

13 – CONTRACTOR AGREEMENT

THIS AGREEMENT is entered into by and between the San Mateo-Foster City School District, hereinafter called "District", and IT Management Corporation, hereinafter called "Contractor,". District and Contractor are sometimes individually referred to as "Party" and collectively as "Parties." This Agreement is made with reference to the following facts:

WHEREAS, The District published a Request for Proposal and seeks to procure the work covered in the Agreement in accordance with Public Contract Code 20118.2;

WHEREAS, The Contractor understands that the Agreement is contingent on the District's receipt of federal and/or state funds for the work covered in this Agreement. If the District does not receive adequate federal and/or state funds, this Agreement shall be null and void. In the event that the Agreement is rendered void, the District will not be liable for any costs incurred by the Contractor prior to the issuance of a Notice to Proceed; and

NOW, THEREFORE, the Parties, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1. Contract Documents. The complete contract includes all of the "Project Documents" provided in the Request for Proposal, including all modifications, addenda and amendments thereto. The Contract Documents are complementary and what is called for by any one shall be as binding as if called for by all.
2. Scope of Work. The Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, and material necessary to perform and complete, in a good workmanlike manner, the work in strict accordance with the Request for Proposal 0390-15NE.2 Network Electronics.

It is understood and agreed that the work shall be performed and completed as required in strict accordance to the Contract Documents including, without limitation, the Drawings and Specifications, under the direction and supervision of, and subject to, the approval of the District or its authorized representative.

LEAVE BLANK. TO BE COMPLETED BY THE OWNER

3. Total Contract Price. As full consideration for the faithful performance of the agreement, District shall pay to Contractor, subject to any additions or deductions as provided in the Contract Documents, the sum of:

_____ Dollars (\$) _____

The above amount includes the following Contingency Amount:

Contingency Fee

_____ Dollars (\$) _____

4. Contingency Fee: Contractor agrees that the Contingency Fee shall be used for adds, moves, and changes requested and authorized by the District in writing. If applicable, the Contract Price will be reduced by the amount of the unused Contingency Fee at the completion of the Project.
5. Work to Commence. It is hereby understood and agreed that the work under this Agreement shall not commence until after the issuance of the Notice to Proceed.
6. Time for Completion. Project must be completed within One Hundred Eighty (180) consecutive calendar days from the date specified in the District's Notice to Proceed. Agreement may be extended if mutually agreed on by both parties in writing.

Should the Contractor fail to complete this Contract, and the Work provided herein, within the time fixed for completion, due allowance being made for the contingencies provided for herein,

the Contractor shall become liable to the District for all loss and damage that the District may suffer on account thereof.

7. 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, In accordance with Government Code section 53069.85, Contractor agrees that it shall pay to the District the sum of **Five Hundred Dollars and Zero Cents (500.00)** 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 portions 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.

8. Coordination of Work: The Contractor shall coordinate its work with the Work of all other contractors. The District shall not be liable for delays resulting from Contractor's failure to coordinate its Work with other contractors in a manner that will allow timely completion of Contractor's Work. Contractor shall be liable for delays to other contractors caused by Contractor's failure to coordinate its Work with the work of other contractors.
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. Classification of Contractor's License: Contractor hereby acknowledges that it currently holds valid Contractor's license(s) issued by the State of California, Contractor's State Licensing Board, in accordance with division 3, chapter 9, of the Business and Professions Code and in the classification called for in the Contract Documents.
11. Payment of Prevailing Wages: The Contractor and all Subcontractors under the Contractor shall pay all workers on all Work performed pursuant to this Agreement 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. The Contractor and all Subcontractors under the Contractor shall comply with the Davis Bacon Act, applicable reporting requirements, and any other applicable requirements for federal funding. If a conflict exists, the more stringent provision shall control over this Agreement.
12. Labor Compliance: This project is subject to State labor compliance monitored and enforced by the Compliance Monitoring Unit of the Department of Industrial Relations, Contractor specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of the District's labor compliance program or State labor compliance, if applicable, including, without limitation, the requirement that the Contractor and all of its Subcontractors shall timely submit complete and accurate certified payroll records as required by the Contract Documents, or the District cannot issue payment.
13. Payment. On or before the twentieth (20th) day of each month, Contractor shall submit to the District an itemized application for payment for Work completed during the prior month. The application shall include all information required by the District and shall be in a format approved by the District.

Contractor may be required to furnish a detailed schedule of values upon request of the District and in such detail and form as the District shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments. No progress payments will be made for Work not completed in accordance with this Agreement or for any amounts withheld by the District due to punchlist items, disputed work or stop notices, upon final completion.

District shall make said payment of any balance due to the Contractor promptly upon filing the Notification of Completion for the Project, receipt of a release of lien and claims from the Contractor pursuant to Civil Code section 3262, and its acceptance of the Work. In the event that the District is required to withhold amounts from payment due to punchlist items, disputed work or stop notices, Contractor shall execute a Conditional Waiver and Release upon Final Payment on the form prescribed in Civil Code section 3262 and shall execute an Unconditional Waiver and Release upon Final Payment on the form prescribed in Civil Code Section 3262, upon the District's payment of any amounts originally withheld from payment. Pursuant to California law, should a dispute arise between the Contractor and District, including amounts withheld for punch list items, District may withhold from the payment an amount not to exceed one hundred and fifty percent (150%) of the disputed amount and/or the amount of the punch list work.

14. **Public Safety.** During the performance of the Project, Contractor shall take over all the necessary precautions and place proper guards for the prevention of accidents and shall be liable to the District for all damages and costs resulting from the Contractor's acts or omissions in the performance of the Project or from any improper materials used in its construction.
15. **Insurance.** Contractor shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form at least as broad as Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001) and with insurance companies acceptable to the District.

At all times during the performance of the Project under this Agreement, Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form at least as broad as Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any auto) and with insurance companies acceptable to the District.

At all times during the performance of the Project under this Agreement and until the date of Project completion and acceptance by the District, Contractor shall maintain workers' compensation in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts indicated herein.

NOTE: The School District, Their Agents, Employees, and Consultants, Shall Be Listed as Additional Insured. CONTRACTOR Shall Submit Six Original Certificates to the OWNER.

16. The following insurance limits are required for the Agreement:

Combined Single Limit	
Commercial General Liability	<u>\$1,000,000</u> per occurrence / <u>\$2,000,000</u> aggregate for bodily injury, personal injury and property damage
Automobile Liability	<u>\$1,000,000</u> per occurrence for bodily injury and property damage
Employer's Liability	<u>\$1,000,000</u> per occurrence

17. **Fingerprinting Requirements.** Contractor shall comply with the applicable requirements of Education Code Sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with the District's pupils. Contractor shall also ensure that its subcontractors on the Project comply with the applicable requirements of Sections 45125.1 and 45125.2. To this end, Contractor and its subcontractors must provide for the completion of the certification form provided in the Request for Proposal and incorporated herein by reference prior to commencing work on the Project. In no event shall any employees of Contractor or its subcontractors come into contact with the District's pupils before the certification is completed.

18. Bonds. The Contractor shall be required to furnish a Payment and a Performance Bond, in an amount not less than one hundred percent (100%) of the Contract Price within ten (10) days of the District's issuance of the Notice to Proceed and prior to the performance of any work or the ordering of any Equipment for the Project. The bonds shall be secured from a surety company satisfactory to District, shall be submitted on the prescribed bond forms include in the request for Proposal. The bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to Code of Civil Procedure section 995.120. Failure to submit acceptable bonds will be cause of termination of the Agreement.
19. Additional Work. To the extent that additional work is required for the proper completion of the Work due to unforeseen circumstances and/or site conditions and is, therefore, not set forth in Contract Documents, the Parties may execute a change order to this Agreement setting forth the scope of such additional work, the time for completion for such additional work and the amount of additional compensation.
20. Assignment of Contract. Neither Party shall not assign, transfer, convey, or otherwise dispose of this Agreement or of his/her right, title of interest in or to the same or any part thereof without previous consent in writing from the other Party's authorized representative.
21. Suspension/Termination of Contract. If Contractor fails to commence work as provided in the Agreement, or fails to make delivery of materials promptly as ordered and such delivery is so late as to amount to gross negligence or willful misconduct, or if in the opinion of District's authorized representative, Contractor is not carrying out the provisions of the Agreement in their true intent and meaning, written notice will be served on Contractor to provide, within a specified time to be fixed by District's authorized representative, for satisfactory compliance with this Agreement. If Contractor neglects or refuses to comply with such notice within the time therein fixed, he/she shall not thereafter exercise any rights under said Agreement or be entitled to receive any of the benefits thereof, except as hereinafter provided, and District's authorized representative may with the approval of the District Board perform any part of the Project or purchase any or all of the material included in the Agreement or required for the completion thereof, or take possession of all or any part of the machinery, tools, appliances, materials and supplies used in the Project covered by the Agreement or that have been delivered by or on account of Contractor for use in connection therewith, and the same may be used either directly by District or by other parties for it, in the completion of the Project.

District has the right to terminate or abandon any portion or all of the Project under this agreement by giving ten (10) calendar days written notice to Contractor and its Surety. In such event, District shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the Project completed and/or being abandoned. District shall pay Contractor the reasonable value of services rendered for any portion of the Project completed prior to termination. If said termination occurs prior to the issuance of the Notice to Proceed, the District shall not be liable to the Contractor for any costs or amounts whatsoever under this Agreement. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by District and Contractor of the portion of such task completed but not paid prior to said termination. District shall not be liable for any costs other than the charges or portions thereof which are specified herein. Contractor shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of the Project.

Contractor may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to District only in the event of substantial failure by District to perform in accordance with the terms of this agreement through no fault of Contractor.

22. Permits and Licenses. Contractor shall maintain any required licenses or professional certifications required to perform the Scope of Work specified herein throughout the duration of the performance of the Project. Contractor and its subcontractors, if any, shall comply with all laws, ordinances, rules and regulations relating to the Project and to the preservation of public health and safety, obtaining all necessary permits and licenses for the construction of the Project and posting all deposits or bonds required by law.

23. Assignment of Anti-Trust Claims. Contractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action as it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700 of Part 2 of Division 7 of Business and Professions Code), and any other applicable laws, arising from purchase of goods, services, or materials, pursuant to this Agreement. This assignment shall become effective at the time that District tenders final payment to Contractor, without further acknowledgment by the parties. Contractor shall have the rights set forth in Sections 4553 and 4554 of the Government Code.
24. Notice of Third-Party Claims. Pursuant to Public Contract Code section 9201, the District shall provide the Contractor with timely notification of the receipt of any third-party claim, relating to the Agreement. The District is entitled to recover its reasonable costs incurred in providing such notification.
25. Substitution of Security. If the Contract Price will be paid over a series of progress payments, from which the District is required to withhold a percentage of the progress payment pursuant to California law, pursuant to Public Contract Code section 22300, Contractor may substitute securities for any money withheld by District for progress payments to ensure the performance under the Agreement.
26. Procedure for Resolving Disputes. The parties to this Agreement are subject to the provisions of Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of the Public Contract Code (as amended by the Statutes of 1990, Chapter 1414, effective January 1, 1991), which requires compliance with the following procedures to resolve any claim by the contractor of \$375,000 or less regarding an extension of time, a change order, extra work, or any other disputed amount: If following the meet and confer conference the claim or any portion remains in dispute, the claimant must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.
27. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless District against any and all claims involving any type of property damage or personal injury, including death, that may be asserted by any person or type of entity, arising out of or in connection with the performance of work, both on and off the job site; provided however, Contractor shall only be liable to the extent of its negligence or willful misconduct. Contractor will defend any action filed in connection with any of said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses, including attorney fees in connection therewith. Contractor will promptly pay any judgment rendered against Contractor or District arising out of or in connection with such work, operation or activities of Contractor hereunder and Contractor agrees to save and hold District harmless there from. District may retain to the extent it deems necessary, the money due to Contractor under and by virtue of this Agreement until disposition has been made of such actions or claims for damages as specified herein above.
28. Interpretation. In interpreting this Agreement, it shall be deemed that it was prepared jointly by the Parties with full access to legal counsel of their own. No ambiguity shall be resolved against any party on the premise that it or its attorneys were solely responsible for drafting this Agreement or any provision thereof.
29. Governing Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of California. The Parties agree that Kern County, California is the proper venue for enforcement of the terms of this Agreement. The prevailing party in any action to enforce this Agreement or otherwise concerning the terms of the settlement of the action shall be awarded costs and attorney's fees.
30. Guarantee of Project. Contractor warrants all work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year after the date of final acceptance (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later), Contractor shall within ten (10) days after being notified in writing by the District of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of

the warranty at its sole cost and expense. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the District, the District shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the District for any expenses incurred hereunder upon demand. Nothing in this section shall limit the District's legal remedies for defective work, including but not limited to remedies pursuant to California Code of Civil Procedure section 337.15.

31. Equipment Warranty. Contractor shall maintain a guarantee that all items delivered under this Agreement are protected against imperfections of materials and/or workmanship during the period of the Agreement. Within thirty (30) days of completion of the Project, the Contractor shall assign any manufacturers or other equipment warranties to the District and shall provide the District with any relevant document(s) thereto.

Should the contract warrant an additional term above the already established term

32. Integrated Agreement. This Agreement embodies the entire understanding between the Parties pertaining to the matters described herein. Each party acknowledges that no party, agent or representative of the other party has made any promise, representation or warranty, express or implied, not expressly contained in this Agreement, that induced the other party to sign this document. No modification of this Agreement shall be valid unless agreed to in writing by the Parties. This Agreement may be executed in separate counterparts, the whole of which shall constitute a binding agreement. Facsimile or E-mail signatures, when received, shall have the same force and effect as original signatures.

33. Contract Expiration. This agreement expires on the date listed below. The contract may be extended upon agreement by both parties. Contract Expiration Date: November 30, 2016

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the Effective Date set forth in the introductory paragraph above.

"DISTRICT"

San Mateo-Foster City School District

By: _____

Name: _____

Title: _____

Date: _____

"CONTRACTOR"

IT Management Corporation

By:  _____

Name: **Arman Eghbali**

Title: **President**

Date: **July 6, 2016**