

SAN MATEO-FOSTER CITY SCHOOL DISTRICT

SERVICE AGREEMENT

This Service Agreement ("Agreement") is made this 13th day of August, 2021, between San Mateo-Foster City School District ("District"), and Colbi Technologies, Inc. ("Contractor"), a Corporation. The District and Contractor may be individually referred to herein as a "Party" or collectively referred to herein as the "Parties."

1. **SERVICES.** Contractor shall provide Construction Project Management software, and related services as more fully described in Exhibit A, attached hereto and incorporated herein by this reference ("Pricing"):

Account-Ability Software, by Colbi Technologies, is a web-delivered software that provides multi-year, multi-fund capital program management in alignment with the District's financial system.

2. **TERM.** A three year subscription

3. **COMPENSATION.** District agrees to pay Contractor for Services as follows:

Implementation: In an amount not to exceed Forty-Five Thousand Dollars (\$45,000), for the implementation and customization of the program including training invoiced to the District in increments as Services are actually completed.

Annual Software Service Fee: Forty-Five Thousand Dollars (\$45,000) a year for five years

Archival Exit Plan: Seven Thousand Five Hundred Dollars (\$7,500) billed after the Implementation phase

Payment shall be made for all undisputed amounts within thirty (30) days after the Contractor submits a detailed invoice to the District's Accounts Payable Department with a carbon copy to the Director of Facilities Amy Ruffo aruffo@smfcsd.net

4. **TERMINATION. With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

4.1. material violation of this Agreement by the Contractor; or

4.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or

4.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and, unless within three (3) calendar days after that notice the condition or violation shall cease or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required Services from another Contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expenses, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

4.4 Termination for Non-Appropriation of Funds. The continuation of this Contract is contingent upon the appropriation of funds to fulfill the requirements of the Contract by the District. If the District fails to appropriate sufficient monies to provide for the continuation of the Contract, or if appropriations to the District are reduced and the effect of such reduction is to provide insufficient monies for the continuation of the Contract, the Contract shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated. Contractor will only be entitled to payment for deliverables that have been satisfactorily completed as of the termination date.

5. **INSURANCE.** Contractor shall be responsible for any damage, loss or other claim arising out of the performance of its services under this Agreement. Contractor shall carry the insurance indicated below throughout the term of this Agreement. The certificate of liability insurance must have San Mateo-Foster City School District, 1170 Chess Drive, Foster City, CA 94404, as the Certificate Holder and as additional insured.

Commercial General Liability Insurance	Each Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
Professional Liability	Each Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
Workers' Compensation		Statutory limits
Employer's Liability	Each Occurrence	\$1,000,000

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Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

Subcontractors

Contractor shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance, and any other insurance required of Contractor under this Agreement, in a company or companies lawfully authorized to do business in California as admitted carriers, in like amounts and scope of coverage as that required of Contractor hereunder.

6. **TAXES; INDEPENDENT CONTRACTOR STATUS.** District shall not withhold or set aside income tax, Federal Insurance Contributions Act Tax, Unemployment Insurance, Disability Insurance, or any other Federal or State funds whatsoever. It shall be the sole responsibility of the Contractor to account for all of the above and Contractor agrees to hold District harmless from all liability for these taxes. While engaged in carrying out the Services Contractor is and shall be an Independent Contractor, and not an Officer, Employee, Agent, Partner, or joint venture of the District.
7. **COMPLIANCE WITH APPLICABLE LAW.** In performing services under this Agreement, Contractor shall comply with all applicable law, including but not limited to Education Code Sections [45125.1](#) and [49406](#). It shall be the sole responsibility of Contractor to obtain any needed business licenses, certificates, permits to conduct business to meet the terms of this Agreement.
8. **WORK PRODUCT.** District is the owner of and entitled to exclusive possession of all records, documents, graphs, photographic or other reproductions of any kind ("Work Product") produced as part of or resulting from this Agreement, and all rights in such Work Product, and no uses thereof except in Contractor's performance of the Services will be permitted except by express written permission of the District. Contractor acknowledges that this Agreement and its work hereunder, including the Work Product, may be subject to disclosure to the public. With respect to records in the District's or Contractor's possession that may be protected from disclosure by applicable law, Contractor agrees to abide by such law.
9. **INDEMNIFICATION.** Contractor shall defend, indemnify, and hold harmless the District and its agents, employees, Board of Education, and members of the Board of Education, from and against claims, damages, losses, and expenses (including, but not limited to attorney's fees and costs including fees of consultants) arising out of or resulting from performance of this Agreement including, but not limited to, the Contractor's use of the sites listed herein; the Contractor's completion of its duties under this Agreement; injury to or death of persons or damage to property or delay or damage to the District, its agents, employees, Board of Education, members of the Board of Education, for any act, omission, negligence, or willful misconduct of the Contractor or its respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or District described in this paragraph.
10. **ENTIRE AGREEMENT; AMENDMENT.** This constitutes the entire Agreement between the District and Contractor supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. This Agreement may only be amended in writing executed by both parties and approved by the District's Board of Education.
11. **NO ASSIGNMENT.** This Agreement may not be assigned by the Contractor, nor any part of the services hereunder subcontracted, without the express written permission of the District.
12. **SEVERABILITY.** In the event that any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, no other provision of this Agreement will be affected by such holding, and all of the remaining provisions of this Agreement will continue in full force and effect, unless to do so would invalidate the intent of the parties in entering into this Agreement.
13. **GOVERNING LAW; VENUE.** This Agreement shall be governed under the laws of the State of California. Any action to enforce the terms of this Agreement shall be brought in the appropriate court having jurisdiction over matters arising in Santa Clara County, California.
14. **FORCE MAJEURE.** No Party shall be liable for any failure or delay in performing this Contract if a Force Majeure event caused the failure or delay and the Party seeking relief under this Section has provided the other Party with written notice of the occurrence of the Force Majeure event, except that a failure to pay any amount due under this Contract shall not be excused by a Force Majeure event where the required services has been performed in accordance with this contract; provided, however, that the District shall not be required to compensate contractor if any school closure or the suspension of Services is caused by a Force Majeure Event (as defined herein). A "Force Majeure Event" shall mean events or circumstances that are beyond a Party's reasonable control and occurring without the Party's fault or negligence, and which by the Party's exercise of due diligence could not reasonably have been avoided and was not avoided, which events or circumstances, include, but are not limited to, acts of God, such as tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters; terrorist attacks; wars; strikes; lockouts; riots; explosions; or governmental acts or order, including sanction, embargo, and import or export regulation.

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SERVICE AGREEMENT**

- 15. ATTORNEY'S FEES.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, expert fees, court costs and attorney's fees.
- 16. BOARD APPROVAL REQUIRED.** Agreements shall not be a valid and binding obligation of the District, unless and until executed by both parties and approved or ratified by the District's Board of Education.
- 17. CONTRACT EXECUTION.** Unless otherwise prohibited by law or District policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term 'electronic copy of a signed contract' refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term 'electronically signed contract' means a contract that is executed by applying an electronic signature using technology approved by the District.

Executed by the parties on the day and year indicated below.

San Mateo-Foster City School District

Date:

Colbi Technologies, Inc.

Date: August 17, 2021



By: Patrick Gaffney
Chief Business Official

By: Letti Boggs
CEO

Exhibit "A"

**SAN MATEO-FOSTER CITY SCHOOL DISTRICT
SERVICE AGREEMENT**

EXHIBIT "A"

Program Management Software and Related Services
Proposal for Web-Enabled Account-AbilitySM

Account-AbilitySM
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San Mateo-Foster City School District

August 11, 2021

It is our pleasure to provide this proposal summarizing the Account-AbilitySM product and services Colbi Technologies would be providing to San Mateo-Foster City School District for management of their school building program. This proposal is valid for 90-days.

**Account-AbilitySM
Implementation**

\$45,000

Account-AbilitySM software will be customized for the District and made available via the web by Colbi Technologies. Customization of the program will specifically incorporate the district's account code structure and internal control processes for project budgeting development, contract award, modification, and payments.

In addition to the customization and installation staffing, Colbi Technologies will provide four days of management consulting and/or training as desired by the district to facilitate a smooth transition to the new system. Typical training includes a half-day interactive workshop flowcharting the district's contracting and payment processes, followed by three days of hands-on training in the district's computer lab. A half-day of follow up is provided four to six weeks later, to assure that the primary software users have adopted best practices. Reimbursement for reasonable travel and lodging costs incurred to provide on-site services apply.

**Annual Software
Services Fee**

\$45,000

The Annual Software Services fee covers the License to use Account-AbilitySM software, Annual Support Services, and Annual Web Services. There is no restriction on the dollar amount of contracts managed or projects planned in the software. There is no restriction on the number of users the District authorizes to use the software; *however, the number of concurrent users is restricted based on the Web Services as described below.* The fee is an allowable OPSC, Developer Fee, or General Obligation Bond expenditure for program management.



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#20190530

Annual Support Services Colbi Technologies will provide support including phone support, online support, Colbi Technologies spring and fall workshops, Best Practice Advisories and Alerts, application updates, six hours of training, and eight hours of consulting services per year. Reimbursement for reasonable travel and lodging costs incurred to provide on-site services apply.

Annual Web Services — Five Users Colbi Technologies will provide the software via the web to any computer meeting the required specifications for a maximum of five concurrent authorized users when security login requirements are met. Additional users may be added at \$575 per user per year.
 The Web Server fee includes access to the software via the web and data maintenance on a Colbi Technologies server with daily backups.

Archival Exit Plan — Advanced Purchase — At the end of the district building program, the district will be provided permanent web access, via a single secure login, to Account-AbilitySM for read-only access to the Transaction module. This enables the district to view all data and print reports. In addition, read-write access is provided to the Budget Development module, which provides full access to the financial planning tools for future building programs.
 \$7,500
 This option may be purchased at the end of the building program for the regularly published price, which is currently \$15,000.

Import of Historical Data Colbi Technologies can import historical expenditure data from digital files – this provides for full reporting of work completed prior to implementation of Account-AbilitySM along with on-going and future projects. In addition, this historical data is easily mined for use in building budgets for future projects based on actual expenditure profiles experienced by the District.
 Price to be Determined
 Cost will vary based on the integrity and amount of data. Colbi Technologies will provide a not-to-exceed estimate after review of sample data. After acceptance of completed work, the District will be billed for actual cost, but not more than the agreed to not-to-exceed cost.

FAST Colbi Technologies will provide FAST staff augmentation services
(Facilities Accounting Support Team) for transactional data entry.

Data Entry Services

\$100/hour

FAST services are performed by experience personnel online using Colbi DocsSM — this ensures that all documents/actions are logged/filed. From source documents, FAST personnel use Account-AbilitySM to generate requests for payments and purchase orders that are routed for review and approval prior to entry into the accounting system by District personnel — this ensures informed decision-making prior to execution in the accounting system. FAST personnel then enter warrant and purchase order information received from District Accounting into Account-AbilitySM to verify that requested transactions are completed — this ensures accuracy. FAST services insure District internal control processes for contracting and payments are consistently followed.

We appreciate this opportunity to be of service to the San Mateo-Foster City School District.

Date: August 11, 2021

Signed: *Lettie Boggs*

Lettie Boggs, CEO, Colbi Technologies

During the term of this Agreement, Colbi will provide Account-AbilitySM software services as described below. Services include the following:

Initial Implementation of Account-AbilitySM

- Account-AbilitySM will be configured to incorporate the Customer's account code structure and internal control processes for project budgeting development, contract award, modification, and payments.
- Colbi will provide four days of management consulting and/or training as desired by the Customer to facilitate a smooth transition to the new system. Typical training includes:
 - A half-day interactive Flowchart Workshop with appropriate members of Customer's facilities and business services staff to fully review the budgeting, contracting and payment processes and document in Account-AbilitySM,
 - Three days hands-on Account-AbilitySM training in the Customer's computer lab.
 - A half-day of follow-up four to six weeks after initial training, to assure that the primary Users have adopted best practices.
- Reimbursement for reasonable travel and living expenses incurred by Colbi are required for services provided on-site.

License to Use the Software

Customer may use Account-AbilitySM software via the Internet. There is no restriction on the dollar amount of contracts managed or projects planned in the software. There is no restriction on the number of Users the Customer authorizes to use the software; *however, the number of Users logged into Account-AbilitySM concurrently is restricted based on the Web Access Services as described below.*

Annual Support Services

- Application updates to Account-AbilitySM.
- Live phone support during normal business hours (Pacific Standard Time)¹.
 - Live on-screen support is provided when appropriate.
- Support via the Colbi helpdesk is available 24/7, with response time to support requests by the next business day; reference below in Classification and Resolution of Issues.
- Six (6) hours of training are provided on an as requested basis each year².
 - Customized to needs, typical training includes: new staff training, new software features, planning/budgeting, construction contract management, refresher training, etc.
 - Additional training services may be obtained as provided in Fees for Services below.
- Eight (8) hours of consulting services are provided on an as requested basis each year².
 - Additional consulting services may be obtained as provided in Fees for Services below.
- Colbi Technologies Spring and Fall Workshops
- Best Practice Advisories and Alerts

Annual Web Access Services

Internet access to Account-AbilitySM will be provided to any computer meeting the required specifications when security login requirements are met. The Annual Software Fee provides for five (5) concurrent logins. Additional concurrent logins for Account-AbilitySM may be added as provided in Fees for Services.

- Account-AbilitySM provided with a 99.9% uptime commitment, refer to Availability below.
- The Customer's data is backed-up nightly at the data center, and a redundant copy is encrypted and transmitted to another location for storage. Data backups are retained for 30 days.
- Maintenance of servers, application software and database is scheduled for late evening on weekends, refer to Maintenance and Updates below for more details. Customer is notified in advance of any maintenance or

¹ Excludes weekends and holidays.

² Reimbursement for reasonable travel and living expenses incurred by Colbi are required for services provided on-site.

updates occurring outside of scheduled maintenance windows.

Account-AbilitySM Archival Exit Plan³

- Advance Purchase of the Exit Plan at time of initial implementation of software: \$7,500

Fees for Services

Customer will pay Colbi the following fees:

- Account-AbilitySM Implementation Fee: \$45,000 one-time fee⁴
 - Annual Software Service Fee for Account-AbilitySM: \$45,000 per year⁴
- Additional Services may be provided upon written authorization from Customer:
- Additional Concurrent Logins (over 5): \$575.00 per login per year⁴
 - Additional Training Services: \$1050.00 per day, or \$175.00 per hour²
 - Additional Consulting Services: \$165.00 per hour²

Service Commencement Date: Upon completion of training; target date on or before _____

Availability

Colbi commits to 99.9% uptime and availability of Account-AbilitySM software (the "99.9% Uptime Commitment"), excluding scheduled maintenance and other occurrences not constituting Downtime (as defined below).

Classification and Resolution of Issues

Colbi will classify, respond to and resolve a reported technical issue (an "Issue") with Account-AbilitySM software that cannot be resolved immediately through phone support as follows:

- **Severity 1 Issues:** Colbi will devote commercially reasonable efforts to provide Issue resolution for Severity 1 Issues within two hours after receipt of notification and verification of the Issue.
 - Account-AbilitySM software down, or major portions of Services down, that impacts the availability of the software or has degraded the software performance resulting in the inability to effectively use the software, with no known workaround.
 - Security attack or threat, malware or virus that has circumvented Colbi's security procedures. Colbi will give the highest scheduling priority and devote its best available resources to respond to Severity 1 Issues within 15 minutes of notification.
- **Severity 2 Issues:** Colbi will give the next highest scheduling priority and devote its available resources to respond to Severity 2 Issues within two hours of notification of the Issue. Colbi will devote commercially reasonable efforts to provide Issue resolution for Severity 2 Issues within twenty-four hours after receipt of notification and verification of the Issue.
 - Non-critical software features or operations are not functioning correctly, but do not impact the entire software application or all users.
 - Provide (or remove) access for Customer authorized users, reset Customer account passwords, or unlock Customer accounts.
 - Emergency backup or backup restoration of Customer's Account-AbilitySM database
- **Severity 3 Issues:** Colbi will give the next highest scheduling priority and devote its available resources to respond to Severity 3 Issues within four hours of notification of the Issue. Colbi will devote commercially reasonable efforts to provide Issue resolution for Severity 3 Issues within one calendar week after receipt of notification and verification of the Issue. The above resolution times are estimates that may be impacted by a variety of variables beyond Colbi's control. Colbi strives to address every Issue with the goal of absolute responsiveness and the fastest path to resolution.
 - Minor bug fixes.
 - An incident with little impact on data or user experience and can be handled on a scheduled basis.

³ Customer is provided web access, via a single secure login, to Account-AbilitySM for read-only access to the Contract Transaction module for the life of Account-AbilitySM software. This enables the Customer to view all data and print reports as long as Account-AbilitySM software is available as a commercial product. In addition, read-write access is provided to the Budget Development module. This provides full access to the financial planning tools for future building programs.

⁴ Fees are an allowable capital bond expenditure for program management.

SAN JOSÉ UNIFIED SCHOOL DISTRICT SERVICE AGREEMENT

- Problems affecting small group of users.

Monitoring

In order to support the 99.9% Uptime Commitment as defined below, Colbi proactively monitors 24 hours a day, 7 days a week, 365 days a year all network devices, servers, storage, and hosted software for performance and availability. If any issues are detected, alerts are automatically dispatched to the Colbi Support Team, who will resolve the issue according to severity.

Hours of Operation

- Standard Hours of Operation: 8:00 AM - 5:00 PM PST Monday - Friday (except holidays⁵)
 - During standard operating hours Colbi will respond to Severity 1, Severity 2 and Severity 3 Issues.
- After-Hours Operation: 5:00 PM - 8:00 AM PST Monday - Friday, weekends, and holidays⁵
 - Support during after-hours will be provided via an on-call system only for Severity 1 Issues. Response to such Severity 1 Issues may be delayed for up to 1 hour from the standard response time set forth above. Severity 2 and Severity 3 Issues will be responded to on the next business day.

Requesting Support

- Authorized Users may submit a support case, or issue, through the Colbi helpdesk by emailing to aasupport@colbitech.com.
 - Users should always include as much information as possible about their Issue to assist Support Technicians diagnose, prioritize, and resolve.
- Authorized Users may call 1-714-505-9544 to speak to a Support Technician during business hours (PST).
 - Questions on how to use the software are answered quickly and may involve live on-screen assistance;
 - Any Issue not resolved during the phone call will be assigned a Support Case for Issue resolution.

Maintenance and Updates

High-quality service and availability requires Colbi to perform routine maintenance and updates on its infrastructure and software applications. While this work is performed, access to Account-AbilitySM may be suspended — suspension of access for scheduled maintenance and updates does not constitute "Downtime." Colbi's goal is to minimize the impact of downtime and potential outages on Customer. Unless Colbi is responding to an emergency situation, maintenance and upgrade activities will be conducted during scheduled maintenance periods. The Customer will be notified in advance in the event that planned maintenance and upgrade activities extend outside of scheduled maintenance periods. Scheduled Maintenance and Updates includes the following:

Service	Description	Suspension of Access	Scheduled Maintenance
Daily (Planned)	Routing maintenance and repairs, security updates, equipment replacement	0 hours	Monday – Saturday 10PM – 2AM PST
Minor (Planned)	Infrastructure maintenance, full backup and/or recoveries	Up to 4 hours	1 st and 3 rd Saturday 10PM – 2AM PST
Major (Planned)	Network & hardware upgrades, software & database updates, OS & application patching, performance testing & troubleshooting, changes to server configurations, and migrations	Up to 12 hours	3 rd Saturday 10PM Sat thru 10AM Sun PST

⁵ Colbi observes the following holidays: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Eve, Christmas, New Year's Eve. If any of the above holidays falls on a weekend, an adjacent weekday is observed as a holiday.