

## APPENDIX C – SAMPLE AGREEMENT

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## SAMPLE AGREEMENT

This SAMPLE PROVIDER AGREEMENT ("the Agreement") is between <<Vendor>> whose address is \_\_\_\_\_ and Lake Orion Community Schools (hereinafter called "the District") whose address is 315 N Lapeer Street, Lake Orion, MI 48362.

### RECITALS

- A The Contractor will provide the District with all of the necessary equipment/devices, implementation, installation, testing and all other related Services required for a fully functioning Video Surveillance & Door Access Control System (hereinafter referred to as "the System(s)") upon the terms and conditions set forth herein and in the other Agreement Documentation.
- B The District desires to obtain the devices and associated Services from the Contractor upon the terms and conditions set forth herein and in the Request for Proposal, Contractor's response to the RFP, and subsequent clarifications. The Contractor shall supply all equipment, materials, technology, and other related services necessary to accomplish the requirements set forth in the Request for Proposal and the Contractor's response to the Request for Proposal.
- C. Parties agree that where there is a conflict between terms of this Agreement and the information presented in the referenced Agreement Documentation, this Agreement shall take precedence. The parties also agree that where there is not a conflict between this Agreement and the information presented in the referenced Agreement Documentation, all terms and conditions in the Request for Proposal and the Contractor's response to the RFP shall be incorporated by reference into the Agreement and shall be binding upon all parties to the Agreement.
- D. District and the Contractor each bind themselves, their partners, successors, and other legal representatives to all covenants, agreements, and obligations contained in this Agreement.
- E. It is expressly agreed that the Contractor is not an agent of District but an independent contractor. The Contractor shall not pledge or attempt to pledge the credit of District or in any other way attempt to bind the District.

NOW, THEREFORE, IN CONSIDERATION FOR THE FOREGOING AND THE MUTUAL COVENANTS SET FORTH HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

## 1 DEFINITIONS AND EXHIBITS

- 1.1 Agreement Documentation. "Agreement Documentation" shall mean (i) this Agreement including any and all Exhibits (ii) the District's Request for Proposal (RFP) dated [Date], (iii) bid bulletins attached hereto, and (iv) the Contractor's Response and clarifications to the RFP dated [Date]. Said documents shall take precedence in the order set forth in this Paragraph.
- 1.2 Documentation. "Documentation" shall mean (i) all written materials or information relating to the System(s) or its operation, including without limitation, user-oriented and technical operation, reference and training manuals and (ii) the documentation as outlined in the Agreement Documentation.
- 1.3 Effective Date. "Effective Date" shall mean the last date on which both parties hereto have executed this Agreement.
- 1.4 Purchase Price. "Purchase Price" shall mean the aggregate amount payable by the District for (i) the purchase of the System(s) and services to be provided by the Contractor in accordance with the RFP and the Contractor's response to the RFP. The Purchase Price is inclusive of all taxes, shipping, handling, material bond(s), payment bond(s), performance bond(s) and insurance.
- 1.5 Systems: Shall include, but not limited to, structured cabling, miscellaneous items and materials necessary for a fully functioning solution to achieve the requirements contained in the Agreement Documentation.
- 1.6 Services. "Services" shall include, but shall not be limited to, any and all labor, implementation, installation, testing, documentation, training, debugging and acceptance testing activities
- 1.7 Sites. Sites shall mean the locations set forth in the Agreement Documentation.
- 1.8 Vendor as Independent Contractor. It is expressly agreed that the Contractor is not an agent of the District but an independent contractor. The Contractor shall not pledge the credit of District or in any other way attempt to bind the District.
- 1.9 Term: District reserves the right to terminate this Agreement at any time for any reason upon thirty (30) days written notice to Contractor.

## 2 TURNKEY SOLUTION

- 2.1 **Turnkey Solution.** This Agreement and the other Agreement Documentation set forth the terms and conditions upon which the Contractor will provide a "turnkey" solution for the System(s) for use by the District. The Contractor agrees that it will provide a complete "Turnkey Solution" to the District. The Contractor shall be responsible for the successful installation, integration, acceptance testing and Documentation of the Systems, as detailed in the Agreement Documentation.
- 2.2 **The Contractor's Obligation.** In consideration of the payment of the Purchase Price, it is agreed and understood that the Contractor shall be obligated to provide the following Products and Services, subject to the terms and conditions set forth herein and in the Agreement Documentation:
- 2.3 **Guarantee.** Contractor hereby guarantees and warrants its design, operation, and functionality of the Systems in accordance with the Agreement Documentation.
- 2.4 **Walk-Through.** Contractor has had an opportunity to review each Site and acknowledges that it has no concerns with its proposed design that would prohibit Contractor from guaranteeing the installation and operation of the System(s), as contemplated in the Agreement Documentation.
- 2.5 **Complete Solution.** Contractor will supply all labor, devices/equipment and services necessary to provide the System(s) in accordance with the Purchase Price set forth in Section 3.1. The Contractor represents and warrants that the purchase of the System(s) and installation and implementation services provided to the District will constitute a fully operational solution as contemplated by the Agreement Documentation.

### 3 PAYMENT

- 3.1 **Purchase Price.** The Contractor agrees to sell to the District and the District agrees to purchase the System(s) and Services upon the terms and conditions set forth in this Agreement at a price not to exceed: \$\_\_\_\_\_.
- 3.2 **Payment Terms:** Payment shall be in accordance to the following schedule:
- (A) Progress billing can be submitted monthly for equipment that is delivered and installed, based on a mutually agreed upon percentage of completion between the District and the Contractor. Total progress payments shall not exceed 90% of the total Purchase Price. Progress billings shall reflect the 10% retainage referenced below.

(B) 10% of the total Purchase Price will be held as retainage and will be payable within (30) thirty days of final acceptance of the completed System(s) by the District or its designated representative. 50% of the retainage will be payable upon delivery of documentation. The remaining 50% of the retainage shall be payable based upon the final acceptance of all sites.

3.3 Request for Payment. The Contractor shall submit to the District's project coordinator the standard AIA Application for Payment forms upon completion of the payment terms referenced in Paragraph 3.2 above. Approved invoices shall be paid within thirty (30) days from date of approval of the invoice. In the event of disputes and invoice is not approved, District shall notify Contractor within ten (10) days of receipt of the invoice.

3.4 Taxes. The Purchase Price is inclusive of any applicable taxes. The District, however, is a tax-exempt entity except if the project makes additions and/or enhancements to real property.

3.5 MAY BE REQUIRED Performance Bonds. Contractor shall provide a performance bond and a labor and materials payment bond upon award of this Agreement in the form acceptable to the District. The bonds shall be equal in amount to the total Purchase Price. The Surety of the bond shall remain in effect for one year after all acceptance of the entire project has been executed by the District. Said bonds shall be provided by a Surety having a rating of A- or better from A. M. Best and Co. and said Surety shall be authorized to do business in the State of Michigan. In the event that the Contractor fails to perform its obligations under any contract between the Contractor and the District, the performance bond shall be paid to the District. The Contractor further agrees to save and hold harmless District and agents from all liability and damages of every description in connection with any subsequent contracts with any third parties. The Contractor shall submit the performance bond to Lake Orion Community Schools within two weeks of the Effective Date of this Agreement or prior to the start of work, whichever comes first. This Agreement shall be unenforceable by Contractor against District until the terms of this section have been satisfied. The cost of said bonds are included in the Purchase Price referenced in Section 3.1

3.6 Payment Disputes. Disputes regarding requests for payments will be communicated to Contractor by District, in writing, within thirty (30) days of the receipt of invoice. Payments will not be delayed unless Contractor is unable to resolve the matter to District's satisfaction ten (10) days prior to payment due date.

#### 4 INSTALLATION AND ACCEPTANCE

- 4.1 Installation and Integration Plan. The Contractor shall deliver the turnkey solution in accordance with the implementation schedule that will be developed and agreed to by the parties within ten (10) days of the Effective Date. In the event that the Contractor fails to deliver the turnkey solution on or before the installation date set forth in the attached Implementation Schedule, and such delays are within the Contractor's control, the Contractor shall be penalized \$200 per day for each day beyond the required completion date for that site. The Contractor shall deploy additional resources necessary to meet the schedule. In the event the Contractor is unable to adhere to the attached schedule or complete the installation schedule as attached, the District shall have the option to terminate this Agreement, award the remaining work to another contractor or negotiate a final completion date. In the event the District so terminates the Agreement and awards the remaining work to another contractor, the Contractor shall be responsible for and shall hold District harmless from any costs or fees to complete the project which exceed the amount of the Purchase Price remaining unpaid at the time of termination. Any changes or deviations to the installation timetable caused by failure of the District or any third parties to meet the completion date set forth therein, shall result in a schedule adjustment in the same magnitude which shall be subject to the Contractor's approval, which approval shall not be unreasonably withheld.
- 4.2 Project Manager. The Contractor designates \_\_\_\_\_ as on-site Project Manager for the duration of the project. Project Management will be within the guidelines as defined in the RFP.
- 4.3 Legal Compliance. The Contractor shall comply fully with all federal, state and local laws, statutes, ordinances, rules, regulations and codes applicable to the work performed as well as all applicable provision of the Occupational Safety and Health Act. These include, but are not limited to, all policies concerning the use of the Sites and appropriate behavior of persons in or on the Sites, such as the prohibitions of sexual harassment or the use or possession of tobacco or alcohol. The Contractor shall be responsible for adhering to all local and state fire codes.
- 4.4 Employee Qualification. All Contractor employees shall be thoroughly experienced in the particular class of work in which they are employed. In the event District determines that Contractor's staff are unqualified, unresponsive or otherwise unacceptable, Contractor will remove and replace said staff from the project in consultation with the District.

- 4.5 Status Meetings. The Contractor shall coordinate regular status meetings between the District Project Coordinator and the Contractor Project Manager as identified in the RFP, at which time a list of open items with targeted responsibility and due dates will be established.
- 4.6 Access to Sites. The Contractor will coordinate access to the Sites per the procedures outlined by the District.
- 4.7 Testing. The Contractor shall perform all testing as to meet the specifications identified in the RFP and applicable bulletins.
- 4.8 Documentation. The Contractor shall provide all Documentation as required in the RFP and applicable bulletins.
- 4.9 Site Damage. The Contractor shall be responsible for restoring the physical site to its original status if said damage is the result of the Contractor. The District shall determine whether the Contractor shall remedy the damage or a third party shall remedy the damage, to be compensated by the Contractor.

## 5 WARRANTY

- 5.1 Warranties on Equipment.
- 5.2 The Contractor shall provide all warranties as identified in the RFP and, to the extent as accepted by the District, the Contractor's Response to the RFP and all applicable bulletins and clarifications. All warranties are effective from the date of the System(s) Final Acceptance.
- 5.3 The Contractor Representations and Warranties. Contractor shall provide warranty on all equipment and services for the duration of the contract. In addition, the Contractor represents and warrants that:
- A. The Contractor possesses full power and authority to enter into this Agreement and to fulfill its obligations hereunder;
  - B. The performance of the terms of this Agreement and of the Contractor's obligations hereunder shall not breach any separate agreement by which the Contractor is bound; and
  - C. The Contractor is financially sound to perform its obligations hereunder, and agrees that any material adverse change in such status shall be immediately communicated in writing to the District.

- 5.4 Warranty of Fitness For A Particular Purpose. The District has presented detailed technical specifications of the particular purpose for which the System(s) is intended. The District has provided detailed descriptions and criteria of how the System(s) can be defined to accomplish the particular purpose. The District has also defined the exact procedures and techniques to be employed in testing whether the System(s) has achieved the defined performance of this particular purpose. Given this advanced preparation concerning, and documentation about the District's particular purpose, the Contractor at the time this Agreement is in force has (1) reason and opportunity to know the particular purpose for which products are required, and (2) that the District is relying on the Contractor's experience and knowledge of these products to provide those which are most suitable and appropriate. Therefore, the Contractor warrants that the System(s) is fit for the purposes for which it is intended as described in the Agreement Documentation.
- 5.5 Warranty. The Contractor warrants that all components provided under this Agreement, whether installed initially or under subsequent purchase orders, shall be: newly manufactured equipment or assembled from newly manufactured parts; approved by Underwriter's Laboratories; and, will be free from defects in workmanship or material for a period as specified in the RFP, Contractor's response to the RFP, and all bulletins and clarifications from the date of final System(s) Acceptance. During this warranty period, the Contractor shall furnish all new replacement parts, shipping costs, repaired parts, service labor, travel costs, and other repair costs at no cost to the District. At the conclusion of the warranty period, the District will consider Contractor support under a separate maintenance agreement.
- 5.6 Acceptance of Installation. Within thirty (30) days of receipt of written notice from Contractor that installation and testing of the System(s) is completed, District shall either accept or reject such System(s) by written notice to Contractor. Failure to give written notice of acceptance or rejection of System(s) within thirty (30) day period shall constitute acceptance. Any rejection shall expressly state the deficiencies giving rise to the rejection. Upon rejection of the System(s) by District, the District shall provide Contractor with reasonable access to correct deficiencies identified, which correction shall be completed within ten (10) days of the date of access. Upon correction, Contractor again shall provide written notice to District that installation and testing is completed and the acceptance/ rejection process set forth above shall be repeated. This procedure shall continue until the installation of the System(s) is accepted or finally rejected by District.



- 5.7 Upon final rejection by District of the System(s), District may without prejudice to any other rights or remedies of District and after giving Contractor and Contractor's surety seven (7) days written notice, terminate this Agreement with Contractor and may, subject to any prior rights of the surety take possession of the materials and finish the project by whatever method District may deem expedient. When District terminates this Agreement pursuant to this section, Contractor shall not be entitled to receive further payment until the project is finished. If the unpaid balance of the contract sum exceeds costs of finishing the project, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to District. Nothing in Section 5.5 shall be construed to limit District's remedies under any warranty set forth below with respect to System(s).
- 5.8 Final Acceptance of the System(s). The System(s) proposed shall be defined to be finally accepted by District after meeting all requirements of the RFP and associated bulletins. The District or District's representative shall be the sole judge of whether all conditions for final acceptance have been met.

## 6 TERMINATION

- 6.1 Right to Terminate on Breach. Each party shall have, in addition to all other remedies available to it, the right to terminate this Agreement immediately upon written notice to the other party that the other party has committed a material breach of any of its obligations herein and such material breach shall not have been cured or corrected within ten (10) days following written notice of the same.
- 6.2 Events upon Termination. Upon termination of this Agreement by either party for breach or default of the other party, each party shall be entitled to exercise any other right, remedy or privilege which may be available to it under applicable law or proceed by appropriate court action to enforce the terms of the Agreement or to recover damages for the breach of this Agreement. Upon termination of this Agreement, the Contractor shall immediately provide the District with all current drawings and Documentation regarding this project.

## 7 GENERAL

- 7.1 Governing Law. This Agreement shall be construed in accordance with, and its performance governed by, the laws of the State of Michigan.
- 7.2 Assignment. This Agreement and any interest herein may not be assigned or transferred, in whole or in part, by either party without the prior written consent of the other party, and any assignment or transfer without such consent shall be null and void.

- 7.3 Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
- 7.4 Force Majeure. Timely performance is essential to the successful implementation and ongoing operation of the project described herein. Time is of the essence. However, neither party shall be liable for any loss or damage suffered by the other party, directly or indirectly, as a result of the first party's failure to perform, or delay in performing, any of its obligations contained in this Agreement (except any obligations to make payments hereunder), where such failure or delay is caused by circumstances beyond the first party's control or which make performance commercially impracticable, including but not limited to, fire, flood, storm or other natural disaster, explosion, accident, war, riot, civil disorder, governmental regulations or restrictions of any kind or any acts of any government, judicial action, power failure, acts of God or other natural circumstances.
- 7.4.1 Right of Cancellation - Either party shall have the right to cancel the Agreement if Force Majeure suspends performance of scheduled tasks by one or more parties for a period of one hundred twenty (120) or more days from the scheduled date of the task. If a cancellation due to a Force Majeure occurs before title passes to the District, the Contractor may keep any parts of the Systems as it can salvage, but must remove same at its own expense and shall return all sums received from the District. If cancellation occurs due to a Force Majeure after title passes to the District, the Systems shall remain with the District and the Contractor shall be entitled to any such payments as have accrued according to the payment schedule.
- 7.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties, supersedes all previous agreements, written or oral, and there are no understandings, representations or warranties of any kind, express, implied or otherwise, not expressly set forth herein.
- 7.6 Non-Waiver and Modification. Waiver by either party of any default or breach of any provision of this Agreement by the other party shall not be construed as a waiver of any subsequent default or breach. No extension of time for payment or other accommodation granted to a party shall operate as a waiver of any of its rights under this Agreement. No provision of this Agreement may be modified by a party without the prior written consent of the other party.

- 7.7 Insurance. The Contractor agrees that it shall maintain Insurance as specified in Section 1 of the RFP throughout the term of this Agreement. Contractor will name District as an additional named insured under Contractor's commercial general liability insurance policy. Contractor agrees to deliver to District either a duplicate original or certificate of all policies procured by Contractor in compliance with its obligations hereunder, together with evidence of payment thereof, and including an endorsement which states that such insurance may not be canceled except upon thirty (30) days written notice to District.
- 7.8 Survival. All duties and responsibilities of any party that, either expressly or by their nature, extend into the future, shall extend beyond and survive the end of the contract term or cancellation of this Agreement.
- 7.9 General Indemnification. The Contractor agrees to indemnify, hold harmless and defend the District, its Board and its Board members in their official and individual capacities, its successors, assignees, employees, contractors and agents from and against any and all claims, costs, expenses, damages, and liabilities, including reasonable attorney's fees, arising out of the (i) negligent act or willful misconduct of the Contractor, its officers, directors, employees and agents, (ii) any breach of the terms of this Agreement by the Contractor or (iii) any breach of any representation or warranty by the Contractor under this Agreement. District agrees to notify Contractor by certified mail, return receipt requested, immediately upon knowledge of any claim, suit, action, or proceeding for which it may be entitled to indemnification under this Agreement. Contractor shall have the sole right, but not the obligation, to control the defense of any such claim. District agrees to provide reasonable assistance to Contractor, at Contractor's expense, in defense of same.
- 7.10 Shipping of Equipment. All shipping and insurance costs to and from the Site shall be included in the Contractor's proposal. All payments to shipping agents and for insurance fees shall be made directly by the Contractor. The District shall make no payments to any firm concerning the shipment, installation and delivery of Equipment which is not a part of this Agreement and for which exact payments are not described. Contractor shall be responsible for all arrangements for the shipment and receipt of equipment to District prepared site. The Contractor shall provide all properly trained representatives to unpack all items of Equipment and place this Equipment in the proper locations. The Contractor shall also be responsible for removal of all debris and packing materials from the site resulting from the installation of the Equipment. The District, at its option, may require the Contractor to provide certificates describing, to the satisfaction of the District, evidence of proper (as required by the State of

- Michigan) worker's compensation and liability insurance for all Contractor staff and representatives involved in the installation of the Equipment. The District shall be named as an additional insured and as the Certificate Holder for all work under this Agreement.
- 7.11 Non-Waiver of Agreement Rights. It is the option of any party to the Agreement to grant extensions or provide flexibilities to the other party in meeting scheduled tasks or responsibilities defined in the Agreement. Under no circumstances, however, shall any parties to the Agreement forfeit or cancel any right presented in the Agreement by delaying or failing to exercise the right or by not immediately and promptly notifying the other party in the event of a default. In the event that a party to the Agreement waives a right, this does not indicate a waiver of the ability of the party to, at a subsequent time, enforce the right. The payment of funds to the Contractor by District should in no way be interpreted as acceptance of the System(s) or the waiver of performance requirements
- 7.12 Patents, Copyrights and Proprietary Rights Indemnification. The Contractor, at its own expense, shall completely and entirely defend the District from any claim or suit brought against the District arising from claims of violation of United States patents or copyrights resulting from the Contractor or the District use of any equipment, technology, documentation, and/or data developed in connection with the services and products described in this Agreement. The District will provide the Contractor with a written notice of any such claim or suit. The District will also assist the Contractor, in all reasonable ways, in the preparation of information helpful to the Contractor in defending the District against this suit. The District retains the right to offset any amounts owed to Contractor in defending itself again claim. Following written notification of an infringement claim, Contractor may, at its expense and its discretion, either (a) procure for District the right to continue to use the alleged infringing product, (b) replace, modify or provide substitute product to District or (c) return all monies paid by District under the terms of the Agreement.
- 7.13 Nondiscrimination By Contractor Or Agents Of Contractor. Neither the Contractor nor anyone with whom the Contractor shall contract shall discriminate against any person employed or applying for employment concerning the performance of the Contractor responsibilities under this Agreement. This discrimination prohibition shall apply to all matters of initial employment, tenure and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, sex, religion, age, national origin, or ancestry. A breach of this covenant may be regarded as a default by the Contractor of this Agreement.
- 7.14 Subcontractors. When using any subcontractors not stated in the Contractor's response to the RFP, the Contractor must obtain written prior approval from the District for activities or duties to take place at the District's site. In using subcontractors, the Contractor agrees to be

responsible for all their acts and omissions to the same extent as if the subcontractors were employees of the Contractor.

7.15 Effect of Regulation. Should any local, state, or national regulatory authority having jurisdiction over the District enter a valid and enforceable order upon the District which has the effect of changing or superseding any term or condition of this Agreement, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, this Agreement shall remain in effect, unless the effect of the order is to deprive the District of a material part of its Agreement with the Contractor. In the event this order results in depriving the District of materials or raising their costs beyond that defined in this Agreement, the District shall have the right to rescind all or part of this Agreement (if such a rescission is practical) or to end the Agreement term upon thirty (30) days written prior notice to the Contractor. Should the Agreement be terminated under such circumstances, the District shall be absolved of all penalties and financial assessments related to cancellation of the Agreement.

7.16 Non-Collusion Covenant. The Contractor hereby represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement. In addition, the Contractor agrees that a duly authorized Contractor representative will sign a non-collusion affidavit, in a form acceptable to District, that the Contractor firm has received from District no incentive or special payments, or considerations not related to the provision of System(s) and Services described in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first set forth above.

DISTRICT: Lake Orion Community Schools CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_ BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_ DATE: \_\_\_\_\_