owner's Representative to extend the time period if necessary. However, under no circumstance will the time exceed 30 days. The Owner's Representative will provide good faith and judgment in advising the Owner accordingly.

6.3 The criteria used to proof operation and performance of the system is defined in the RFP.

6.4 Documentation. Prior to Substantial Completion, the Contractor shall furnish to the Owner's Representative multiple documentation sets (see RFP for quantity) including test results, network diagrams, as-builts, software licenses, asset tag information, configuration information, etc. – see the RFP for a complete list of documentation items to be included in the final package.

6.5 Acceptance of System. The system shall be deemed accepted and completed by the Owner following successful testing for "Substantial Completion," outlined above. The Owner's Representative shall issue an acceptance letter to the Owner and copy it to the Contractor.

## **ARTICLE 7 – WARRANTY**

### **7.0 General**

7.0.1 The Contractor / manufacturers guarantees that all hardware and software provided in the "System" is new and of the latest model / version at the time of installation with all software patches installed.

7.0.2 The Contractor / manufacturers acknowledges that they are the owner of the "System" (software and hardware) and have the legal right to sell, distribute, install, and provide a limited license to the Owner to use per the RFP and contract documents. The Contractor / manufacturer will defend and hold harmless the Owner and the Owner's Representative(s) from all claims for patent and copyright violations.

7.0.3 The Contractor acknowledges that they are certified as an integrator to install, maintain, and repair the "System" and related components.

7.0.4 Assignment of Warranties. The warranties and representations may be assigned to the extent permitted by equipment manufacturers and suppliers.

### **7.1 Construction Warranty**

7.1.1 The Contractor agrees to provide a Construction Warranty for 12 months following final system acceptance. The Construction warranty covers all oversights, if any, during the final walk through. If it is determined that an item was missed during the 12 month period, the Contractor shall return and correct the oversight within 30 days at no cost.

7.1.2 The Construction Warranty does not cover system configuration changes caused by system use, items superseded by change orders, or typical service maintenance related items.

## 7.2 Parts and Labor Warranty

7.2.1 All hardware, software, and labor provided in the “System” is covered by a depot warranty – see the RFP for warranty duration and type (OEM or Contractor). The Contractor will respond to all service calls within 8 business hours of a trouble call.

7.2.2. The warranty covers all on-site parts and labor required to repair or fix the failed component via depot service (remove component, send out for repair, reinstall upon return, and reconfigure to normal operation).

7.2.3. The Contractor covers all labor, transportation, shipping expenses, etc. as part of the base contract. The failed components will be removed, tagged with a service ticket, documented, and overnight shipped (next day air) for authorized repairs.

7.2.4. The Owner may have spare parts on-site which the Contractor will install while the permanent unit is sent out for servicing.

7.2.5. Upon receipt of the repaired component, the Contractor will have the unit reinstalled within 8 hours.

7.2.6. Additions, moves, and modifications, performed after completion of the System are not covered under the depot warranty.

7.2.7. The Contractor shall pass on to the Owner any manufacturer or supplier warranties for equipment and facilities purchased under this Agreement.

7.2.8. All Warranty(ies) shall be free of any obligation of the Owner to purchase and maintain any service contract.

## 7.3 Service Maintenance

7.3.0 This section only applies if the Owner accepted a Service Maintenance Contract as part of the award. See the RFP and Amendment A for additional information.

7.3.1 The Contractor shall furnish maintenance services to the Owner as specified in the RFP and Amendment A. The Contractor shall be responsible for conducting all routine, ongoing, and emergency maintenance services as purchased under this Agreement.

7.3.2 Statement of Maintenance Charges. In each instance where charges for general routine, ongoing, or emergency maintenance are billed to the Owner, the Contractor shall provide to the Owner a statement detailing the hourly charges for labor and use of equipment and the costs of all materials to be charged. The hourly charges for labor and use of equipment for the first year of the term of this agreement are set forth in the Response to the RFP. Increases in charges for labor and use of equipment for general routine, ongoing, or emergency maintenance shall not exceed on an annual basis the most recent annual increase in the Consumers Price Index-all Urban Consumers (CPI-U) for Detroit, MI, as published by the U.S. Department of Labor, Bureau of Labor Statistics.

7.3.3 Performance of Modifications. The Contractor or another entity to which the Owner has provided consent, which shall not be unreasonably withheld, shall perform all modifications. Charges for work for modification and/or system changes shall be handled per the RFP.

7.3.4 The Owner shall not be liable for payment for any system modification made solely for the benefit of Contractor. All maintenance service agreements shall be performed per the RFP and Amendment A, as applicable.

## **ARTICLE 8 – INSURANCE**

### 8.0 Proof of Insurance

8.0.1 The Contractor shall, at its sole expense, secure and maintain in force in the name of the Contractor during the term of this agreement, policies of insurance of the following types:

- (a) Workers' Compensation Insurance with Michigan statutory limits;
- (b) Comprehensive General Liability Insurance with a minimum combined bodily injury and property damage single limit of at least \$2,000,000 per occurrence (or as stated in the RFP). The Owner and Owner's Representative(s) shall be included as an Additional Insured as its interests may appear;
- (c) Contractual Liability Insurance specifically endorsed to cover liability assumed by the Contractor under this agreement with the Owner, products liability, and excess liability insurance, in addition to that specifically named, in the amount of at least \$2,000,000 (or as stated in the RFP);
- (d) Builder's risk (fire and extended coverage) to insure 100% of the value of the property for the benefit of the Contractor, of the Owner, and any Subcontractor(s) as their interests may appear;
- (e) Automobile Liability Insurance with a minimum combined bodily injury and property damage single limit of at least \$3,000,000 per occurrence, providing coverage for owned, non-owned and hired vehicles.

8.0.2 Proof of the above insurance shall be provided to the Owner prior to commencing work. The Contractor's insurance companies shall be bound to provide a minimum of 30 days notice to the Owner of any pending lapse of the Contractor's insurance.

#### 8.1 Bonding Requirements

8.1.1 The Contractor shall, at its sole expense, furnish to Owner security bonds of the following types and amounts:

Performance Bond	100%
Labor and Material Bond	100%

Each such bond shall be with a surety company licensed to do business in the State of Michigan, or posted as a cash deposit in lieu of bond an equivalent amount.

8.1.2 The bidder awarded the contract on this project shall be required to provide a Performance Bond and a Labor and Materials Payment Bond covering the faithful performance of the contract and the payment of obligations arising there under in a penalty sum equal to 100% of the amount of the contract sum (includes change orders). Said bonds shall remain in effect for 12 months after the date established as the start of a one-year guarantee period. Premiums shall be included and paid for by the Contractor. Bonds shall be submitted on AIA Document A311/CM or an adequate and proper surety company form conforming to the AIA document A311/CM. It is required that the surety company complies with the following:

- (a) Be listed in the "Federal Register," latest applicable issue, by the U.S. Department of the Treasury, Fiscal Service, Bureau of Government Financial Operations (Circular #570);
- (b) Not exceed, at the time of bidding or issuance of Contract for its project, the underwriting limitations (on any one risk) as stipulated in the "Federal Register";
- (c) Be acceptable to the Owner;
- (d) Insurance and Surety companies shall be deemed qualified and acceptable to the Owner in connection with Contractor bonding and insurance requirements under said contracts **only** if such companies have a policy holder's rating of A+/-, A+, A or A-, a financial category not less than Class VII, all shown on Best's Key Rating Guide, latest

edition provided. However, the bond shall be furnished by one of the aforesaid qualified Sureties who is also listed in the Department of the Treasury Circular 570, Volume 41, No. 132 Part V (Federal Register) and is licensed in the State of Michigan and the penal sum of the bond does not extend the underwriting limitation set forth in the subject Circular, unless the excess, if any, is reinsured with the approval of the Owner.

(e) The bidder shall require the attorney-in-fact that executes the required bonds on behalf of the Surety to affix thereto a certified and current copy of his power-of-attorney indicating the monetary limit of such power;

(f) The bonds shall be made for not less than 100% of amounts due under the (each) Contract, for base bid and any alternates or other cost included at the time of the execution of the Contract. The contractor shall have made provisions to cover additional amounts that may raise the total Contract amount, which may be authorized as provided for under "Changes In The Work". This may be done either by making provisions for such additional items in the text of the bond or by the issuance of an amendment or rider to provide for the additional coverage. There will be no increase in Bond cost attributed to this project unless an increase in the bond is requested specifically.

#### **ARTICLE 9 – CHANGES IN THE WORK**

9.1 All system changes will be submitted to the Owner's Representative for review and recommendation. Upon Owner review, the Owner's Representative will draft a formal Change Order which incorporates the material and labor cost associated with work and a description of the work on a building-by-building level. The Change Order will be forwarded to all parties for review and approval (formal signature is required). Upon complete execution of the Change Order, the Contractor will proceed with the approved work accordingly.

9.2 The Contractor will submit material and labor costs as stated in the bid response. All unit pricing submitted in the bid proposal is binding through the duration of the project. All price drops will be passed on to the Owner and reflected in the Change Orders.

9.3 No administrative fee or penalty will be incurred for product restocking.

9.4 All Change Orders will be itemized separately on all invoices.

#### **ARTICLE 10 – INDEMNIFICATION**

10.0 The Contractor agrees, to the fullest extent permitted by law, to indemnify and hold the Owner and the Owner's Representative(s) harmless from any claims, losses, damages, liabilities, or expenses of any kind whatsoever (including reasonable attorney's fees and costs of defense) arising from any acts, errors, or omissions of the Contractor and its officers, directors, employees, agents, representatives, subcontractors, or consultants.

10.1 Notwithstanding the provisions of the Contractor's bid proposal, clarifications and exceptions, the Owner and Owner's Representative(s) do not assume any liability that the Contractor may incur to any third parties on account of its performance of this Agreement.

10.2 The Contractor agrees to promptly repair and indemnify and hold the Owner harmless on account of any damage it causes to Owner's facilities resulting from its work. If the Contractor fails to do so, in addition to any other remedies the Owner may have pursuant to this Agreement or by law, the Owner may withhold from any sums due to Contractor pursuant to this Agreement such amounts that are sufficient to cover the cost of repair or indemnity.

#### **ARTICLE 11 – TERMS AND OTHER PROVISIONS**

11.0 Term of Agreement. This Agreement shall remain in full force and effect through the warranty period.

11.1 Effectiveness. This Agreement supersedes any and all agreements, if any previously made, between the parties relating to the subject matter hereof and there are no understandings or agreements other than those included herein.

11.2 Construction and Governing Law. This Agreement has been executed in the State of Michigan, and shall be construed in accordance with the laws of the State of Michigan.

11.3 Delay of Performance. Contractor's sole remedy in the event its performance is delayed due to circumstances beyond its reasonable control is a reasonable extension of the time for it to complete its performance of this Agreement.

11.4 Survival. The provisions relating to Contractor's responsibilities for liability, indemnity, and holding the Owner harmless, as well as any warranties related to the materials provided or work performed under this agreement, shall be effective on the date of this Agreement and shall survive the completion or termination of this Agreement.

11.5 Assignment. This Agreement and the rights and duties hereunder may not be assigned or transferred by either party without the written consent of the other party.

11.6 Benefit. This Agreement shall be binding upon and insure to the benefit of the respective legal representatives, successors, and assigns of the parties.

11.7 Alteration. Except as otherwise provided for herein, this Agreement cannot be amended, altered, or any of its provisions waived on behalf of either party, except in writing by a duly authorized agent of either party

11.8 Attached Schedules. All of the Attachments and other documents referenced herein form an integral part of the understandings and agreements between the parties and, as such, are a part of this Agreement.

11.9 Headings. The paragraph headings used in this Agreement are included solely for convenience and shall not affect or be used in connection with the interpretation of this Agreement.

11.10 Severability. If any part of this Agreement is held to be invalid or unenforceable under the laws of the State of Michigan, the remaining provisions shall be enforceable to the maximum extent permitted by law; provided that such remaining provisions effectuate fully the intent of the parties as manifested herein.

11.11 Waiver. Waiver by either of the parties of any of the provisions, terms, or conditions of this Agreement shall not constitute a permanent waiver of any such provision, term, or condition, and that each of the provisions of this Agreement shall at all times remain in full force and effect until modified by the parties in writing.

11.12 Execution of Contract Documents. The Owner and Contractor shall sign the Contract documents. If either the Owner or Contractor or both do not sign all of the Contract documents, but nevertheless perform the work in accordance with the Owner's RFP, they shall be deemed subject to the terms of the Contract document.

11.13 Notices. All notices or communications required or permitted to be given under this Agreement shall be addressed as noted in the signature addresses.

(Owner)  
(Title) RFP

This Agreement is entered into as of the date of the Board Award and is executed in at least two original copies, one of which is to be delivered to the Contractor and one to the Owner.

Attn: \_\_\_\_\_, President

Contractor's Name: \_\_\_\_\_

Contractor's Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Attn: \_\_\_\_\_

District Name: \_\_\_\_\_

District Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Included Documents List Acknowledgement**

Document Name	Description	Number of Pages	Document Date	Acknowledgement Initials