

**NEW HAVEN UNIFIED SCHOOL DISTRICT
REQUEST FOR PROPOSALS #776**

Audio Video Systems

**CONTRACT
TERMS & CONDITIONS**

New Haven Unified School District

UNION CITY • SOUTH HAYWARD • (510) 471-1100

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CONTRACT AGREEMENT BETWEEN THE NEW HAVEN UNIFIED SCHOOL DISTRICT AND

This Agreement is dated for convenience on _____ and is entered into between _____, (hereinafter "Contractor") and the New Haven Unified School District (hereinafter "District").

WITNESSTH, that the Contractor and the District, for considerations stated herein, mutually agree as follows:

1. SERVICES CONTRACTOR AGREES TO PERFORM

The Contractor shall provide the District with [Audio Video Systems](#) to all requesting sites and administration offices as per [RFP #776 \(Bid/RFP#\)](#), received and opened on _____ consisting of signed Purchase Agreement Proposal, General Terms, Conditions, Instructions and Information for Bidders, Special Conditions and Bid Sheet. All Terms and Conditions of the RFP become part of this Contract.

2. INFRINGEMENTS – INDEMNIFICATION

The Contractor shall assume the defense of all claims and suits against the District, its officers and agents, for infringement of the patents, copyrights, or trademarks of any person arising out of the use by District, its officers or agents, or any article supplied under this Purchase Agreement Proposal, and the Contractor shall indemnify and hold harmless the District, its officers and agents, from any and all liability, loss, or damage arising from such claims or suits. The Contractor agrees to hold the New Haven Unified School District harmless from any and all claims and liabilities for damage to all persons, including but not limited to employees of the contractor arising out of and in the course of the performance of this agreement.

3. COMPENSATION

The Contractor shall be paid as per the RFP. Requests for compensation shall be monthly, complete with a breakdown of charges and receipts as applicable. Payments shall be made in a reasonable time upon approval that services have been rendered in a

professional and timely manner as set forth in Section 1 of this Agreement. The amount of money to be paid to the Contractor under this Agreement shall not exceed _____. If the scope of work described herein is increased, the Agreement amount may also be increased, provided that there is a prior written modification to the Agreement *and* a Board Resolution authorizing said increases. It shall be the responsibility of the Contractor to ensure that the total approved amount of the Agreement is not exceeded. Any work performed in excess of said amount shall not be compensated.

4. TERM OF AGREEMENT

The term of the contract shall be from the award date of _____ until completion.
Expected date of completion: July 31, 2017.

5. INSURANCE AND BONDS

The Contractor shall provide all required certificates of insurance and performance bonds as evidence thereof.

Prior to award, contractor must submit written evidence of the following insurance which must be maintained in force during the term of this contract:

AUTOMOBILE AND GENERAL LIABILITY INSURANCE

The Bidder shall take out and maintain during the life of the Agreement such General Liability and Automobile Liability Insurance providing protection against Bodily injury Liability and Property Damage as shall protect him/her, while performing work covered by the Contract, from any and all claims for damages for bodily injury including accidental death, as well as any and all claims for property damage which may arise from the Bidder's operations under the Contract, whether such operations are by him/herself or by anyone directly employed or retained by either of them. The limits of liability for each policy, both on a per accident or occurrence basis, and the aggregate amounts of such insurance, the exclusions, and the deductibles shall all be acceptable to New Haven Unified School District.

Commercial General Liability Insurance, including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments with limits of not less than \$1,000,000 for each occurrence and \$2,000,000.00 for General Aggregate.

- a. Comprehensive or Business Automobile Liability insurance with limits of not less than \$1,000,000 for each occurrence for combined single limit for Bodily Injury and Property Damage.
- b. Professional Liability insurance with limits of not less than \$1,000,000 for each occurrence.

- c. Workman's Compensation with Employers Liability limits of not less than \$1,000,000 or Statutory Limits per each accident.
- d. Employers Liability insurance with limits of not less than \$1,000,000 for each occurrence.
- e. If any policies are written on claims made from, the contractor agrees to maintain such insurance continuously in force for three years following the completion of this contract.
- f. Certificate of Insurance, satisfactory to the District, evidencing all coverage above shall furnished to the District before commencing any operations under this contract, with complete copies of policies upon District request.
- g. Approval of the insurance by the District shall not relieve or decrease the liability of the Contractor hereunder.
- h. The General Liability and Comprehensive Automobile Liability Insurance shall be endorsed to provide:
 - Name as additional insured the New Haven Unified School District, its board, officers and employees.
 - Such policies shall be primary insurance to any other insurance available to the additional insured, with respect to any claim arising out of this Agreement, and that insurance applies separately to each insured against whom a claim is made or a suit is brought against.
 - The certificate of insurance for the above shall provide 30 days advance written notice to Purchasing regarding cancellation, non-renewal or reduction of coverage of any of the above insurance.

6. TERMINATION

In the event the Contractor fails to perform any of its obligations under this Agreement, the District through the Chief Business Officer may terminate this Agreement, and all of the Contractor's rights hereunder ended. Termination shall be effective after ten (10) days written notice to the Contractor. No new work will be undertaken after the date of receipt of any notice of termination, or five days after the date of the notice, whichever is earlier. In the event of such termination, the Contractor shall be paid for its services under this agreement, up to the date of termination that has been performed to the satisfaction of the District.

The District may terminate this agreement in whole or in part for its convenience by giving 30 days written notice of its intent.

Upon receipt of written notice that this Agreement is terminated, the Contractor will submit an invoice to the District for an amount that represents the value of services

actually performed up to the date of termination for which the Contractor has not previously been compensated as per Section 3. Upon approval and payment of this invoice by the District, the District shall be under no further obligation to the Contractor, monetary or otherwise.

7. CONTRACTOR'S DEFAULT

Failure or refusal of the Contractor to perform or do any act herein required shall constitute default. In the event of any default, in addition to any other remedy available to the District, the District may terminate this Agreement pursuant to the terms of Section 6 herein. Such a termination shall not waive any other legal remedies available to the District.

8. LIQUIDATED DAMAGES:

Time is of the essence for all work under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, Contractor agrees that it shall pay to the District the sum of One Thousand Dollars (\$1,000) per day as liquidated damages for each and every day's delay beyond the time herein prescribed in finishing the Work. It is hereby understood and agreed that this amount is not a penalty.

In the event any portion of the liquidated damages are not paid to the District, the District may deduct that amount from any money due or that may become due the Contractor under this Agreement. The District's right to assess liquidated damages is as indicated herein and in the General Conditions.

The time during which the Contract is delayed for cause as hereinafter specified may extend the time of completion for a reasonable time as the District may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

9. LOSS OR DAMAGE:

The District and its authorized representatives shall not in any way or manner be answerable or suffer loss, damage, expense, or liability for any loss or damage that may happen to the Work, or any part thereof, or in or about the same during its construction and before acceptance, and the Contractor shall assume all liabilities of every kind or nature arising from the Work, either by accident, negligence, theft, vandalism, or any cause whatever; and shall hold the District and its authorized representatives harmless from all liability of every kind and nature arising from accident, negligence, or any cause whatever.

10. PAYMENT OF PREVAILING WAGES:

The Contractor and all Subcontractors under the Contractor shall pay all workers on all Work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code.

11. ENTIRE CONTRACT

All of the agreements between the parties are included herein and no warranties, expressed or implied, representations, promises or statements have been made by either party unless endorsed here in writing and no change or waiver or of any provision hereof shall be valid unless made in writing and executed in the same manner as the Contract.

12. ASSIGNMENT

The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, including the right to receive payment, burdens, duties or obligations without the prior written consent of the District.

Any assignment of the Contract by the Contractor with the approval of the District shall be subject to the terms and conditions hereof and to the rights of the District contained in the Contract. No transfer or assignment of the Contract by the Contractor shall release it from its obligations hereunder.

13. INDEPENDENT CONTRACTOR: PAYMENT OF TAXES & OTHER EXPENSES

The Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which the Contractor performs the service required of the Contractor by the terms of this Agreement. The Contractor shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between the District and the Contractor. Terms in this Agreement referring to direction from the District shall be construed as providing for direction as to policy and the result of the Contractor's work only and not as to the means by which such a result is obtained.

14. INCIDENTAL AND CONSEQUENTIAL DAMAGES

The Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from contractor's acts or omissions. Nothing in this agreement shall constitute a waiver or limitation of any rights, which the District may have under applicable law.

15. BUDGET AND FISCAL PROVISIONS

The Contract is subject to the budget and fiscal policies of the District. Charges will accrue only after prior written authorization certified by the District's Chief Business Officer and any amount of the District's obligation hereunder shall not at any time exceed the amount certified for the purpose and periods stated in such advance authorization. If funds are appropriated for a portion of a fiscal year, this agreement will terminate, without penalty, at the end of the term for which funds are appropriated, unless additional funds are appropriated. This section shall control against any and all other provisions of the Contract.

16. CONFLICT OF INTEREST

Contractor understands the following and certifies that it does not know of any facts which constitutes a violation

Contractor hereby certifies that no current Board member or employee of the New Haven Unified School District, and no one who has been a Board member or who has been employed by the New Haven Unified School District within the past two years has participated in bidding, selling or promoting this contract. Furthermore, Contractor certifies that no such current or former Board member or employee has an ownership interest in this contract, nor shall any such current or former Board member or employee derive any compensation, directly or indirectly, from this contract. Contractor understands that any violation of this provision of the contract shall make the agreement violable by the District.

Government Code of the State of California, Section 87100 et. seq. Public officials; state and local; financial interest.

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

17. PROPRIETARY OR CONFIDENTIAL INFORMATION OF THE DISTRICT

The Contractor understands and agrees, that in the performance of the work of services under this Agreement, or in contemplation thereof, the Contractor may have access to private or confidential information which may be owned or controlled by the District, and that such information may contain proprietary details, the disclosure of which to

third parties will be damaging to the District. The Contractor agrees that all information disclosed by the District, its employees or students. The Contractor also understands and agrees that the disclosure of such information by violates state and/or federal law. The Contractor agrees that all information disclosed by the District to the Contractor shall be held in confidence and used only in performance of the Agreement. The Contractor shall exercise the same standard of care to protect such information as is used to protect its own proprietary data.

18. MODIFICATION OF AGREEMENT

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

The District may order changes in the work herein required and may order extra materials and extra work in connection with the performance of the contract and the Contractor must comply with such orders, except that:

If changes in services are of such a nature as to increase or decrease the cost of any part of the work, the price fixed in the contract may be increased or decreased by such amount as the Contractor and the Chief Business Officer may agree upon as the reasonable and proper allowance for the increase or decrease in the cost of work, and

No order for any alteration, modification, or extra which will increase or decrease the cost of the services shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the Chief Business Officer. No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this contract.

19. ADMINISTRATIVE REMEDY FOR AGREEMENT INTERPRETATION

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Chief Business Officer who shall decide the true meaning and intent of the Agreement. The Chief Business Officer's decision shall be final and conclusive.

20. AGREEMENT MADE IN CALIFORNIA: VENUE

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Alameda County.

21. LAWS AND REGULATIONS

Articles and services covered by this contract must comply with applicable Federal, State, and Local Laws, ordinances, and other law requirements which are in effect at the day and year first herein about written. If any term or provision of this agreement shall be found to be illegal or unenforceable, notwithstanding, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

22. NON-COLLUSION

Bidder declares that the Bid is not made in the interest of, or on behalf of any undisclosed person, partnerships, company, association, organization or corporation; that the bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived or agreed with any Bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding, that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the Bidder or any other Bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further that the Bidder has not directly or indirectly submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

23. SUBCONTRACTING

The Contractor is prohibited from subcontracting this Contract or any services provided pursuant to this Contract unless such subcontracting is agreed to in writing and executed in the same manner as this Contract. No party on the basis of this Contract shall in any way contract on behalf of or in the name of the other party of this Contract, and violation of this provision shall confer no rights on any party and shall be void.

24. NON-DISCRIMINATION

Contractor agrees that it shall not discriminate on the basis of sex, race, religious creed, national origin, age, marital status, sexual orientation, gender identity, AIDS/ARC/HIV status, or disability, in its performance under this Contract.

25. SAFETY AND SECURITY

It shall be the responsibility of the Contractor to ascertain from, and comply with, the District’s rules and regulations pertaining to safety, security, and driving on school grounds, particularly when students are present.

26. BANKRUPTCY

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect, and any property or rights of such other party, tangible or intangible, shall forthwith be returned to it. The Contractor shall notify the District within ten (10) days of filing and bankruptcy petition under the Federal Bankruptcy Act.

27. The District’s terms and conditions will supersede any other terms and conditions submitted by the Contractor, in case of a conflict.

CONTRACTOR:

BY: _____
Signature

Title

(Date)

DISTRICT:

New Haven Unified School District:

BY: _____
Signature

CO-SUPERINTENDENT
Superintendent or Designee

(Date)