

## CONTRACT

THIS CONTRACT is made this \_\_\_\_ day of \_\_\_\_\_, 2015 by and between the Plum Borough School District (“**Owner**”) and Dagostino Electronic Services, Inc. (“**Contractor**”).

The parties, intending to be legally bound hereby, agree as follows:

1. **Project and Location.** Owner is a Pennsylvania school district and owns -----elementary schools, ----- middle school, ----- high school, and ----- administration building in Plum Borough, Pennsylvania. It is Owner’s desire for Contractor to provide certain security upgrade services and materials at its property as more fully set forth below (the “**Project**”).

2. **Scope of Work.** Contractor will furnish all labor, equipment, materials, supervision, and coordination as more fully set forth in its ----- Proposal to Owner. The ----- Proposal to Owner is incorporated and made part of this Contract as **Exhibit A**. Contractor has also furnished to Owner a Statement of Work further detailing its work at the Project. The Statement of Work is incorporated and made part of this Contract as **Exhibit B**.

3. **Owner’s Representative.** Chris Burkey, Director of Educational Technology, or another designee as assigned by the Owner’s Superintendent of Schools (“**Designee**”), will serve as the Owner’s agent and representative for the Project and the Owner will be bound by and responsible for any directions and decisions made by Mr. Burkey, or Designee, to Contractor during the course of the Contractor’s work at the Project.

4. **Price.** Owner will pay Contractor the Contract price of ----- (the “**Contract Price**”).

5. **Basis of Payment.** At the time of execution of this Contract, Owner shall provide an immediate payment to Contractor in the amount of ten percent (10%) of the Contract Price. Thereafter, progress billings shall be submitted by the Contractor to the Owner on or before the 30<sup>th</sup> day of each month. On or before the 10<sup>th</sup> day of the following month, Owner shall pay Contractor the entire value of the work completed and materials suitably stored at the Project during the previous month as set forth on Contractor’s invoicing. To the extent that there is not sufficient space or the Project site is not otherwise suitable for the storage of materials on-site, those materials will be stored at Contractor’s facilities. Contractor shall be entitled for payment of materials stored at its facilities provided that (a) Contractor evidences to Owner that the materials for which payment is requested were delivered to Contractor and

are in Contractor's possession; (b) Contractor maintains the materials in a safe and secure manner; and (c) Contractor maintains appropriate insurance on said materials.

6. **Final Payment.** The final payment will be due ten (10) days after substantial completion of the Project. If corrective or repair work of a minor nature remains to be accomplished by the Contractor after the Contractor's work is substantially complete, the Contractor will perform such "punchlist" work expeditiously and the Owner will not withhold payment pending the completion of such minor work.

7. **Interest on Late Payments.** In addition to all other remedies available to Contractor by law, any late payments made by the Owner shall be subject to interest at a monthly rate of one percent (1.0%).

8. **Penalties, Damages and Backcharges.** Contractor shall in no event be liable for any backcharges, penalties, delays, or damages, including, but not limited to, consequential damages, unless specifically provided for in this Contract.

9. **Project Schedule.** Contractor will work with Owner to establish an agreed-upon Project schedule. It is the parties' goal to attain substantial completion at the Project prior to the beginning of the Owner's 2016-2017 academic school year. Contractor's preliminary Project schedule (the "**Preliminary Schedule**") is incorporated and made part of this Contract as **Exhibit C**. The parties agree that substantial completion prior to the beginning of the Owner's 2016-2017 academic school year can be attained in accordance with the Preliminary Schedule provided that Contractor can begin procuring materials on or before ----- . The parties also agree that in order for the procurement of materials to begin on or before ----- , this Contract must be fully executed by the parties on or before ----- . Any delays in the execution of the Contract beyond ----- will result in delays to the Preliminary Schedule. The parties also agree that Contractor will have full and uninterrupted access to the Project site to begin its physical work no later than ----- . Any delays in providing such access to the Contractor will result in delays to the Preliminary Schedule. The parties also agree that Contractor shall not be denied reasonable access to the Project site prior to ----- to perform preliminary work during "second shift" hours (non-school hours). To the extent Contractor performs any "second shift" work prior to ----- , such work will be performed at no additional cost to the Owner.

10. **Extra Work.** Should Owner or any of Owner's agents direct any deletion from, modification of, or addition to the work covered by Contractor's original scope of work, the cost shall be added to or deducted from the Contract Price. In the case of extra work, Contractor shall be entitled to payment from the Owner regardless of whether the extra work order is reduced to writing.

11. **Insurance by Owner.** Owner will procure at its own expense and before the commencement of work hereunder "all risk" insurance with course of construction, theft, vandalism and malicious mischief endorsements attached. The insurance is to be in a sum at least equal to the Contract Price. Additionally, the Contractor shall carry minimum insurance requirements throughout the Project as follows:

- General Liability - \$1,000,000.00 each occurrence
- Personal Injury - \$1,000,000.00
- General Aggregate - \$2,000,000.00

The insurance will name the Contractor and its subcontractors, if any, as additional insureds and will be written to protect Owner, Contractor and subcontractors as their interests may appear. Should Owner fail to procure such insurance, Contractor may do so at the expense of Owner, but is not required to do so. Owner and Contractor waive rights of subrogation against each other to the extent that any loss is covered by valid and collectible insurance. If the Project is destroyed or damaged by accident, disaster, or calamity such as fire, storm, flood, landslide, subsidence, or earthquake, work done by Contractor in rebuilding or restoring the Project shall be paid by Owner as extra work.

12. **Payment/Performance Bonds.** If required, the Contractor shall procure payment and/or performance bonds for the Project. The costs associated with the procurement of payment and/or performance bonds are not included in the Contract Price.

13. **Delay.** Contractor shall be excused for delay in completion of the Contract caused by acts of God, acts of the Owner, acts of the Owner's other contractors at the Project, inclement weather, labor trouble, acts of public agencies, inspectors, or public utilities, extra work, failure of the Owner to make progress payments timely and for other contingencies unforeseen by Contractor and beyond the reasonable control of Contractor. It is further understood that time is not of the essence.

14. **Right to Stop Work.** Contractor shall have the right to stop work if Owner breaches the Contract. If the breach(es) is not cured, Contractor may, upon seven days' written notice, terminate the Contract.

15. **Concealed Conditions.** If Contractor should encounter concealed conditions that were not reasonably anticipated by Contractor, Contractor will call such conditions to the attention of Owner immediately, and the Contract Price will be accordingly adjusted for such extra work.

16. **Cleanup.** At all times during the progress of the work, and upon completion of the work, Contractor will clean up the jobsite and remove debris and surplus material.

17. **Limitations of Liability.** The Owner's exclusive remedy against Contractor for any damages allegedly suffered by the Owner arising out of this Contract shall be for breach of contract, and Contractor's liability in this regard shall be limited to the replacement of nonconforming services or materials or repayment of the monies paid by the Owner for the nonconforming services or materials, as Contractor may elect in its sole discretion. Contractor shall in no way be liable to the Owner for any special, consequential, or punitive damages. Any action for the breach of this Contract that is brought by the Owner must be brought within one (1) year after the cause of action shall occur, and no such action may be maintained which is not commenced within such period.

18. **Warranty and Disclaimer of Warranties.** Contractor agrees to pass on all manufacturer warranties, if any, to the Owner. Owner's sole recourse for defective or deficient materials or products provided by the Contractor shall be against any applicable manufacturer warranties. Additionally, Contractor warrants its work for one year from the date of substantial completion.

19. **Contractor Clearances.** Clearances must be submitted by Contractor for all workers performing work at the Project. Clearances must be dated such that they are not older than a year from the start date and must be submitted two weeks before physical work begins at the Project site. Clearances required are Act 151 Child Abuse, Act 34 Pa State Criminal History, Act 114 FBI Clearance and Act 168 Sex Reference Clearance.

20. **Attorney's Fees.** The Owner shall be liable to Contractor for any expenses, including attorney's fees or collection fees, incurred by Contractor due to any breach of this Contract by the Owner.

21. **Governing Law.** This Contract is governed by the laws of the Commonwealth of Pennsylvania.

22. **Disputes, Litigation and Arbitration.** Any dispute, controversy or claim arising out of or relating to this Contract shall be resolved by arbitration or litigation at the sole discretion and choice of Contractor. If Contractor chooses arbitration, it shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Such litigation or arbitration will be

conducted in Pittsburgh, PA, or such other venue as Contractor chooses. The Owner agrees to submit to the jurisdiction of the arbitration panel or court at such venue. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

23. **Enumeration of Contract Documents.** The Contract Documents shall consist of the following:

- The Contract between Owner and Contractor;
- Contractor's ----- Proposal to Owner (**Exhibit A**);
- Contractor's Statement of Work (**Exhibit B**); and
- Contractor's Preliminary Schedule (**Exhibit C**); and
- Contractor's Design Drawings delivered to Owner on -----.

24. **Entire Agreement.** This terms and conditions of this Contract represent the entire agreement between the parties.

IN WITNESS WHEREOF, the parties to these presents hereunto set their hands as of the day and year first above written.

**Plum Borough School District**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**DAGOSTINO ELECTRONIC SERVICES, INC.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_