

**MILPITAS UNIFIED SCHOOL DISTRICT
INDEPENDENT CONTRACTOR SERVICES AGREEMENT**

This INDEPENDENT CONTRACTOR SERVICES AGREEMENT (“Agreement”) is made and entered into effective June 9, 2020 (the “Effective Date”), by and between the Milpitas Unified School District (“District”) and Digital Scoreboards, LLC (“Contractor”).

1. **Contractor Services.** Contractor agrees to provide the following services to District (collectively, the “Services”):

Provide the scoreboard and installation for Milpitas High Gym. See attached proposal for services.

2. **Contractor Qualifications.** Contractor represents and warrants to District that Contractor, and all of Contractor’s employees, agents or volunteers (the “Contractor Parties”), have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. Contractor and any Contractor Parties performing Services shall be competent to perform those Services.

3. **Term.** This Agreement shall begin on June 9, 2020, and shall terminate upon completion of the Services, but no later than July 31, 2020 (“Term”), except as otherwise stated in Section 4 below. There shall be no extension of the Term of this Agreement without the express written consent of all parties. Written notice by the District Superintendent or designee shall be sufficient to stop further performance of the Services by Contractor or the Contractor Parties. In the event of early termination, Contractor shall be paid for satisfactory Services performed to the date of termination. Upon payment by District, District shall be under no further obligation to Contractor, monetarily or otherwise, and District may proceed with the work in any manner District deems proper.

4. **Termination.** Either party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other party, however the parties may agree in writing to a shorter notice period. Notwithstanding the foregoing, District may terminate this Agreement at any time by giving written notice to Contractor if Contractor materially breaches any of the terms of this Agreement, any act or omission of Contractor or the Contractor Parties exposes District to potential liability or may cause an increase in District’s insurance premiums, Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed because of Contractor’s insolvency. Such termination shall be effective immediately upon Contractor’s receipt of the notice.

5. **Payment of Fees for Services.** District agrees to pay Contractor fees of \$69,900 for Services satisfactorily performed. Contractor shall not increase the rate over the course of this Agreement. Total fees (“the Fee”) paid by District to Contractor shall not exceed \$69,900. Any work performed by Contractor in excess of the Fee shall not be compensated. District agrees to pay the Fee, up to the maximum amount provided herein, within sixty (60) days of receipt of a detailed invoice from Contractor, including any additional supporting documentation District reasonably requests.

6. **Indemnity.** Contractor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, the “District Parties”), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the “Claims”) directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Contractor, the Contractor Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees in the performance of or failure to perform Contractor’s obligations under this Agreement, including, but not limited to Contractor’s or the Contractor Parties’ use of the site, Contractor’s or the Contractor Parties’ performance of the Services, Contractor’s or the Contractor Parties’ breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or damage to property or delay or damage to the District or the District Parties. 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 entity described in this paragraph. The indemnification provided for in this Section 6 includes, without limitation to the foregoing, claims that may be made against District by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against District alleging civil rights violations by Contractor or Contractor Parties under the California Fair Employment and Housing Act (“FEHA”).

7. **Equipment and Materials.** Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively, “Equipment”) which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any Equipment used by Contractor or the Contractor Parties, even if such Equipment is furnished, rented or loaned to Contractor or the Contractor Parties by District. Furthermore, District may reject any Equipment or workmanship that does not conform to the requirements of this Agreement and Contractor must then promptly remedy or replace it at no additional cost to District and subject to District’s reasonable satisfaction.

8. **Insurance.** Without in any way limiting Contractor’s liability, or indemnification obligations set forth in Section 6 above, Contractor shall secure and maintain throughout the Term of this Agreement the following insurance: (i) comprehensive general liability insurance with limits of not less than \$1 Million each occurrence and \$2 Million in the aggregate; (ii) commercial automobile liability insurance with limits not less than \$2 Million each occurrence, if applicable; and (iii) worker’s compensation insurance as required by Labor Code section 3200, *et seq.*, if applicable. Neither Contractor nor any of the Contractor Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by District. All insurance policies shall include an endorsement stating that District and District Parties are named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days’ prior written notice has been given to District. If such a notice is not given or even if District receives a notice, District may, at its sole option, terminate this Agreement. All insurance policies shall include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties. A copy of the declarations

page of Contractor's insurance policies shall be attached to this Agreement as proof of insurance.

9. **Independent Contractor Status.** Contractor is engaged in an independently established trade, occupation, or business to provide the Services required by this Agreement and is hereby retained to provide specialized services for District that are outside the usual course of District's business. Contractor is free from the control and direction of District in connection with the manner in which it provides the Services to District. Contractor understands and agrees that Contractor and the Contractor Parties shall not be considered officers, employees, agents, partners, or joint venturers of District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled.

10. **Taxes.** All payments made by District to Contractor pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. District will not withhold any money from fees payable to Contractor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor and the Contractor Parties and otherwise in connection with this Agreement.

11. **Fingerprinting/Criminal Background Investigation Certification.** Contractor and the Contractor Parties shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:

A. ☒ Contractor and the Contractor Parties will **only have limited or no contact** (as determined by District) with District students at all times during the Term of this Agreement.

B. ☐ The following Contractor and Contractor Parties will have **more than limited contact** (as determined by District) with District students during the Term of this Agreement:

_____. [Attach and sign additional pages, as needed.]

C. ☐ (Required only if Box 11.B is checked.) All of the Contractor and Contractor Parties noted above, at no cost to District, have completed background checks and have been fingerprinted under procedures established by the California Department of Justice and the Federal Bureau of Investigation, and the results of those background checks and fingerprints reveal that none of these Contractor and Contractor Parties have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code.

Contractor further agrees and acknowledges that if at any time during the Term of this Agreement Contractor learns or becomes aware of additional information which differs in any way from the representations set forth above, or Contractor or Contractor Parties add personnel who will provide Services under this Agreement, Contractor shall immediately notify District and prohibit any new personnel from having any contact with District students until the fingerprinting and background

check requirements set forth in this Section 11 have been satisfied and District determines whether any contact is permissible.

12. **Tuberculosis Certification.** Contractor and the Contractor Parties shall at all times comply with the tuberculosis (“TB”) certification requirements of Education Code section 49406. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:

A. ☒ Contractor and Contractor Parties will **only have limited or no contact** (as determined by District) with District students at all times during the Term of this Agreement.

B. ☐ The following Contractor and Contractor Parties will have **more than limited contact** (as determined by District) with District students during the Term of this Agreement and, at no cost to District, have received a TB test or risk assessment in full compliance with the requirements of Education Code section 49406:

_____. [Attach and sign additional pages, as needed.]

Contractor shall maintain on file the certificates showing that the Contractor and Contractor Parties were examined and found free from active TB. These forms shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit.

Contractor further agrees and acknowledges that all new personnel hired to provide Services under this Agreement after the Effective Date of this Agreement by Contractor and Contractor Parties are subject to the TB certification requirements of Education Code section 49406 and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied and District determines whether any contact is permissible.

13. **Confidential Information.** Contractor shall maintain the confidentiality of, and protect from unauthorized disclosure, any and all individual student information received from the District, including but not limited to student names and other identifying information. Contractor shall not use such student information for any purpose other than carrying out the obligations under this Agreement. Upon termination of this Agreement, Contractor shall turn over to District all educational records related to the Services provided to any District student pursuant to this Agreement.

14. **Assignment/Successors and Assigns.** Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of District. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

15. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

16. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both parties.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Santa Clara, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

18. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.

19. **Compliance with Law.** Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Contractor shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to fingerprinting under Education Code section 45125.1, confidentiality of records, Education Code section 49406 and others. Contractor agrees that it shall comply with all legal requirements for the performance of duties under this Agreement and that failure to do so shall constitute material breach.

20. **Non-Discrimination.** There shall be no unlawful discrimination in the contracting of persons under this Agreement because of race, color, national origin, age, ancestry, religion, sex, or sexual orientation of such persons.

21. **Liability of District.** Notwithstanding anything stated herein to the contrary, District shall not be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits in connection with this Agreement.

22. **Time.** Time is of the essence to this Agreement.

23. **Waiver.** No delay or omission by District in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the District from any or further exercise of any right or remedy.

24. **Reports.** Contractor shall maintain complete and accurate records with respect to the Services rendered and the costs incurred under this Agreement, including records with respect to any payments to employees and subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures. Upon request, Contractor shall make such records available to District for the purpose of auditing and copying such records for a period of five years from the date of final payment under this Agreement.

25. **Entire Agreement.** This Agreement is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

26. **Ambiguity.** The parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any

subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.

27. **Execution of Other Documents.** The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

28. **Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

29. **Warranty of Authority.** The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective parties, and by their signatures to bind the respective parties to this Agreement.

DISTRICT:	CONTRACTOR:
MILPITAS UNIFIED SCHOOL DISTRICT	DIGITAL SCOREBOARDS, LLC.
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Address for District Notices:

Attn: _____
1331 E Calaveras Blvd.
Milpitas, CA 95035

Address for Contractor Notices:

Attn: _____
333 S. Tamiami Trail Suite 283
Venice, FL 34285